

Water and Another Regulation Amendment Regulation (No. 1) 2014

Explanatory notes for SL2014 No. 63

made under the

Sustainable Planning Act 2009

Water Act 2000

General Outline

Short title

Water and Another Regulation Amendment Regulation (No. 1) 2014

Authorising Law

Sections 232 and 763 of the *Sustainable Planning Act 2009*.

Sections 20C, 190, 193, 206, 213, 633, 691, 967, 1014, 1083A and schedule 4 of the *Water Act 2000*.

Policy objectives and the reasons for them

Amendment of the Sustainable Planning Regulation 2009 (the SP Regulation) and Water Regulation 2002 (the Water Regulation) to implement a state-wide framework for regulating the construction of new levees and the modification of existing levees

The objective is to implement a state-wide framework for regulating the construction of new levees and the modification of existing levees in order to implement the Queensland Floods Commission of Inquiry (the Commission) recommendations. The Commission was established on 17 January 2011 to investigate the Queensland floods of 2010 and 2011 and provided the Queensland Government with a report detailing their findings and recommendations on 16 March 2012. On 7 June 2012 the Queensland Government committed to implement all 123 recommendations which relate directly to the State. The Commission made five recommendations directly related to levees. In summary, the Commission recommended that levees should be regulated using the most appropriate regulatory regime under the *Sustainable Planning Act 2009* (SP Act) and that the regime should be developed in consultation with local governments.

The first step in the development of a legislative framework for regulating the construction of new levees and the modification of existing levees occurred with the passage of the *Land, Water and Other Legislation Amendment Act 2013* (LWOLA) in May 2013. Sections 301, 302 and 306 of LWOLA amended the *Water Act 2000* (Water Act) by inserting a definition of levee and providing two regulation making powers to provide for the control and management of levees and to state a code against which applications will be assessed. The new levee framework will also form part of the integrated development assessment system (IDAS) under the SP Act.

This regulation is the second step in the development of the legislative framework for regulating the construction of new levees and the modification of existing levees and amends the SP Regulation and the Water Regulation.

Amendment of the Water Regulation

Rename the constructing authority protocol for taking water without a water entitlement

Section 20C(3)(c)(i) of the Water Act states that a constructing authority may take water to construct or maintain infrastructure if the taking of water for that purpose is prescribed under a regulation; and the constructing authority complies with the conditions prescribed under a regulation

Section 52AAB of the Water Regulation prescribes the conditions on taking water by a constructing authority. It states that the taking of water by a constructing authority is subject to the condition that water is taken in accordance with the document called ‘Protocol—Authorised taking of water without a water entitlement’ approved by the chief executive. The objective is to rename this protocol to remove any ambiguity about the purpose of the document and to remain consistent with other naming conventions used in the Water Regulation.

Remove two self-assessable codes

The objective is to remove redundant regulation.

Sections 1014(2)(i) and (j) of the Water Act state that a regulation may, for the purposes of SP Act, state a code for carrying out self-assessable development that is operational work that allows taking or interfering with water. That is, operational work mentioned in schedule 3, part 2, table 4 of the SP Regulation. Currently, such codes are stated in section 62 of the Water Regulation.

On 2 December 2013, the SP Regulation was amended to provide an exemption for the following works that take or interfere with water in a watercourse, lake or spring: replacement (like for like) pumps, infrastructure associated with take of water for which no water entitlement is required (i.e. water taken under sections 20 to 20C of the Water Act), new pumps if the water entitlement (e.g. water licence) is managed under a resource operations licence or interim resource operations licence, other works if the water licence states a rate of take and infrastructure that interferes with water.

Prior to the SP Regulation amendment, some of these works were self-assessable development and were assessed in accordance with the following self-assessable codes stated in section 62 of the Water Regulation:

- Self-assessable code for the development of riparian water access works on a watercourse, lake or spring
- Code for self-assessable development of operational works that interfere with water in a watercourse, lake or spring.

As a result of the exemptions for these particular works in the SP Regulation, the above mentioned self-assessable codes are now redundant and need to be removed.

Prescribe entities

The objective is to prescribe ‘Troy Peter Sobczak and Kate Louise Sobczak as trustee for the Evergreen Trust’.

Section 215 of the Water Act states that water taken under a licence can generally only be used on the land to which the licence is attached. However, section 213 of the Water Act provides that water licences do not attach to land if the holder is one of the entities listed in the section or an entity prescribed under a regulation. Section 206 of the Water Act also enables an entity to apply for a water licence.

Sections 7 and 14 of the Water Regulation provide that the entities for the purposes of sections 206 and 21 of the Water Act are listed in schedule 2. Item 13 of schedule 2 of the Water Regulation currently lists ‘Thomas Powell Stevens, Elsie Janett Stevens, John Brian Stevens and Deborah Jean Stevens, as joint holders of licences with licence numbers 61070B and 17990B, or a licence that replaces either licence’ as an entity that may hold a water licence that does not attach to land (the current entity).

The land relating to licence numbers 61070B and 17990B was recently sold by the current entity. While Water Licence 17990B was transferred upon sale, Water Licence 61070B was not. Instead, the contract of sale requires the current entity to transfer Water Licence 61070B to Troy Peter Sobczak and Kate Louise Sobczak as trustee for the Evergreen Trust once they have been established as an entity in the Water Regulation. In order for Water Licence 61070B to be transferred, Troy Peter Sobczak and Kate Louise Sobczak as trustee for the Evergreen Trust must be prescribed as an entity.

Prescribe new institutional structures for dissolved water authorities and former authority areas

Section 633 of the Water Act provides that a regulation may dissolve the employing office for a water authority. Similarly, section 691 of the Water Act provides that a regulation may dissolve a water authority for converting to the authority to an alternative institutional structure or dissolve a water authority after transferring all of its function to a local government. Alternative institutional structures include corporations, cooperatives, trusts, two-tiered cooperative structures and all parties to a closed water activity agreement.

As a result of the Webbe-Weller Review of Queensland Government boards, committees and statutory authorities (including category 2 water boards) the *Water Amendment Regulation (No. 3) 2013* dissolved, for conversion to alternative institutional structures, a number of

category 2 water boards including the Condamine Plains, Coreen, Grevillea, Kooingal, Middle Park, Mulgildie, and Oaky Creek Water Boards and the Myall Plains Water Authority. Similarly the Juandah, Washpool and Woodmillar Water Boards, which are category 2 water authorities have, by special resolution, requested that the Minister for Natural Resources and Mines dissolve the boards and transfer their assets and liabilities to their respective alternative institutional arrangements.

With the exception of Woodmillar Water Board, in order to continue the existing water entitlement arrangements held by these dissolved water authorities it is necessary to prescribe the new institutional structures for these authorities as entities in schedule 2 and in addition, remove Juandah, Washpool and Woodmillar Water Board as existing water authorities from schedule 6 and reflect that these boards have been replaced by new institutional structures nominated in schedule 6B of the Water Regulation.

Section 548 of the Water Act also provides that a regulation may establish water authorities and state their authority areas. Section 691 of the Water Act provides that if a water authority has an authority area, the regulation may dissolve the authority area. Sections 1083 and 1083A of the Water Act provide for the transition of water areas in existence immediately before the commencement of the Water Act. In particular, section 1083A of the Water Act provides that a regulation must identify each former water area for which no board was in existence immediately before the commencement of section 1083. These areas are identified in schedule 13 of the Water Regulation.

The Back Creek Water Supply Area (WSA) is listed in schedule 13 of the Water Regulation as a former water area. Water planning developments in the Fitzroy catchment resulted in the Back Creek WSA no longer serving the function for which it was established. After considering a number of management options presented to them by the department the landholders in the area requested that the area be dissolved.

Amend metered entitlements

Section 808 of the Water Act provides that it is an offence for the holder of a metered entitlement to take water other than through works that have an approved meter attached. Section 1014(2)(d) of the Water Act provides that a regulation may state a number of matters in relation to water meters.

Part 7 of the Water Regulation provides for the implementation of a system for the compulsory use of approved water meters for taking or interfering with water. In particular, schedule 15A of the Water Regulation specifies those entitlements that are metered entitlements. Section 71 of the Water Regulation provides the definition of an approved meter. Section 76 of the Water Regulation states that a meter is not recognised as an approved meter unless the meter continues to undergo validation by a date outlined in column 3 of schedule 15A of the Water Regulation.

As part of the implementation of the Queensland Non-Urban Water Metering Policy for Unsupplemented Extractions the transfer of ownership of approximately 5000 meters was to be completed on 31 March 2014. The transfer of ownership of water meters has been delayed and as a result the dates for revalidation of water meters need to be extended to provide additional time to for the owners of the meter to understand their new requirement to revalidate.

One of the objectives of this amendment regulation is to list the Central Lockyer Creek Water Management Area (non-benefited) as a metered entitlement area in schedule 15A of the Water Regulation. This will complete the process of establishing a metered area. The majority of the meters in the Central Lockyer Creek Water Management Area (non-benefited) were installed in either 1997 or 2000, with additional meters installed as required from 2000. This process and metering requirement was reflected in section 89 of the *Water Resource (Moreton) Plan 2007*.

The proposed amendment regulation also makes a number of minor amendments to schedule 15A of the Water Regulation to:

- reflect that titles of resource operations plans prepared by the department no longer refer to the year in which they were made
- remove redundant references that relate to plan areas
- remove references to specific licences in areas where metering requirements now apply across the entire area. There are many references to specific licences in schedule 15A of the Water Regulation. The listing of particular licences was a transitional approach to implement metering requirements.

Achievement of policy objectives

Implement a state-wide framework for regulating the construction of new levees and the modification of existing levees

The implementation of a state-wide framework for regulating the construction of new levees and the modification of existing levees will be achieved by:

- amending the SP Regulation to categorise the construction of new levees and the modification of existing levees (operational works) as development under section 231 of the SP Act and reflect these works in the appropriate schedules in the SP Regulation.
- amending the SP Regulation and Water Regulation to recognise that levees location, size and construction will all affect the level of risk they pose to population and assets. As a result, three categories of levees, each requiring a different level of assessment, will be prescribed.

A Category 1 levee has no off-property impacts and is subject to self-assessment. The other two categories are assessable development under the SP Act and require a development permit. A Category 2 levee has off-property impacts, but impacts less than three people and is subject to code assessment. A Category 3 levee has off-property impacts, impacts three or more people and is subject to impact assessment.

- amending the Water Regulation to prescribe a volume of material for the definition of a levee, ensuring that anything under this threshold is not captured as levee. The volume of 50 cubic meters was determined following the consultation process and the consideration of existing local laws.

Rename the constructing authority protocol for taking water without a water entitlement

Confusion about the name of the constructing authority protocol will be removed, and consistency with the naming conventions used in other instruments prescribed in the Water Regulation achieved, by amending section 52AAB of the Water Regulation to replace the current document name with 'Exemption requirements for the taking of water without a water entitlement under the Water Regulation 2002'.

Remove two self-assessable codes

The removal of redundant self-assessable codes will be achieved by amending section 62 of the Water Regulation to remove references to the self-assessable code for the development of riparian water access works on a watercourse, lake or spring and the code for self-assessable development of operational works that interfere with water in a watercourse, lake or spring.

Prescribe entities

This amendment regulation amends schedule 2 of the Water Regulation to prescribe Troy Peter Sobczak and Kate Louise Sobczak as trustee for the Evergreen Trust as an entity. This will allow them to hold a water licence that is not attached to land.

Prescribe new institutional structures for dissolved water authorities and former authority areas

The amendment regulation will prescribe the new institutional structures for the Condamine Plains, Coreen, Grevillea, Kooingal, Middle Park, Mulgildie, and Oaky Creek Water Boards, the Myall Plains Water Authority, Juandah and Washpool Water Boards as entities in schedule 2 to allow them to continue existing water entitlement arrangements. The amendment regulation will also remove Juandah, Washpool and Woodmillar Water Boards as existing water authorities from schedule 6 of the Water Regulation and reflect that these boards have been replaced by new institutional structures in schedule 6B of the Water Regulation.

The amendment regulation will amend schedule 13 of the Water Regulation to remove Back Creek WSA and its authority area described on – AP3963.

Amend metered entitlements

The extension of time to revalidate meters in areas where the transfer of ownership of water meters has been delayed will be achieved by amending schedule 15A of the Water Regulation to extend meter validation dates by two years.

The completion of metering in the Central Lockyer Creek Water Management Area (non-benefited) will be achieved by including the area in schedule 15A of the Water Regulation.

The use of consistent terminology will be achieved by removing the years associated with resource operations plans from schedule 15A of the Water Regulation.

The removal of redundant references to plan areas will be achieved by amalgamating table rows (in schedule 15A) that relate to a single plan area. In the event of two different validation dates, the latter one has been included in the schedule.

The removal of references to specific licences in areas where metering requirements now apply across the entire area will be achieved by omitting specific entitlement numbers from schedule 15A of the Water Regulation.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objectives of the SP Act and the Water Act.

In particular, the implementation of a state-wide framework for regulating the construction of new levees and the modification of existing levees ensures that levees are prescribed as assessable development under section 231 and section 232 of SP Act, which categorises the types of development to which IDAS applies and provides that a regulation may require a code or impact assessment or both for assessable development and state the code.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation. It provides for the removal or inclusion of provisions consistent with other legislation relating to assessable development.

Alternative ways of achieving policy objectives

The policy objectives of the amendment regulation could not be achieved in any alternative way. Changes to subordinate legislation are necessary to achieve the operational requirements of these objectives.

Benefits and costs of implementation

Implement a state-wide framework for regulating the construction of new levees and the modification of existing levees

This amendment gives effect to the amendments made to the Water Act through LWOLA. It delivers on the recommendation made by the Commission in its 2012 report that levees should be regulated under the most appropriate regulatory regime under the SP Act.

The benefit of this new framework is that there will be a consistent approach applied to the construction of new levees, or modification of existing levees, throughout Queensland. This will provide a level of certainty for landholders who may be located near a levee being constructed or modified and levee proponents about the requirements for levee construction.

The costs of this new regulation are estimated at \$32.7 million over a ten year period, or \$4.7 million per year. The costs are largely (around 85%) borne by levee proponents, through having to conduct hydrological studies to show the likely impacts of their levees. There is also a cost to local councils, as the assessment managers for levees.

It is considered that the benefits of introducing the regulation will offset these costs over the longer term.

Rename the constructing authority protocol for taking water without a water entitlement

The renaming of this protocol facilitates the ongoing operation of the Water Act and provides consistency with other terminology used in the department. The amendment itself has no implementation costs.

Removal of self-assessable codes

The removal of these redundant provisions facilitates the ongoing operation of the Water Act. They also give effect to the exemptions provided for in the SP Regulation for certain works.

Prescription of entities

Prescribing Troy and Kate Sobczak will enable them to hold a water licence as part of the sale of land where the water licence for the parcel of land was not attached to the land.

Prescription of new institutional structures associated with dissolved water authorities and authority areas

The key benefit of these amendments are to facilitate the operation of the Water Act and enable the entities to operate more independently and efficiently in a way that best fits the scale of their operations.

Metered entitlements

This amendment will ensure the continued operation of the Water Act in respect to changes that have occurred as part of the new metering policy which provides greater flexibility for water entitlement holders in the management of their meters.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation was consulted regarding all of the amendments.

Implement a state-wide framework for regulating the construction of new levees and the modification of existing levees

The amendments to the SP Regulation and Water Regulation to introduce a state-wide framework for regulating the construction of new levees and the modification of existing levees form part of the second stage of the implementation of the Committee's recommendations. LWOLA amended the Water Act to provide the first step in the development of a legislative framework for a consistent approach to regulating the construction of levees. Stakeholders and relevant Queensland and Local Government agencies were consulted on the new levee provisions during development of LWOLA and as part of the regulatory impact statement (RIS) process required for these amendments.

In total, 35 submissions were received following release of the RIS. 20 of these were from local governments. Many of the local government submissions indicated a preference for the Queensland Government to assume the assessment manager role for Category 2 and 3 levees. However, given that local governments currently assess development applications and urban flood mitigation schemes, it was considered that local governments were in the best position to manage levees for the benefit of local communities. Local councils were advised of this decision through the decision RIS and have subsequently been consulted during the development of the codes and guidelines to support the regulation.

While the majority of consultation on the levee provisions was undertaken as part of this RIS process with local government and relevant stakeholders, further consultation with the Department of State Development, Infrastructure and Planning about the amendments, including development of the codes, was undertaken.

Rename the constructing authority protocol for taking water without a water entitlement

No consultation was undertaken on this proposed amendment. However, feedback was received from regional staff and some clients in regards to the existing name. This has prompted this amendment to amend the terminology to clarify the intended purpose of the document and to adopt a consistent approach now taken across the department. No stakeholder will be adversely affected by this amendment.

Remove two self-assessable codes

This is a consequential amendment to support changes made to the SP Regulation to remove now redundant codes, no consultation was undertaken on this proposed amendment and the amendment will not disadvantage stakeholders. Consultation with key industry stakeholders including Queensland Farmers' Federation, AgForce, Queensland Resources Council, Australian Petroleum Production and Exploration Association, SEQ Water and Sunwater was carried out during the process to amend the SP Regulation in December 2013.

Prescription of entities

The amendment to schedule 2 of the Water Regulation is in response to a request from the proposed entity. The parties sought to be prescribed as an entity to allow them to hold a water licence that does not attach to land.

Prescribe new institutional structures for dissolved water authorities and former authority areas

The amendments related to water authorities and former authority areas affect the former Condamine Plains, Coreen, Grevillea, Kooingal, Middle Park, Mulgildie, Oaky Creek Water Boards, the Myall Plains Water Authority, Juandah Water Board, Washpool Water Board and Woodmillar Water Board. The stakeholders were fully informed of the proposal to dissolve each of the boards and transfer all their functions to alternative institutional arrangements. This occurred through information packages prepared by the boards that were provided to affected landholders. Landholders were provided the opportunity to express views and concerns through a special ballot process in accordance with section 695(3) of the Water Act and section 48 of the Water Regulation where the majority of ratepayers agreed with the request for dissolution.

At a meeting on 8 August 2013 landholders in the Back Creek WSA considered a options provided by the department about the future of the Back Creek WSA. After consideration of the options the landholders unanimously decided to make a request to dissolve the WSA. A public notice in accordance with section 692 of the Water Act was published in December 2013 about the proposed dissolution and no submissions were made.

Amend metered entitlements

There has been ongoing consultation with the relevant water entitlement holders regarding changes to metered entitlements. This has included information packages provided to these water entitlement holders in metered area informing them of the transfer of ownership rollout and what it will mean for them.

Significant consultation occurred with entitlement holders in the Central Lockyer Creek Water Management Area through water planning and metering communication processes undertaken prior to and during the time of meter installation. Metering in this area is also reflected in the *Water Resource (Moreton) Plan 2007* which required active engagement with the community.