

# Water Regulation 2016

Explanatory notes for SL 2016 No. 216

made under the

*State Penalties Enforcement Act 1999*  
*Sustainable Planning Act 2009*  
*Water Act 2000*

## General Outline

### Short title

*Water Regulation 2016*

### Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*  
Section 763 of the *Sustainable Planning Act 2009*  
Sections 36, 39, 49, 99, 101, 104, 126, 127, 152, 158, 168, 360C, 344, 353, 479, 548, 602, 690, 808, 814, 967, 981, 986A, 983L, 993, 1006, 1014, 1014A and schedule 4 of the *Water Act 2000*

### Policy objectives and the reasons for them

The objective of the *Water Regulation 2016* is to replace the expiring *Water Regulation 2002* and prescribe administrative and operational matters for the *Water Act 2000*, including to:

- support provisions for watercourse identification
- provide a process for releasing unallocated water
- provide matters for the Minister's report on water plans
- prescribe the purpose and conditions for which a constructing authority may take water
- prescribes activities for which the taking of, or interfering with, water is authorised without an entitlement
- provide for matters relating to water licences
- allow for seasonal water assignments and prescribe associated rules
- provide criteria for establishing water allocations and prescribe water allocation dealing rules
- provide information about the water allocations register
- provide matters for water supply and demand management

- prescribe the annual levy for underground water management payable to the Office of Groundwater Impact Assessment
- provide for water authorities
- provide for authorised interstate water trades
- prescribe exemptions for riverine protection permits
- prescribe requirements for decommissioning water bores
- provide for works that are self-assessable and assessable development for the *Sustainable Planning Act 2009* and prescribe the associated codes.
- provide requirements for the construction and modification of levees
- provide for the metering of water entitlements
- provide water bore drillers licencing requirements
- make declarations about underground water taken to be water in a watercourse
- set fees and charges payable under the *Water Act 2000*
- set royalties for riverine quarry material
- prescribe drainage rates payable
- provide rules for managing underground water that isn't managed through a water plan
- provide for the continuation of former water areas

The *Water Regulation 2002* is subordinate legislation made under the *Water Act 2000* and subject to automatic expiry under Part 7 of the *Statutory Instruments Act 1992*. The *Water Regulation 2002* was due to expire on 1 September 2012, however it was exempted from expiry under the *Statutory Instruments Act 1992* on the basis that the *Water Act 2000* was under review.

Many of the provisions of the *Water Regulation 2002* remain necessary for the continued effective operation of the *Water Act 2000* as it facilitates the operation of provisions and prescribes necessary administrative and machinery matters. As a result, the *Water Regulation 2016* continues the majority of the existing provisions.

The *Water Regulation 2016* includes amendments to improve the operation and usability of the existing provisions and correct errors. It also incorporates uncommenced provisions that were to be made by the *Water and Other Legislation Amendment Regulation (No. 1) 2014*, and includes further consequential amendments, to support the implementation of the *Water Reform and other Legislation Amendment Act 2014*.

## **Achievement of policy objectives**

The *Water Regulation 2016* remakes the *Water Regulation 2002*. To a large extent, the content of the *Water Regulation 2002* has been retained.

In addition to continuing existing provisions the *Water Regulation 2016* makes the following changes to improve the operation and usability of the provisions:

- structures the provisions in a more logical manner, aligning where possible with revised structure of the *Water Act 2000* following amendments by the *Water Reform and Other Legislation Amendment Act 2014*
- incorporates uncommenced amendments from the *Water and Other Legislation Amendment Regulation (No. 1) 2014*

- contemporises the existing provisions while maintaining the existing policy intent
- makes operational amendments relating to prescribe new metered entitlement areas, extend the meter revalidation dates for certain metered entitlement areas and update water bore drillers licencing requirements to more closely reflect the National Uniform Drillers' Licensing System
- corrects errors and makes other minor improvements

The *Water Regulation 2016* also carries over amendments to the *State Penalties Enforcement Regulation 2014* from the *Water and Other Legislation Amendment Regulation (No. 1) 2014* that remain uncommenced. It also makes consequential amendments to the *Sustainable Planning Regulation 2009* and various water plans made under the *Water Act 2000* to implement the *Water Reform and Other Legislation Amendment Act 2014* and the *Water Regulation 2016*.

## **Consistency with policy objectives of authorising law**

The *Water Regulation 2016* is consistent with the objectives of the *Water Act 2000*.

## **Inconsistency with policy objectives of other legislation**

The *Water Regulation 2016* is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The *Water Regulation 2016* ensures continued effective operation of the *Water Act 2000*, by prescribing necessary administrative and machinery matters. No costs to government are currently envisaged. No substantial policy changes have been made from the existing provisions of the *Water Regulation 2002*. However, if any operational costs do arise they will be met from existing agency budget allocations.

## **Consistency with fundamental legislative principles**

Whether legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons – *Legislative Standards Act 1992*, section 4(3)(c)

Section 18 of the *Water Regulation 2016* provides that the chief executive may decide the terms of a sale of water or the terms of granting water under the release of unallocated water process. This section could be considered to be a breach of fundamental legislative principles in regard to the delegation of administrative power only in appropriate cases and to appropriate persons. In this case, the chief executive is considered justified as the appropriate person as it is consistent with new section 40 of the *Water Act 2000*, which allows the chief executive to set a price for the sale of unallocated water. It is argued that because the chief executive may set the price, the chief executive is also the appropriate person to set the other terms of the sale or grant.

Whether legislation provides for the compulsory acquisition of property only with fair compensation – *Legislative Standards Act 1992*, section 4(3)(i)

Section 19 of the *Water Regulation 2016* provides for failure to complete a purchase of unallocated water. Under this provision a deposit paid by a person purchasing unallocated water who does not complete the purchase in accordance with the terms of sale is forfeited to the State. This could be considered a breach of fundamental legislative principles in relation to whether legislation provides for the compulsory acquisition of property only with fair compensation. This provision is considered justified and appropriate as forfeiture of deposits is common commercial practice. Also, the purchaser has prior knowledge that if the purchase is not completed then the deposit is liable to be forfeited.

Section 4(5)(e) of the *Legislative Standards Act 1992* provides that subordinate legislation should allow the sub delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act. The following sections require compliance with external documents. These sections could be considered to be a breach of fundamental legislative principles in regard to the delegation of administrative power only in appropriate cases and to appropriate persons.

Sections 23 and 24 of the *Water Regulation 2016* provide a mechanism for constructing authorities (State or local government) to take water for the purpose of constructing or maintaining State infrastructure (for example public roads, state railways, pipelines etc) across multiple water sources without a water licence or permit. This taking of water must be carried out in accordance with the document identified in the *Water Regulation 2016*.

This provision is considered justified and appropriate as it reduces regulatory burden on constructing authorities and the Department of Natural Resources and Mines by removing the need for obtaining a water licence or water permit before accessing water necessary for construction or maintenance activities. This will enable more timely access to water by constructing authorities for the repair and construction of community infrastructure, including infrastructure damaged or destroyed by natural disasters.

Section 96 of the *Water Regulation 2016* provides that the excavating or placing of fill in a watercourse, lake or spring is authorised if carried out in accordance with a document called 'Riverine Protection Permit Exemption Requirements' approved by the chief executive. This provision is considered appropriate and justified as it reduces the regulatory burden on the Department of Natural Resources and Mines and persons wishing to undertake small scale low risk riverine activities within the limits prescribed and in accordance with the requirements pre-determined by the chief executive as being acceptable.

Section 97 of the *Water Regulation 2016* provides that a water bore must be decommissioned in accordance with the prescribed standards, which are the approved Australian standards for decommissioning bores.

Section 127 of the *Water Regulation 2016* states certain conditions that apply to a water bore driller's licence. These include requiring certain drilling activities to be conducted in accordance with nationally accepted standards.

Both *sections 97* and *127* of the *Water Regulation 2016* rely on external documents that have been developed by the National Uniform Drillers Licensing Committee and a departmental document specific to Queensland conditions. The documents are used extensively by regulators and the drilling industry, and provide a consistent standard reference across Australia for the licensing of bores and drillers. The requirements focus on protecting groundwater resources from contamination, deterioration, and uncontrolled flow associated with poorly constructed bores, and on the construction of bores to provide a good water supply. A number of the documents are lengthy and include detailed information. It is arguable that for practical reasons it is appropriate for such detailed matters to be set out in a document other than subordinate legislation.

## Consultation

The Department of Natural Resources and Mines and the Department of Environment and Heritage Protection met with key stakeholder groups that form the Water Engagement Forum on 7 March 2016 and 29 April 2016 to discuss the proposed *Water Regulation 2016*. Stakeholders included in the Water Engagement Forum include: AgForce, Association of Mining and Exploration Companies, Australian Bankers' Association, Australian Petroleum Production and Exploration Association Ltd, Environmental Defenders Office Great Barrier Reef Marine Park Authority, Irrigation Australia, Local Government Association of Queensland, Local Management Arrangements for Irrigation Channel Schemes, Queensland Conservation Council, Queensland Farmers' Federation, Queensland Regional Natural Resource Management Groups Collective, Queensland Resources Council, State Council of River Trusts, Queensland Seafood Industry Association, SEQ Catchments, Seqwater, SunWater, The Wilderness Society and the World Wide Fund for Nature Australia.

The Department of Natural Resources and Mines received eight submissions on the draft. Stakeholders generally support the *Water Regulation 2016*.

The Office of Best Practice Regulation, Queensland Productivity Commission was consulted and confirmed that the remaking of the *Water Regulation 2002* as the *Water Regulation 2016*, as well as changes to extend the revalidation dates for some metered entitlement areas, prescribing new metered entitlement areas and updating the water bore drillers licencing qualifications and experience to more closely reflect the national standard, are excluded from further analysis under the Regulatory Impact Statement system or the Queensland Government Guide to Better Regulation.

# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

#### Short title

*Section 1* provides that the short title of the regulation is the *Water Regulation 2016*.

#### Commencement

*Section 2* provides that the *Water Regulation 2016* will commence on commencement of section 68 of the *Water Reform and Other Legislation Amendment Act 2014*. This is to ensure that commencement of the new *Water Regulation 2016* aligns with the automatic commencement of amendments to the *Water Act 2000* under the *Water Reform and Other Legislation Amendment Act 2014* on 6 December 2016.

#### Definitions

*Section 3* states that certain defined terms are included in schedule 19 to the *Water Regulation 2016*.

### Division 2 Watercourse identification and outer bank location

*Division 2* carries over the existing provisions for watercourse identification and outer bank location. These provisions support the *Water Act 2000* to clarify the lateral extents of the watercourse as being the 'outer' banks. The provisions allow for the identification of the watercourse's location within the valley setting, using adjacent floodplain and valley margin features to depict the lateral extent. This recognises that watercourses are landscape features measured at the valley scale. *Schedule 1* contains a number of diagrams that support watercourse identification and outer bank location.

## Part 2 Water rights and planning

### Division 1 Collecting information about water

#### Notice of works and water use

*Division 1* carries over a new provision that was to be inserted by the *Water and Other Legislation Amendment Regulation (No. 1) 2014*, that specifies what is to be provided in a notice of works and water use. A notice of works and water use is a notice that may be issued by the chief executive under the *Water Act 2000* to gather information about the existence of works for taking or interfering with water for which no water entitlement is required at the time.

### Division 2 Unallocated water

*Division 2* carries over provisions about unallocated water and incorporates amendments that remained uncommenced under the *Water and Other Legislation Amendment Regulation (No. 1) 2014*.

From the *Water and Other Legislation Amendment Regulation (No. 1) 2014* it carries over a new provision for reserving unallocated water in areas outside of a water plans, or water to which no water plan applies. The *Water Regulation 2016* is intended to be

the mechanism for reserving unallocated water in non-plan areas or for water resources that fall within a plan area but not dealt with under the plan, for example where overland flow water is not regulated under a plan.

A new provision is included that provides an option for the Minister to undertake public consultation on a proposal to reserve unallocated water, in advance of an unallocated water reserve being made by regulation.

Division 2 also carries over the existing State wide process for the release of unallocated water through public auction, tender or fixed price sale. This process has been subsequently amended to refer to the new planning instruments.

### **Division 3 Minister's reports on water plans**

#### **Minister's reports on water plans**

*Division 3* carries over a new provision that was to be inserted by the *Water and Other Legislation Amendment Regulation (No. 1) 2014*, that provides the Minister's reporting requirements for water plans. The *Water Act 2000* previously required the Minister to prepare reports on each water resource plan as an assessment of the progress and performance of the management strategies of each plan in achieving the plan's outcomes. This provision has now been relocated from the *Water Act 2000* to the *Water Regulation 2016* and modified to ensure that monitoring regimes within each plan are more outcomes-focused. This section has also been amended to align with the new purpose of the *Water Act 2000* to refer to sustainable management.

## **Part 3 Statutory authorisations to take or interfere with water**

### **Division 1 Constructing authorities**

*Division 1* carries over the existing provisions for a constructing authority, such as a state government agency or local government, to take water for the construction or maintenance of state infrastructure in accordance with the exemption requirements document approved by the chief executive, without a water licence or water permit.

### **Division 2 Authorised taking of, or interference with, water without water entitlement**

#### **Prescribed activities—Act, s 101(1)(a)**

*Division 2* continues the existing provision for activities for which water can be taken, or interfered with, without the requirement for a water entitlement or permit. The taking or interfering with water for prescribed activities provided for in this section may be altered or limited by a water plan, requirements prescribed for an underground water area or a moratorium notice in accordance with section 101 of the *Water Act 2000*.

This section is amended, as per the uncommenced amendment under the *Water and Other Legislation Amendment Regulation (No. 1) 2014*, to ensure that water cannot be taken for these prescribed activities in a water supply scheme.

## **Part 4 Matters relating to water licences**

### **Division 1 Preliminary**

#### **Prescribed entities—Act, s 104, definition prescribed entity,**

*Division 1* carries over the existing provision that prescribes entities that may apply for a water licence without being an owner of land, or hold a water licence that does not attach to land. For various reasons there may be circumstances where an entity either does not own land for which they require a water licence or need to use water from a water licence on land other than the land to which the water licence attaches. Examples include:

- Body corporates or similar entity that need to water land within the body corporate area that is not owned by the corporate or entity
- An entity that may operate infrastructure that is located on land which they do not own.
- A water authority that has converted into an alternative institutional structure that needs to continue to hold their water licence.

These prescribed entities are listed in schedule 4.

### **Division 2 Water sharing rules**

*Division 2* carries over the existing provisions for water sharing rules for specified water management areas listed in schedule 5. Water sharing rules specify the way the volume of water that a person is authorised to take under an entitlement is determined, define the nominal entitlement, specify how the announced entitlement for a year is determined and state the way in which the annual entitlement for a water licence is determined.

### **Division 3 Transfer, amendment or amalgamation of water licences—Act, s 126**

*Division 3* carries over the existing provisions that allow for the transfer (relocation), and subsequent amendment or amalgamation of particular water licences. Any proposed relocation of a water licence is assessed against a set of relocation rules which aim to ensure that the change in location does not adversely impact on the water security of existing entitlements or the environment.

In notifying the applicant of a decision under this division, the chief executive must, within 30 business days of deciding the application, give the applicant a decision notice in circumstances where no other decision could have been made. Where another decision could have been made the chief executive must give the applicant an information notice. The applicant may appeal a decision included in an information notice but may not appeal a decision notice.

### **Division 4 Seasonal water assignments and rules—Act, s 127**

*Division 4* carries over the existing provision that allows for seasonal water assignment (temporary trade) of water available under a water licence. Seasonal water assignments are allowed in the areas prescribed in schedule 6 for the types of water licences listed in the schedule in accordance with the prescribed rules.

### **Division 5 Effects of land dealings or acquisition of land on water licences**

*Division 5* carries over provisions that were to be relocated from the *Water Act 2000* under the *Water and Other Legislation Amendment Regulation (No. 1) 2014*. Under the *Water Act 2000*, water licences generally attach to the licensee's land, with the licensee being the owner of the parcel or parcels of land. Land dealings, such as the

sale of land, or the acquisition of all or part of the land, affect who is able to be the licensee.

The division specifies the arrangements that apply in relation to a water licence when the licensee ceases to be the owner of the land to which the licence relates. The division creates a default arrangement that establishes responsibility for a licence when a licensee disposes of land to which the licence relates and no arrangements have been effected to transfer the licence to the new owner of the land.

## **Part 5 Water allocations**

### **Division 1 Criteria for establishing elements of particular proposed water allocations**

*Division 1* carries over the uncommenced provisions for establishing elements of particular proposed water allocations. These provisions were to be inserted into the *Water Regulation 2002* by the *Water and Other Legislation Amendment Regulation (No. 1) 2014*. The strategies and criteria provided in these provisions are commonly known as 'conversion rules' and apply to the conversion of non-tradeable water licences and other authorisations to tradeable water allocations. Conversion rules existed in 22 separate water resource plans. Some conversion rules are generic across all plan areas, while others reflect catchment-specific requirements.

The criteria include nominal volumes and volumetric limits for the allocation, maximum rates (listed in schedule 7) at which water can be taken under the allocation, and daily volumetric limits for the allocation. The provisions require that the details of the existing authorisation be considered in determining these values and that the chief executive may also impose conditions on the water allocation.

Conversion rules for rates of take, where none are specified on the existing entitlement, can include consideration of the authorised pump size determined using a 'pump size schedule' in a water plan. Conversion rules for rates of take are used to guide specific requirements of proposed water allocations.

### **Division 2 Seasonal water assignments**

*Division 2* carries over the uncommenced provision from the *Water and Other Legislation Amendment Regulation (No. 1) 2014* that prescribes the process for granting a seasonal water assignment (temporary trade) for water allocations. Seasonal water assignments for water allocations were previously provided for under the *Water Act 2000*, however have been relocated to the *Water Regulation 2016*. The division provides the arrangements for seasonal water assignments for water allocations that are not managed under a resource operations licence as well as for those that are managed under a resource operations licence. Where the water allocation is managed under a resource operation licence, the holder of the water allocation may enter into an arrangement for a seasonal water assignment where the resource operations licence holder, and any relevant distributions operations licence holder consents to the arrangement.

### **Division 3 Water allocation dealing rules applying to the whole of the State**

*Division 3* carries over uncommenced provisions that were to be inserted under the *Water and Other Legislation Amendment Regulation (No. 1) 2014*, to provide for water allocation dealing rules that apply to the whole of the State. The provisions clarify those dealings permitted under the rules, which include particular amalgamations, subdivisions and other dealings that must be assessed against particular criteria.

The prescribed state-wide water allocation dealing rules do not apply if the relevant water management protocol provides an alternative process for making or deciding a water allocation dealing. The State-wide dealing rules clarify the following:

- process for making an application for a dealing, including:
  - the way an application may be made
  - fees to accompany an application
  - requirements for publishing a notice of the application
  - dealing with any costs associated with researching and investigating an application if these costs are expected to be substantial.
- process for deciding an application, including:
  - considerations for the chief executive in deciding an application
  - requirements for notifying the applicant and other submitters.

#### **Division 4 Registration of water allocations and interests and dealings with water allocations**

*Division 4* carries over the existing provisions that specify registration details for certain water allocations, the location of offices of the water allocations registry and documents that can be lodged at registry.

### **Part 6 Water supply and demand management**

Part 6 carries over the existing provisions for water supply and demand management to ensure the delivery of sustainable and secure water supply and demand management for the South East Queensland region and other designated regions.

The purpose is achieved by:

- providing for the desired level of service objectives for water security in the SEQ region and designated regions; and
- requiring the bulk water supply authority and water service providers for designated regions to have a water security program including plans and strategies to facilitate the achievement of the desired level of service objectives.

### **Part 7 Annual levy for underground water management**

#### **Division 1 Preliminary**

*Division 1* carries over the existing provisions for an annual levy to fund the activities of the Office of Groundwater Impact Assessment. It provides that the objectives of Part 7 are to specify the structure of the levy on petroleum tenure holders which will fund the annual estimated costs of the Office of Groundwater Impact Assessment in carrying out its underground water management functions under Chapter 3 of the *Water Act 2000*.

#### **Division 2 Working out annual levy**

*Division 2* carries over the existing provisions for how the annual levy on petroleum tenure holders is to be worked out. It provides the structure of the levy based on apportionment of the Office of Groundwater Impact Assessments annual costs to each class of relevant sub-block of a petroleum tenure. It also identifies the types of petroleum tenure holders to which the levy applies.

### **Division 3 Collecting annual levy**

*Division 3* carries over the existing provisions for the collection of the annual levy on petroleum tenure holders by the Office of Groundwater Impact Assessment.

## **Part 8 Water Authorities**

*Part 8* provides for the continuation of existing water authorities and their associated water authority areas that were established or amalgamated under the *Water Regulation 2002*, which is repealed by this regulation.

The *Water Act 2000* was amended in 2015 to provide that no new water authorities may be established. However, these continued authorities may be amalgamated, dissolved, converted to an alternative institutional structure or have their functions transferred to a local government.

## **Part 9 Investigations, enforcement and offences**

*Part 9* carries over the following existing provisions which provide for circumstances in which particular *Water Act 2000* offences do not apply.

*Section 95* provides for authorised taking of water to which the *Water Act 2000* applies by the authority of a NSW access licence. A NSW access licence under the *Water Management Act 2000* (NSW) is declared to be of a similar nature and to have a similar effect to a water allocation. This provision is necessary to allow interstate water trades in the Border Rivers area and ensures that a person taking water in the Border Rivers area under a NSW access licence is not liable for an offence for unauthorised taking of water under the *Water Act 2000*. This provision is also updated to reflect the new planning framework under the *Water Reform and Other Legislation Amendment Act 2014*, under which the unsupplemented water elements of the Border Rivers Resource Operations Plan are to be contained in the Border Rivers water management protocol.

*Section 96* provides for when a person may excavate or place fill in a watercourse lake or spring without a riverine protection permit and not be liable for an offence. Among other things, this includes where the activity is carried out under the 'Riverine Protection Permit Exemption Requirements', approved by the chief executive.

*Section 97* prescribes the requirements that must be complied with when decommissioning a water bore.

## **Part 10 Relationship with Planning Act**

### **Division 1 Works for taking or interfering with water**

*Division 1* provides for whether particular works for the taking or interfering with water are self-assessable or assessable development. It also sets out codes which are

approved for carrying out self-assessable development that is operational works for taking or interfering with water under the *Sustainable Planning Act 2009*. These codes are carried over from the *Water Regulation 2002*.

*Section 98* provides for schedule 9 which consolidates works requirements from water plans. Prior to commencement of the *Water Regulation 2016*, water plans each contained provisions that outline the relationship of the plan with the *Sustainable Planning Act 2009* and stated what works are assessable development or self-assessable development. Under the new water planning framework under the *Water Act 2000*, inserted by the *Water Reform and Other Legislation Amendment Act 2014*, works requirements for water plans are now to be prescribed by regulation.

*Section 98* provides works requirements for taking overland flow, taking underground water through a subartesian bore, or interfering with underground water, where the water is managed under a water plan. It is important to note that works requirements for underground water areas outside of a water plan are stated in section 139 of the *Water Regulation 2016*, also works requirements for water in a watercourse, lake or spring, or for taking underground water through an artesian bore are specified under the *Sustainable Planning Regulation 2009*.

### **Division 2 Levees**

*Division 2* carries over the existing state-wide framework for regulating the construction of new levees and the modification of existing levees. This framework provides:

- Three categories of levees each requiring different levels of assessment under the *Sustainable Planning Act 2009*, recognising that location, size and construction affect the level of risk they pose to population assets.
- A Category 1 levee has no off-property impacts and is subject to self-assessment under the *Sustainable Planning Act 2009*. The other two categories are assessable development under the *Sustainable Planning Act 2009* 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.
- 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.

## **Part 11 Metering**

### **Division 1 Preliminary**

*Division 1* carries over the existing provisions to implement a system for the compulsory use of approved water meters. It provides that the purpose for this part is to be achieved by providing for installation of water meters, declaring certain authorisations as metered entitlements, providing for the validation of water meters, applying requirements for metered entitlement holders and owners of works and providing for the ownership and transfer of water meters. It also provides key definitions for the part.

**Division 2 Metered entitlements**

*Division 2* carries over existing provisions that provide for metered entitlements and approved meters. It is an offence under section 808 of the *Water Act 2000* to take water under a metered entitlement other than through an approved meter. Sections 106–108 provide the process for the declaration of an entitlement as a metered entitlement and also provides for what is considered an approved meter.

Also, meters have now been installed in several new areas across the state. As such, this regulation declares entitlements in these new areas to be metered entitlements.

**Division 3 Validation of meters**

*Division 3* carries over the existing provisions for the validation of meters. Sections 109–112 provide for the appointment of meter validators, requirements for meters to be validated and revalidated in order to be considered an approved meter and requirements for metered entitlement holders to arrange validation inspections for their meter.

**Division 4 Reading meters**

*Division 4* carries over the existing provisions for the reading of meters. Section 113 allows the chief executive to give the holder of a metered entitlement or the owner of works a notice requiring the person to read a meter and provide the meter reading. Section 114 provides the circumstances when the chief executive may arrange for a meter to be read.

**Division 5 Charges**

*Division 5* carries over the existing provisions for meter charges.

**Division 6 Ownership**

*Division 6* carries over the existing provisions for the ownership of meters.

**Division 7 Miscellaneous**

*Division 7* carries over an existing miscellaneous provision which supports the metering framework. Section 121 allows the chief executive to issue specifications for carrying out site preparation or installing a meter.

**Part 12 Water bore drillers**

*Part 12* carries over the existing provisions for water bore drillers with minor amendments to reflect new underground water terminology and most recent National Uniform Drillers' Licensing System. Sections 122–127 prescribe information for water bore drillers licencing, including the classes of water bore drillers licences, licence endorsements, qualifications and experience required for each licence class and licence conditions. Section 128 prescribes the records that must be kept by a water bore driller's licence holder about each water bore drilling activity.

Sections 124, 125 and 126 which provide the qualifications and experience required for each licence class are updated to align with the most recent National Uniform Drillers' Licensing System. The changes include:

- Clarifying that the recognition of a water bore drillers licence issued in another state is only recognised in Queensland if the qualifications and experience

required for granting the licence in the other state are considered equivalent to those in Queensland.

- Amending the supervision requirements to focus on the number of bores drilled, rather than the number of months employed, under supervision
- Provide the ability for an applicant for a class 2 licence to have their experience equivalent to a class 1 licence recognised in applying for a class 2 licence.

## **Part 13 Declaration about watercourses**

*Part 13* carries over existing declarations about water in aquifers that is declared to be water in a watercourse. These declarations allow the underground water immediately below or adjacent to a watercourse to be regulated as if it were water in a watercourse where the taking of that water could impact significantly on the water in the watercourse.

## **Part 14 Fees, charges etc.**

### **Division 1 Fees**

*Division 1* provides for fees payable under the *Water Act 2000* including the water licence fee. The fees are carried over from the *Water Regulation 2002*, however this regulation also updates the fee descriptions to align with amendments to the *Water Act 2000*.

For example, the water licence application process was amended in the *Water Act 2000* to ensure that simple changes to water licences are not required to follow a lengthy application process and may simply be registered on the Department of Natural Resources and Mines' system. They will also provide that multiple consecutive changes to water licences can be dealt with concurrently. Some of these changes to the licencing process have implications for fees that are payable. The schedule of fees was updated to reflect these changes.

Further, a separate provision is included that provides for fees for interim water allocations to continue. The *Water Reform and Other Legislation Amendment Act 2014* removes provisions relevant to interim water allocations and allows for them to continue through transitional arrangements under the provisions of the unamended *Water Act 2000*. Section 132 allows for the fees relevant for interim water allocations under the unamended Act to also continue. These continuing fees are listed in schedule 13. It is intended that these fees will continue to be subject to annual indexation, consistent with other fees and charges, while interim water allocations continue to exist.

### **Division 2 Charges for water allocated, supplied or taken**

*Division 2* carries over the existing provisions about water charges. Water charges are payable for water harvesting in the areas listed in the schedule. The application and amount of the charges has not been changed from the *Water Regulation 2002*.

### **Division 3 Royalty for State quarry material**

*Division 3* carries over the existing provisions for royalties payable for State quarry material under the *Water Act 2000*. Royalties are payable for riverine quarry material extracted under the authority of an allocation notice issued under the *Water Act 2000*

unless the chief executive issues a certificate stating the material was supplied to the Department of Natural Resources and Mines for the department's purposes.

#### **Division 4 Drainage rates**

*Division 4* carries over the existing provisions for drainage rates that may be collected by SunWater from an owner of land in a drainage area.

## **Part 15 Miscellaneous provisions**

#### **Division 1 Water management areas**

*Division 1* carries over the existing provisions for water management areas. Water management areas may be declared by the chief executive to manage unsupplemented water in an area of the State. Water management areas can be declared for the purpose of applying water charges, allowing seasonal water assignments, prescribing water sharing rules and implementing metering. An underground water area is also considered a water management area.

Unless the water management area is declared under a water plan or water management protocol the chief executive must give notice of the declaration of water users in the area and publish a notice about the declaration. These requirements also apply should the chief executive change the boundaries of a water management area to water users in the area added to or removed from a water management area.

#### **Division 2 Underground water areas**

*Division 2* provides for underground water areas. These provisions carryover provisions about declared subartesian areas, however the provisions are updated to reflect the new terminology in the *Water Act 2000* as amended by the *Water Reform and Other Legislation Amendment Act 2014*. The provisions and associated schedule 16 regulate the taking or interfering with underground water in an underground water area by stating when a water entitlement is required and stating the types of works for taking underground water through a subartesian bore that are assessable or self-assessable development for the *Sustainable Planning Act 2009*. Works for taking underground water through an artesian bore are specified as assessable development under the *Sustainable Planning Regulation 2009*. These requirements apply for the taking or interfering with underground water in the underground water area until such time as a water plan is approved to manage the underground water in the underground water area or part of the area.

A new item is also included to clarify that for particular underground water areas the taking of water for prescribed activities is not authorised without a water entitlement or permit.

*Section 140* carries over the existing critical distances for non-stock and domestic bores in particular underground water areas. Critical distances identified in schedule 16 support the meaning of what is an exempt bore and therefore is not assessable or self-assessable development for the *Sustainable Planning Act 2009*.

#### **Division 3 Former water areas**

*Section 141* provides for the continuation of former water areas that were continued under the *Water Regulation 2002*.

#### **Division 4 Other matters**

*Section 142* provides the meaning of accounting period for the definition of water year under the *Water Act 2000*. The relevant document for specifying the accounting period is updated to reflect the new planning instruments under the *Water Act 2000*.

## **Part 16 Repeals and transitional provisions**

#### **Division 1 Repeal provision**

*Division 1* provides for the repeal of subordinate legislation that is replaced or made redundant by this regulation. This regulation replaces the *Water Regulation 2002* and incorporates previously uncommenced provisions of the *Water and other Legislation Amendment Regulation (No. 1) 2014* and the *Water and Other Legislation Amendment Regulation (No. 2) 2015*.

#### **Division 2 Transitional Provisions**

*Division 2* provides transitional provisions for the *Water Regulation 2016*. It provides that existing water management areas continue as valid water management areas under this regulation and do not need to be declared again. It also provides for any references to the *Water Regulation 2002* to be taken to be references to this regulation, should the context permit.

## **Part 17 Amendment of other subordinate legislation**

Part 17 provides for schedule 20 to include a range of consequential amendments to regulations and water plans. These include consequential amendment to the *State Penalties Enforcement Regulation 2014*, the *Sustainable Planning Regulation 2009* and water plans made under the *Water Act 2000* to implement both the *Water Regulation 2016* and changes made to the *Water Act 2000* by the *Water Reform and Other Legislation Amendment Act 2014*.

## **Schedule 1 Valley reaches**

*Schedule 1* includes diagrams to support the depiction of different valley reaches to support the watercourse and outer bank location provisions in the *Water Regulation 2016*. These have been carried over unchanged from the *Water Regulation 2002*.

## **Schedule 2 Particular unallocated water reserved**

*Schedule 2* is set aside to allow for any future reserving of unallocated water for a part of the State of for particular water to which no water plan applies. There are currently no unallocated water reserves outside of a water plan area.

## **Schedule 3 Prescribed activities, Act, section 101(1)(a)**

*Schedule 3* lists the activities prescribed for which a person may take water without a water entitlement or permit. The ability to take water for an activity listed in this schedule may be altered or limited by a water plan or through regulating underground water areas. The schedule was amended and carried over from the *Water and Other*

*Legislation Amendment Regulation (No. 1) 2014*. Amendments included activities prescribed so that there was consistency across industry sectors. Some changes include:

- washing down equipment, plant or vehicles
- temporary camps
- constructing works, infrastructure or plan
- construction but not maintenance of roads

## **Schedule 4 Prescribed entities**

*Schedule 4* lists entities that may apply for and hold a water licence without being the owner of land. This schedule is carried over from the *Water Regulation 2002* with minor amendments made through the *Water and Other Legislation Amendment Regulation (No. 1) 2014*.

## **Schedule 5 Water sharing rules**

*Schedule 5* provides for water sharing rules. It is carried over from the *Water Regulation 2002*.

## **Schedule 6 Seasonal water assignments**

*Schedule 6* provides for seasonal water assignments. It identifies areas of the state where seasonal water assignment of water licences is allowed, and prescribes the associated seasonal water assignment rules. It is carried over from the *Water Regulation 2002*.

## **Schedule 7 Rates and pump sizes**

*Schedule 7* provides the rate and pump sizes for calculating the maximum rate for a water allocation. This schedule was included in the *Water and Other Legislation Amendment Regulation (No. 1) 2014* and has been included in this regulation unchanged.

## **Schedule 8 Water authorities**

*Schedule 8* provides for established and amalgamated water authorities.

## **Schedule 9 Self-assessable development or assessable development**

*Schedule 9* provides the works requirements for operational works that take or interfere with water that is managed under a water plan, including works for taking overland flow, works for taking underground water through a subartesian bore, or works that interfere with underground water. These works requirements were previously included in water resource plans, however the water planning framework under the *Water Act 2000*, as amended by the *Water Reform and Other Legislation Amendment Act 2014*, provides that these works requirements are to be prescribed by regulation.

Note, works requirements for an underground water area (i.e. an area where underground water is regulated outside of a water plan) are specified in section 139 of the regulation. Also, works for taking underground water through an artesian bore,

other than for monitoring, are made assessable development under the *Sustainable Planning Regulation 2009*.

### **Schedule 10 IDAS code for development applications for construction or modification of particular levees**

*Schedule 10* provides the IDAS codes for development applications under the *Sustainable Planning Act 2009* for the construction or modification of particular levees. This code has been carried over unchanged from the *Water Regulation 2002*.

### **Schedule 11 Metered entitlements**

*Schedule 11* provides for water entitlements that are metered entitlements. It has been carried over from the *Water Regulation 2002* with some minor updates to terminology.

### **Schedule 12 Fees**

*Schedule 12* provides for fees payable under the *Water Act 2000*. This schedule has been included from the *Water and Other Legislation Amendment Regulation (No. 1) 2014*. The fee schedule was updated by the *Water and Other Legislation Amendment Regulation (No. 1) 2014* to reflect changes to make water licence dealings more streamlined and flexible, and to correctly reflect new section numbers. For example multiple dealings that are currently dealt with consecutively will be charged as one dealing. The fee schedule has been included largely unchanged, other than to reflect the consumer price indexation of fees and charges that occurred in 2015 and 2016 while the *Water and Other Legislation Amendment Regulation (No. 1) 2014* remained uncommenced.

### **Schedule 13 Fees for continuing interim water allocations**

*Schedule 13* provides for the continuation of fees that apply for applications related to interim water allocations. These are provided in separate schedule as interim water allocations are no longer provided for under the *Water Act 2000* other than via section 1271 of the *Water Act 2000* which provides for their continuation under the provisions of the unamended Act (i.e. the *Water Act 2000* prior to commencement of the *Water Reform and Other Legislation Amendment Act 2014*). These fees for interim water allocations may be subject to future consumer price indexation of fees and charges.

### **Schedule 14 Water charges**

*Schedule 14* provides for water charges. It has been carried over from the *Water Regulation 2002* with some minor updates to terminology.

### **Schedule 15 Royalties**

*Schedule 15* provides royalties for removing State quarry material. It has been carried over from the *Water Regulation 2002* unchanged.

### **Schedule 16 Drainage rates**

*Schedule 16* provides drainage rates. It has been carried over from the *Water Regulation 2002* unchanged.

## **Schedule 17 Underground water areas**

*Schedule 17* provides for underground water areas. It provides for when a water entitlement or authorisation is required to take or interfere with water in the area and also provides critical distances for when a bore is considered an exempt bore in an underground water area. This schedule replaces declared subartesian areas from the *Water Regulation 2002* to reflect the updated terminology in the *Water Act 2000* as amended by the *Water Reform and Other Legislation Amendment Act 2014*.

## **Schedule 18 Authority areas**

*Schedule 18* provides for authority areas that are continued under the *Water Act 2000*. This schedule has been continued unchanged from the *Water Regulation 2002*.

## **Schedule 19 Dictionary**

*Schedule 19* provides the definitions for terms in the regulation.

## **Schedule 20 Subordinate legislation amended**

### ***State Penalties Enforcement Regulation 2014***

Amendments to the *State Penalties Enforcement Regulation 2014* are carried over from the *Water and Other Legislation Amendment Regulation (No. 1) 2014* as amended by the *Water and Other Legislation Amendment Regulation (No. 2) 2015*. These amendments update section numbers for various penalty infringement notice offences to reflect the new section numbers in the *Water Act 2000*, as amended by the *Water Reform and Other Legislation Amendment Act 2014*. New penalty infringement notice offences are also prescribed for offences relating to the underground water impact management framework under chapter 3 of the *Water Act 2000*. These amendments are included in this regulation as the *Water and Other Legislation Amendment Regulation (No. 1) 2014* and the *Water and Other Legislation Amendment Regulation (No. 2) 2015* are repealed by this regulation.

Consequential amendments are also made to ensure the *State Penalties Enforcement Regulation 2014* correctly refers to the *Water Regulation 2016*.

### ***Sustainable Planning Regulation 2009***

Minor and consequential amendments are made to the *Sustainable Planning Regulation 2009* to ensure that the description of operational works for taking or interfering with water that are to be assessable or self-assessable development correctly reflect the water planning framework in the *Water Act 2000*, as amended by *Water Reform and Other Legislation Amendment Act 2014*.

Amendments ensure the *Sustainable Planning Regulation 2009* reflects the new terminology for underground water in the amended *Water Act 2000*. It also ensures that the *Sustainable Planning Regulation 2009* correctly refers to the *Water Regulation 2016* as the instrument which identifies the works requirements for subartesian bores and taking overland flow water, these works requirements were previously included in water resource plans. The amendments also remove duplication and overlap with the *Water Regulation 2016* regarding the definition of exempt bore.

## Water Plans

Minor and consequential amendments are made to the water plans made under the *Water Act 2000* to:

- To remove sections from the water plans that provide for particular works to be assessable or self-assessable development. The *Water Regulation 2016* is now the instrument that provides for whether works for taking or interfering with underground water through a subartesian bore or overland flow water is assessable or self-assessable development. The provisions from water plans being omitted are replaced by the works requirements provided in schedule 9 of this regulation, and as such these sections are now redundant.
- To remove sections from the water plans that provide for the Minister's report on the plan. Section 22 of this regulation now provides for the Minister's reports on water plans, as such these sections are no longer required and are omitted to prevent duplication.
- To update the water plans to reflect the change in terminology for underground water under the *Water Act 2000*. The *Water Reform and Other Legislation Amendment Act 2014* removes definitions for subartesian water and artesian water from the *Water Act 2000* however many water plans rely on these terms to describe water to which the plan applies. Consequential amendments are made to sections in the plans to ensure consistency with the new terminology, or in the case of the *Water Plan (Mary Basin) 2006* which relies more heavily on the existing terminology, provide an interim definition for the term subartesian water until such time as the plan is reviewed and replaced.
- To update references to the *Water Regulation 2002* with references to the *Water Regulation 2016* and other minor errors to reflect current drafting practice.

Note the *Water Reform and Other Legislation Amendment Act 2014* amends the water planning instruments under the *Water Act 2000*, including transitioning water resource plans to become water plans. Under transitional arrangements one water resource plan, the *Water Resource (Whitsunday) Plan 2010* will not transition into the water plan immediately, as the relevant resource operations plan has a deferred aspect. As such, this plan is referred to as a water resource plan.