

Water and Other Legislation Amendment Regulation (No. 1) 2017

Explanatory notes for SL 2017 No. 122

made under the

Valuers Registration Act 1992
Water Act 2000

General Outline

Short title

Water and Other Legislation Amendment Regulation (No. 1) 2017.

Authorising law

Section 66 of the *Valuers Registration Act 1992*
Sections 39, 101(1)(a), and 691 of the *Water Act 2000*

Policy objectives and the reasons for them

Code of professional conduct for valuers of land in Queensland

The *Valuers Registration Act 1992* provides for the registration of valuers of land and defines the composition, administrative procedures and powers of the Valuers Registration Board of Queensland.

Section 66(2) of the *Valuers Registration Act 1992* provides that a regulation may prescribe a code of professional conduct for valuers of land in Queensland.

Section 2 of the *Valuers Registration Regulation 2013* provides for the code of professional conduct. It includes the requirements for the code and states that along with the requirements of schedule 1 of the *Valuers Registration Regulation 2013*, the code can either include the Valuers Registration Board of Queensland's own requirements or the API code (the API code is the Australian Property Institute's code of professional conduct). The code consists of the provisions in schedule 1 together with the API code.

The API code is defined in section 2 of the *Valuers Registration Regulation 2013*. Part of the definition includes the date the code becomes effective.

The API code is periodically amended by the Australian Property Institute, changing the date the code becomes effective each time.

The objective of the *Water and Other Legislation Amendment Regulation (No. 1) 2017* is to update the definition of API code, including the date the code became effective.

To dissolve the Merlwood Water Board to allow for its conversion to an alternative institutional structure

Section 691 of the *Water Act 2000* allows for a regulation to dissolve a water authority and its authority area for the purpose of its conversion to an alternative institutional structure. Sections 695, 695A and 696 of the *Water Act 2000* prescribe the additional procedures for conversion to an alternative institutional structure.

The Merlwood Water Board is a category 2 water authority under the *Water Act 2000* that carries out water activities for rural industries and domestic use in its authority area.

Merlwood Water Board members requested their dissolution (in accordance with section 695 of the *Water Act 2000*) to allow for conversion to an alternative institutional structure following the Webbe-Weller Review of all statutory bodies in Queensland, which found that on balance the public interest was not served by the continuance of these authorities. The preferred alternative institutional structure has now been established and all pre-dissolution requirements under sections 695, 695A and 696 of the *Water Act 2000* have been met to proceed with the dissolution.

To provide for holders of resource operations licences, interim resource operations licences, or distribution operations licences for water supply schemes, to take water for prescribed activities from an area to which a water supply scheme applies

Section 101(1)(a) of the *Water Act 2000* provides that a person may take water as necessary to carry out an activity prescribed by regulation (a prescribed activity) and that alterations or limitations on this take may apply under a moratorium notice, water plan or a regulation. Schedule 3 of the *Water Regulation 2016* includes 14 prescribed activities for which the take of water does not require a specific authority, one of which is 'constructing or maintaining infrastructure approved under an interim resource operations licence, resource operations licence or distribution operations licence'.

Holders of resource operations licences, interim resource operations licences, or distribution operations licences for water supply schemes (water supply scheme operators), require water for construction and maintenance of their approved water supply infrastructure. Although the construction and maintenance of such infrastructure is a prescribed activity, the *Water Regulation 2016* applies an exclusion on any person taking water for prescribed activities, such that they may not do so in an area to which a water supply scheme applies (a water supply scheme area).

The purpose of introducing this exclusion was to protect against increased take of water from water supply scheme areas by users other than the water supply scheme operators, which was seen as a necessary protection for water supplies and water entitlement security within a scheme when the list of prescribed activities was expanded. The exclusion however has the effect of precluding the water supply scheme operators from using water in their water supply scheme area for prescribed activities.

To provide for the seasonal assignment of a water allocation by the holder of a seasonal water assignment notice for the water allocation

A seasonal water assignment is the temporary assignment of all or part of the water that may be taken under a water allocation to another person for the remainder of a water year. The *Water Act 2000*, in its definition of a seasonal water assignment, includes the assignment of a water allocation by the holder of the water allocation or by the holder of a seasonal water assignment notice for the allocation.

Section 39 of the *Water Act 2000* provides that a regulation may prescribe the process for granting a seasonal water assignment for a water allocation. The *Water Regulation 2016* prescribes the process accordingly. However Part 5, Division 2 of the *Water Regulation 2016* has been written in a way that has inadvertently confined the making of an application for a seasonal water assignment to the ***holder of the water allocation***.

The *Water Act 2000* defines ***holder of a water allocation*** to mean (a) the person whose details are stated on the water allocations register as the person who holds the water allocation; or (b) if a lease of the water allocation is registered on the register—the lessee of the lease. The definition does not include the holder of a seasonal water assignment notice (an ***assignee***) as intended by the *Water Act 2000*.

Prior to the making of the *Water Regulation 2016*, holders, lessees and assignees could all make an application for a seasonal water assignment and the intent was not to change this. Amendments are required to reinstate the ability for an assignee to temporarily reassign a water allocation.

Achievement of policy objectives

The *Water and Other Legislation Amendment Regulation (No. 1) 2017* will achieve the policy objectives by –

1. Simplifying the definition of API code in the *Valuers Registration Regulation 2013*, and amending the effective date to provide for the current API code which became effective on 15 June 2015.
2. Amending the *Water Regulation 2016* to:
 - dissolve the Merlwood Water Board and formalise its conversion to a company (the member parties' preferred alternative institutional structure), registered as 'Merlwood Water Pty Ltd ACN 611 379 278';

- state that the preclusion from taking water for prescribed activities from an area to which water supply scheme applies does not include holders of resource operations licences, interim resource operations licences and distribution operations licences for the area; and
- include the holder of a seasonal water assignment notice for a water allocation as a person that can apply to the chief executive for a seasonal water assignment.

Consistency with policy objectives of authorising law

The amendment to the *Valuers Registration Regulation 2013* is consistent with the main objectives of the *Valuers Registration Act 1992*, which is to provide a measure of protection for the public through the registration of valuers of land and to improve the standard of valuers in Queensland.

The *Water and Other Legislation Amendment Regulation (No. 1) 2017* is consistent with the policy objectives of the *Water Act 2000*.

A purpose of the *Water Act 2000* is to provide a framework for ‘the effective operation of water authorities’. The *Water Act 2000* provides for dissolution of particular water authorities by regulation when the authorities have established particular alternative institutional structures and have met specific notification, consultation and indemnity requirements. These requirements have been met for the particular water authority being dissolved in the *Water and Other Legislation Amendment Regulation (No. 1) 2017*.

Reinstating the ability for water supply scheme operators to use water from the water supply scheme for construction and maintenance of water supply infrastructure is consistent with the purposes of the *Water Act 2000* relating to sustainable management, including efficient use, of water resources.

The *Water Act 2000* incorporates in its purpose statement ‘*the efficient use of water through the establishment and operation of water markets*’, as an aspect of sustainable management of Queensland’s water resources. Removing unnecessary, unintentional restrictions on who may apply for a seasonal water assignment will improve opportunities to meet this purpose statement, as was provided for prior to the regulatory amendment that created such restrictions.

Inconsistency with policy objectives of other legislation

The *Water and Other Legislation Amendment Regulation (No. 1) 2017* does not introduce any inconsistencies with other legislation.

Alternative ways of achieving policy objectives

The policy objectives of the *Water and Other Legislation Amendment Regulation (No. 1) 2017* could not be achieved in any alternative way.

Failing to progress the amendments that give effect to the dissolution of Merlwood Water Board will prevent the authority from operating under its new institutional structure.

Failing to progress amendments relating to prescribed activities and seasonal water assignment applications may force the administrators of the *Water Regulation 2016* to rely on provisions that, when interpreted in a literal sense, are inconsistent with the purposes of the *Water Act 2000* and the intent of the processes and activities that are subject to the regulatory provisions.

Benefits and costs of implementation

Code of professional conduct for valuers of land in Queensland

The amendment to the *Valuers Registration Regulation 2013* is machinery in nature, and does not affect the operation or objectives of the *Valuers Registration Regulation 2013*. There are no costs associated with implementation of this amendment.

Dissolution of Merlwood Water Board

The key benefit of dissolving the Merlwood Water Board is providing for the entity to operate more independently and efficiently in a way that best fits the scale of its operations.

When it ceases to operate as a statutory body, it is no longer bound by Chapter 4 of the *Water Act 2000* and the *Financial Accountability Act 2009*, which may result in reduced governance and administrative burden (and associated costs) on the entity itself and Queensland Government departments providing oversight.

The amendments create neutral impacts on the community, as the new entity will continue to provide the services that are provided to the community under the water authority structure.

Providing for water supply scheme operators to take water for prescribed activities from an area to which a water supply scheme applies

The key benefit of the amendment to allow water supply scheme operators to take water for prescribed activities from the area to which the water supply scheme applies, is that an impractical and unintentional barrier to efficient business operation is removed. There are no costs to business, government or the community resulting from the amendment.

Providing for the seasonal assignment of a water allocation by the holder of a seasonal water assignment notice for the water allocation

The key benefit of the amendment to allow a holder of a seasonal water assignment notice for a water allocation to apply for a seasonal assignment of the water allocation is that it restores the head of power for the chief executive to accept such applications, therefore correcting an error that has inadvertently reduced seasonal assignment opportunities. There are no costs to business, government or the community resulting from the amendment.

Consistency with fundamental legislative principles

The amendments are consistent with all fundamental legislative principles.

Consultation

Code of professional conduct for valuers of land in Queensland

Simplification of the definition of 'API code' was discussed with a representative of the Australian Property Institute. However, the amendment is considered machinery in nature, and does not affect the operation or objectives of the *Valuers Registration Regulation 2013*.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (g) - Regulatory proposals that are of a machinery nature).

Dissolution of Merlwood Water Board

Ratepayers in the Merlwood Water Board authority area have been consulted regarding the conversion, and were balloted regarding the dissolution. Ratepayers voted in favour of dissolving the water authority.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (c) - regulatory proposals for the internal management of the public sector or a statutory authority).

Providing for water supply scheme operators to take water for prescribed activities from an area to which a water supply scheme applies

The provision that prevents water supply scheme operators from taking water from supply scheme areas for prescribed activities was raised as problematic in March 2017 by a major bulk water supply scheme operator at a stakeholder meeting administered by the Department of Natural Resources and Mines.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the amendment providing for water supply scheme operators to take water from a water supply scheme area for prescribed activities. The Department of Natural Resources and Mines applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (f) - regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice).

Providing for the seasonal assignment of a water allocation by the holder of a seasonal water assignment notice for the water allocation

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the amendment providing for the seasonal assignment of a water allocation by the holder of a seasonal water assignment notice. The Department of Natural Resources and Mines applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (f) - regulatory proposal that correct technical errors or amend legislation to take account of current Queensland drafting practice).