

Water (Metering and Compliance) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 1

made under the

Water Act 2000

General Outline

Short title

Water (Metering and Compliance) Amendment Regulation 2019

Authorising law

Sections 42, 44, 49, 981 and 1014 and Schedule 4 of the *Water Act 2000* (the Water Act).

Policy objectives and the reasons for them

The objectives of the *Water (Metering and Compliance) Amendment Regulation 2019* (the amendment regulation) are to improve Queensland's rural water management by:

1. Strengthening metering, meter validation and compliance provisions.
2. Adding new metered entitlements and making other operational amendments.
3. Correcting minor errors and out of date references.

The first objective addresses actions as part of the Queensland Government's response to the Independent audit of Queensland — non-urban water measurement and compliance (Independent audit), and the Murray-Darling Basin Water Compliance Review. This is the first of a suite of proposed regulatory framework enhancements.

The proposed changes complement, but are not dependent upon, changes to the Water Act.

Achievement of policy objectives

The amendment regulation will achieve its objectives by:

- Preventing water taken through a faulty meter unless certain conditions are met.
- Providing a more comprehensive framework for meter validation.
- Improving the compliance value of meter cessation notices.
- Updating the schedule of meter entitlements.
- Clarifying the process for accessing unallocated water reserves.
- Clarifying that a seasonal water assignment notice does not increase the volume of water that may be taken under multi-year accounting.
- Providing additional flexibility in the format of the Minister reporting on water plans to better support stakeholder consultation on plan development.
- Enabling joint landholders to be issued a copy of their licences following land dealings.
- Updating references and correcting minor errors.

The metering and compliance amendments are expected to improve Queensland's rural water management.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objectives of the Water Act to provide a framework for the sustainable management of Queensland's water resources.

Inconsistency with policy objectives of other legislation

The amendment regulation is not inconsistent with any policy objectives of any other legislation.

Benefits and costs of implementation

The benefits of implementation are:

- Delivering on a Government commitment to undertake actions to improve Queensland's rural water management.
- Improved water management and security.
- Improved reliability of information about water use.

All costs will be met within existing resources. There are no additional costs from this amendment regulation.

Consistency with fundamental legislative principles

The amendment regulation has been assessed as being consistent with fundamental legislative principles.

Consultation

There has been consultation with the Water Engagement Forum, and discussions with AgForce, Queensland Farmers' Federation and Irrigation Australia, all of whom support these amendments.

In accordance with the *Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted in relation to the metering and compliance provisions regulatory proposals.

In relation to the metering and compliance provisions regulatory proposals, OBPR considered the proposed amendments unlikely to result in significant adverse impacts and advised that no further regulatory impact analysis was required under the Guidelines.

In relation to the other proposed amendments, the Department of Natural Resources, Mines and Energy (the department) applied a self-assessable exclusion from undertaking further regulatory impact analysis in relation to the minor and operational amendments (category a – Regulatory proposals that make consequential amendments; category f - Regulatory proposals that correct technical errors; and category g – Regulatory proposals that are of a machinery nature).

Notes on provisions

Short title

Clause 1 specifies the short title to the subordinate legislation as the *Water (Metering and Compliance) Amendment Regulation 2019*.

Regulation amended

Clause 2 states that the regulation amends the Water Regulation.

Omission of s20 (Selling water after auction or tender process)

Clause 3 removes s20, which provides for the chief executive to sell all or part of an unallocated water reserve made available, but not sold, under auction or tender. The provision created unrealistic public expectation about chief executive sale decisions. There is already discretion for the chief executive (under s16) to decide an appropriate release process.

Amendment of s22 (Minister's reports on water plans – Act, s49)

Clause 4 amends s22 to provide that a notice under s44(2) of the Water Act that addresses the matters required for the Minister's 5-yearly report on a water plan is taken to be a subsequent report under this section. This would be used when the reporting timeframe overlaps with the Minister's proposal to prepare a draft water plan. The provision will enable the Minister to combine reporting requirements in one report, and would enable more timely and meaningful information to be available to stakeholders (during preliminary consultation).

Amendment of s41 (Effect of disposal of part of land to which water licence to take water attaches)

Clause 5 amends s41 to provide for the chief executive to issue a copy of a water licence to new land owners, when a registered landholder disposes part of the land to which the licence is attached.

Amendment of s59 (Deciding application)

Clause 6 amends s59 which provides the process for the chief executive in deciding seasonal water assignment applications for water allocations not managed under a resource operations licence. The amendment clarifies that a seasonal water assignment notice can only increase the volume of water that may be taken under a water allocation, if multi-year accounting arrangements do not apply to the water allocation.

Amendment of s60 (Conditions of seasonal water assignment notice)

Clause 7 amends s60 to clarify that the location condition applying to a water allocation, or an existing seasonal water assignment notice, does not apply to a seasonal water assignment notice, if the seasonal water assignment rules allow for a change in location.

Amendment of s98 (Works that are or are not assessable development – Act, s39(f))

Clause 8 makes a minor heading change to s98.

Amendment of s99 (Requirements for accepted development for operational work for taking water – Act s1014(2)(g))

Clause 9 makes a minor heading change and correction to wording in s99.

Amendment of s101A (Requirement for accepted development for category 1 levees – Act, s1014(2)(g))

Clause 10 makes minor heading and referencing changes to s1014. Updates to the definition of levee code are also included to make reference to the current self-assessable development code.

Amendment of s102 (Assessment benchmarks for particular levees – Act, s967(2))

Clause 11 makes a minor heading change to s102.

Amendment of s105 (Definitions for part)

Clause 12 amends s105, which provides definitions for Part 11 on Metering in the Water Regulation. There is a new definition for faulty meter, which supports a new provision s110A in relation to requirements for faulty meters. Clause 13 also corrects an out of date reference to Queensland's non-urban metering standard, and removes a note for the definition of a validation certificate.

The new definition provides that faulty meter means a water meter that is not capable of being read. This may occur if the glass on the meter is frosted or broken, if the meter dial / display is obscured, or if telemetry fitted to the meter is not functioning to allow remote reading of the meter. The definition also includes a water meter that is not capable of recording the volume of water taken through the associated works within

the permissible limits of error under the non-urban metering standard. A water meter that has or had an air or water leak (including in a connection or fitting) or that has been tampered with (evident by the tamper-proof seal being broken, damaged or missing) is also a faulty meter.

Amendment of s106 (Approved meter – Act, sch 4, def *approved meter*)

Clause 13 makes consequential amendments to s106(2) to reflect the introduction of two new provisions under which a meter stops being approved.

Amendment of s107 (Metered entitlements – Act, sch 4, def *metered entitlement*)

Clause 14 amends s107 to clarify that the metered entitlement status of an authorisation is maintained if the authorisation is converted to a water allocation that is separate from land.

Amendment of s108 (Chief executive may give meter notice to holder of authorisation or owner of works)

Clause 15 amends s108 to allow faster recognition of an authorisation as a prescribed metered entitlement, where a meter is already installed (and meets the requirements under the metering standard). Section 108 currently provides for 12 months' notice and this will be reduced to 60 business days, i.e. 3 months. The amended provision is not meant to be used retrospectively. That is, the department may not issue a metering notice for 1 year and then amend it to 60 business days if the entitlement holder installs a meter early. The amendment will improve the accuracy of water use information for accounting and compliance.

Insertion of new s109A

Clause 16 inserts new provision s109A to strengthen the regulation of meter validators. Under s109, the chief executive may appoint a person as an authorised validator.

New provision s109A provides for the chief executive to cancel or suspend the appointment of an authorised validator after a show cause process, if the chief executive is reasonably satisfied that validator gave a validation certificate containing false or misleading information. The chief executive can also act under this section if the person has been convicted of an offence against the Water Act, the repealed Water Act or an interstate law regulating the taking or using of water or the drilling of a water bore. Note, the provision applies to validators appointed directly by the chief executive. It is not intended to apply to validators who are certified by authorised third party industry bodies, such as Irrigation Australia. Irrigation Australia have their own procedure for ensuring their certified meter installers and validators meet code of conduct requirements. Complaints are dealt with via the complaints procedure documented on the Irrigation Australia website.

Insertion of new s110A

Clause 17 introduces a new provision s110A that makes it an offence to take water through a faulty meter, and closes a technical loophole identified by the Independent audit. The amendment requires the entitlement holder or owner to report a fault in writing to the chief executive within 3 business days of becoming aware of it, and to arrange for the repair and revalidation of the meter.

The amendment attempts to strike a balance between ensuring the integrity of water metering requirements, and the need to be fair and reasonable and provide for circumstances where users are unable to comply for genuine reasons. It allows for the reasonable use of water to continue through a faulty meter until 60 business days after the fault was reported to the chief executive – the expiry date – without offence, on condition that water take is recorded in the approved form. The expiry date may be extended if the chief executive is reasonably satisfied that the meter cannot be validated before this date.

Amendment of s111

Clause 18 amends s111 to clarify that the section also applies to a water meter under s106(1)(b).

Insertion of new s112 A

Clause 19 introduces new provisions s112A to strengthen the regulation of meter validators. Currently, the chief executive must accept a validation certificate, regardless of the quality or any doubts about the information contained in the notice.

New provision s112A will provide for the chief executive to give a notice to request another validation certificate if the chief executive is reasonably satisfied that the holder or owner prepared the first certificate (i.e. a material conflict of interest exists); that the validation certificate contains false or misleading information, or that the person who prepared the first certificate was not authorised to do so. The holder or owner must give the chief executive a new certificate before 60 business days pass – the expiry date – since receiving the notice, otherwise the meter stops being approved.

Provisions are included for a holder or owner to request an extension to the 60 business day timeframe. The chief executive can grant an extension if reasonably satisfied the holder or owner cannot comply with the original timeframe.

Amendment of s113 (Chief executive may require meter reading by holder of metered entitlement or owner of works)

Clause 20 amends s113 to enable the chief executive to require the holder or owner to notify the chief executive whether or not the meter is a faulty meter each time they submit a meter reading. The amendment will minimise the need for prosecution and enforcement activities, by establishing a mechanism for water users to check for faults with their meters, between revalidation dates. It will also provide more assurance that meter readings are correctly recording water use.

Amendment of s120 (Approved meter that does not comply with non-urban metering standard may stop being approved meter)

Clause 21 amends s120, which provides for the chief executive to issue a cessation notice, should a person fail to validate their meter in accordance with a validation notice and provide no reasonable justification. Currently, the chief executive must issue the cessation notice at least 1 year before it takes effect. The amendment reduces the period to a minimum of 20 business days, in order to improve the compliance value of a cessation notice.

Amendment of ss124, 125 and 126

Clauses 22, 23 and 24 amend subsection (2)(a)(1) in ss124, 125 and 126, respectively. The subsection currently refers to the Australian Drilling Industry Training Committee (ADITC) in relation to necessary qualifications or experience for different classes of water bore driller's licence. ADITC's role was to administer exams set by the National Uniform Drillers Licencing Committee, however it closed in August 2018. The amendment removes the reference to ADITC.

Amendment of sch 4 (Prescribed entities)

Clause 25 amends sch 4 of the Water Regulation, to reflect the change of ownership of two groundwater licences 172496 and 603953, from Kingfisher Bay Resort Pty Ltd to Sealink Fraser Island Pty Ltd.

Amendment of sch 11 (Metered entitlements)

Clause 26 is a routine update to sch 11 of the Water Regulation to list new metered entitlements, and make minor corrections to existing entries.

To be listed in sch 11 an entitlement holder must have first been issued with a meter notice under s108. After the appropriate amount of time (a minimum of 1 year for new installations, or 60 business days where meters were installed prior to the notice), the entitlement is registered as a metered entitlement, requiring that it be routinely validated and maintained.

Validated and maintained water meters improve the accuracy of information on water use, which supports better water accounting and as well as compliance and enforcement actions.

Amendment of sch 14 (Water charges)

Clause 27 deletes the reference to The Barron River – Emerald Creek water management area in sch 14 of the Water Regulation, which relates to water harvesting. Water harvesting does not exist in Emerald Creek and there are no active entitlements for the purpose of ‘water harvesting’ in the Barron River catchment.

Amendment of sch 17 (Underground water areas)

Clause 28 removes a redundant provision for bore setback distances in sch 17 Part 2 of the Water Regulation, for the Burdekin groundwater management area.

Part 2 (Critical distances for non-stock or domestic water bores) prescribes a minimum bore setback distance of 200 metres from a property boundary and a minimum distance from another water bore of 400 metres. However, the former setback was considered a mechanism for each land owner to achieve the latter. The amendment deletes the setback of 200 metres in Column 2 for the Burdekin underground water area, so only 400 metres remains in Column 4.

Amendment of sch 19 (Dictionary)

Clause 29 makes consequential amendments to sch 19 of the Water Regulation, by deleting the reference to ADITC, and inserting references to fault and NUDLC. The amendment also removes wording ‘or operations manual’ from the definition of ‘water licence’.