Mineral Resources and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 204

made under the

Mineral Resources Act 1989
State Penalties Enforcement Act 1999
Water Act 2000

General Outline

Short title

Mineral Resources and Other Legislation Amendment Regulation 2019

Authorising law

Sections 334ZP and 417 of the *Mineral Resources Act 1989*
Section 165 of the *State Penalties Enforcement Act 1999*
Sections 104, 126, 360C, 691 and 1014 of the *Water Act 2000* (the Water Act)

Policy objectives and the reasons for them

The objectives of the *Mineral Resources and Other Legislation Amendment Regulation 2019* are to amend the *Mineral Resources Regulation 2013*, the *State Penalties Enforcement Regulation 2014* and the *Water Regulation 2016* (the Water Regulation) for the following water related matters.

Amendments to the Mineral Resources Regulation 2013
To make operational improvements to the measuring and reporting of associated water taken by mining lease or mineral development licence holders, including to:

- Allow additional methods for calculating the volume of associated water taken;
- Adjust the period for reporting volumes of associated water take to better align with wet season reporting;
- Exempt reporting of volumes less than 2 megalitres within a reporting period;
- Allow the chief executive to require further information be provided about the calculation of associated water taken.

Amendments to the State Penalties Enforcement Regulation 2014

To make enhancements to water related infringement notice offences, including increased penalties for corporations, removing limitations on existing offences, aligning penalties for similar offences and prescribing new infringement notice offences.

Amendments to the Water Regulation

To support the operation of CleanCo Queensland Limited (CleanCo)

In December 2018, CleanCo was established as the State's new renewable energy generator government owned corporation.

CleanCo is a structural long-term reform that will positively impact the energy market through innovative and reliable renewables-focused energy solutions. It will build, own and operate a portfolio of renewable energy assets and trade energy products to support the increased utilisation of low and no emission power generation assets. CleanCo will improve competition in the wholesale electricity market and increase Queensland's electricity system security and reliability, placing downward pressure on electricity prices.

A foundation portfolio of electricity generation assets will be transferred to CleanCo from the existing electricity generation government owned corporations, CS Energy Limited (CS Energy) and Stanwell Corporation Limited (Stanwell), under the *Government Owned Corporations (Generator Restructure–CleanCo) Regulation 2019*.

The objectives of amendments to the Water Regulation relevant to CleanCo are to facilitate CleanCo's operation as an energy generation GOC in Queensland, by ensuring it can hold and receive transfers of water licences and water contracts with Seqwater under the Water Act, and to do so on a level footing with other Queensland electricity generator government owned corporations which are relevantly subject to the regulatory requirements of the Water Act.

Other matters

The objectives of amendments to the Water Regulation are also to:

1. Align the terminology and process for relocation of water licences with the current Water Act provisions

The *Water Reform and Other Legislation Amendment Act 2014* introduced the new term 'relocate' to the Water Act in relation to water licences (previously the term was 'other transfer'). The *Mineral, Water and Other Legislation Amendment Act 2018* made further amendments to address issues of clarity around the term 'relocate', when an application to 'relocate' a water licence may be made and how it is to be dealt with. The Water Regulation continues to use the old terminology consistent with the Water Act provisions prior to the aforementioned amendments.

2. Make amendments related to metered entitlements

An Independent Audit of Queensland Non-Urban Water Measurement and Compliance identified areas within Queensland's legislative and policy framework for non-urban water measurement and compliance that require strengthening. The Rural Water Management Program has been established to drive more transparent and sustainable rural water management across the state. The program is developing a new non-urban water measurement policy and metering standard. These amendments to the Water Regulation are intended to support implementation of the Queensland Government's response to the Independent Audit by providing interim measures and by making minor improvements to the metered entitlement provisions. This includes:

- Providing a process for dealing with a faulty meter that is identified by the chief executive and establishing a new offence for not complying with the requirements for dealing with a faulty meter.
- Making clarifications about the validation date and self-validation of meters.
- Extending revalidation dates for metered entitlements so meters will not require revalidation under the current policy framework while a new measurement policy framework is being developed.

3. Provide for Granite Belt Water Limited to hold a water licence not attached to land by listing them as a prescribed entity in the Water Regulation

4. Provide for the dissolution of category 2 water authorities to facilitate their transition to closed water activity agreements

5. Reduce burden for constructing authorities by allowing limited capacity overland flow works for the purpose of construction and maintenance activities to be accepted development if carried out in accordance with the applicable code

6. Remove a redundant fee.

Achievement of policy objectives

Amendments to the Mineral Resources Regulation 2013

To achieve its objectives the *Mineral Resources and Other Legislation Amendment Regulation 2019* amends section 31A of the *Mineral Resources Regulation 2013* to allow for additional methods, other than the water balance method, to be used to calculate the volume of associated water. The additional methods are outlined in the guideline 'Quantifying the volume of associated water taken under a mining lease or mineral development licence'.

Section 31B of the *Mineral Resources Regulation 2013* is amended to eliminate reporting requirements of minor quantities of associated water (less than 2 megalitres) that are taken. The annual reporting period is also adjusted, to better align with wet season reporting timeframes for mining lease or mineral development licence holders, from ending on 30 June to 31 October. Mining lease and mineral development licence

holders generally also have responsibilities under their environmental authority to submit the available storage capacity of dams on sites as at 1 November. For this to occur, many mine operators must undertake calculations and modelling very similar to those required for associated water reporting. This amendment will better align these statutory reporting obligations.

A new notice power is also introduced for the chief executive to request mining lease and mineral development licence holders to provide further information about the calculation of associated water volumes. Failure to comply with this request will be an offence unless the holder has a reasonable excuse.

Amendments to the State Penalties Enforcement Regulation 2014

To achieve its objectives, the *Mineral Resources and Other Legislation Amendment Regulation 2019* amends the *State Penalties Enforcement Regulation 2014* in relation to Water Act infringement notice offences to:

- Increase penalties which apply to corporate offenders.
- Adjust penalty unit values for consistency across similar offences.
- Remove a 5 megalitre limitation for issuing an infringement notice offence for unauthorised taking or supplying water.
- Prescribe new infringement notice offences for:
  - Taking water in excess of the volume or rate allowed under a water entitlement.
  - Excavating or placing fill in a watercourse, lake or spring without a permit.
  - Contravening the conditions of a riverine protection permit or quarry material allocation notice.
  - Carrying out unauthorised water bore drilling activities.
  - Failing to comply with requirements for dealing with faulty meters.

These amendments will support compliance with the Water Act by ensuring that appropriate enforcement tools are in place for dealing with non-compliances.

Amendments to the Water Regulation

To support the operation of CleanCo

The policy objectives are achieved by amending the Water Regulation to prescribe CleanCo to be:

- a “prescribed entity” under section 104 of the Water Act; and
- a “bulk water customer” under section 360C of the Water Act.

Section 126 of the Water Act provides that water licences required for the taking and use of water, or interference with the flow of water in particular circumstances, may be obtained by or transferred to specified categories of person, including an owner of a parcel or parcels of land, or a “prescribed entity”. Such water licences will be required for the operation of CleanCo’s electricity generation assets.

Prescribed entity is defined in section 104 of the Water Act to mean a range of specified entity types including "an entity prescribed by regulation" (paragraph (l) of the definition). Under section 360C of the Water Act a "bulk water customer" includes "an entity declared by regulation to be a bulk water customer". Bulk water customers are subject to regulation under the Water Act, including as to the entry into, and transfer of, certain contracts for water with Seqwater. Such contracts will be required for the operation of CleanCo's electricity generation assets.

Both CS Energy and Stanwell are currently "prescribed entities" under section 104 of the Water Act. Stanwell is currently declared as a bulk water customer under section 360C of the Water Act. The *Mineral Resources and Other Legislation Amendment Regulation 2019* makes no change to those existing prescriptions.

Other matters

1. Relocation of water licence process

To achieve its objectives relating to the relocation of water licences, the *Mineral Resources and Other Legislation Amendment Regulation 2019* amends part 4, division 3 of the Water Regulation to update the process and terminology to use the term 'relocate' consistent with the Water Act, section 126. The *Mineral Resources and Other Legislation Amendment Regulation 2019* also makes other minor amendments to improve the operation and clarity of provisions. A transitional section is included to make it clear that water plans, water management protocols or water sharing rules that continue to use old terminology and refer to 'other transfer, amendment or amalgamation', where the context permits, can be taken to refer to 'relocate'.

2. Amendments related to metered entitlements

- *Make a clarification about the validation date*

The Water Regulation provides that if the chief executive gives a meter notice (a notice requiring a meter to be installed) but the water authorisation, to which the notice relates, has not been prescribed as a metered entitlement by the validation date stated in the meter notice, then the chief executive must extend the validation date. There is currently some minor ambiguity regarding what may happen in this circumstance if the chief executive fails to notify the holder of the authorisation of the extended validation date. Section 108 of the Water Regulation is amended to make it clear that in this circumstance the validation date is automatically extended to the date the authorisation is prescribed as a metered entitlement.

- *Faulty meters*

The Water Regulation currently requires a person to bring a faulty meter to the attention of the chief executive in order to trigger the requirements for dealing with the faulty meter. It is often the case that a faulty meter is identified by the chief executive undertaking a routine inspection or audit of the works for taking water. A new section 110AA is included in the Water Regulation to allow the chief executive to issue a notice about a faulty meter. Existing section 110A is amended to apply the requirements for dealing with a faulty meter where the chief executive has issued a notice about a faulty meter under section 110AA and also to make it an offence for failing to comply with the requirements for dealing with a faulty meter.

A maximum penalty of 20 penalty units will apply for:

- Failing to provide the chief executive information about water taken through the works to which a faulty meter is attached in accordance with the approved form and before the expiry date.
- Failing to ensure a meter other than a faulty meter is attached to the works and a validation certificate is provided to the chief executive for the meter before the expiry date.

- *Make a minor clarification about self-validation of meters*

Currently the Water Regulation makes it clear that the chief executive can request an additional validation certificate if a person has carried out the validation inspection for their own meter. This is intended to prevent a person from carrying out their own validation inspection, however this is not expressly stated or prohibited. A minor amendment to section 112 of the Water Regulation will put it beyond doubt that the validation inspection of a meter must not be carried out by the holder or owner of works to which the meter is attached, regardless of whether or not the holder or owner is also an authorised meter validator.

- *Extend revalidation dates for metered entitlements*

Revalidation of meters involves the owner of the meter engaging an authorised meter validator to inspect the meter and confirm that it continues to meet the Queensland interim metering standard. Revalidation is required to occur before the revalidation specified in scheduled 11 of the Water Regulation. If revalidation does not occur before the specified revalidation date, the owner of the meter would be committing an offence if they continue to take water through the meter.

While the non-urban water metering policy and standard is under review following the release of the Independent Audit of Queensland Non-Urban Water Measurement and Compliance, it is not desirable to broadly undertake revalidation of metered entitlements under the current framework. The exception to this is in high priority areas where water use information is vital for improved management of the water resource and where many meters are known to be substandard. Schedule 11 of the Water Regulation is amended to extend meter revalidation dates on a priority basis with the intent that the majority of revalidations will be carried out following implementation of a new non-urban water measurement policy and metering standard.

3. Provide for Granite Belt Water Limited to hold a water licence not attached to land

The objective is to prescribe Granite Belt Water Limited as an entity that may hold a water licence without it attaching to land. The objective will be achieved by listing Granite Belt Water Limited as an entity under schedule 4 of the Water Regulation.

4. *Provide for the dissolution of category 2 water authorities to facilitate their transition to closed water activity agreements*

The Brigooda Water Board is a category 2 water authority under the Water Act that supplies water in its water authority area for livestock, agriculture and domestic purposes. The Brigooda Water Board has requested its dissolution to allow for conversion to an alternative institutional structure of a closed water activity agreement.

The East Deeral Drainage Board is also a category 2 water authority under the Water Act that provides a coordinated drainage system for the removal and disposal of excess water from agricultural lands and maintains drainage works. The East Deeral Drainage Board has requested it be dissolved and its respective assets and liabilities transferred to a closed water activity agreement.

Section 691 of the Water Act allows for a regulation to dissolve a category 2 water authority to allow for its conversion to an alternative institutional structure, including a closed water activity agreement. The policy objective is achieved by amending schedule 8, part 3 of the Water Regulation to formalise the dissolution and conversion of the Brigooda Water Board and East Deeral Drainage Board to their respective closed water activity agreements.

5. Allowing limited capacity overland flow works for constructing authorities

Section 99 of Water Act currently allows a constructing authority to take water for construction and maintenance purposes without a water entitlement or permit if they comply with particular requirements. Water for this purpose may be taken from watercourses, water bores as well as overland flow storages. In many areas of the State, overland flow works below a certain capacity are considered accepted development and do not require a development permit. However, this is not the case for the Queensland Murray-Darling Basin catchments, Georgina Diamantina and Cape York water plan areas. For constructing authorities who carry out construction and maintenance works across the State, this can mean a large number of development applications for small, low risk works. To reduce burden for constructing authorities in the abovementioned areas, schedule 9 of the Water Regulation is amended to prescribe overland flow works that are 5 megalitres or less, for the purpose of taking water for construction and maintenance carried out by a constructing authority, to be considered accepted development if carried out in accordance with the applicable self-assessable code.

6. Remove a redundant fee

The policy objective will be achieved by removing the redundant fee for an image for the title of a water allocation. The fee was included to reflect a land title fee that is used for old land titles prior to the land titles register becoming digital. Water allocations were established after this time, as such, the fee is, and has always been, redundant.

Consistency with policy objectives of authorising law

The *Mineral Resources and Other Legislation Amendment Regulation 2019* is consistent with the objectives of the *Mineral Resources Act 1989*, the *State Penalties Enforcement Act 1999* and the Water Act.

Inconsistency with policy objectives of other legislation

The *Mineral Resources and Other Legislation Amendment Regulation 2019* is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative considered to be available to meet policy objectives.

Benefits and costs of implementation

The *Mineral Resources and Other Legislation Amendment Regulation 2019* ensures continued effective operation of the *Mineral Resources Act 1989*, the *State Penalties Enforcement Act 1999* and the Water Act by prescribing necessary administrative and machinery matters. No costs to government are currently envisaged. In relation to the amendments to support the implementation of CleanCo, it is further noted that the costs of implementing the *Mineral Resources and Other Legislation Amendment Regulation 2019* will be borne by CleanCo, and will not negatively affect electricity prices for Queenslanders.

Consistency with fundamental legislative principles

The *Mineral Resources and Other Legislation Amendment Regulation 2019* has been assessed as being consistent with fundamental legislative principles.

Consultation

The Water Engagement Forum[1], the Department of Natural Resources, Mines and Energy's peak body advisory group on government-related water matters, was informed of the proposed amendments in September 2019, with a focus on proposed amendments to water metering provisions and water-related infringement notice offences. No particular concerns were raised in relation to those amendments.

CleanCo was consulted in relation to the amendments to the Water Regulation relating to CleanCo. Consultation with CleanCo did not result in any changes to the *Mineral Resources and Other Legislation Amendment Regulation 2019*.

[1] The Water Engagement Forum is comprised of representatives from AgForce Queensland; the Association of Mining and Exploration Companies; the Australian Bankers' Association; Australian Petroleum Production and Exploration Association Ltd; the Environmental Defenders Office; Irrigation Australia; the Local Government Association Queensland; NRM Regions Queensland; the Queensland Conservation Council; Queensland Farmers' Federation; Queensland Resources Council; Queensland Seafood Industry Association; State Council of River Trusts Queensland; Seqwater; SunWater; The Wilderness Society; and WWF Australia.

In accordance with the *Queensland Government Guide to Better Regulation* (the guidelines), the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was not consulted in relation to the regulatory proposals relating to updating the terminology for relocation of water licences, the dissolution of category 2 water authorities or amendments relating to CleanCo.

The department applied the following self-assessable exclusions from undertaking further regulatory impact analysis:

- category (a) – (Regulatory proposals that make consequential amendments) in relation to aligning the terminology and process for relocation of a water licence with the current Water Act provisions.
- category (c) – (Regulatory proposals for the internal management of the public sector or statutory authority) in relation to the CleanCo related amendments and the dissolution of water boards.
- category (f) - (Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice) in relation to removing a redundant fee.

OBPR was consulted regarding the need to prepare a Regulatory Impact Statement under the guidelines for the remaining amendments. OBPR advised that the amendments were excluded from requiring further regulatory impact analysis on the basis that the amendments would not significantly add to the burden of regulation and are unlikely to result in significant adverse impact.