

Water Amendment Regulation 2022

Explanatory notes for SL 2022 No. 177

made under the

Water Act 2000

General Outline

Short title

Water Amendment Regulation 2022 (Amendment Regulation).

Authorising law

Sections 39, 981, and 1014 of the *Water Act 2000* (Water Act).

Policy objectives and the reasons for them

The policy objectives of the Amendment Regulation are to amend the *Water Regulation 2016* (Water Regulation) for the following water-related matters:

- declare new metered entitlements in Cape York and Burdekin Basin water plan areas;
- provision of information notices for seasonal water assignment applications;
- clarify the commencement date of a seasonal water assignment for a water allocation;
- correction of water bore drillers licence class description; and
- minor amendments.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives through the following means.

Declare new metered entitlements in Cape York and Burdekin Basin water plan areas

The Amendment Regulation amends schedule 11 to ensure particular water entitlements are now included as metered entitlements in the *Water Plan (Cape York) 2019*, other than Lakeland

water licence zones 1 and 2; and in the *Water Plan (Burdekin Basin) 2007* in the Mistake A Water licence zone. This enables the entitlements to operate under a framework for metering, including when a meter must be installed, the arrangements for maintaining and reading meters and minimum construction standards.

Provision of information notices for seasonal water assignment applications

The Amendment Regulation removes the requirement for an information notice to be provided to an applicant when a seasonal water assignment application for a water allocation (not managed under a resource operations licence) is approved. Amendments are also made to confirm when a decision notice or an information notice should be provided in relation to a decision about a seasonal water assignment of a water allocation. These amendments streamline the administration of a seasonal water assignment decision-making process.

Commencement date of a seasonal water assignment for a water allocation

The Amendment Regulation provides clarity about when a notice of a seasonal water assignment of a water allocation takes effect. It is important to have a clear understanding of the meaning of ‘given’ in relation to the day the seasonal water assignment notice takes effect, for both applicant and assignee as well as the Department of Regional Development, Manufacturing and Water (DRDMW) in undertaking compliance. Ambiguity is removed by amending Section 59(6) to clarify that a seasonal water assignment notice for a water allocation will take effect from the date stated in the notice.

Update water bore drillers licence class description

Section 122 of the Water Regulation prescribes the classes of water bore drillers licences and inadvertently limits a water bore drillers licence to only authorise the drilling of a subartesian, artesian bore or both, not the comprehensive suite of water bore drilling activities. The intent of the amendment is that a water bore drillers licence authorises the holder to carry out all water bore drilling activities relevant to a subartesian, artesian bore or both. This amendment achieves the policy objective by aligning terminology between the Water Act and Water Regulation.

Minor amendments

The Amendment Regulation makes the following amendments to correct technical errors or to improve clarity:

- updates to rename self-assessable codes to accepted developments to reflect the change in May 2016 to the *Planning Act 2016*;
- updates to schedule 11 for metered entitlements in the Lower Callide to refer to water allocations. This amendment reflects the conversion of water licences to water allocations in 2015; and
- updates Schedule 16 map AP reference for the Burdekin River drainage area.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the Water Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative mechanism available to meet the policy objectives.

Benefits and costs of implementation

Metered entitlements

Metering non-urban water entitlements has a number of benefits, such as:

- security of existing entitlements by minimising the risk of excess or unauthorised water use;
- facilitating accurate monitoring of usage by water users;
- improved planning and management of water resources; and
- enables water trading for water allocations and tradeable water licences.

Amending schedule 11 of the Water Regulation (Metered entitlements) will ensure the Water Regulation accurately reflects metered entitlements in the *Water Plan (Cape York) Plan 2019* and the *Water Plan (Burdekin Basin) 2007* water plan areas.

The Water Regulation ensures continued effective operation of the Water Act by prescribing necessary administrative and machinery matters. No costs to the government are currently envisaged.

Consistency with fundamental legislative principles

Natural Justice – right to be heard

Issuing a particular written notice for when deciding Seasonal Water Assignment applications

Clause 4 amends section 59 of the Water Regulation to clarify the requirements for providing notice of a decision to applicants. These decisions are broadly categorised as either discretionary or non-discretionary decisions.

For decisions where the Chief Executive has no discretion or where a different decision consistent with the relevant seasonal water assignment rules could not be made, the chief executive is required to give the application statement of reasons for the decision rather than an information notice.

For example, where the relevant seasonal water assignment rules direct the chief executive to refuse an application because it is inconsistent with the relevant seasonal water assignment rules, the chief executive is required to give the applicant a statement of reasons for the decision.

In those circumstances, the applicant does not have a right of review of the administrative decision. This is a potential breach of the fundamental legislative principle – consistency with natural justice (right to be heard).

This breach is considered justified as a water plan and associated water management protocol provides a person natural justice in relation to the development of the relevant seasonal water assignment rules. For example, a water plan together with an associated water management protocol sets the rules for deciding seasonal water assignment applications. As these plans are released for public consultation, a person can make a submission to express their views on the proposed rules before the rules are finalised. If a plan therefore gives no discretion to the chief executive in making a particular licensing decision, then there is no need for that decision to be subject to a merit-based review.

Importantly, the amendment continues to require where the Chief Executive has exercised discretion in making the decision, the applicant must be given an Information Notice, affording a merit-based review (internal review) of the decision in the first instance, and subsequent right of appeal to a court. Thus, upholding the principles of natural justice.

All other clauses are consistent with the fundamental legislative principles.

Consultation

DRDMW consulted with the Water Engagement Forum (WEF) on the proposed amendments in February 2022. WEF is the DRDMW's peak body advisory group on government-related water matters and 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.

Affected entitlement holders in the Cape York and Burdekin Basin water plan areas have been notified of the metering requirements by issue of a statutory meter notice under Section 108 of the Water Regulation. No affected entitlement holders lodged an objection following the issue of the statutory meter notice.

An agency-assessment was undertaken by DRDMW and determined the amendments can be excluded from further regulatory impact analysis as they are regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice (Category F) and regulatory proposals that are of a machinery nature (Category G).