

Queensland



Regulatory Impact Statement for SL 1998 No. 99

Sewerage and Water Supply Act 1949

STANDARD SEWERAGE LAW

TITLE

Standard Sewerage and Water Supply Law 1997

AUTHORISING LAW

Sewerage and Water Supply Act 1949.

POLICY OBJECTIVES

What is the problem which needs to be solved?

The existing Standard Sewerage Law and Standard Water Supply Law provide certain powers for local governments to administer and carry out the functions of providing water supply, sewerage and stormwater drainage within the State and to regulate plumbing and sanitary drainage on premises.

The last review of the regulation which led to a substantive change in the regulation was undertaken in 1981 when the Standard Sewerage Law was re-written. Since that time, new Australian Standards have been developed which could, if adopted, replace the greater part of the State specific technical requirements of the standard law. Nationwide, all State and Territory regulating authorities have moved to adopt these standards into their regulations.

Since 1981, change has also occurred in the water and building industries

and State and local government administrative arrangements embodied in State legislation need to reflect such change. Nationally, water authorities no longer regard the regulation of plumbing matters as part of their core business. However, within the building industry there is a growing perception that the provision of plumbing and drainage services, within premises, is predominantly a building related activity.

The present standard law does not readily allow for the separation of these major functional groups. This is frustrating for local governments attempting to rationalise their business (water and sewerage provision) and regulatory (plumbing and drainage approval, inspection etc.) functions.

To remove essentially artificial impediments to such rationalisation, separation of the provisions in the standard law relating to the management of utilities from those relating to the regulation of plumbing and sanitary drainage on premises is required.

The specific objectives of the Standard Sewerage Law and the Standard Water Supply Law are as follows—

(a) water supply and sewerage—

- to provide specific powers for local governments to operate their sewerage and water supply utilities
- to ensure uniform water supply and sewerage administrative practices are adopted throughout Queensland for the benefit of all involved
- to ensure that the provision and continuing management and operation of these services are of such a standard as to maintain satisfactory levels of public health and safety
- to provide a uniform code of offences and penalties applicable to water supply and sewerage services;

(b) plumbing and sanitary drainage—

- to set out the specific powers of local governments and the responsibilities of licensed persons and owners in relation to plumbing and sanitary drainage on private premises
- to ensure that plumbing and sanitary drainage installations are of an adequate standard to maintain a high level of public health and safety and do not present a risk to the integrity of

- the local government's water supply and sewerage systems
 - to ensure uniform plumbing and sanitary drainage practices are adopted throughout Queensland for the benefit of all involved
 - to provide a uniform code of offences and penalties applicable to plumbing and sanitary drainage on private premises
 - to ensure that approved products are used in plumbing and sanitary drainage within premises;
- (c) stormwater drainage—
- to provide specific powers for local governments to operate their stormwater drainage facilities
 - to ensure uniform stormwater drainage administrative practices are adopted throughout Queensland for the benefit of all involved.

What is the risk which needs to be controlled?

The risks to be controlled by the proposed regulation are the same as for the existing regulation that it is to replace. They are as follows—

- water supply services that deliver water to premises for domestic use could be constructed in ways that compromise public health and safety
- sewerage services that remove waste water from premises could be constructed in ways that compromise public health and safety
- within premises, water supply plumbing and sanitary drainage systems could be installed in ways that compromise the health and safety of the occupants
- water supply plumbing and sanitary drainage systems within premises could constitute a risk to the public water supply and sewerage utility systems
- wastes discharged to sewerage could pose a risk to the system, to the workers who operate and maintain it or to the processes that treat wastes carried by the system

- sewerage and stormwater drainage systems could be interconnected. The result would be either to overload the sewerage system with stormwater or to discharge raw sewage to the environment through the stormwater drainage system.

Have the key stakeholders done everything in their power to control the risk?

The provision of water supply, sewerage and stormwater drainage services is a function of local government. All of the State's local governments operate under the broad jurisdiction granted by the *Local Government Act 1993*, section 25 and utilise the Standard Sewerage Law and the Standard Water Supply Law to control risk in the exercise of their water supply, sewerage and stormwater drainage functions.

The risks identified under the previous heading are currently controlled and regulated by the existing Standard Sewerage Law and Standard Water Supply Law.

The proposed rewrite of the standard laws will provide for the continued regulation and control of those risks. However, the proposed standard laws will require compliance with the National Plumbing and Drainage Code, AS 3500, and other Australian Standards.

Local government and industry support the retention of the standard laws as a mechanism for controlling risks to public health and safety and for protecting the integrity of public water supply and sewerage utilities.

Extensive government, industry and public consultation has also been undertaken.

Is there a compelling case for Government involvement on the grounds of public health, safety, prosperity, heritage or amenity?

Queensland's water and sewerage legislation originated in the State's early health legislation and was, and still is, concerned with matters of public health. Such legislation empowered the Chief Health Officer to prescribe "standards for water consumption or use by man" and "measures for the protection or purification of such water" in order to prevent the spread of disease. It also provided for the regulation of sewerage and stormwater drainage, on the recommendation of the Chief Health Officer,

with the onus for ensuring the maintenance of public health in these areas falling on local governments. The present *Health Act 1937* retains such powers while the Standard Sewerage Law and the Standard Water Supply Law give effect to them by dealing with the administrative mechanisms and the technical standards required to achieve the health objectives.

The universality of the objectives, and the need for regulation, is further emphasised in the World Health Organisation (WHO) “Guidelines on Health Aspects of Plumbing” (1982) which recognise that safe and ample supplies of water and efficient sanitation and drainage are essential factors for healthy living.

The WHO document is uncompromising on the need for plumbing control, stating—

“Health authorities must exercise sufficient control over the design, construction, materials and workmanship of plumbing on private property and public areas, to ensure that the health of the public is protected. Water and sewerage authorities equally have an interest in good plumbing practice, to protect water quality, to prevent wasteful leaks in water service lines, and to minimise the risk of surcharge to sewage flows. The achievement of this control involves laying down standards and regulations contained within a comprehensive code of practice, and supporting this code with legislation and with an inspection mechanism to secure compliance with its provisions.”

While the above objectives are reflected within the present regulation, and maintaining the regulation is appropriate to address community needs, the regulation needs to be substantially updated to meet current industry and legislative standards.

What would happen if Government does nothing—that is, what is the worst possible consequence of Government inaction?

In late 1990, the Ministers comprising the then Australian Water Resources Council agreed that the National Plumbing and Drainage Code, AS 3500, published by Standards Australia, should form the basis for future plumbing and drainage practice in Australia once the relevant sections of the Code were implemented by the regulatory authorities in each State.

Failure to amend the present Standard Sewerage Law and the Standard Water Supply Law would breach the 1990 agreement and leave Queensland

out of step with the other States. Most States have now adopted the Code. TAFE colleges involved in the training of plumbers and drainers and the building industry are also moving to the use of the Code for national uniformity.

The present Standard Sewerage Law and the Standard Water Supply Law are also out of date in many respects. They refer to legislation, State and local government agencies and statutory positions that have been renamed or that no longer exist and there is overlap and conflict with legislation such as the *Building Act 1975*, the *Local Government Act 1993*, and the *Environmental Protection Act 1994*.

Failure to update the legislation and address such issues may leave decisions of local governments open to challenge. Overlapping and conflicting legislative requirements create confusion, increase administrative burdens and reduce public confidence in local and State governments.

LEGISLATIVE INTENT

What does this legislation do—that is, what rights are taken away, obligations imposed, or circumstances does it change or establish?

Following the 1990 Ministerial agreement, two reviews of the Standard Sewerage Law and the Standard Water Supply Law were undertaken. The first review addressed the technical provisions of the standard laws to be directly replaced by provisions of the National Code while the second dealt with both the *Sewerage and Water Supply Act 1949* and its subordinate legislation under the State's systematic review of business legislation and regulations.

The reviews strongly supported a revision of the Standard Sewerage Law and the Standard Water Supply Law addressing the following objectives—

- adopting the National Plumbing and Drainage Code, AS 3500, in lieu of the technical provisions in the standard law
- adopting other Australian Standards where possible and referring to a Code of Practice for waste water management
- removing provisions relating to sewerage design standards, allowing for the development of more appropriate local

government standards and specifications based on the Department of Natural Resources' Sewerage and Water Supply Guidelines

- removing outdated, inconsistent and redundant provisions and re-writing the residual standard laws to ensure the consistency of the proposed legislation with fundamental legislative principles
- removing the present State based system for plumbing and drainage product approval in favour of the National Certification of Plumbing and Drainage Products Scheme
- separating the laws related to the management of utilities from those related to the control of plumbing and sanitary drainage on premises to facilitate the administration of the legislation at State and local government levels.

The proposed legislation removes some unnecessary requirements for local government approval of minor plumbing and drainage works. All other existing rights and obligations will be retained.

How will that work in practice—what is the overall effect expected to be?

Adopting the National Plumbing and Drainage Code, AS 3500, and other Australian Standards in lieu of the technical provisions of the standard laws will eliminate the need for the State to maintain a set of standards which apply only to works within the State.

Removing the mandatory sewerage design standards from the standard law will allow them to be consolidated in the Guidelines. This will give local governments greater flexibility in the development of design and construction specifications more suited to their particular needs.

Separating the residual laws relating to the management of utilities from those relating to the control of plumbing and sanitary drainage on premises will give local governments much greater flexibility in separating responsibilities for their commercial and regulatory activities.

How does this contribute to the achievement of the overall objective of the legislation proposed?

The overall objective of the proposed subordinate legislation is achieved by continuing to preserve the powers local governments need to operate their water, sewerage and stormwater drainage utilities and continuing to ensure that water supply and sewerage administrative practices are uniform throughout Queensland. The proposed subordinate legislation will also continue to ensure that the provision, management and operation of such services is appropriate to maintaining satisfactory levels of public health and safety.

The adoption of the National Plumbing and Drainage Code, AS 3500, and other Australian Standards in lieu of the technical standards contained in the present standard laws will ensure that plumbing and sanitary drainage installations on premises will continue to be of a standard consistent with maintaining a satisfactory level of public health and safety, and present a minimum risk to the integrity of local government's water supply and sewerage systems.

Why is this legislative approach reasonable and appropriate?

The existing legislation recognises the delegated responsibilities of local governments with respect to issues of public health and safety associated with water supply and sewerage. It protects the substantial investment that local governments have in water supply and sewerage infrastructure and ensures that privately owned plumbing and drainage installations connected to the public infrastructure systems will not adversely affect the operation of such systems.

The proposed legislation preserves the intent of the existing legislation and recognises the benefits of adopting national standards wherever possible. It was developed following extensive discussions with local governments, the plumbing and sanitary drainage industry, trade organisations and the public.

Generally industry favours the continuance of regulation that maintains standards of plumbing and sanitary drainage installation as industry associations are unable to control the actions of non-members. Because of the specialised nature of the work, the public are not always in a position to judge the quality of the work.

CONSISTENCY WITH THE AUTHORISING LAW AND OTHER LEGISLATION

The proposed legislation is consistent with the authorising law because it meets the law's overall objectives of effective and efficient management of public water supply and sewerage utilities and the control of plumbing and sanitary drainage systems connected to the public utilities.

The need to re-draft the legislation to accommodate the adoption of the National Plumbing and Drainage Code has provided the opportunity to bring the standard laws into line with recently introduced complementary legislation such as the *Local Government Act 1993*, and the *Environmental Protection Act 1994*.

OPTIONS AND ALTERNATIVES

What are the alternative ways of achieving the policy objectives of the subordinate legislation (including the “do nothing” option) and why were they rejected?

Given the universal recognition of the need for the regulation of water supply, sewerage, plumbing and sanitary drainage, the alternative methods of achieving the policy objectives are largely administrative in nature. The repeal of the legislation is an option, but it is not considered desirable given the public health and environmental issues involved. The alternatives are—

ALTERNATIVE A

Retain the subordinate legislation with amendments

Retaining the subordinate legislation with amendments will maintain all essential provisions, remove redundant provisions, update those still relevant and ensure that the legislation is consistent with fundamental legislative principles. This is the preferred course of action.

Advantages—

- maintains the present levels of uniformity in public health, safety and amenity standards

- maintains the present levels of local government control over water and sewerage undertakings
- maintains appropriate controls over plumbing and sanitary drainage on premises
- adopts the National Plumbing and Drainage Code, AS 3500, ensuring nationwide uniformity in plumbing and sanitary drainage practice
- continues joint management by the relevant State Government departments under an administrative arrangement.

Disadvantages—

- substantial amendment and restructuring of the subordinate legislation is required to minimise conflict in administrative roles, delete unnecessary provisions and update those still relevant
- the Standard Sewerage Law and the Standard Water Supply Law will continue to address water and sewerage utility matters as well as the provision of plumbing and sanitary drainage on premises
- that portion of the standard law dealing with the provision of plumbing and sanitary drainage on premises will need to be repealed when appropriate building related legislation is available to take up this part of the regulation.

ALTERNATIVE B

Leave the amended provisions dealing with local government control over water supply and sewerage undertakings as subordinate legislation under the Sewerage and Water Supply Act. Move the amended provisions concerning plumbing and sanitary drainage functions into other building related regulation.

Advantages—

- allows for the separate administration of the two principal functions of the present legislation
- facilitates the consolidation of legislation concerning the provision of water and sewerage utility services by local governments, currently contained in several Acts

- adopts the National Plumbing and Drainage Code, AS 3500, ensuring nationwide uniformity in plumbing and sanitary drainage practice
- maintains present levels of uniformity in public health, safety and amenity standards
- Maintains present levels of local government control over water and sewerage undertakings.

Disadvantages—

- no suitable building related legislation currently exists into which the plumbing and drainage regulations may be incorporated. To wait until such legislation is developed will mean a further, unnecessary, delay in the introduction of the National Plumbing and Drainage Code, AS 3500. The implementation of the Code in Queensland has already been delayed through the need to completely re-write the present Standard Sewerage Law and the Standard Water Supply Law consistent with current legislative drafting practices.

ALTERNATIVE C

What would happen without the regulation?

There are no advantages in repealing the regulation. Potential problems which may be detrimental to the community and which may occur if there were no regulation include—

- (a) water supply and sewerage—
 - local government functions would be open to challenge, for example the current legislation gives local governments control over admissions of trade wastes to sewerage. Without the legislation, a waste generator could force local governments to accept trade wastes without regard to impact
 - non-standard work would proliferate, lowering of standards of public health, amenity and safety through use of inferior products and inferior practices unless Local Governments applied their own development conditions
 - the State would be unable to set uniform standards for the

local governments' water supply and sewerage operation

- there would be a loss of uniformity in local government control over water and sewerage utilities, for example in the ability to enforce sprinkler restrictions, ability to prevent unauthorised connections to water mains, sewers etc.
- each local government would revert to setting its own standards of control for water and sewerage, leading to confusion in the industry, particularly in adjoining local government areas, and consumer dissatisfaction.

(b) plumbing and sanitary drainage—

- non-standard work would proliferate, lowering of standards of public health, amenity and safety through use of inferior products and inferior practices unless local governments applied their own development conditions
- the risk of contamination to town water supplies, stormwater and the environment would increase through uncontrolled connections to water supply pipes, stormwater pipes, sanitary drains etc.
- each local government would revert to setting its own standards for plumbing and sanitary drainage materials and installation, leading to confusion in the industry, particularly in adjoining local government areas, higher cost of products (through variability in pipes, fittings and plumbing work) and consumer dissatisfaction, conflicting with the principles of micro-economic reform
- building maintenance and insurance costs would increase as a result of inferior work
- there would be no assurance of quality in plumbing and sanitary drainage works
- the risk of damage to sewerage systems and/or damage to the environment would increase through uncontrolled discharges of wastes.

There is a high probability that the disadvantages mentioned above would occur and major impacts detrimental to public health and the environment would result.

ALTERNATIVE D

The “do nothing” option

The “do nothing” option offers no advantages. The present legislation already requires substantial up-dating to accommodate changes brought about by changes in other legislation. There are a number of major disadvantages associated with this course of action and these have been outlined previously in the section on Policy Objectives.

BENEFIT COST ANALYSIS

What are the Benefits and Cost of implementing the proposed legislation as compared with any reasonable alternative?

The *Sewerage and Water Supply Act 1949* (including subordinate legislation) provides the necessary regulation to protect, control and operate publicly owned water supply and sewerage infrastructure with a replacement value of \$15 000 million and an annual operating cost of \$300 million.

Attached to this publicly owned infrastructure is privately owned plumbing and sanitary drainage with an estimated replacement value of \$8 000 million. Each year, additional privately owned plumbing and sanitary drainage to the value of about \$300 million is provided in the State, most of it connected to the publicly owned water and sewerage systems.

The total cost to the State and local governments of administering the regulation amounts to about \$11.3 million per annum. The State government component of this cost, about \$300 000, is recovered by the issue of Plumbers and Drainers Licences and fees for product authorisation. The major part, the local government component of the cost, is recovered by way of fees for approvals, services provided, inspection fees etc., almost entirely related to plumbing and sanitary drainage on premises.

Plumbing and sanitary drainage installation in dwellings contributes about 6% to the cost of a dwelling. Costs associated with the present plumbing and sanitary drainage regulation, fees etc., represent about 3.7% of the cost of installing plumbing and sanitary drainage in dwellings. This compliance cost therefore represents only 0.2% of the overall cost of a

dwelling to the individual householder. The overall cost associated with the regulation is quite small, given the value of the infrastructure which it protects and the protection and benefit it affords to the health and welfare of the community.

The issues underlying the proposed changes were taken into account in a cost benefit analysis undertaken when the existing legislation was reviewed as part of the State's systematic review of business legislation and regulations. With respect to the proposed changes the analysis showed "little or no impact" for both government and business, and a "moderate to slight positive impact" for the consumer. For Government, a small negative impact could be attributed to the cost associated with amending the legislation. For Business, a small positive impact could be attributed to benefits arising from the adoption of the National Plumbing and Drainage Code, AS 3500. The moderate to slight positive impact for consumers could be attributed to a range of small benefits and the result is consistent with the concept that the major beneficiaries of the regulation are consumers.

Under the preferred course of action only limited changes are proposed for the regulations. The proposed changes will not alter the essential application of the existing regulation and therefore they will not materially impact on the major costs and benefits associated with the existing regulation.

NATIONAL COMPETITION POLICY

What is the impact of the proposed legislation on competition—that is, to what extent does it impose or encourage any restrictions?

The Trade Practices Audit Reports conducted by the Departments of Primary Industries and Local Government and Planning and certified by the then acting Directors General for the Departments of Primary Industries and Natural Resources and the Director General of the Department of Local Government and Planning respectively did not identify any behaviour or provisions which may be anti-competitive in terms of the *Trade Practices Act 1974*, Part IV (Cwlth).

The existing Standard Sewerage Law and the Standard Water Supply

Law apply to all local governments and are administered by them. The proposed amendment of this regulation does not alter the role of local governments in the provision of the public utility services of water supply and sewerage or their regulation of plumbing and sanitary drainage on premises. To this extent, the proposed subordinate legislation is competitively neutral.

Do the benefits outweigh the costs from an economy wide perspective?

Yes. One of the principal objectives for the revision of the Standard Sewerage Law and the Standard Water Supply Law is to adopt the National Plumbing and Drainage Code, thus eliminating unnecessary differences in plumbing and sanitary drainage practice from State to State.

If there are restrictions, how and why are they in the public interest?

The responsibility for the provision of water supply and sewerage utility services rests within the jurisdiction of local government. The Standard Sewerage Law and the Standard Water Supply Law merely ensures that common standards and procedures apply throughout all of the State's local government areas.

How do the competitive impacts of the proposed legislation compare with any reasonable alternative?

From the preceding discussion, regulation is necessary for public health and safety reasons. The only reasonable alternative is to retain the existing subordinate legislation. The main change in the proposed legislation is to introduce the National Plumbing and Drainage Code, AS 3500, so that there is Australia wide uniformity in the principal criteria concerning plumbing and sanitary drainage practice. This would tend to increase competition for plumbing and sanitary drainage services.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

To what extent is the proposed legislation consistent with fundamental legislative principles?

It is intended that the proposed legislation will have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

RISK ASSESSMENT POLICY

Have the risks inherent to the situation regulated been formally assessed?

The levels of risk associated with the issues addressed by the Standard Sewerage Law and the Standard Water Supply Law were assessed during the reviews of the regulation. The proposed regulation reflects those assessments by relaxing approval and inspection requirements for minor plumbing and sanitary drainage repair and maintenance work in favour of a self certification arrangement.

Does the regulation allow for compliance options which are reflective of the assessed level of risk?

The existing and proposed regulation utilises a system of approval processes and inspection arrangements and applies penalties to ensure compliance. The proposed penalties will be graded in accordance with the seriousness of the offence and a maximum penalty of 165 penalty units will apply to some breaches of the regulation.

Does the enforcement effort (through measures like inspection, sampling, monitoring and audit) target the areas of greatest risk as a priority?

The proposed regulation will retain full approval and inspection arrangements to ensure compliance in high risk instances but will allow for self certification in respect to certain minor plumbing and sanitary drainage repair and maintenance work. The proposed self-certification arrangement will ensure that local governments continue to receive notification that

certain critical repair work has been carried out, for example the repair of broken sanitary drainage pipes, while less critical works may be undertaken without the additional cost of approval or inspection fees.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Natural Resources.