



# **Water Fluoridation Act 2008**

**Current as at 1 November 2013**

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Queensland

# Water Fluoridation Act 2008

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# Water Fluoridation Act 2008

**An Act to provide for the fluoridation of public potable water supplies, and for related purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Water Fluoridation Act 2008*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Act binds all persons**

- (1) This Act binds all persons, including the State.
- (2) However, nothing in this Act makes the State liable to be prosecuted for an offence.

### **Division 2 Object**

#### **4 Object of Act**

The object of this Act is to promote good oral health in Queensland by the safe fluoridation of public potable water supplies.

## **Part 2 Interpretation**

### **5 Definitions**

The dictionary in the schedule defines particular words used in this Act.

## **Part 3 Fluoridation of public potable water supplies**

### **7 Decisions about fluoridation of public potable water supplies**

- (1) A local government may decide that fluoride be added to the water supply that supplies potable water to the community in its local government area if it is satisfied the decision is in the best interests of the community.
- (2) If a local government makes a decision under subsection (1)—
  - (a) if the local government is not the public potable water supplier for the potable water supply that supplies potable water to the community—the local government must give the water supplier notice of the decision; and
  - (b) the water supplier must add fluoride, or continue to add fluoride, to the water supply.
- (3) A local government may decide that fluoride not be added to the water supply that supplies potable water to the community in its local government area if it is satisfied the decision is in the best interests of the community.
- (4) If a local government makes a decision under subsection (3)—
  - (a) if the local government is not the public potable water supplier for the potable water supply that supplies



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- potable water to the community—the local government must give the water supplier notice of the decision; and
- (b) the water supplier must not add fluoride, or must cease to add fluoride, to the water supply.
- (5) A local government may, before making a decision under subsection (1) or (3), consult with the public potable water supplier for the potable water supply about cost implications, infrastructure arrangements and potential impact on water supply inside or outside the local government area.
- (6) In this section—
- community*, of a local government, includes part of the community of the local government.

## **8 Requirement for public potable water supplier not to impact on another local government**

- (1) This section applies to a public potable water supplier for a public potable water supply that is required under section 7 to add fluoride, or cease to add fluoride, to the water supply that supplies potable water to a community in a local government area.
- (2) The public potable water supplier must not, when adding fluoride, or ceasing to add fluoride, to the water supply, affect another local government's water security or water supply or the fluoridation of another local government's water supply without the other local government's agreement.

## **9 Costs**

If—

- (a) a local government makes a decision under section 7 to add fluoride, or cease to add fluoride, to the water supply that supplies potable water to the community in its local government area; and
- (b) the local government is not the public potable water supplier for the potable water supply; and

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- (c) the public potable water supplier for the potable water supply incurs costs (*compliance costs*) in complying with the local government's decision;

the local government must pay the public potable water supplier's compliance costs.

## 12 Requirements relating to the addition of fluoride to public potable water supply

A public potable water supplier for a public potable water supply that adds fluoride to the public potable water supply must—

- (a) add the fluoride in a form prescribed under a regulation; and
- (b) comply with the requirements prescribed under a regulation relating to the addition of fluoride to, and the maintaining of fluoride in, a public potable water supply.

*Note—*

For the consequences of contravening this provision, see part 5, division 3.

## 13 Notification of intention relating to fluoridation of public potable water supply

- (1) This section applies if a local government makes a decision (a *fluoridation decision*) to add fluoride, or cease to add fluoride, to the public potable water supply that supplies potable water to the community, or part of its community, in its local government area.
- (2) The local government must—
  - (a) give the chief executive a notice stating that the local government has made a fluoridation decision and the nature of the decision; and

- (b) publish the notice at least once in a newspaper circulating in the area of the State serviced by the water supply.
- (3) The public potable water supplier for the public potable water supply must, at least 30 days before adding fluoride or ceasing to add fluoride to the water supply—
  - (a) give a fluoridation notice to the chief executive; and
  - (b) publish the fluoridation notice at least once in a newspaper circulating in the area of the State serviced by the water supply.
- (4) In this section—

*fluoridation notice* means a notice stating—

  - (a) that the local government has made a fluoridation decision; and
  - (b) that the public potable water supplier for the public potable water supply intends to add fluoride or cease to add fluoride to the water supply from a stated day.

#### **14 Only certain persons may add fluoride to a public potable water supply**

A person must not add fluoride to a public potable water supply unless the person is—

- (a) a public potable water supplier for the water supply; or
- (b) an employee or agent of the water supplier acting under the water supplier's authority; or
- (c) acting under section 60.

Maximum penalty—100 penalty units.

## **Part 5                      Monitoring and enforcement**

### **Division 1                Authorised persons**

#### **Subdivision 1        Preliminary**

#### **24        Powers generally**

- (1) An authorised person has the powers given under this Act.
- (2) In exercising the powers, the authorised person is subject to the directions of the chief executive.

#### **25        Functions of authorised person**

An authorised person has the following functions—

- (a) to enforce this Act;
- (b) to monitor compliance with this Act;
- (c) to help achieve the object of this Act by providing advice and information on how the object may be achieved.

#### **Subdivision 2        Appointment of authorised persons**

#### **26        Appointment and qualifications**

- (1) The chief executive may appoint any of the following persons as an authorised person—
  - (a) a public service employee of the department;
  - (b) a health service employee;
  - (c) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an authorised person only if satisfied the person is qualified for

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appointment because the person has the necessary expertise or experience.

## **27 Appointment conditions and limit on powers**

- (1) An authorised person holds office on any conditions stated in—
  - (a) the authorised person’s instrument of appointment; or
  - (b) a signed notice given to the authorised person; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person’s powers under this Act.
- (3) In this section—

*signed notice* means a notice signed by the chief executive.

## **28 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person’s signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

## **29 Production or display of identity card**

- (1) In exercising a power under this Act in relation to another person, an authorised person must—

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- (a) produce the authorised person's identity card for the other person's inspection before exercising the power;  
or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 33(1)(b) or (2).

### **30 When authorised person ceases to hold office**

- (1) An authorised person ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised person ceases to hold office;
  - (c) the authorised person's resignation under section 31 takes effect.
- (2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- (3) In this section—
- condition of office* means a condition on which the authorised person holds office.

### **31 Resignation**

An authorised person may resign by signed notice given to the chief executive.

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## **32 Return of identity card**

A person who ceases to be an authorised person must return the person's identity card to the chief executive within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## **Division 2 Powers of authorised persons**

### **Subdivision 1 Entry of places**

#### **33 Power to enter places**

- (1) An authorised person may enter a place if—
  - (a) an occupier of the place consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) it is a place that contains a public potable water supply or equipment connected with a public potable water supply; or
  - (d) the entry is authorised by a warrant.
- (2) For the purpose of asking an occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) Subsection (1)(c) does not authorise the entry of any part of a place where a person resides.

## **Subdivision 2 Procedure for entry**

### **34 Entry with consent**

- (1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 33(1)(a).
- (2) Before asking for the consent, the authorised person must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.



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### 35 Application for warrant

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### 36 Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place or, within the next 7 days, will be at the place.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person's powers under this division; and
  - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and

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- (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the date and time of the warrant's issue; and
- (i) the date, within 14 days after the warrant's issue, the warrant ends.

### **37 Application by electronic communication and duplicate warrant**

- (1) An application under section 35 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 35(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—

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- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the authorised person must complete a form of warrant including by writing on it—
      - (A) the magistrate’s name; and
      - (B) the date and time the magistrate issued the warrant; and
      - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 35(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This section does not limit section 35.

(10) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **38 Defect in relation to a warrant**

(1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 35, 36 or 37, unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 37(5).

### **39 Warrants—procedure before entry**

(1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person's identity card or other document evidencing the appointment;

(b) give the person a copy of the warrant;

- (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 37(5).

## **Subdivision 3      General powers**

### **40      General powers after entering places**

- (1) This section applies to an authorised person who enters a place.
- (2) However, if an authorised person enters a place to get an occupier's consent to enter a place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the authorised person may—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, at the place for analysis; or
  - (d) copy a document at the place or take the document to another place to copy it; or

- (e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this division; or
  - (f) require an occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e); or
  - (g) require an occupier of the place, or a person at the place, to give the authorised person information to help the authorised person find out whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (5) If an authorised person takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

#### **41 Failure to help authorised person**

- (1) A person required to give reasonable help under section 40(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 40(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

#### **42 Failure to give information**

- (1) A person of whom a requirement is made under section 40(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

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Maximum penalty—50 penalty units.

*Note—*

Also, under section 66, it is an offence for a person to state anything to an authorised person the person knows to be false or misleading in a material particular.

- (2) It is a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **Subdivision 4 Power to seize evidence**

### **43 Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place under this division without the consent of the occupier and without a warrant, may seize a thing at the place only if the authorised person reasonably believes the thing is evidence of an offence against this Act.

### **44 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
- (a) an authorised person is authorised to enter a place under this division only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
- (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and

- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person also may seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

## **Subdivision 5      Dealing with seized things**

### **45      Securing seized things**

Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted



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## **46 Tampering with seized things**

- (1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—100 penalty units.

- (2) In this section—

*tamper* includes attempt to tamper.

## **47 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and  
(b) if necessary, to remain in control of it at the stated place for a reasonable time.

- (2) The requirement—

- (a) must be made by notice; or  
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.

- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) The cost of complying with subsection (4) must be borne by the department.

#### **48 Authorised person may require thing's return**

- (1) If an authorised person has required a person to take a thing to a stated place by a stated reasonable time under section 47 the authorised person may require the person to return the thing to the place from which it was taken.
- (2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.  
Maximum penalty—100 penalty units.
- (3) The cost of complying with subsection (2) must be borne by the department.

#### **49 Receipts for seized things**

- (1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

#### **50 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the authorised person who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.

- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (5) Without limiting subsection (4), the chief executive may destroy or dispose of the thing.

## **51 Return of seized things**

- (1) If a thing has been seized but not forfeited or destroyed under this division, the authorised person must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited or destroyed under this division, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

## **52 Access to seized things**

- (1) Until a thing that has been seized is forfeited, destroyed or returned under this division, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **53 Power of destruction**

An authorised person may destroy a thing seized under this division if—

- (a) the thing consists wholly or partly of contaminated or decomposed matter; or
- (b) the authorised person reasonably believes the thing poses an immediate risk to public health or safety.

## **Subdivision 6 Power to obtain information**

### **54 Power to require production of documents**

- (1) An authorised person may require a person to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person a document required to be kept by the person under this Act.
- (2) The authorised person may keep the document to copy it.
- (3) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised person must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the

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authorised person may keep the document until the person complies with the requirement.

- (6) A requirement under subsection (1) is a *document production requirement*.

## **55 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

## **56 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **Division 3 Remedial notices**

### **57 Definitions for div 3**

In this division—

*relevant provision* see section 59(2)(b).

*remedial notice* see section 59(1).

*the contravention* see section 58(b).

### **58 Application of div 3**

This division applies if an authorised person reasonably believes—

- (a) a public potable water supplier—
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
- (b) a matter relating to the contravention or likely repeated contravention (in either case *the contravention*) can be remedied; and
- (c) it is appropriate to give the public potable water supplier an opportunity to remedy the matter.

## 59 Authorised person may issue remedial notice

- (1) The authorised person may give the public potable water supplier a notice (a *remedial notice*) requiring the water supplier to remedy the contravention.
- (2) The remedial notice must state the following—
  - (a) that the authorised person reasonably believes the public potable water supplier—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
  - (b) the provision the authorised person believes is being, or has been, contravened (the *relevant provision*);
  - (c) briefly, how it is believed the relevant provision is being, or has been, contravened;
  - (d) the period in which the water supplier must remedy the contravention.
- (3) The period stated under subsection (2)(d) must be reasonable having regard to the contravention.
- (4) The remedial notice may also state the reasonable steps that the authorised person considers necessary to remedy the contravention.

- (5) The authorised person must keep a copy of the remedial notice.
- (6) The public potable water supplier must comply with the remedial notice.
- (7) If it is an offence to contravene the relevant provision for which the remedial notice is given, the public potable water supplier can not be prosecuted for that offence unless the public potable water supplier fails to comply with the remedial notice and does not have a reasonable excuse for the noncompliance.
- (8) A public potable water supplier may be prosecuted for the contravention of a relevant provision without an authorised person first giving a remedial notice for the contravention.

**60 Chief executive may take action if remedial notice not complied with**

- (1) This section applies if the public potable water supplier fails to comply with the remedial notice.
- (2) The chief executive may take the action the chief executive considers reasonably necessary to remedy the contravention.
- (3) For taking the action, the chief executive may authorise a person to do the things that are necessary and reasonable.
- (4) Without limiting subsection (3), the person may—
  - (a) enter a place for the purpose of taking action to remedy the contravention; and
  - (b) take onto the place any persons, equipment or materials the person reasonably requires for taking action to remedy the contravention.
- (5) This section does not authorise a person to enter any part of a place where a person resides.

## **61 Recovery of chief executive's costs**

The reasonable costs and expenses incurred by the chief executive in taking the action are a debt payable by the public potable water supplier to the State.

## **62 Obstruction**

A person must not obstruct the chief executive, or a person authorised by the chief executive to take the action, in taking the action, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

# **Division 4 General enforcement matters**

## **Subdivision 1 Notice of damage and compensation**

### **63 Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised person damages property.
- (2) The authorised person must immediately give notice of particulars of the damage to a person who appears to the authorised person to be an owner of the property.
- (3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person's or other person's control, the authorised person may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in



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a conspicuous position and in a reasonably secure way at the place where the damage happened.

- (5) This section does not apply to damage the authorised person reasonably believes is trivial.
- (6) In this section—  
*owner*, of property, includes a person in possession or control of it.

## **64 Compensation**

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under division 2, other than the exercise or purported exercise of a power under section 53 to destroy a thing seized under division 2, the person may claim compensation from the State.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under division 2.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

## **Subdivision 2 Other matters**

### **65 Obstructing authorised person**

- (1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
  - (a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person’s conduct an obstruction.

## **66 False or misleading statements**

A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

## **67 False or misleading documents**

- (1) A person must not give an authorised person a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the authorised person, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the authorised person.

## **68 Impersonating authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—100 penalty units.

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## Part 6 Analysis of things or samples

### Division 1 State analysts and approval of laboratories

#### 69 Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as a State analyst—
  - (a) a public service employee of the department;
  - (b) a health service employee;
  - (c) a person prescribed under a regulation.
- (2) A person may be appointed as a State analyst under subsection (1) to carry out any type, or only particular types, of analysis.
- (3) However, the chief executive may appoint a person as a State analyst only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### 70 Appointment conditions

- (1) A State analyst holds office on any conditions stated in—
  - (a) the State analyst's instrument of appointment; or
  - (b) a signed notice given to the State analyst; or
  - (c) a regulation.
- (2) In this section—

*signed notice* means a notice signed by the chief executive.

#### 71 When State analyst ceases to hold office

- (1) A State analyst ceases to hold office if any of the following happens—

[s 72]

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- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the State analyst ceases to hold office;
  - (c) the State analyst's resignation under section 72 takes effect.
- (2) Subsection (1) does not limit the ways a State analyst may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the State analyst holds office.

## **72 Resignation**

A State analyst may resign by signed notice given to the chief executive.

## **73 Chief executive may approve laboratory**

The chief executive may approve a laboratory to analyse things, or samples of or from things, taken under section 40(3)(c) if—

- (a) the chief executive is satisfied the laboratory has the resources and expertise to conduct the analysis; and
- (b) the laboratory is accredited, authorised or approved to conduct the analyses by an entity prescribed under a regulation.

## **Division 2 Other matters about analysis of things or samples**

### **74 Analysis**

- (1) If an authorised person takes a thing, or a sample of or from a thing, for analysis under section 40(3)(c), the authorised

person must as soon as practicable give it to a State analyst appointed to carry out the particular type of analysis required.

- (2) If a State analyst receives a thing or sample for analysis under subsection (1), the State analyst must as soon as practicable—
  - (a) analyse the thing or sample; or
  - (b) give the thing or sample to an approved laboratory for analysis.
- (3) If the State analyst analyses the thing or sample, the State analyst must, as soon as practicable after analysing it—
  - (a) complete a certificate of analysis for it; and
  - (b) give the certificate to the authorised person who took the thing or sample for analysis.
- (4) If an approved laboratory analyses the thing or sample, the State analyst must, as soon as practicable after it is analysed—
  - (a) obtain a certificate of analysis for it from the approved laboratory; and
  - (b) give the certificate to the authorised person who took the thing or sample for analysis.

## **75 Certificate must indicate methodology used**

The certificate of analysis must include information about the methodology used to conduct the analysis.

## **Part 8                      Evidence and legal proceedings**

### **Division 1                Application**

#### **84        Application of part**

This part applies to a legal proceeding under this Act.

### **Division 2                Evidentiary aids**

#### **85        Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) an authorised person's appointment;
- (c) the authority of the Minister, the chief executive or an authorised person to do anything under this Act.

#### **86        Signatures**

A signature purporting to be the signature of the Minister, the chief executive or an authorised person is evidence of the signature it purports to be.

#### **87        Evidentiary provisions**

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given, issued or kept under this Act—
    - (i) an appointment or decision;

- (ii) a notice or requirement;
  - (iii) a record or report, or an extract from a record or report;
  - (b) a stated document is another document kept under this Act;
  - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, an appointment as an authorised person was, or was not, in force for a stated person;
  - (e) on a stated day, a stated person was given a stated notice under this Act;
  - (f) on a stated day, a stated requirement was made of a stated person;
  - (g) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) A certificate of analysis for a thing or sample taken for analysis under this Act stating any of the following matters is evidence of the matters—
- (a) the qualifications of the person (the *analyst*) who conducted the analysis;
  - (b) the analyst received the thing from a stated person;
  - (c) the thing was analysed at a stated place on a stated day or during a stated period;
  - (d) the methodology used to analyse the thing;
  - (e) the results of the analysis.

## Division 3                      Offence proceedings

### 88                      Summary offences

A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

**89 Allegations of false or misleading information or document**

In any proceeding for an offence against this Act involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

**90 Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

  - (a) the person’s knowledge, intention, opinion, belief or purpose; and



- (b) the person's reasons for the intention, opinion, belief or purpose.

## **Part 9**                      **Matters relating to liability and indemnity**

### **Division 1**                **Liability**

#### **92**            **Contravention of this Act does not create civil cause of action**

No provision of this Act creates a civil cause of action based on a contravention of the provision.

#### **93**            **Act does not affect other rights or remedies**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.
- (3) This section is subject to section 94.

#### **94**            **Protection from civil rights and remedies**

A person does not have any civil right or remedy against a public potable water supplier in relation to the fluoridation of a public potable water supply under this Act.

## 95 Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the Minister or the chief executive; or
  - (b) a person acting under the authority of the Minister or the chief executive; or
  - (c) a State analyst; or
  - (d) an authorised person; or
  - (e) a person acting under the direction or authority of an authorised person.

## Division 2 Indemnity for public potable water suppliers

### 96 Indemnity

- (1) The State is to indemnify a local government or a public potable water supplier (a *supplier*) against all costs and expenses properly incurred, and not recovered, by it in relation to any civil proceeding in a court taken against it in relation to anything it is required or permitted to do under section 7 (an *Act proceeding*).
- (2) If an Act proceeding is started against a supplier, it must immediately notify the Minister.

### 97 Minister etc. may elect to be joined as a party

The Minister, or a person nominated by the Minister, (the *electing party*) may at any time elect to be joined in an Act proceeding as a party by notice filed in the court.

## 98 Effect of election

- (1) The electing party may, on behalf of the supplier, do anything the supplier could do as a party to the proceeding including settling any matter arising in the proceeding.
- (2) The supplier must not do anything as a party to the proceeding unless authorised to do so by the electing party.
- (3) The supplier must assist the electing party to act under subsection (1) including by executing all documents that the electing party considers necessary for that purpose.

# Part 10 Miscellaneous

## 99 Delegations

- (1) The Minister or the chief executive may delegate his or her functions under this Act to an appropriately qualified person who is—
  - (a) a public service employee of the department; or
  - (b) a health service employee.
- (2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

if a person is a public service employee of the department, the person's classification level in the department

*functions* includes powers.

## 100 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.

- (2) A regulation may be made about the following—
- (a) the keeping of records and the records to be kept;
  - (b) reporting requirements including what is to be contained in reports and to whom and by whom reports are to be given;
  - (c) the qualifications of persons employed in operating equipment used in relation to adding fluoride to a public potable water supply;
  - (d) the undertaking of analyses of water and other things connected with a public potable water supply including the methods to be used and the times at which the analyses are to happen;
  - (e) imposing a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

## **Part 11                      Repeal**

### **101      Repeal of Fluoridation of Public Water Supplies Act 1963**

The Fluoridation of Public Water Supplies Act 1963, No. 34 is repealed.

## Part 12 Transitional provisions for South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012

### 102 Definitions for pt 12

In this part—

*amending Act* means the *South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012*.

*commencement* means the commencement of this section.

*former*, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

*relevant public potable water supply* see former section 6.

### 103 Adding fluoride to relevant public potable water supply continues

- (1) This section applies to a public potable water supplier for a public potable water supply that is, immediately before the commencement, adding fluoride to the water supply.
- (2) From the commencement, the public potable water supplier must continue to add fluoride to the water supply until the local government in whose area the potable water is supplied makes a decision under section 7 to cease to add fluoride to the water supply.
- (3) This section applies despite the repeal of former sections 7 and 11.

**104 Exemptions and applications for exemptions from requirements to add fluoride to relevant public potable water supply**

- (1) Subsection (2) applies to an exemption given under former section 8 from the requirement under former section 7 for a public potable water supplier for a relevant public potable water supply to add fluoride to the water supply.
- (2) On the commencement, the exemption is of no effect.
- (3) An application for an exemption, made under former section 8 but not decided before the commencement, is taken never to have been made.

**105 Dissolution of committee**

- (1) This section applies to the Queensland Fluoridation Committee established under former section 76.
- (2) On the commencement, the committee is dissolved and each person who, immediately before the commencement, was a member of the committee goes out of office.
- (3) No compensation is payable to a member because of subsection (2).

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# Schedule Dictionary

## section 5

*Act proceeding*, for part 9, division 2, see section 96(1).

*analysis* includes testing.

*approved laboratory* means a laboratory approved by the chief executive under section 73.

*authorised person* means a person appointed as an authorised person under section 26.

*document certification requirement* see section 54(5).

*document production requirement* see section 54(6).

*electing party*, for part 9, division 2, see section 97.

*equipment* includes plant.

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

*fluoride* includes any compound of fluorine.

*health service employee* see the *Hospital and Health Boards Act 2011*, schedule 2.

*notice* means written notice.

*obstruct* includes hinder and attempt to obstruct or hinder.

*place of seizure* see section 45.

*potable water* means water that is intended to be, or is likely to be, used for human consumption.

*public potable water supplier*, for a public potable water supply, means—

- (a) if there is a water treatment plant for the water supply, the owner of the water treatment plant; or

- (b) otherwise, the owner of the reticulation equipment for the water supply.

***public potable water supply*** means a water supply at the point it supplies potable water to the public by means of a water treatment plant or reticulation equipment.

***relevant provision***, for part 5, division 3, see section 57.

***remedial notice***, for part 5, division 3, see section 57.

***State analyst*** means a person appointed as a State analyst under section 69.

***supplier***, for part 9, division 2, see section 96(1).

***the contravention***, for part 5, division 3, see section 57.