

EXPLANATORY NOTES FOR SUBORDINATE LEGISLATION

Water and Another Regulation Amendment Regulation (No. 1) 2013

Explanatory notes for SL2013 No. 190

made under the

Sustainable Planning Act 2009

Water Act 2000

General Outline

Short title

Water and Another Regulation Amendment Regulation (No. 1) 2013

Authorising law

Sections 232 and 763 of the *Sustainable Planning Act 2009*.

Sections 20, 190, 195, 201, 206, 213, 223, 230, 299, 302, 814, 1006, 1014, 1046 and 1117A of the *Water Act 2000*.

Policy objectives and the reasons for them

Amendment of the Sustainable Planning Regulation 2009

Clearing vegetation in a watercourse or lake

Sections 293, 294 and 299 of the *Land, Water and Other Legislation Amendment Act 2013* (the LWOLA Act) amended the *Water Act 2000* (Water Act) to remove the requirement for a person to obtain a riverine protection permit to destroy vegetation in a watercourse, lake or spring. However, a riverine protection permit is still required to excavate or place fill in a watercourse, lake or spring. Consequential amendments to the *Sustainable Planning Regulation 2009* (SP Regulation) are required as the destruction of vegetation in a watercourse, lake or spring undertaken in accordance with the riverine protection framework in the Water Act operates in conjunction with the *Vegetation Management Act 1999* and the SP Regulation.

Schedule 3 of the SP Regulation makes the clearing of native vegetation assessable development unless the clearing is mentioned in schedule 24, part 1 of the SP Regulation.

Schedule 24, part 1, item 1 of the SP Regulation allows for the clearing of an area of vegetation that is less than 0.5 hectares within a watercourse or lake for an activity that is subject to an approval process under another Act (such as the riverine protection permit process under chapter 2, part 8 of the Water Act), or is carried out under a prescribed guideline approved by the chief executive of the Water Act.

The objective of the amendment regulation is to retain this exemption to the extent necessary to ensure that the LWOLA Act changes do not inadvertently duplicate the approvals required for the destruction of vegetation associated with excavating or placing fill in a watercourse or lake.

Amendment of the Water Regulation 2002

Low risk activities

Section 290 of the LWOLA Act amended section 20 of the Water Act to prescribe additional low risk activities for which a person may take, or interfere with, water without a water entitlement or water permit. New section 20(2)(a) of the Water Act provides that a person may take water if doing so is necessary to carry out an activity prescribed under a regulation. The objective of the amendment regulation is to prescribe these activities.

Interim water allocations for the Julius Dam water supply scheme

The objective of the amendment regulation is to remove the process that facilitated the redistribution of an interim water allocation held by the Mount Isa Water Board into three separate interim water allocations. These interim water allocations were granted in 2009 and subsequently converted to water allocations under the Gulf Resource Operations Plan in 2010. As such, this process is now redundant.

Transferring, amending and amalgamating water licences

Part 2, division 3A of the *Water Regulation 2002* (the Water Regulation) currently prescribes the process for transferring a water licence under section 223 of the Water Act. Subdivision 1 provides the process that applies in particular areas where water licences are not managed under a water resource plan. Subdivision 2 provides the process that applies for water licences to which a water resource plan applies.

Prior to the commencement of the LWOLA Act, section 223 of the Water Act made a distinction between the transfer of water licences in a water resource plan area and the transfer of water licences outside of a water resource plan area. In particular, it limited the application of water licences not managed under a water resource plan such that they could only be transferred to other land where provided for by regulation. However, water licences to which a water resource plan applied could be amended or amalgamated as well as transferred where provided for by regulation. Section 263 of the LWOLA Act amended section 223 of the Water Act to remove the limitation associated with water licences managed under a water resource plan.

The current section 223 of the Water Act provides that all water licences may be transferred, amended or amalgamated in accordance with the process in the regulation.

The objective of the amendment regulation is to consequentially amend the Water Regulation to reflect the current section 223 of the Water Act.

Water bore drillers

The Water Regulation provides the licensing requirements for water bore drillers including the endorsements (drilling methods) that may be listed on a water bore driller's licence, the qualifications or experience required to obtain a water bore driller's licence and the conditions attached to a water bore driller's licence. These requirements form part of a national drillers licensing system (the national system). The objective of the amendment regulation is to better align the Queensland licensing system with the national system.

Destruction of vegetation in a watercourse, lake or spring

Sections 293, 294 and 299 of the LWOLA Act amended the Water Act to remove the requirement for a person to obtain a riverine protection permit to destroy vegetation in a watercourse, lake or spring. The objective of the amendment regulation is to consequentially amend the Water Regulation to implement the LWOLA Act.

Removal of section 61A

The objective of the amendment regulation is to update the Water Regulation to reflect the changes made to the integrated development assessment processes under the *Sustainable Planning Act 2009* (Sustainable Planning Act). As a result of these changes the chief executive administering the Sustainable Planning Act has assumed the majority of the state government's assessment manager and concurrence agency responsibilities, including responsibilities associated with operational work for the taking or interfering with water.

As a result, the chief executive administering the Water Act is no longer the assessment manager under the Sustainable Planning Act for operational work for taking or interfering with water, and is therefore no longer required to assess development applications against the 'Code for assessable development for operational works for taking overland flow water' which is prescribed in section 61A of the Water Regulation.

Removal of transitional provisions

The objective of the amendment regulation is to remove transitional provisions that have no operable effect. Sections 106 to 109 of the Water Regulation were inserted at various times as transitional provisions for previous amendments to the Water Regulation about water charges, transferring interim water allocations and water supply contracts. The period in which they applied has since passed and the provisions are now redundant.

Granting interim water allocations in the Monto Mulgildie Underground Water Area

In 1997, the 'Three Moon Creek Irrigation Project, The Agreement for Monto/Mulgildie Salinity Area' (the agreement) was endorsed by the then Minister administering the now repealed *Water Resources Act 1989*. The purpose of the agreement was to provide relevant water licence holders the opportunity to apply for an interim water allocation.

This would provide licence holders with greater reliability and address existing water quality issues in the groundwater area.

Section 1014(2)(ga)(ii) of the Water Act and sections 113 to 120 of the Water Regulation were introduced in 2005 to give effect to the agreement and provided an application process for interim water allocations.

The majority of water licence holders elected to apply for, and were granted, interim water allocations. The remaining water licence holders have expressed no desire to apply for interim water allocations and, in accordance with the period prescribed in the Water Regulation, are no longer eligible to apply. That is, the period in which applications could be made has expired. As such, the objective of the amendment regulation is to remove these redundant provisions.

Prescription of new entities

The objective is to allow the following entities to hold an interim water allocation, or apply for and hold a water licence, not attached to land:

- Aurizon Operations Limited ACN 124 649 967
- Callide Power Management Pty. Limited ACN 082 468 700
- C S Energy Limited ACN 078 848 745
- Meridian Energy Australia Pty Limited ACN 143 533 322.

Seasonal water assignment rules for Lakeland groundwater management area

Seasonal water assignment rules have been prepared for the Lakeland groundwater management area. The objective of this amendment regulation is to give effect to these rules.

A seasonal water assignment is the assignment of the benefit of all or some of the water available under a water entitlement in a water year, by the holder of a water entitlement to another person. Seasonal water assignment rules provide greater security and flexibility to water users in the groundwater management area through allowing the temporary trade of water.

The objective of this amendment regulation is also to declare new metered entitlements in the Lakeland groundwater management area to require the compulsory use of water meters. This amendment will support the introduction of seasonal water assignment rules.

Declaration of upstream limits

The objective of the amendment regulation is to declare the following upstream limits:

- Boggy Creek and unnamed tributaries of Boggy Creek
- Bullhead Creek and unnamed tributaries of Bullhead Creek
- Fifty Mile Creek
- Lakes Creek
- Lily Creek
- Ninda Creek and unnamed tributaries of Ninda Creek
- One Mile Creek
- Page Creek
- Spring Creek

- Tableland Creek
- Unnamed tributary of Leichhardt Creek
- Watkins Creek.

The declaration of an upstream limit establishes the limits of jurisdiction under the Water Act when accessing water and quarry material resources in a watercourse.

Declared subartesian areas

Section 1046 of the Water Act provides that a regulation may declare an area to be a subartesian area to regulate the taking, or interfering with, subartesian water until such time a water resource plan is approved for subartesian water in the area, or part of the area. These areas are declared in schedule 11 of the Water Regulation.

The objective of the amendment regulation is to update schedule 11 of the Water Regulation to reflect that, following the finalisation of the draft *Water Resource (Wet Tropics) Plan 2013*, part of the Cook subartesian area, and all of the Cairns Coast and the Mossman subartesian areas will be managed under the water resource plan.

Metered entitlements in Horseshoe Lagoon

The objective of the amendment regulation is to meter all water use (other than for stock or domestic purposes only) in the Horseshoe Lagoon sub-area of the Burdekin groundwater management area, not just those water licences to take water where meters have already been installed. The Horseshoe Lagoon sub-area is one which is at risk of seawater intrusion. In order to manage this risk fairly and equitably it is necessary to meter all water use in this area.

Miscellaneous/Minor corrections

The objective is to correct minor errors and inconsistencies identified in the legislation.

Achievement of policy objectives

Amendment of the Sustainable Planning Regulation 2009

Clearing vegetation in a watercourse or lake

The amendment regulation achieves the policy objective by amending the exemption in schedule 24, part 1 of the Sustainable Planning Regulation to allow the clearing of an area of vegetation (less than 0.5 hectares) in a watercourse or lake where the clearing is a necessary and unavoidable consequence of the excavation or placing of fill authorised under a riverine protection permit or carried out under the document called 'Riverine Protection Permit Exemption Requirements' approved by the chief executive of the Water Act.

Amendment of the Water Regulation 2002

Low risk activities

The amendment regulation achieves the policy objective by inserting a new schedule which prescribes the activities for which a person may take water without a water entitlement or water permit.

Interim water allocations for the Julius Dam water supply scheme

The amendment regulation achieves the policy objective by omitting sections 13C to 13E of the Water Regulation.

Transferring, amending and amalgamating water licences

The amendment regulation achieves the policy objective by amending part 2, division 3A of the Water Regulation to provide a single process for transferring, amending or amalgamating water licences. This will remove the distinction between transfers involving water licences that are managed under a water resource plan and those that are not.

Water bore drillers

Section 19 of the Water Regulation specifies the endorsements (drilling methods) that an applicant for a water bore driller's licence may apply for. The amendment regulation achieves the policy objective by including a new endorsement – sonic drilling. Sonic drilling is a recent development in drilling methodology in Australia. The National Uniform Drillers Licensing Committee (NUDLC) has recently formulated a structure and protocol for the new sonic drilling licence endorsement. As such, the Water Regulation is amended to include the new endorsement as part of Queensland's implementation of the national system.

Section 22 of the Water Regulation provides the qualifications or experience for a class 3 water bore driller's licence. One of the requirements includes the successful completion of a course relating to the use and application of drilling fluids. The completion of a drilling fluid course does not form part of the national system. As such, the amendment regulation achieves the policy objective by removing this requirement from the Water Regulation.

Section 23 of the Water Regulation prescribes the conditions of a water bore driller's licence. Under section 23(2) of the Water Regulation, a water bore driller who wishes to construct screened and designed gravel packed bores must have completed the relevant course. The completion of such a course does not form part of the national system. As such, the amendment regulation achieves the policy objective by removing this requirement from the Water Regulation.

Destruction of vegetation in a watercourse, lake or spring

Sections 49 to 51 of the Water Regulation permit the destruction of vegetation (section 49), excavation (section 50) and the placing of fill (section 51) to be undertaken in a watercourse, lake or spring in certain circumstances without a riverine protection permit.

One of these circumstances includes carrying out these activities in accordance with guidelines approved by the chief executive.

The amendment regulation achieves the policy objective by omitting section 49 of the Water Regulation. The omission of section 49 of the Water Regulation also provided an opportunity to combine sections 50 and 51 of the Water Regulation as the circumstances in which excavating and placing fill are permitted are identical. The Department of Natural Resources and Mines (the department) has also simplified its approach to the development of guidelines, replacing the existing riverine protection permit guidelines with a single document called 'Riverine Protection Permit Exemption Requirements'.

Removal of section 61A

The amendment regulation achieves the policy objective by omitting section 61A of the Water Regulation.

Removal of transitional provisions

The amendment regulation achieves the policy objective by omitting sections 106 to 109 of the Water Regulation.

Granting interim water allocations in the Monto Mulgildie Underground Water Area

The amendment regulation achieves the policy objective by omitting sections 113 to 120 of the Water Regulation.

Prescription of new entities

The amendment regulation achieves the policy objective by prescribing the abovementioned entities in schedule 2 of the Water Regulation.

Seasonal water assignment rules for Lakeland groundwater management area

The amendment regulation achieves the policy objective by prescribing seasonal water assignment rules for the Lakeland groundwater management area in schedule 4 of the Water Regulation and listing the Lakeland groundwater management area in schedule 15A of the Water Regulation.

Declaration of upstream limits

The amendment regulation achieves the policy objective by declaring the upstream limits for the abovementioned watercourses in the Water Regulation.

Declared subartesian areas

The amendment regulation achieves the policy objective by amending the entry for the Cook subartesian area, and omitting the entries for the Cairns Coast subartesian area and the Mossman subartesian area in schedule 11 of the Water Regulation.

Metered entitlements in Horseshoe Lagoon

The amendment regulation achieves the policy objective by amending the entry for the 'Burdekin groundwater management area – Horseshoe Lagoon sub-area only identified on CAS1605' in schedule 15A of the Water Regulation to declare all water licences to take subartesian water, other than licences for stock or domestic purposes only, as metered entitlements.

Miscellaneous/Minor corrections

The amendment regulation achieves the policy objectives by correcting minor errors and inconsistencies identified in the legislation.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objects of the Sustainable Planning Act and the Water Act.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Amendment of the Sustainable Planning Regulation 2009

Clearing vegetation in a watercourse or lake

The key benefit of retaining the exemption is to ensure there is no duplication whereby two approvals are required for clearing vegetation in a watercourse or lake (where the clearing is associated with the excavation or placing of fill).

Amendment of the Water Regulation 2002

Low risk activities

The key benefit of this amendment is that it removes the regulatory burden on water users and reduces red tape. Water users undertaking the activities listed in the Water Regulation will no longer have to obtain a water entitlement or water permit to undertake the activity. The amendment also decreases the administrative burden on the department in assessing applications for water entitlements or water permits for activities that are considered to pose a low risk to the water resource.

Interim water allocations for the Julius Dam water supply scheme

The removal of this redundant process facilitates the ongoing operation of the Water Regulation.

Transferring, amending and amalgamating water licences

The key benefit of this amendment is that it removes duplication within the process for transferring, amending and amalgamating water licences under section 223 of the Water Act.

Water bore drillers

The key benefits of the amendments are that they bring Queensland's requirements in line with the national system, reducing red tape for water bore drillers seeking to transfer between states and territories.

Destruction of vegetation in a watercourse, lake or spring

This amendment gives effect to the red tape reduction initiatives introduced in the LWOLA Act.

In addition, the streamlining and simplification of the department's riverine protection permit guidelines addresses stakeholders concerns about the complexity of the guidelines, making it easier for stakeholders to understand and apply the riverine protection exemption requirements.

Removal of section 61A

The removal of this provision is consistent with the government's commitment to improve the coordination and responsiveness of the state government's involvement in the integrated development assessment processes under the Sustainable Planning Act.

Removal of transitional provisions

The removal of these redundant provisions facilitates the ongoing operation of the Water Regulation.

Granting interim water allocations in the Monto Mulgildie Underground Water Area

The removal of this redundant process facilitates the ongoing operation of the Water Regulation.

Prescription of new entities

Replacing 'QR Limited' with 'Aurizon Operations Limited' reflects a name change that took place on 1 December 2012.

Prescribing Callide Power Management Pty. Limited ACN 082 468 700 and C S Energy Limited ACN 078 848 745 enables existing contractual arrangements to be transitioned into to the water planning and management framework prescribed in the Water Act.

Meridian Energy Australia Pty Limited ACN 143 533 322 has recently bought the rights to a proposed 37MW hydro project on the Burdekin Falls Dam, south of Townsville. Prescribing Meridian Energy Australia as an entity will facilitate the operation of the Burdekin Falls hydro project by enabling the company to apply for and hold a water licence not attached to land.

Seasonal water assignment rules for Lakeland groundwater management area

Allowing seasonal water assignments in the Lakeland groundwater management area provides a sustainable and equitable management regime whereby water can be temporarily traded between water users in the area. It assists in managing the growing demand for the limited available water resources and promotes the movement of water from low value to higher value uses by placing a value on water and allowing it to be used within the groundwater management area rather than limiting water use to individual properties.

The introduction of the compulsory use of water meters for measuring water extraction in the Lakeland area is an important management tool for the protection and long-term viability of the water resources in the area and for the implementation of the seasonal water assignment regime.

Declaration of upstream limits

Declaration of upstream limits establishes the limits of jurisdiction under the Water Act, making it quicker and easier for the client to determine whether or not a water entitlement is required.

Declared subartesian areas

The changes to the subartesian areas reflect the department's ongoing implementation of water resource plans and resource operations plans and facilitates the ongoing operation of the Water Regulation.

Metered entitlements in Horseshoe Lagoon

The use of water meters for measuring water extraction in Horseshoe Lagoon is an important management tool for the protection and long-term viability of the water resource.

Miscellaneous/Minor corrections

Minor amendments will correct errors and eliminate inconsistencies.

Consistency with fundamental legislative principles

Amendments are consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation was consulted regarding all of the amendments.

Amendment of the Sustainable Planning Regulation 2009

Clearing vegetation in a watercourse or lake

The amendments to the Sustainable Planning Regulation are consequential amendments resulting from the removal of the requirement for a person to obtain a riverine protection permit to destroy vegetation in a watercourse, lake or spring from the

Water Act by the LWOLA Act. Industry and relevant State government agencies were consulted on removal of the requirement during the development of the LWOLA Act. Queensland Resources Council, Agforce, SEQ Water, Queensland Farmers Federation, the Local Government Association of Queensland and SunWater were further consulted on the development of the Riverine Protection Permit Exemption Requirements document during the preparation of the amendment regulation.

Amendment of the Water Regulation 2002

Low risk activities

Industry and relevant State government agencies were consulted during the development of the LWOLA Act on the proposed amendments to section 20 of the Water Act to include additional low risk activities for which a water entitlement or water permit to take water is not required. Queensland Resources Council, Agforce, SEQ Water, Queensland Farmers Federation, the Local Government Association of Queensland and SunWater were further consulted on the proposed amendments during the preparation of the amendment regulation.

Interim water allocations for the Julius Dam water supply scheme

Consultation was not undertaken on this amendment as the process provided for in sections 13C to 13E of the Water Regulation has fulfilled its purpose, performs no current function and cannot be used in the future. No stakeholders will be affected or disadvantaged by the proposed amendment.

Transferring, amending and amalgamating water licences

Industry and relevant State government agencies were consulted on the proposed amendments to section 223 of the Water Act to allow water licences not managed under a water resource plan to be transferred, amended or amalgamated where provided for by regulation during the development of the LWOLA Act. The amendments to the Water Regulation to consolidate the two existing processes dealing with water licences managed under a water resource plan and those that are not managed under a water resource plan are consequential amendments of the changes made to the Water Act in the LWOLA Act.

Water bore drillers

The Queensland water bore driller's licensing framework reflects the national system which is coordinated by the NUDLC.

The NUDLC agreed to establish a new endorsement for sonic drilling and requested that the states and territories undertake any amendments necessary for its implementation. In March 2013, the department advised the NUDLC that it had accepted the need to include a sonic drilling endorsement and that the endorsement would be included as an amendment to the Water Regulation.

The department discussed the proposal to remove the requirement for the successful completion of a drilling fluid course for a class 3 water bore driller's licence and the completion of a screen and gravel pack course with NUDLC. The NUDLC had no objection to the removal of these course requirements. These amendments will ensure

that Queensland's licensing framework continues to be consistent with the national system.

Destruction of vegetation in a watercourse, lake or spring

Industry and relevant State government agencies were consulted on the proposed amendments to remove the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring during the development of the LWOLA Act. The amendments to the riverine protection permit framework in the Water Regulation are consequential amendments of the changes made to the Water Act in the LWOLA Act.

The department further consulted with Queensland Resources Council, Agforce, SEQ Water, Queensland Farmers Federation, the Local Government Association of Queensland, SunWater and other relevant government agencies during the development of the 'Riverine Protection Permit Exemption Requirements'.

Removal of section 61A

The department has been working collaboratively with the Department of State Development, Infrastructure and Planning on the reforms to the integrated development assessment processes under the Sustainable Planning Act. The provisions of the 'Code for assessable development for operational works for taking overland flow water' have been incorporated into the State Development Assessment Provisions. The amendment to the Water Regulation to omit the abovementioned code is a consequential amendment resulting from the reforms to the integrated development assessment processes.

Removal of transitional provisions

Consultation was not undertaken on this amendment as the transitional provisions provided in sections 106 to 109 of the Water have fulfilled their purpose, perform no current function and cannot be used in the future. No stakeholders will be affected or disadvantaged by the proposed amendment.

Granting interim water allocations in the Monto Mulgildie Underground Water Area

Consultation was not undertaken on this amendment as the process provided in sections 113 to 120 of the Water Regulation have fulfilled their purpose, perform no current function and cannot be used in the future. No stakeholders will be affected or disadvantaged by the proposed amendment.

Prescription of new entities

Each of the entities, Aurizon Operations Limited, Callide Power Management Pty. Limited, C S Energy Limited and Meridian Energy requested that it be prescribed as an entity under the Water Regulation.

Seasonal water assignment rules for Lakeland groundwater management area

The management of groundwater in the Lakeland area has been discussed at public meetings with licensees, landholders and other interested stakeholders in the area and a period for public submissions on the rules and associated groundwater policy was

provided. The seasonal water assignment rules were developed in close consultation with water users in the Lakeland groundwater management area and have been compiled with particular consideration given to stakeholder views and concerns. There is ongoing consultation with the relevant water entitlement holders regarding the implementation of the rules, including the metering requirements.

Declaration of upstream limits

The upstream limits declared in the amendment regulation are all located within the Lakeland area. The management of surface water in the Lakeland area has been discussed at public meetings with licensees, landholders and other interested stakeholders in the area and a period for public submissions was provided.

Declared subartesian areas

Amendments to the subartesian areas under schedule 11 of the Water Regulation simply reflect changes made through the water resource planning process, which includes requirements for extensive consultation. The areas affected by the proposed amendments fall within the plan area of the *Draft Water Resource (Wet Tropics) Plan 2013* (the draft WRP). Consultation on the draft WRP has been ongoing since the plan was released for public consultation on 28 March 2013.

Metered entitlements in Horseshoe Lagoon

There has been ongoing consultation with the relevant water entitlement holders regarding metered entitlements.

Miscellaneous/Minor corrections

Consultation was not undertaken due to the minor nature of these amendments.

