

Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017

Explanatory notes for SL 2017 No. 5

made under the

Mineral Resources Act 1989

Petroleum and Gas (Production and Safety) Act 2004

Water Act 2000

General Outline

Short title

Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017.

Authorising law

Sections 334ZP and 417 of the *Mineral Resources Act 1989*

Sections 186 and 859 of the *Petroleum and Gas (Production and Safety) Act 2004*

Sections 101, 127, 1014 and 1046 and schedule 4 of the *Water Act 2000*

Policy objectives and the reasons for them

The objective of the *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017* is to amend the *Mineral Resources Regulation 2013* and the *Petroleum and Gas (Production and Safety) Regulation 2004* to meet the new provisions inserted into the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* by the *Water Reform and Other Legislation Amendment Act 2014*. Also, the objective is to amend the *Water Regulation 2016* for operational clarification purposes.

The objectives of the amendments to the *Mineral Resources Regulation 2013* are to:

- Provide a process for mining tenure holders to measure and report the volume of underground water taken under their statutory right to take associated water.
- Provide a process for mining tenure holders to estimate and report the volume of underground water taken through the result of evaporation.
- Provide consistency with the reporting of take of associated water between the mining and petroleum and gas industries and provide the information required for water accounting.

The objectives of the amendments to the *Petroleum and Gas (Production and Safety) Regulation 2004* are to:

- Continue the right for a petroleum tenure holder to take or interfere with non-associated underground water in the area of the tenure in carrying out another authorised activity for the tenure during a transitional period, which is five years after commencement for petroleum tenure holders within the Surat cumulative management area, and two years for petroleum tenures outside of the cumulative management area.
- Provide for a process to measure and report the volume of non-associated water taken by the petroleum tenure holder during the transitional period.

The objectives of the amendments to the *Water Regulation 2016* are to:

- Provide a continued authorisation to take water for a prescribed activity in the Black River underground water area if the person had constructed a bore for the purpose of taking water for a prescribed activity purpose under the repealed *Water Regulation 2002* prior to 6 December 2016.
- Clarify and prescribe metered entitlements in the Gowrie and Oakey Creek water management area.
- Update the name of water sharing rules and seasonal water assignment rules.

Achievement of policy objectives

Mineral Resources Regulation 2013

The policy objectives will be achieved by:

- Specifying how and what to measure and report in order to provide information required for water accounting.
- Providing consistency with the reporting of take of associated water between the mining and petroleum and gas industries.
- Minimising the burden on industry by providing for a default method by which the volume of water can be measured, with the detail of this method to be provided in a guideline that the *Mineral Resources Regulation 2013* will reference, and by providing the option to seek approval from the chief executive for any alternative method.
- Further minimising the burden on industry by using QDEX (the Queensland Digital Exploration Reports System database) as an existing efficient and well supported reporting system currently used by all tenure holders in the resources sector in Queensland.

Petroleum and Gas (Production and Safety) Regulation 2004

The policy objectives will be achieved by:

- Specifying how and what to measure and report in order to provide a baseline of information on non-associated water taken during the transitional period.
- Minimising the burden on industry by providing two methods by which the volume of water taken can be measured, and by providing the option to seek approval from the chief executive for any alternative method.
- Further minimising the burden on industry by using QDEX as the reporting database.

Water Regulation 2016

The policy objectives will be achieved by:

- Amending the limitation for the taking of water for prescribed activities in the Black River underground water area that was introduced in the *Water Regulation 2016* on 6 December 2016 to exclude water users who had constructed a bore for a prescribed activity purpose during the period in which the taking of water for prescribed activities was authorised without a water entitlement in the area.
- Amending the schedule of metered entitlements to ensure it accurately reflects metered entitlements in the Gowrie and Oakey Creek water management area.
- Amending the Lower Callide, Prospect Creek and Upper Callide water sharing rules and seasonal water assignment rules to remove their application to Lower Callide as rules for this area are now provided in the water management protocol for the Fitzroy Basin.

Consistency with policy objectives of authorising law

The *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017* is consistent with the objectives of the *Mineral Resources Act 1989*, which includes encouraging environmental responsibility in prospecting, exploring and mining.

It is also consistent with the objectives of the *Petroleum and Gas (Production and Safety) Act 2004*, which includes facilitating and regulating the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.

Amendments to the *Water Regulation 2016* are consistent with the objectives of the *Water Act 2000*, including to provide for sustainable management of Queensland's water resources.

Inconsistency with policy objectives of other legislation

The *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017* is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* both create regulation making powers for the matters addressed in this regulation, relating to measuring and reporting underground water take, to be through regulation. The proposed measurement and reporting methods have been discussed with industry and have been selected as minimising the burden upon tenure holders, by providing flexibility in the method of measurement, allowing for alternative methods to be proposed by a tenure holder, and by using an existing reporting system. Specifying a more prescriptive method, or not providing for the chief executive to approve alternative methods, would tend to increase the compliance cost on industry by preventing the tenure holder from selecting a method which integrates with existing measurement systems used in a particular operation. Using a separate reporting

system would increase compliance costs for industry and operational costs to the Government.

The proposed amendment to provide a continued authorisation to existing water users in the Black River underground water area in relation to prescribed activities is considered the only appropriate way of achieving the policy objective of providing certainty to these existing users and providing clarification within the existing provision of the *Water Regulation 2016*.

There are not alternative ways of achieving the policy objectives for amendments proposed to the *Water Regulation 2016* for metered entitlements, water sharing rules and seasonal water assignment rules as the amendments are to existing *Water Regulation 2016* provisions.

Benefits and costs of implementation

The *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017* ensures the effective implementation of the *Water Reform and Other Legislation Amendment Act 2014*, by prescribing necessary administrative matters and using existing reporting systems. No costs to government are currently envisaged, however, if any operational costs do arise they will be met from existing agency budget allocations.

Consistency with fundamental legislative principles

The *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017* is consistent with fundamental legislative principles.

Consultation

The content of this regulation in relation to the proposed measurement and reporting requirements for the mining and petroleum and gas industries has been developed in consultation with peak bodies for the mining and petroleum and gas industries. Further consultation was then undertaken with members of the Department of Natural Resources and Mines' Water Engagement Forum which includes a wide range of external stakeholders.

Water entitlement holders that are to be prescribed as metered entitlements in the Gowrie and Oakey Creek water management area are already aware of the requirement to have installed an approved meter following notices being sent to holders in May 2015 by the Department of Natural Resources and Mines. These notices also advised that following May 2016 the entitlements would be prescribed as metered entitlements.

Consultation was not undertaken on the amendment relating to the Black River underground water area, however this amendment is simply to clarify the intent of the limitation introduced in the *Water Regulation 2016*. The effect of the amendment will be to ensure existing users are not impacted by this limitation.

Water entitlement holders in the Lower Callide were consulted during the process for amending the Fitzroy Basin Resource Operations Plan in 2013 and 2014.

For the amendments to the *Mineral Resources Regulation 2013* and the *Petroleum and Gas (Production and Safety) Regulation 2004* the Queensland Productivity Commission was consulted regarding the Regulatory Impact Statement system. The Queensland Productivity Commission assessed the regulatory proposal and provided an exemption from further assessment under the Treasurer's RIS system guidelines.

For amendments to the *Water Regulation 2016*, in accordance with the Queensland Government Guide to Better Regulation, the Department of Natural Resources and Mines applied a self-assessable exclusion from undertaking further regulatory impact analysis. The following self-assessable exclusion categories have been applied to the following provisions within the *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017*:

- Section 9– Category (d)/(e) Regulatory proposals of a savings nature/that are of a transitional nature
- Sections 10 and 11– Category (a) Regulatory proposals that make consequential amendments
- Section 12– Category (g) Regulatory proposals that are of a machinery nature

Notes on provisions

Part 1 Preliminary

Short Title

Section 1 states that when enacted, the regulation will be cited as the *Mineral Resources and Other Legislation Amendment Regulation (No. 1) 2017*.

Part 2 Amendment of Mineral Resources Regulation 2013

Regulation amended

Section 2 provides that Part 2 amends the *Mineral Resources Regulation 2013*.

Insertion of new ch 2, pt 6

Section 3 inserts a new part 6 in chapter 2. This new part will provide for the measuring and reporting of the take of associated water for the mineral resources sector.

Part 6 Measuring and reporting the taking of associated water

Section 31A Requirements for measuring the taking of associated water – Act, s 334ZP(5)(a)

This section provides certain requirements for the holder of a mineral development licence or a mining lease to measure or estimate the volume of associated water taken during their activities.

Subsection (2) states that where associated water is taken as a result of the water entering the mine pit or workings (for example, by pumping out the water that has entered, or by collecting the water that has entered for re-use) the volume of associated water taken must be calculated by applying the water balance method stated in the guideline. Also, if the associated water is taken by dewatering the mine by using bores, the volume must be measured by using a meter that complies with the relevant Australian Standard.

Subsection (3) provides that the holder may calculate the taking of underground water using an alternative methodology. However, the alternative method must be submitted to the Department of Natural Resources and Mines' Chief Executive in writing together with information that allows assessment of the proposed method, and the alternative method may be used only if is approved by the chief executive.

Subsection (4) provides that the guideline referred to in this section is published on the Department of Natural Resources and Mines website and is entitled 'Measuring the volume of take of associated water under a mining lease or mineral development licence'.

Section 31B Requirements for reporting the taking of associated water – Act, s 334ZP(5)(b)

This section provides certain requirements for the holder of a mineral development licence or a mining lease to report to the chief executive, the volume of associated water taken.

Subsection (2) states that for each reporting period, the holder must report the total volume of associated water taken on the tenement. In addition, if the associated water is taken by bores, the holder must report the volume of associated water taken from each borefield, along the geological formation where groundwater is being extracted and whether the groundwater is artesian or subartesian.

Subsection (3) provides that if the licence or lease expires or is surrendered, the holder must also report survey data for the pit, to allow the pit volume and surface area to be calculated and evaporation rates estimated. The holder must also provide a prediction of the rate of entry of underground water into any rehabilitated area of the mine and an explanation of how this prediction has been made.

Subsection (4) states that reporting under this section must be submitted within 20 business days of the end of the reporting period using the Queensland Digital Exploration Reports System. However, if the tenure expires or is surrendered, reporting must be submitted on the day the tenure expires or is surrendered.

Subsection (5) states that if a portion of a reporting period has elapsed before commencement of this regulation, a holder only needs to report information available after commencement.

Section 31C Chief executive may review alternative method

This section provides that the chief executive may at any time review alternative methodologies for quantifying the volume of associated water taken.

Subsection (3) states that if as a result of the review the chief executive no longer considers the alternative methodology to be reliable or accurate, the chief executive must notify the tenement holder of the result of the review and the holder must use either the methods prescribed under section 31A or another compliant alternative method.

Amendment of sch 6 (Dictionary)

Section 4 inserts definitions, which will apply for chapter 2, part 6.

‘Active bore field’ is defined as a single bore, or a group of bores used to dewater a part or the whole of the surface or underground mine.

‘Reporting period’ is defined as the period starting on 1 July and ending on 30 June, unless the tenure is surrendered in the reporting period, in which case the reporting period ends the day the surrender occurs.

'Surface mine' is defined as a mine other than an underground mine or the surface operations of an underground mine.

'Underground mine' is defined as a mine where workers normally work beneath the surface of the earth.

Part 3 Amendment of Petroleum and Gas (Production and Safety) Regulation 2004

Regulation amended

Section 5 provides that Part 3 amends the *Petroleum and Gas (Production and Safety) Regulation 2004*.

Insertion of new ch 2, pt 3, div 3

Section 6 inserts a new division in chapter 2, part 3. This new division will provide for the measuring and reporting of the take of non-associated water for the petroleum and gas sector.

Division 3 Measuring and reporting the taking of non-associated water

Section 61B Requirements for measuring the taking of non-associated water – Act, s 186(4)

This section provides certain requirements for the holder of a petroleum tenure to measure the volume of non-associated water taken during their activities, during the transitional period identified by s186 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Subsection (2) states that the volume of non-associated water taken must be measured by either using a water meter that complies with the relevant Australian Standard, or by counting the number of loads carried by a water truck (or similar vehicle) of known capacity.

Subsection (3) provides that the holder may calculate the taking of groundwater using an alternative methodology. However, the alternative method must be submitted to the Department of Natural Resources and Mines' Chief Executive in writing together with information that allows assessment of the proposed method, and the alternative method may be used only if it is approved by the chief executive.

Section 61C Requirements for reporting the taking of non-associated water – Act, s 186(4)

This section provides certain requirements for the holder of a petroleum tenure to report the volume of non-associated water taken to the chief executive.

Subsection (2) states that for each reporting period the holder must report the total volume of non-associated water taken within the tenure, and the authorised activity for which the non-associated water was used. There are additional requirements for water extracted from a bore. If the holder uses an alternative method under 61B(3), an explanation of that method must be provided.

Subsection (3) states that reporting under this section must be submitted within 20 business days of the end of the reporting period using the Queensland Digital Exploration Reports System. However, if the tenure expires or is surrendered, reporting must be submitted on the day the tenure expires or is surrendered.

Subsection (4) states that if a portion of a reporting period has elapsed before commencement, a holder only needs to report information available after commencement.

Section 61D Chief executive may review alternative method

This section provides that the chief executive may at any time review alternative methods of measuring the volume of non-associated water taken.

Subsection (3) states that if as a result of the review the chief executive no longer considers the alternative method to be reliable or accurate, the chief executive must notify the holder of the result of the review. For the following reporting period the tenure holder must use either the methods prescribed under section 61B or an alternative approved method.

Amendment of sch 6 (Dictionary)

Section 7 inserts definitions, which will apply for chapter 2, part 3, division 3.

‘Non-associated water’ is defined by reference to section 186 of the *Petroleum and Gas (Production and Safety) Act 2004* to mean water in the area of a tenure for use in the carrying out any authorised activity.

‘Reporting period’ is defined as the period starting on 1 July and ending on 30 June or starting on 1 July and finishing on 31 December, unless the tenure is surrendered during the reporting period, in which case the reporting period ends the day the surrender occurs.

Part 4 Amendment of the Water Regulation 2016

Regulation amended

Section 8 provides that Part 4 amends the *Water Regulation 2016*.

Amendment of section 139 (Declared underground water areas – Act, s 1046)

Section 9 amends section 139 of the *Water Regulation 2016* to clarify that the limitation for taking water for a prescribed activity in the Black River underground water area

does not apply to a person who had lawfully constructed a bore for a prescribed activity purpose before 6 December 2016. Prior to 6 December 2016 a person was authorised to take water for the purpose of a prescribed activity in the Black River area without limitation. When the limitation was introduced on 6 December 2016 it was intended to prevent additional growth in the taking of water, not to preclude existing users from making use of their bores. This amendment will continue this authorisation for pre-existing users.

Amendment of schedule 5 (Water sharing rules)

Section 10 amends the schedule of water sharing rules to reflect that rules for the Lower Callide are now provided in the Fitzroy Basin water management protocol.

Amendment of schedule 6 (Seasonal water assignments)

Section 11 amends the schedule of seasonal water assignment rules to reflect that rules for the Lower Callide are now provided in the Fitzroy Basin water management protocol.

Amendment of schedule 11 (Metered entitlements)

Section 12 amends the schedule of metered entitlements to align with the water management area and zones identified in the *Water Plan (Condamine and Balonne) 2004* as well as identifying newly metered entitlements in the area.