

# South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021

Explanatory notes for SL 2021 No. 88

made under the

*South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

## General Outline

### Short title

*South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021*

### Authorising law

Section 102 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Act).

### Policy objectives and the reasons for them

The purpose of the *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021* (the Regulation) is to replace the expiring *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010*, which applies certain general directors' duties and related provisions derived from the *Corporations Act 2001* to board members and officers of distributor-retailers.

The Regulation contributes to the overall effectiveness of the standards of corporate conduct applicable to Unitywater and Urban Utilities, regarding corporate responsibility and accountability.

The *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010* was due to expire on 31 August 2021 and is required to be remade to achieve a simple continuity of primary purpose.

A minor amendment is required to remove a redundant *section 24 Exemption for transfers of motor vehicles*. This section originally introduced to facilitate the transfer of assets from local governments during the establishment of the distributor-retailers, no longer has relevance.

## **Achievement of policy objectives**

The Regulation is achieving the intended purpose of providing a framework for transparent and accountable corporate conduct.

It was originally established to give board members and officials more certainty and accountability about the nature of the duties and the consequences if they breach their duties.

It provides a regulatory framework that sets out the minimum standards of corporate conduct that are not otherwise set out in Queensland law, but which are common across Australian business and which Board members and officers are generally familiar with. The courts have developed considerable case law about the legal obligations of corporations over time.

The Regulation contributes to the overall effectiveness of the standards of corporate conduct applicable to distributor-retailers.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, which is to ensure that the performance of the functions of distributor-retailers as service providers are continually improved since the industry restructure.

## **Inconsistency with policy objectives of other legislation**

The regulation is consistent with the policy objectives of other legislation. It provides for key general duties and responsibilities set out in the *Corporations Act 2001* (Cth) consistent with other State laws on transparency and accountability that relate to corporate conduct.

## **Benefits and costs of implementation**

The benefit of the Regulation is that it will continue to provide a regulatory framework applicable to distributor-retailers on mitigating the potential misuse of power by board members and officers.

In the absence of remaking the *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010*, there is potential for misuse of power by board members and officers within the organisation.

Implementing the Regulation will have negligible costs.

## **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles. It complies with relevant requirements of section 4(5) of the *Legislative Standards Act 1992*, namely it:

(a) is within the power that, under an Act or subordinate legislation (the authorising law), allows the subordinate legislation to be made; and

- (b) is consistent with the policy objectives of the authorising law; and
- (c) contains only matter appropriate to subordinate legislation; and
- (d) amends statutory instruments only.

## **Consultation**

The Department of Regional Development, Manufacturing and Water (DRDMW) lodged a proposal with the Queensland Productivity Commission's Office of Best Practice Regulation (OBPR), submitting that the Regulation should be remade with the removal of a redundant clause.

DRDMW also consulted with the distributor-retailers, Unitywater and Urban Utilities, as both entities are responsible for implementing the Regulation.

The Department of the Premier and Cabinet (DPC) and Queensland Treasury (QT) were also consulted.

## **Results of consultation**

The OBPR issued a letter of evaluation supporting the Department's proposal. The OBPR considers that the Department has satisfactorily met the objectives for a sunset review as set out in the Queensland Government Guide to Better Regulation, and evaluated that the Regulation continues to satisfy its objectives. The need for continued regulatory action was demonstrated.

Both the distributor-retailers agreed that the Regulation is functioning effectively and is achieving the intended purpose of providing a framework for transparent and accountable corporate conduct.

DPC and QT responded with no objections to the proposed amendment regulation.