

A flood of water law reforms for Queensland

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Persistent drought and increasing population in the South East continues to flood the political agenda and drive Queensland's water law reform. This paper canvasses the raft of Queensland water law reforms from mid 2005 until February 2007.

(i) Water Infrastructure

The *Water Amendment Act 2005* commenced mostly on 18 November 2005 and amended the *Water Act 2000* to implement State water supply **emergency directions** in emergency water shortage situations.

On 21 December 2005 the Minister for Natural Resources, Mines and Water released a **Draft Water Supply Strategy for the Central Queensland Region** for public comment by 31 March 2006. The Draft Strategy covers the Fitzroy Basin and nearby coastal catchments, encompassing regional centres Gladstone, Rockhampton, Yeppoon and Emerald. The Draft Strategy sets out possible water infrastructure and demand management initiatives which could be adopted in central Queensland over the next 50 years. Despite espousing water efficiency and demand management principles, in the "options" listed for each sub-area within the catchment, the Draft Strategy makes just two references to employing efficiency, trading and demand management to meet future need. In all other instances the "options" are solely infrastructure proposals, including pipelines, dams and weirs. On 16 December 2006, the final **Central Qld Regional Water Supply Strategy** was released, and is available from www.cqwaterstrategy.qld.gov.au/documentation/cqrwss_report.html. It is a non-statutory strategy developed by the state and local governments to plan for long term water supply in that region. As well as several dams espoused in the final Strategy, heavy reliance is placed on the **Nathan Dam** being built – a dam challenged in Court by QCC and WWF on the basis of its adverse impacts on the Great Barrier Reef. In 2004 the Full Federal Court sent the Nathan Dam proposal back for a broader environmental impact assessment of the GBR impacts from chemicals likely to be used by farmers using water from the dam, and the process has stalled since then.

In 2006, the first amendments to the *State Development and Public Works Organisation Regulation* to facilitate **works for potential dam sites** commenced on 5 May 2006. A new Part 4 was inserted into the Regulations to enable the Coordinator-General to undertake works in the Albert, Logan and Mary Rivers and the Teviot Brook to investigate the engineering feasibility of constructing a dam and to conduct cultural heritage, plant and animal surveys.

The Premier's *Water Amendment Act 2006* commenced on 17 May 2006 and amended the *Water Act 2000* to create the **Queensland Water Commission**, which is charged with decision-making

and implementation of water supply and demand management throughout Queensland. The Commission's four main roles are to:

- i. undertake regional assessments of water supply and demand and develop 'water security options' which the Minister will consider when making a regional water security program;
- ii. facilitate and implement regional water security programs approved by the Minister;
- iii. ensure compliance with regional water security programs; and
- iv. set restrictions on water usage where necessary to ensure water supply.

A second round of amendments to the *State Development and Public Works Organisation Regulation* which commenced on 28 July 2006 established the **Water Infrastructure Project Board**, which is responsible for developing and implementing four drought contingency projects: the Southern Regional Water Pipeline, Western Corridor Recycled Water Scheme, Tugun Desalination Plant and Regional Water Inter-Connectors.

More recently, the Premier legislated various water saving and generation plans mooted in the media for several months by gazettal on 8 August 2006 of the *Water Amendment Regulation (No. 6) of 2006*. The Amendment Regulation committed the state and local governments to a **Water Plan** with timeframes for delivery of a host of projects to deliver water to the South East corner from September 2006 until 2011, including:

- The Western Corridor Recycled Water Scheme, and use generally of recycled water by industrial and commercial consumers;
- Retrofitting 150,000 residential homes with water-saving devices under the 'SEQ Home WaterWise Service' retrofit program;
- Accessing groundwater and aquifers in Bribie Island and in and around Brisbane;
- The Tugun Desalination Plant, to be constructed by November 2008;
- The Southern Regional Water Pipeline and the Northern and Eastern Pipeline Inter-connector (the 'Water Grid');
- A study into power station water use efficiency, and new business and industry consumer water use efficiency requirements;
- The SEQ Regional Water Leakage and Pressure Management Project; and
- Raising Mt Crosby Weir and Hinze Dam and **new dams** on the **Logan River (Wyaralong)** and **Mary River (Traveston Crossing)**. The Mary River contains the only remaining major spawning ground of the 180 million year old Queensland lungfish, a species of international importance. The Burnett River was the only other major spawning ground for the lungfish however its major lungfish spawning areas were destroyed by Walla Weir and the controversial Paradise Dam.

Both dams have now been declared a significant project requiring environmental assessment by an **environmental impact statement** (EIS) under Queensland's *State Development and Public Works Organisation Act 1971*, as well as a controlled action requiring federal government approval under the *Environment Protection and Biodiversity Conservation Act 1999*.

The **draft terms of reference** for both EIS's were released for public comment until February 2007. The draft terms of reference for the Mary River dam address impacts on the endangered Mary River Cod and Tortoise and the vulnerable lungfish, water quality and habitat impacts in Ramsar listed Great Sandy Strait and World Heritage listed Fraser Island, and the potential for weed growth, algae blooms and potential transfer of pathogen organisms between river basins. The draft terms of reference for the Logan River dam address historic rainfall patterns in the catchment and the impacts of the dam on catchment water flows, downstream Moreton Bay (an internationally important wetland) and vulnerable and migratory species.

Both draft terms of reference state that the EIS will consider alternatives to the project as well as other dam locations and will outline the reasons for selecting preferred options. However, too little emphasis is placed on the need for the EIS to examine alternatives, which should be made more prominent and include a requirement for a full costs benefit environmental, social and economic analysis of each water supply alternative. The need for a fulsome assessment of the social impacts of the dams should also be made more prominent in the terms of reference.

The federal **Senate** is also disgruntled with the process, and on 26 February 2007 it referred the matter to the Rural and Regional Services and Transport Committee for an **inquiry** into:

The examination of **all reasonable options, including increased dam capacity, for additional water supplies for South East Queensland**, including:

- (a) the merits of all options, including the Queensland Government's proposed Traveston Crossing Dam as well as raising the Borumba Dam; and
- (b) the social, environmental, economic and engineering impacts of the various proposals.

Following consideration of public submissions which are due on 4 April 2007, the Committee will hold public hearings. The Committee will consider all submissions and may invite individuals and organisations to give evidence at the public hearings. See www.aph.gov.au/senate/committee/rrat_ctte/traveston_dam/info.htm.

A further round of amendments to the *State Development and Other Legislation Amendment Act 2006* commenced on 7 December 2006, creating a new category of "prescribed projects" including "critical infrastructure projects" which have their own fast-track rules. Those **new 'hurry up' powers** in the State Development Act have now been used by government for the **Tugun Desalination Plant, Southern Regional Water Pipeline and the Western Corridor Recycled Water Project**. Those projects were declared on 23 January 2007 "prescribed projects" and "critical infrastructure projects", which enlivens the Coordinator-General's new powers to hurry along – or take over – the assessment process already being conducted by other departments if decision making is taking too long. Once assessment of a prescribed project is taken over by the Coordinator-General, the powers of all other departments are demoted to providing advice only and their veto power against a project is removed. The powers of the public to appeal approval of such a project are also removed. In a further snub to the community, judicial review rights for critical infrastructure declarations are removed, which places them completely outside the realm of public appeal. The trend of centralising greater powers in a non-elected bureaucrat to steamroll infrastructure projects with environmental impacts and lock out the community is of great concern.

(ii) Water Conservation

In November 2005 the federal Environment Protection and Heritage Council released draft *National Guidelines for Water Recycling – Managing Health and Environmental Risks* for public comment by 10 February 2006. The draft Guidelines comprise a risk management framework and specific guidance on managing the health risks and the environmental risks associated with the use of recycled water. Phase two of guideline development will focus on stormwater reuse, aquifer storage and recovery as a method of recycling reclaimed water and potable use of recycled water. It appears that the Guidelines are yet to be finalised.

Still on **water recycling**, on 30 November 2006 the Premier tabled the *South-east Queensland Water Recycling Plebiscite Bill 2006* to legislate for a SEQ plebiscite (**referendum**) on 17 March 2007 about introducing recycled water into existing water supplies for drinking. The plebiscite was to cover 19 shires in SEQ from the Tweed River up to Cooloola Shire including Toowoomba in the west, with the option of adding extra local government areas, and be determined by 50% +1 of votes. The Bill was expected to be passed at the first sitting of Parliament in February 2007, until the Premier announced that the water crisis was so dire that there was no longer a choice about drinking recycled water, so the referendum was cancelled. The Bill was withdrawn on 6 February 2007.

On 1 March 2006 the *Plumbing and Drainage Legislation Amendment Regulation (No 1) 2005* commenced, giving effect to the new Queensland Plumbing and Wastewater Code governing **greywater** in sewered areas, which replaces the Onsite Sewerage Code. The Amendment Regulation also includes the criteria local governments must apply in granting a compliance permit for greywater use, and the relevant criteria for declaring areas to be unsuitable for greywater use. This coincided with the 1 March 2006 commencement of the *Plumbing and Drainage and Other Legislation Amendment Act 2005*, which allows homeowners in sewered areas to divert greywater from showers, bathtubs and washing machines to their gardens via *underground* watering systems. In a further development, new rules which permit **above ground application of greywater** from laundries, baths, showers and basins from single detached dwellings, as long as it does not cause a nuisance, danger or health risk, commenced on 10 August 2006 with amendments to the *Plumbing and Drainage Act 2002* made by the *Building and Other Legislation Amendment Act 2006*. It remains an offence to use kitchen greywater or blackwater (containing human waste), however, applications to Council may now be made for chemical, composting or incinerating toilets, which were previously banned.

From 1 November 2006 **Level 4 water restrictions** applied in the 12 SEQ Council areas of Beaudesert, Brisbane, Caboolture, Esk, Gatton, Gold Coast, Ipswich, Kilcoy, Laidley, Logan, PineRivers and Redcliffe. Different restrictions for residential and non-residential users apply, with fines for non-compliance. The *State Penalties Enforcement Regulation* was amended on 30 August 2006 to enable local governments to **enforce breaches of water restrictions**, following an earlier legislative oversight. Amendments to the *Water Act 2000* made by the *Wild Rivers and Other Legislation Amendment Act 2006* passed on 30 November 2006 increase the maximum penalty for businesses contravening a water restriction from \$15,000 to \$125,000.

From 1 July 2006, the SEQ Home Water Saver Strategy under the SEQ Water Plan provided **rebates** for homeowners, businesses and governments to increase their **water efficiency**. Rebates are available to homeowners who install rainwater tanks, convert to dual flush toilets, buy water-efficient washing machines, taps and showerheads, and install grey water recycling systems. Encouraging *existing* homes to retro-fit water saving devices complements legislative

amendments that **mandate water saving devices in new homes** which commenced on 1 March 2006. Under those earlier legislative changes to the Queensland Development Code under the *Standard Building Regulation 1993*, all new home plans approved after 1 March 2006 must include greenhouse efficient hot water systems; energy-efficient lighting; AAA-rated shower roses in reticulated town water areas; dual flush toilets; and water pressure limiting devices to restrict maximum water pressure to no more than 500 kilopascals (only in areas with high water pressure). Water-saving shower roses and dual-flush toilets are also mandatory for bathroom renovations in houses and units.

New rules for **rainwater tanks** are now part of the *Building Act* and the *Queensland Development Code* following commencement of the *Wild Rivers and Other Legislation Amendment Act 2006* on 7 December 2006 and notification of the *Building and Other Legislation Amendment Regulation No.2 of 2006* on 15 December 2006. Previously local governments had discretion to require new homes to have rainwater tanks, and about one quarter of Queensland Councils had imposed such requirements. Under the new rules, local governments must mandate rainwater tanks and water saving targets for all new housing in SEQ after 1 January 2007 and statewide by 1 July 2007. The targets require water savings of 70 kilolitres a year for detached houses and 42 kl per year for terrace and townhouses. These amendments complement the rebates available for houses which retrofit water saving devices into existing houses, and the government's \$3 million commitment to install water saving devices into major government buildings including new public housing.

(iii) Water efficiency

The Queensland *Water Efficiency Labelling and Standards Act 2005* commenced on 10 April 2006 and established a new **water efficiency labelling scheme** for designated products in residential, commercial and industrial buildings. The Act requires all manufacturers to label washing machines, dishwashers, toilets, showers and some types of taps and urinals with a star rating according to their water efficiency, with 6 stars being the most water efficient. The Act complements federal legislation which established a national water efficiency labelling scheme which commenced on 18 March 2005.

New water efficiency requirements will apply to businesses as a result of amendments to the *Water Act 2000* made by the *Wild Rivers and Other Legislation Amendment Act 2006* which commenced on 7 December 2006. The Qld Water Commission (in SEQ) and the Department of Natural Resources and Water chief executive (outside SEQ) can now require large water using Qld businesses to prepare, implement and report on new **Water Efficiency Management Plans** (WEMPs) which show how businesses plan to reduce the amount of water they use. It is an offence carrying a \$125,000 penalty to not comply with an approved WEMP. Previously WEMPs were only voluntarily, so this is the first time that non-domestic water users have been required to achieve water savings.

(iv) Water Charges

The *Water and Other Legislation Amendment Regulation (No. 1) 2005* commenced on 1 January 2006 (1 July 2006 for local governments) and established a framework to implement new water charges for local governments of \$15 per ML, for industry of \$10 per ML and for irrigators of \$4 per ML. However in a confusing backflip on water charges, a second lot of amendments to the *Water Regulation 2002* commenced on 1 July 2006 which **suspended those previous new water**

charges. The 1 July 2006 amendments reinstate (with some modification) the water charges that applied prior to the 1 January 2006 amendments, after industry successfully lobbied the Queensland government for an independent costs analysis, a situation compounded by confusion about the intention of the National Water Initiative in relation to water charges.

On 30 June 2006 the *Water Regulation* was amended for a fifth time this year, to implement **water metering charges** in the Boyne River Basin, to approve self-assessable development codes for bores, to declare the Mulgildie subartesian area and make other minor amendments.

From 7 March 2007, drought-affected Queensland irrigators will be able to submit applications for rebates on fixed water charges paid since 1 July 2006 until 30 June 2008. The Irrigators Fixed Water Charges Rebate Scheme, announced in December 2006, provides rebates in areas where there is or has been low water availability due to the current prolonged drought. Irrigators must be a customer of SunWater (or another water service provider) or a licenced DNRW water holder, must be paying fixed water charges and meet the 20% or less low water availability threshold and have paid their water charges invoices from 1 July 2006.

(v) Water Planning

In late August 2005 the Premier released the **Queensland Water Plan 2005-2010**. This non-legislative Plan contains seven strategies which address water pricing (changes to water rates for urban, commercial, mining, petroleum and local government users), catchment based water resource plans and water trading, developing regional supply strategies and building new water storage and supply infrastructure, water re-use and recycling, protecting water quality, education and enforcement programs, and investment in water and climate change science and technology. A copy of the Water Plan is available from www.nrw.qld.gov.au/water/queensland_water_plan.html.

The *Water Amendment Act 2005* which mostly commenced on 18 November 2005 amends the *Water Act 2000* to provide Ministerial power to give State **water supply emergency directions** to service providers (local governments and water authorities) in emergency water shortage situations. The Act also increases the power of service providers to impose water restrictions, and when the remaining provisions commence on 19 November 2007, will allow service providers to pass on to consumers the new water charges announced as part of the Water Plan 2005-2010.

The **Mary River Water Resource Plan** (WRP) commenced on 28 July 2006, covering the Mary and its tributaries plus the Burrum, Maroochy, Mooloolah and Noosa Rivers. WRPs under the *Water Act* are meant to provide a framework to allocate and manage surface and subartesian water to meet future water requirements, including the protection of natural ecosystems and security of supply to water users. However the Mary River WRP had to be amended at the last minute to cater for the proposed Traveston Crossing Dam! It is questionable whether the WRP can perform its role of protecting natural ecosystems if the proposed dam proceeds. *The Mary Basin WRP* is available from www.nrw.qld.gov.au/wrp/mary.html.

During July and August 2006, the Queensland government released for public comment five **draft Water Resources Plans for Logan Basin, Gold Coast, Moreton, Burdekin and Calliope**. Despite the WRP's obligation to protect natural ecosystems, both the Logan Basin and Burdekin draft WRPs include reserves of unallocated water which the WRPs state could be made available for new dams. In February 2007 the moratorium in place while the Logan River WRP is

being prepared was amended to allow works to construct the Cedar Grove Weir – a project in the Premier’s Water Grid which is being run through the State Development Department. As happened previously with the Mary River WRP for the Traveston Dam, water planning processes are being interfered with to enable the Premier’s water infrastructure projects. On 7 March 2007 the final Logan WRP was released, factoring in the Cedar Grove Weir and the Wyaralong Dam. On 15 December 2006 the final WRPs for Calliope and Gold Coast were released and came into effect, and **draft WRPs for the Gulf and Mitchell catchments** were released for public comment by 31 January 2007. *Those draft and final WRPs and accompanying reports are available from www.nrw.qld.gov.au/wrp/catchments.html.*

Amendments to the *Water Act* made by the *Wild Rivers and Other Legislation Amendment Act 2006* which commenced on 7 December 2006 facilitate the implementation of resource operations plan for the **Great Artesian Basin** and provide greater flexibility in the **transfer of water licences**, primarily in the Great Artesian Basin but also envisioned for a number of Water Resource Plan areas.

In a **New South Wales case** under laws which resemble those governing Queensland’s water resource plans, the Nature Conservation Council of NSW (represented by the Environmental Defender’s Office of NSW) was due to appear in the High Court on 13 December 2005, **challenging the validity of the Water Sharing Plan for the Gwydir River**. The appeal concerned whether the Plan was invalidated by the NSW Minister for Natural Resources’ failure to set aside water for environmental health *before* allocating water for irrigation and other consumptive purposes. The case therefore had potential implications for Queensland and other states’ allocation of water for environmental flows in water resource planning. However, the NSW government legislated the case out of Court with the passage on 1 December 2005 of the *NSW Water Management Amendment Bill 2005*. The Bill included provisions that retrospectively validated any management plans gazetted, and also "clarified" that water can be committed in ways that are abstract instead of actual, which removed the basis for NCC’s case against the Minister. The case was forced to settle by consent orders on 8 December 2005, including that the NSW Minister pay the NCC’s costs in preparing for the scuttled High Court appeal.

(vi) Murray Darling Basin management

On 25 January 2007, the Prime Minister announced a \$10 billion plan for national water management, including the Commonwealth assuming management of water resources in the Murray-Darling Basin. Constitutionally this would require the States referring their powers, and on 23 February 2007 all State governments bar Victoria agreed with the Federal Government on the new national management arrangements for the Basin. The Queensland state government successfully argued for:

1. protection for water entitlements in draft water resource plans nearing finalisation, subject to CSIRO confirming it would not result in significant over-allocations;
2. an independent commission to manage the Basin, with all affected States nominating who will sit on the commission; and
3. a review of the new management system after seven years.

The Prime Minister also committed to examine Queensland’s two proposals involving drawing water from rivers in northern and western Queensland and northern NSW to recharge the Murray Darling System but also enable agriculture and resource industries in the north. The first option is

a revival of the Bradfield scheme, widely criticised by scientists and conservationists, to move water from the Tully-Herbert-Burdekin Rivers into the Flinders and Thomson Rivers to the headwaters of the Warrego.

(vii) Water offence enforcement options

The *Water and Other Legislation Amendment Regulation (No. 1) 2005* established **penalty infringement notices** which commenced on 16 December 2005 in relation to a number of offences under the *Water Act 2000*.

(viii) Water Quality

Amendments to the *Environmental Protection (Water) Policy 1997* commenced on 1 May 2006 which better **protect riverine, estuarine and coastal water quality** in three project areas – Moreton Bay/SEQ, the Mary River Basin/Great Sandy Region and the Douglas Shire. These are powerful amendments, as the ‘environmental values’ and ‘water quality objectives’ stated for those three areas become matters for consideration in assessing development applications and setting conditions on Environmentally Relevant Activities. Amendments to existing development approvals can also be ordered to achieve the environmental values and water quality objectives.

The *Maritime and Other Legislation Amendment Act 2006*, which mostly commenced on 17 May 2006, amends several Acts to better deal with **marine pollution** (including narrowing the scope of defences, clarifying roles for pollution response in ports, allowing cost recovery for pollution cleanup, and providing whistleblower protection for reporting illegal pollutant discharges) and provide rules for dealing with abandoned and wrecked ships.

The *Water Amendment Regulation (No.7) 2006* which commenced on 27 October 2006 makes minor amendments to the *Water Regulation 2002*, including to allow for **excavating or placing fill in a watercourse** without the need for a permit under the *Water Act 2000* if there is a valid licence, petroleum lease or authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004*.

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