



Water Legislation Amendment Bill 2022

Report No. 34, 57th Parliament

State Development and Regional Industries Committee

December 2022

State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg

Committee Secretariat

Telephone	+61 7 3553 6662
Email	sdric@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/SDRIC

Acknowledgements:

The committee acknowledges the assistance provided by officials from the Department of Regional Development, Manufacturing and Water.

Contents

Chair’s foreword	iii
Recommendations	iv
Executive Summary	v
1 Introduction	1
1.1 Policy objectives	1
1.2 Policy background	1
1.3 Government consultation process	2
1.4 Should the Bill be passed?	3
2 Examination of the Bill	4
2.1 Need for improved water measurement	4
2.2 Implementation costs	5
2.3 Detail to be included in regulation or standards	6
2.4 Meter standards and specifications	7
2.5 Telemetry	9
2.6 Measurement of overland flow	10
2.7 Access to and protection of data collected	11
2.8 Practical implementation issues	13
2.9 Other amendments in the Bill	13
2.10 Issues outside of scope of Bill	15
3 Compliance with the <i>Legislative Standards Act 1992</i>	16
3.1 Fundamental legislative principles	16
3.2 Rights and liberties of individuals	17
3.3 Institution of Parliament	20
3.4 Explanatory notes	22
4 Compliance with the <i>Human Rights Act 2019</i>	24
4.1 Human rights compatibility	24
4.2 Committee comment	24
4.3 Statement of compatibility	25
Appendix A – Water Engagement Forum	27
Appendix B – Submitters	28
Appendix C – Officials at public departmental briefing	29
Appendix D – Witnesses at public hearing	30
Statement of Reservation	31

Chair's foreword

This report presents a summary of the State Development and Regional Industries Committee's examination of the Water Legislation Amendment Bill 2022.

The committee has recommended that the Bill be passed.

The primary objective of the Bill is to amend the *Water Act 2000* to establish a regulatory framework for implementing Queensland's strengthened policy for measuring the take of non-urban water. The Bill also amends several other pieces of water legislation to improve their operational efficiency.

The Bill achieves this through amendments that:

- increase the coverage and standard of meters used to measure non-urban water take
- provide for measurement of overland flow take
- improve data quality and timeliness
- ensure fit for purpose enforcement for measurement of water take.

Stakeholders broadly supported strengthened water measurement requirements and recognised the need to carefully manage water resources. However, a key issue was the cost for water users in implementing the new requirements.

The Department of Regional Development, Manufacturing and Water (the department) confirmed that an Australian Government subsidy is available for the telemetry rollout and that other initiatives have been applied to reduce costs for water users, including:

- a risk-based framework to prioritise high-risk areas for increased water measurement
- exemptions for low-volume water users
- keeping existing meters in service as long as they meet measuring standards.

After careful consideration, I am satisfied that the department has taken reasonable and responsible steps to reduce the cost for stakeholders, and will continue to engage with stakeholders on cost-saving measures.

Many stakeholders commented on the positive engagement with the department through the Water Engagement Forum. I commend the department on such an effective and collaborative mechanism and its stakeholder engagement through developing the Bill.

On behalf of the committee I thank the many organisations and individuals who participated in the inquiry for their valuable contributions. I also thank my fellow committee colleagues for their collaboration and parliamentary service staff who supported the inquiry.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendations

Recommendation 1	3
The committee recommends the Water Legislation Amendment Bill 2022 be passed.	3
Recommendation 2	6
The committee recommends that the Department of Regional Development, Manufacturing and Water continue to monitor cost implications and transition time needed to implement strengthened requirements as supporting regulations and guidelines are finalised and rolled out.	6
Recommendation 3	7
The committee recommends that the Department of Regional Development, Manufacturing and Water provide the Water Engagement Forum with exposure drafts of regulations and standards in advance of implementation; and that a review of regulations be conducted after a period of no more than 5 years.	7
Recommendation 4	12
The committee recommends that the Department of Regional Development, Manufacturing and Water develop and publish a clear framework that specifies how reported data will be collected, used, distributed and published.	12

Executive Summary

This report presents a summary of the committee's examination of the Water Legislation Amendment Bill 2022 (the Bill).

The committee has recommended that the Bill be passed.

Policy objectives

The main objective of the Bill is to establish a regulatory framework to implement a strengthened policy for measuring the take of non-urban water in Queensland. It does this by setting up clear legislative heads of power to enable regulation to be made to require non-urban water users to:

- apply strengthened requirements to measure the volume of water they take under their water entitlement, such as the use of meters and telemetry
- report information about water they take under their water entitlement
- comply with the strengthened measurement requirements.

The Bill implements the new Queensland Non-Urban Water Measurement Policy which was informed by a comprehensive consultation process.

Stakeholder views

There was broad support for the implementation of strengthened water measurement arrangements. Many inquiry stakeholders acknowledged the benefits including better resource management, protection and security of water rights, better decision making and a greater capacity to trade water.

However, one of the key issues raised was the cost for water users in implementing the new requirements. The Department of Regional Development, Manufacturing and Water (department) confirmed that an Australian Government subsidy is available for the introduction of telemetry and that other initiatives have been applied to reduce costs for water users.

The committee has recommended that the department continue to consult on cost implications and transition time needed to implement any new requirements as regulations, standards and guidelines underpinning the non-urban water measurement policy be finalised and rolled out.

Much of the detail underpinning the strengthened water measurement policy is to be provided in regulation or guideline which the committee has not reviewed. The department has outlined its commitment to continuing engagement as it develops the proposed regulations, both through its Water Engagement Forum and with individual industry organisations outside the Forum.

A risk-based approach will be used to determine where strengthened measurement arrangements will be applied and prioritised. For example, telemetry will only be required for water allocations in the Queensland Murray-Darling Basin in the first instance. While acknowledging the benefits of strengthened measurements, some practical issues were raised around expected standards of meters, availability of skilled technicians, and how reported data will be used and distributed. The department has outlined various measures to address each of these issues.

Fundamental legislative principle and human rights issues

The committee is satisfied there is sufficient regard to fundamental legislative principles and human rights.

1 Introduction

This chapter summarises the policy objectives of and background to the Bill, the nature of government consultation, and the committee's determination of whether or not the Bill should be passed.

1.1 Policy objectives



The main objective of the Water Legislation Amendment Bill 2022 (the Bill) is to amend the *Water Act 2020* (Water Act) to establish a regulatory framework to implement a strengthened policy for measuring the take of non-urban water in Queensland.¹

This includes establishing the necessary legislative heads of power to require certain water users to:

- apply strengthened measurement requirements to the volume of water they take under their water entitlements
- report information about water they take under their water entitlement, including through the use of telemetry
- comply with the strengthened measurement requirements.²

The Bill also amends the *Water Act*, the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) and the *South-East Queensland Water (Distribution and Retail Restructuring Act) 2009* (SEQ Water Act) to make minor operational and technical amendments to improve the operational efficiency of these Acts, including the framework for managing underground water.³

1.2 Policy background

The Bill follows government commitments made in 2018 to improve Queensland's water management and compliance following the Independent Audit of Queensland Non-Urban Water Measurement and Compliance (Independent Audit) and the Murray-Darling Basin Compliance Compact (the Murray-Darling Compact).⁴

Key commitments included ensuring that water-take in the Queensland Murray-Darling Basin be accurately measured by 2025 and that a review of the then non-urban water measurement policy take place.

A review commenced in 2019 and following 'extensive stakeholder consultation' (discussed below) a revised policy – *Queensland Non-Urban Water Measurement Policy* – was completed in May 2022. This included the release of a discussion paper outlining proposals to which 320 written submissions were received and 22 stakeholder meetings were conducted across the state.⁵

The objectives of the revised policy are to:

- increase the coverage and standard of metering for the direct measurement of non-urban water-take
- provide for farm scale measurement of overland flow water-take
- receive timely and accurate data on water-take

¹ Explanatory notes, p 1.

² Explanatory notes, p 2.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Department of Regional Development, Manufacturing and Water, Proposals for strengthening non-urban water measurement: Consultation summary, May 2022.

- ensure fit for purpose compliance and enforcement for measurement of water-take.⁶

1.2.1 A risk-based approach to implementation

The department confirmed that a risk-based approach will be used to implement the strengthened measurement requirements.⁷

Risk assessments are based at individual catchment levels and consider factors such as the levels of resource pressure, levels of allocation and compliance with authorised water-take entitlements. Those areas deemed to be at the highest risk will be prioritised for implementation of strengthened arrangements. By way of example, telemetry will only be applied in the Queensland Murray-Darling Basin at this stage.⁸

1.3 Government consultation process



The Department of Regional Development, Manufacturing and Water conducted a comprehensive consultation process to inform the new Queensland Non-Urban Water Measurement Policy.

Positive feedback, particularly on the operation of Water Engagement Forum, was received from a range of inquiry participants on the consultation process.

The Water Engagement Forum (WEF)⁹ is the main advisory group to the department and includes representatives from industry groups, peak bodies and community organisations with an interest in the department's water portfolio. The department first informed the WEF of the intent to progress legislative changes in June 2022 with further detail discussed with the group thereafter.¹⁰

The explanatory notes state that there was 'broad support for strengthening non-urban water measurement to provide better accountability for water use'. This view was also generally reflected in evidence to the committee.

The explanatory notes state that while some concerns were raised by Irrigation Australian Limited on proposals to improve the accountability of certified meter installers, no significant concerns were raised by other WEF members.¹¹

Inquiry participants including the Queensland Conservation Council, Queensland Resources Council, AgForce Queensland and Queensland Farmers Federation spoke favourably about the operation of the WEF as a mechanism for consultation and dissemination of information to industry and community stakeholders.¹²

⁶ Explanatory notes, pp 1-2.

⁷ L Barbeler, public briefing transcript, Brisbane, 24 October 2022, p 4.

⁸ L Barbeler, public briefing transcript, Brisbane, 24 October 2022, p 4.

⁹ See Department's response to issues raised in submissions for further information on the WEF.

¹⁰ Explanatory notes, p 13.

¹¹ Explanatory notes, p 13.

¹² N Parratt, public hearing transcript, Brisbane, 14 November 2022, p 24; Queensland Resources Council, submission 10, p 3; K Bremner, public hearing transcript, Brisbane, 14 November 2022, p 13; S McIntosh, public hearing transcript, Brisbane, 14 November 2022, p 15.

1.3.1 Committee comment

The committee is satisfied that the consultation process for the Bill was comprehensive. It is clear that the Water Engagement Forum provides an important mechanism for engagement with, and dissemination of information to key stakeholders. The committee has made several recommendations in this report for the department to continue to use the Water Engagement Forum to consult on any future regulation, standard or guideline to be implemented as part of the new non-urban water measurement policy framework.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Water Legislation Amendment Bill 2022 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all minor and technical amendments proposed by the Bill.

2.1 Need for improved water measurement



There was broad support amongst inquiry participants for strengthened water measurement in Queensland.

Many inquiry stakeholders identified benefits including the more sustainable management of water resources, protection of security and rights to water for those with entitlements and higher compliance levels.

There was broad support submitted by inquiry participants for strengthened water measurement in Queensland.¹³ The Inspector-General of Water Compliance particularly welcomed arrangements relating to telemetry and measurement plans for overland flow, noting that 'these were significant steps forward for water management in Queensland and consequently the Murray-Darling Basin'.¹⁴

Representatives of the agriculture sector also supported the policy direction of the Bill. AgForce Queensland supported a 'risk-based, cost-effective approach to water management and any new measurement requirements underpinning it', acknowledging benefits including more sustainable resource use, protection of security of water rights and better decision making. AgForce emphasised however, that the benefits must outweigh the costs for affected water users.¹⁵

Similarly, Queensland Farmers' Federation (QFF) supported an 'affordable, efficient, and cost-effective water metering, management and compliance framework'. QFF recognised that 'water metering is a necessity for the fair and equitable use of water', however submitted that it was important that the agriculture sector be able to 'reasonably comply with any new requirements'.¹⁶

The Queensland Resources Council also supported the Bill, submitting that it strikes 'a fair balance in establishing principles for reform and a measured transition mechanism to implement the new policies'.¹⁷

Environmental interest groups also supported the Bill. Queensland Conservation Council submitted that the strengthened measurement of non-urban water will lead to improved environmental and ecological outcomes.¹⁸ The Environmental Defenders Office (EDO) submitted that a 'strong metering framework assists with the management of water resources and markets and is critical for an effective compliance system', and 'increases trust among water users and the public generally'.¹⁹

2.1.1 Committee comment

The committee notes the broad support for the Bill. Measuring water-take is vital to sustainable management of our valuable water resources. Measurement devices, such as meters and telemetry, are necessary to ensure fair and equitable water access and to hold those who do not follow the rules to account.

¹³ See submissions 3, 5, 8, 10, 14, 15.

¹⁴ Inspector General of Water Compliance, submission 3, p 8.

¹⁵ AgForce Queensland, submission 8, p 2.

¹⁶ Queensland Farmers' Federation, submission 5, pp 2-3.

¹⁷ Queensland Resources Council, submission 10, p 3.

¹⁸ Queensland Conservation Council, submission 5, p 1

¹⁹ Environmental Defenders Office, submission 17, p 4.

2.2 Implementation costs



A key issue raised by stakeholders was the installation, maintenance, and validation costs associated with implementing the strengthened requirements.

Over \$22 million dollars is available in subsidies to implement telemetry devices. The Department of Regional Development, Manufacturing and Water has also identified a range of initiatives to reduce costs for affected water users.

The majority of inquiry stakeholders raised the issue of cost for water users.²⁰

Both AgForce and QFF emphasised the need for a ‘cost-effective’ management approach where the benefits of additional measuring outweigh the costs for affected water users.²¹

AgForce and QFF also outlined their support for grandfathering arrangements that would see existing meters (where fit for purpose) being able to be used to minimise upfront costs.²²

The department has sought to minimise costs for water users. The following Australian Government funding is available to subsidise the use of telemetry:

- Australian Government Hydrometric Networks and Remote Sensing Program (\$10.2 million over three years from 2020) and
- Murray-Darling Basin Communities Investment Package (\$12.5 million over three years from 2021).

The subsidy will be available for water users from 2023 and the department advised that this will ‘significantly’ reduce the costs associated with meeting any new telemetry requirements.²³

The department also advised of several initiatives to minimise costs for water users:

- taking a risk-based approach to implementation so that new metering is prioritised in areas where water resources are at the highest risk.
- applying a 5 megalitre or less threshold below which new metering would not be required and exclusions, such as for education facilities, to ensure small volume and low-risk water entitlements are not subject to undue costs.
- using transitional arrangements to keep existing meters in service provided the meter is installed correctly and is working properly. This will allow many existing meters to stay in use.
- allowing the use of non-pattern approved meters for large metering installations where there is a limited range of fit for purpose cost-effective pattern-approved meters.²⁴

The department also explained that meters are already required in many water management areas across Queensland with the cost being an existing cost. As such, many users understand that metering is an obligation that comes with water entitlements and they are responsible for all costs associated with installing, maintaining, reading, validating and replacing meters.²⁵

²⁰ Mount Isa to Townsville Economic Development Zone raised concerns about the potential burden requirements would impose on water users, as did Kalamia Cane Growers Organisation Limited and Lower Burdekin Water.

²¹ AgForce, submission 8; Queensland Farmers Federation, submission 15.

²² AgForce, submission 8; Queensland Farmers Federation, submission 15.

²³ L Barbeler, public briefing transcript, Brisbane, 24 October 2022, p 2.

²⁴ Department, correspondence, 21 November 2022, p 4.

²⁵ Department, correspondence, 21 November 2022, p 4.

2.2.1 Committee comment

The committee acknowledges that measuring water-take is vital to sustainable water management and that measurement devices are necessary. The committee also acknowledges the concerns raised by some stakeholders around cost of implementation.

The availability of \$22 million in subsidies will ‘significantly’ reduce the costs associated with introducing any new telemetry requirements. We also note that several policy initiatives have been adopted to reduce the costs for water users such as applying exemptions to small-volume water users; allowing existing meters to continue to be used if they are appropriate; using non-pattern approved meters if there is a lack of pattern-approved meters available; and applying these requirements in accordance with the department’s risk-based approach.

While we note the efforts made to reduce costs for water users, we have recommended that the department continue to monitor the cost impact of the proposals as any supporting regulations and guidelines are finalised and rolled out. We also emphasise the need for the department to continue to monitor the transition time needed for users to implement new standards, and that adequate flexibility be built into the policy framework.

Recommendation 2

The committee recommends that the Department of Regional Development, Manufacturing and Water continue to monitor cost implications and transition time needed to implement strengthened requirements as supporting regulations and guidelines are finalised and rolled out.

2.3 Detail to be included in regulation or standards



Much of the detail underpinning the strengthened arrangements is to be provided in regulation which the committee has not reviewed.

The department has outlined its commitment to continuing engagement as it develops the proposed regulations, both through its Water Engagement Forum and with individual industry organisations outside the Forum.

The Bill provides for a regulation to identify the water authorisations to which the measurement requirements apply, the measurement requirements that apply to measurement devices and measurement systems, arrangements for validating and certifying measurement devices and measurement plans (including the arrangements and functions of duly qualified persons to carry out this work), requirements for providing data and information, arrangements for dealing with faults including identifying, rectifying and reporting and the technical standards that apply to the strengthened measurement requirements, including for measurement devices and measurement plans, and for meter reading and telemetry to reporting water take information.²⁶

The rationale for this approach is that water resource risks vary from catchment to catchment and there are large variations in the way authorisations may be specified. It is therefore considered more appropriate to use instruments which are better able to provide for catchment specific management requirements.²⁷ This approach is consistent with the existing framework under the Water Act.

The approach was supported by AgForce for reasons of ‘responsiveness and flexibility in implementing a new policy’.²⁸ Several key stakeholders expressed the desire to be consulted during the regulation-

²⁶ Explanatory noted, pp 9-10.

²⁷ Explanatory notes, p 9.

²⁸ AgForce, submission 8.

writing process. Border Rivers Food & Fibre noted that it is vital that ‘subsequent regulations are subject to appropriate consultation.’²⁹

Stakeholders added that consultation was imperative if measurement and telemetry requirements were expanded to beyond the Queensland Murray-Darling Basin. QFF recommended a minimum timeframe of 3 to 5 years ‘before consultation is undertaken to assess the implementation of the non-urban water metering standards in schemes outside of the Queensland Murray-Darling Basin region’.³⁰

Stakeholders also suggested a review of the regulations in general to ensure they were working as intended. AgForce recommended a 5-year review to confirm the regulations delivered a balance of benefits.³¹ Queensland Resources Council supported the review recommendations by AgForce and QFF during public hearings.³²

In its response to submissions, the department committed to continuing engagement as it develops the proposed regulations, both through its Water Engagement Forum and with individual industry organisations outside the Forum.³³ The department also noted that the Queensland Murray-Darling Basin is the priority for the telemetry rollout, and that the department will engage with water users in other areas if the need for telemetry arises.³⁴

2.3.1 Committee comment

The committee welcomes the commitment from the department to continue engagement with the Water Engagement Forum and individual organisations as the regulations and standards underpinning the measurement of non-urban water policy are finalised. We consider this to be vitally important, and accordingly have recommended that the Water Engagement Forum be provided with exposure drafts of any new regulations, standards and guidelines for comment prior to finalisation.

The committee acknowledges the desire among stakeholders for an evaluation of the measures to ensure the strengthened policy is operating as intended without undue costs and unintended consequence. We agree that this is important and recommend that the department conduct a review of the strengthened measurement policy, including regulations, after a period of no more than 5 years.

Recommendation 3

The committee recommends that the Department of Regional Development, Manufacturing and Water provide the Water Engagement Forum with exposure drafts of regulations and standards in advance of implementation; and that a review of regulations be conducted after a period of no more than 5 years.

2.4 Meter standards and specifications

The *Queensland interim water meter standard for non-urban metering* sets the performance standards for non-urban water metering across Queensland. To assure an acceptable level of confidence in meter performance, Queensland has adopted the requirements of the national Metrological Assurance Framework 2 (MAF2) which sets rules and guidelines for a nationally consistent approach to regulating and managing non-urban water meters.

²⁹ Border Rivers Food & Fibre, submission 14, p 3.

³⁰ Queensland Farmers’ Federation, submission 15, p 5.

³¹ D Miller, public hearing transcript, Brisbane, 14 November 2022, p 10.

³² A Barger, public hearing transcript, Brisbane, 14 November 2022, p 6.

³³ Department, correspondence, 21 November 2022, p 5.

³⁴ Department, correspondence, 21 November 2022, p 7.

Queensland and all other Murray-Darling basin states have agreed to implement MAF2.³⁵

The MAF2 framework includes implementing agreed pathways to ensure greater coverage of ‘pattern’ approved non-urban water meters. A ‘pattern approved’ meter is one that has been tested by the National Measurement Institute of Australia for compliance with Australian Standard 4747 (AS4747).³⁶

Several submitters commented on the implementation of AS4747 meters. QFF suggested that the government should develop its own assessment process to determine if meters meet specific standards, adding that AS4747 metering compliance outside the Murray-Darling Basin is extremely hard to justify and will cause significant costs in some schemes that could make them financially unviable.³⁷

In response the department confirmed that it remained committed to the use of pattern approved meters in line with the policy and the national framework.³⁸

The department advised that implementation of this requirement will be staged, taking into consideration evidence of the cost and appropriateness of available pattern approved meters. The department acknowledged that Queensland has a wide range of works used for the extraction of non-urban water and that the same type of meter will not be suitable for all situations.³⁹ As such, implementation timeframes have not been determined for mandating pattern approved meters for all new and replacement meters for greater than 600mm pipe sizes.⁴⁰

A new water meter standard will specify which new and replacement meters can be used. The department confirmed that any non-pattern approved meter used must satisfy the intent of MAF2 2021 and that the standard will be updated on an ongoing basis as meters suited to Queensland’s conditions receive certification.⁴¹

Investigations are underway to provide the necessary information to support a decision in relation to the timeframe to mandate pattern approved meters for large sized metering installations. The department added that it must be confident that requirements can be implemented ‘on the ground’, the lifetime costs have been identified and considered and clear benefits can be established.⁴²

It is proposed that the standards will be reviewed annually to ensure that they remain accurate and continue to align with the national direction.⁴³

³⁵ Department of Regional Development, Manufacturing and Water, correspondence, 21 November 2022, p 8.

³⁶ Australian Government, *Non-urban water metering framework and guidelines*, www.dccew.gov.au/water/policy/policy/nwi/nonurban-water-metering-framework.

³⁷ Queensland Farmers Federation, submission 15.

³⁸ Department, correspondence, 21 November 2022, p 8.

³⁹ Department, correspondence, 21 November 2022, p 9.

⁴⁰ Department, correspondence, 21 November 2022, p 9.

⁴¹ Department, correspondence, 21 November 2022, p 9.

⁴² Department, correspondence, 21 November 2022, p 9.

⁴³ Department of Regional Development, Manufacturing and Water, correspondence, 21 November 2022, p 9.

2.5 Telemetry



Telemetry will be required for water allocations in the Queensland Murray-Darling Basin to improve the coverage, timeliness and accuracy of water-take data.⁴⁴ Stakeholders provided various responses to this proposal. While acknowledging the benefits, practical issues around connectivity, technical feasibility and cost effectiveness were identified.

The Bill proposes amending the Water Act to introduce a new power to require telemetry devices on water meters. The explanatory notes state that telemetry devices will send more accurate and timely data on water-take to the department.⁴⁵

Currently, water entitlement holders are required to submit one to 2 meter reads a year. This frequency of meter reading is suitable for measuring annual water-take, but it does not prove (or disprove) compliance across the year. It also stops water entitlement holders from effectively tracking their use and ensuring they are complying with their entitlement conditions.⁴⁶

Telemetry devices can transmit meter data in near real-time, supporting more effective compliance and monitoring of water-take. The requirement for telemetry devices will be applied using a risk-based approach, with entitlements in higher risk catchments prioritised for the installation of telemetry devices. The Water Regulation 2016 will specify which entitlements will be required to install telemetry devices and any standards for these devices.⁴⁷

The department explained that telemetry requirements and implementation timing will be determined based on the outcomes of a recent telemetry trial that is helping to determine what is practical, feasible and possible.

The department advised that initial assessment indicates that telemetry is possible with a range of devices, including satellite connectivity to ensure coverage, and networks and within existing government infrastructure. Analysis indicates that data is fit for purpose but in some cases may require additional calibration.⁴⁸

In its response to submissions, the department stated that telemetry is already widely used in many industries, with many irrigators using on-farm telemetry as part of their business.

The Queensland Murray-Darling Basin is the current priority for telemetry implementation, though telemetry may be required in higher risk areas in other parts of Queensland. The department has stated they will engage further with water users in these areas should the need for telemetry arise.⁴⁹

The Australian Government Inspector-General for Water Compliance was highly supportive, noting that '[t]imely and accurate data around water-take is essential for water accounting and for water compliance regulators to enforce relevant laws and rules'.⁵⁰

QFF gave qualified support to the use of telemetry devices, stating that if telemetry is required, water users should have access to the data.⁵¹

⁴⁴ Department, Queensland non-urban water measurement implementation plan.

⁴⁵ Explanatory notes, p 3.

⁴⁶ Explanatory notes, p 3.

⁴⁷ Explanatory notes, p 3.

⁴⁸ Department, correspondence, 21 November 2022, p 7.

⁴⁹ Department, correspondence, 21 November 2022, p 7.

⁵⁰ Australian Government Inspector-General of Water Compliance, submission 3, pp 7-8.

⁵¹ Queensland Farmers Federation, submission 15, p 2.

AgForce recommended telemetry devices be exempt from certain validation and testing requirements if the device has consistently been in good working order, and to add a review clause in the Bill that moderates validation requirements when enough data has been gathered to identify long term compliance.⁵²

2.5.1 Committee comment

The benefits of timely and accurate data around water-take are clear. The committee reiterates its recommendation that proposed telemetry specifications be provided to the Water Engagement Forum and other industry stakeholders for comment, prior to finalisation.

2.6 Measurement of overland flow



The Bill introduces a head of power for regulation to require the measurement of farm scale overland flow. Stakeholders identified some practical issues with the application of overland flow requirements and recommended extensive consultation with relevant parties prior to finalising the requirements.

In most situations, take is simple to measure and a measurement device such as a meter can be used to measure the volume of water-taken.⁵³ However, in other cases, measuring is more complex and will require a combination of different devices and methods to calculate the amount of water-taken as part of a 'measurement system'. For example, where overland flow water is captured through diversion works and the water is stored in on-farm storages and calculating any water that might be lost along the diversion channels or through storage evaporation.⁵⁴

Where a measurement system is used to measure take, the Bill provides that the measurement system must be outlined in a measurement plan to explain how water take is measured and calculated. This is to ensure that the take of overland flow is more accurately measured.⁵⁵

The department has been consulting on the strengthened measurement of overland flow since 2019. Consultation has focussed on the Queensland Murray-Darling Basin where the implementation of overland flow measurement flow requirements will be prioritised.⁵⁶

Reflecting on the New South Wales experience, Borders Rivers Food and Fibre submitted that practical implementation of the overland flow arrangements has been a matter of concern however, that the Queensland approach to enable individual measurement plans appears sensible.⁵⁷

QFF raised issues about the application of overland flow measurement requirements and how they will be implemented, inside and outside of the Murray-Darling Basin, including the cost of meeting these requirements could be significant. The organisation recommended that extensive consultation with stakeholders was needed.⁵⁸

Similarly, AgForce raised issues relating to the implementation costs, consultation with affected stakeholders (especially outside of the Murray-Darling Basin) and the limited number of Registered Professional Engineers of Queensland (RPEQ) engineers to support implementation and fees associated with services, cost of replacing a measurement plan every 5 years.⁵⁹

⁵² AgForce Queensland, submission 8, p 5.

⁵³ Explanatory notes, p 2.

⁵⁴ Explanatory notes, p 2.

⁵⁵ Explanatory notes, p 2.

⁵⁶ Department, correspondence, 21 November 2022, p 6.

⁵⁷ Border Rivers Food & Fibre, submission 14, p 3.

⁵⁸ Queensland Farmers' Federation, submission 15.

⁵⁹ AgForce, submission 8, p 6.

In response, the department stated that it will continue to consult with affected stakeholders as it further develops the measurement systems amendments to the Water Regulation 2016 that will incorporate overland flow measurement requirements.

The department estimated costs of between \$30,000 and \$40,000 to deliver overland flow requirements. The department acknowledging that this was not an insignificant cost, however advised that it is significantly less than the estimated \$270,000 cost per farm that would be required if direct measurement of overland flow was required (such as that required other jurisdictions).⁶⁰

The cost for a measurement plan is estimated to be similar to the current cost of getting overland flow works certified by RPEQ, which is required under existing plans as part of applying for a new licence to take overland flow water or to reconfigure works.⁶¹

Additionally, the measurement plan approach enables water users to continue to use existing farm measurement devices and diversion infrastructure without the need for costly infrastructure.⁶²

AgForce supported the simplification of requirements and the provision of templates and other resources by the government to minimise the cost of any measurement and certification requirements to be imposed.⁶³

The department advised that it is developing several resources including a measurement plan guideline, technical standard, measurement methodologies and systems to support affected water users achieve compliance. The department will also develop a pilot water balance calculator for consultation to improve understanding of and refine water-take calculations. The department also intends to establish a measurement plan trial to test the practicality of the approach. The results of these activities will inform the development of guidelines and standards.

2.6.1 Committee comment

The committee is satisfied that the development of a new overland flow framework will make it easier to assess compliance against overland flow water licences.

Improved measurement of overland flow will provide transparency and information to support future planning activities across the Basin.

The committee reiterates its recommendation that the department continue to consult with the Water Engagement Forum and affected stakeholders in finalising the technical standards and requirements for the measurement of overland flow.

2.7 Access to and protection of data collected



Several stakeholders commented on how collected data would be used and who would have access to it. The Department of Regional Development, Manufacturing and Water has confirmed that the existing legislation provides for the protection of personal data.

QFF suggested that all data collection by the government should be subject to robust and agreed data protection principles including those of lawfulness, purpose limitation, data minimisation, accuracy, storage limitation, confidentiality and not for public access.⁶⁴ AgForce said the same, recommending

⁶⁰ Department, correspondence, 21 November 2022, p 7.

⁶¹ Department, correspondence, 21 November 2022, p 7.

⁶² Department, correspondence, 21 November 2022, p 7.

⁶³ AgForce, submission 6.

⁶⁴ Queensland Farmers' Federation, submission 15, p 3.

that the Bill include clear and robust privacy protections for individual entitlement holders and their water use data, to protect their person and business interests.⁶⁵

In response, the department advised that Queensland's *Information Privacy Act 2009* provides for the protection of personal information collected and held by Queensland Government agencies and outlines how personal information must be managed. Any system that the Queensland Government uses to collect, store, use or disclose personal information is subject to the compliance requirements in the *Information Privacy Act 2009*.⁶⁶

Some stakeholders commented on who would have access to the data provided by water users.

The Australian Government Inspector-General for Water Compliance said real-time data provided the opportunity to act on non-compliance immediately.⁶⁷ Queensland Resources Council noted that limited, de-identified water use data was useful for other water users in the catchment and noted the economic value of the data for water trading.⁶⁸

Queensland Conservation Council submitted that while privacy is paramount, the data should be publicly available in the interest of transparency.⁶⁹ AgForce also stated the importance of privacy for individual water users, and that water users should be able to access as much of their water use data as possible to support water management decisions.⁷⁰

QFF said that data collection should be done within a robust data protection framework, and that some data could be made available provided it doesn't breach privacy or information that is commercial-in-confidence.⁷¹

2.7.1 Committee comment

Information about water use is vital to understand water availability, to inform water planning and allocation decisions and to be able to assess compliance of water-take against entitlement conditions. Stakeholders must have confidence that the data they are sending to the Queensland Government will be kept safe and secure.

The committee notes that existing legislation provides for the protection of personal information collected and held by Queensland Government agencies. We also acknowledge that some information can have commercial value for entitlement holders. The committee recommends that the department develop clear guidance that specifies how reported data will be collected, used, distributed and published.

Recommendation 4

The committee recommends that the Department of Regional Development, Manufacturing and Water develop and publish a clear framework that specifies how reported data will be collected, used, distributed and published.

⁶⁵ AgForce Queensland, submission 8.

⁶⁶ Department, correspondence, 21 November 2022, p 9.

⁶⁷ A Blacker, public hearing transcript, Brisbane, 14 November 2022, p 2.

⁶⁸ A Barger, public hearing transcript, Brisbane, 14 November 2022, p 8.

⁶⁹ N Parratt, public hearing transcript, Brisbane, 14 November 2022, p 24.

⁷⁰ AgForce Queensland, submission 8, p 6.

⁷¹ S McIntosh, public hearing transcript, Brisbane, 14 November 2022, pp 16-17.

2.8 Practical implementation issues



Several stakeholders questioned the practicality of complying with measurement requirements given difficulties in securing the services of duly qualified people, particularly in some parts of regional and remote areas of Queensland.⁷²

AgForce Queensland supported the use of duly qualified persons particularly in the interest of public confidence around compliance. However, stakeholders had concerns that there is a lack of duly qualified people available to perform the role. AgForce suggested that the department should hold a list of approved validators who can operate in Queensland and make it available to water users.⁷³

Reflecting on their representation of irrigators in New South Wales, Border Rivers Food & Fibre noted delays in implementation timeframes resulting from a shortage of supply of approved meters on the market and the limited availability of qualified installers.⁷⁴

In response, the department advised that it continues to work with the Australian Government and industry to ensure the supply of pattern-approved meters can meet the demands and ensure that a comprehensive range of meters are available on the market for the benefit of all users.⁷⁵

The department acknowledged that a greater number of certified installers and validators will be required to support implementation of the measurement requirements.⁷⁶ As such, the department regularly liaises with Irrigation Australia Limited (the irrigation training body) – to ensure it has the capacity to deliver the training necessary to support the expansion of metering. The measurement implementation plan enables water users and industry to plan for certified meter installers and validators state wide.⁷⁷

2.9 Other amendments in the Bill

The Bill makes several other amendments to water legislation. This includes the amendment of the Water Act, the *Water Supply (Safety and Reliability) Act 2008* and the *South-East Queensland Water (Distribution and Retail Restructuring Act) 2009* to improve operational efficiency and make minor operational and technical amendments to the framework for managing underground water.⁷⁸

2.9.1 Contemporise publishing requirements

The Bill contemporises publishing requirements across water legislation, including the Water Act, *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) and the *South-East Queensland Water (Distribution and Retail Restructuring Act) 2009* (SEQ Water Act) by removing impediments that prevent online publishing being the preferred method, and replaces references to newspapers with non-paper publication methods, such as websites.⁷⁹ This is in line with requirements introduced under the *Financial Accountability Act 2009* to prioritise publishing information online.

⁷² Kalamia Cane Growers Organisation Limited, submission 7; Border Rivers Food & Fibre, submission 14, AgForce Queensland, submission 8.

⁷³ AgForce Queensland, submission 8.

⁷⁴ Border Rivers Food & Fibre, submission 14, p 3.

⁷⁵ Department, correspondence, 21 November 2022, p 5.

⁷⁶ Department, correspondence, 21 November 2022, p 5.

⁷⁷ Department, correspondence, 21 November 2022, p 5.

⁷⁸ Explanatory notes, p 1.

⁷⁹ Explanatory notes, p 5.

AgForce noted that all regional areas, rural and remote areas in Queensland do not have reliable internet connectivity suggesting that publications should not be restricted to online access to ensure that those potentially affected have the information they need.⁸⁰

The department confirmed that the chief executive retains the discretion to publish by other means if necessary.⁸¹

2.9.2 Administrative amendments to the Water Act

The Bill makes several administrative amendments to the Water Act.

2.9.2.1 Validate the postponement of expiry of delayed water resource plans

The process for expiry and postponement of water plans was introduced into the Water Act in 2013. This resulted in some water resource plans being classed as 'delayed' water resource plans through transitional arrangements. The transitional arrangements were unclear on whether postponement provisions could be used to further postpone the expiry of these plans. Two 'delayed' water resource plans have since had their expiry postponed.

The validation provision proposed by the Bill will make it clear that these postponements are valid.⁸²

2.9.2.2 Water licence dealings

The Water Act has non-discretionary processes for simple applications around water entitlements, such as a transfer of ownership. These processes were introduced in 2016 to create administrative efficiencies.⁸³

However, certain dealings may be captured by these non-discretionary processes that are not clear in nature and potentially impact other water right holders, cultural interests, environmental water needs, or be counter to the public interest.

The Bill addresses this oversight by reinstating the chief executive discretion and consideration of the public interest for these types of applications. The Bill proposes treating existing applications as new applications to allow this discretion and public interest test to apply retrospectively.⁸⁴

2.9.2.3 Underground water management

The Bill makes minor operational changes and technical amendments to underground water management under Chapter 3 of the Water Act to correct errors and enhance operation of the framework.⁸⁵ This part of the framework is administered by the department of Environment and Science.⁸⁶

2.9.2.4 Water authority boards

The Bill aligns the administrative arrangements of water authority boards to those of similar government boards. The Bill proposes extending the maximum term for board directors from 3 to 4 years, which matches arrangements under the *Hospital and Health Boards Act 2011* and the *Brisbane Olympic and Paralympic Games Arrangements Act 2021*.⁸⁷

⁸⁰ Department, correspondence, p 16.

⁸¹ Department, correspondence, p 16.

⁸² Explanatory notes, p 5.

⁸³ Explanatory notes, p 5.

⁸⁴ Explanatory notes, p 6.

⁸⁵ Explanatory notes, p 6.

⁸⁶ Explanatory notes, p 1.

⁸⁷ Explanatory notes, pp 6-7.

The Bill provides a mechanism for the Minister to temporarily suspend a director of a category 1 water authority for up to 60 days in appropriate circumstances, such as poor conduct, negligence or incapability. This aligns with temporary suspension arrangements for other government boards such as under the *Hospital and Health Boards Act 2011*.

The Bill also proposes allowing a dissolving water authority to transition to an alternative structure that involves multiple closed water activity agreements. The Bill creates and clarifies the circumstances in which there can be more than one water activity agreement.⁸⁸

2.9.2.5 Clarity of offence provisions

The Bill clarifies water related offences by including examples of ‘a period’ that may be relevant when determining an offence for excess take of water. The Bill also clarifies that the offence for unauthorised water bore drilling activities can relate to a test hole.⁸⁹

2.9.3 Amendments to the Water Supply Act

The Bill amends the Water Supply Act to address identified inconsistencies and clarify dam safety, drinking and recycled water provisions. The explanatory notes state that this is so that the department can perform its regulatory functions more effectively and efficiently.⁹⁰

The amendments include administrative and operational arrangements around water supplier registration, reviews of customer service standards, reporting, auditing of water and recycled water plans and clarifying offence provisions.⁹¹

2.10 Issues outside of scope of Bill

Several stakeholders commented on matters which technically fell outside of the scope of this Bill.

The committee has informed the relevant departments of issues raised for consideration as appropriate. Initial departmental responses to these matters are published with the department’s correspondence of 22 November 2022, published on the inquiry webpage.

⁸⁸ Explanatory notes, pp 6-7.

⁸⁹ Explanatory notes, p 7.

⁹⁰ Explanatory notes, p 4.

⁹¹ Explanatory notes, p 7.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles that legislation must have sufficient regard to are:

- the rights and liberties of individuals
- the institution of Parliament.

The committee considered several fundamental legislative principle issues as part of its examination (summarised below). In all cases the committee was satisfied that any potential breaches, were appropriate and sufficiently justified. The committee has discussed several of these issues in further detail in the remainder of this chapter.

Summary - Fundamental legislative principle issues examined

Retrospectivity (Clause 33)	<ul style="list-style-type: none"> • Existing water applications are to be treated as new applications. • Any purported decisions are of no effect and application is taken to have been made on commencement. • Decisions to postpone the expiry of delayed water resource plans are validated.
Abrogation of common law rights (Clause 39)	<ul style="list-style-type: none"> • Regulation-making power to require certain water users to attach measurement devices and to have a measurement plan. • Potential to limit an individual's rights to deal with their property.
Right to Privacy (Clause 39)	<ul style="list-style-type: none"> • Requirement to give chief executive information stated in regulation or standard and copies of records. • May engage with the rights and liberties of individuals if holders of an authorisation must also give their personal information.
Penalty should be reasonable and proportionate (Clauses 45, 47, 60, 68 and 70)	<ul style="list-style-type: none"> • Offence for taking water in breach of measurement requirements. • Offence for service provider not to have drinking water management plan audited, or data in a performance report audited, and not to give the regulator a report. Offences also reverse the onus of proof.
Power to enter premises (Clause 44)	<ul style="list-style-type: none"> • Authorised officer may enter water user's land to read, check, repair or replace a measurement device. • Power limited to places that are not dwelling houses.
Evidentiary aids (Clause 48)	<ul style="list-style-type: none"> • Certificate signed by chief executive can be used as evidence. • Certificate signed by an authorised officer can be used as evidence.
Delegation of legislative power (Clause 39)	<ul style="list-style-type: none"> • Water Act provides for requirements to be dealt with by regulation rather than primary legislation. • Power delegated to the chief executive to make standards for the measurement requirements.

3.2 Rights and liberties of individuals

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

3.2.1 Retrospectivity

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.⁹²

Clause 33 inserts transitional provisions in the Water Act, including new sections 1304–1306, 1308 and 1310. Section 1304 applies amended section 113 (which requires the chief executive to consider the application together with the public interest) when deciding an application for a water licence, or an application for a dealing with a water licence, that was made but not decided before commencement.

If an application for a dealing with a water licence is an amendment to add, remove or change a condition of the licence, section 1305 applies new section 130 to the application, if the application was made from 12 October 2022 to the day before commencement (transition period). This means the application for a dealing is assessed as an application for a new water licence, thereby allowing consideration of the public interest. The application is taken to be made on the day of commencement. The section also prohibits the chief executive from deciding the application during the transition period, and if an application was purported to be decided during that period, the purported decision is of no effect.

Section 1306 applies section 1250D to an application for an associated water licence. The explanatory notes state that this new section is for applications ‘made but not decided before commencement of the Act’. However, this is not stated in the section, which appears to apply to applications made from commencement.

Section 1308 applies section 1250L to an application for a dealing with an associated water licence (that is an amendment to add, remove or change a condition of the licence) made during the transition period. This means that the dealing is assessed as if it were an application for a new associated water licence. As with section 1305, the application is taken to be made on commencement, the chief executive must not decide the application, and a purported decision is of no effect.

New section 1310 validates a decision purportedly made under former section 52B(6), to postpone the expiry of a delayed water resource plan. The decision is taken to always have been valid as it would have been if section 1236(2) had not applied despite former section 52A(3).

In addressing the Bill’s consistency with fundamental legislative principles, the explanatory notes only justify retrospectivity in relation to section 1305:

This provision is considered justifiable on the grounds that dealing with the application in accordance with the unamended section 130 without proper consideration by the chief executive may negatively impact water resource management outcomes, including other water users and the public interest.⁹³

Although explanatory notes do not include section 1310 in its consideration of the Bill’s consistency with fundamental legislative principles, the policy intent is explained elsewhere as follows:

When the process for expiry and postponement of water plans was initially introduced into the Water Act in 2013, particular water resource plans were identified as ‘delayed’ water resource plans through transitional arrangements. The transitional arrangements were ambiguous with respect to whether the postponement provisions could be used to further postpone the expiry of these plans. Two ‘delayed’

⁹² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 55.

⁹³ Explanatory notes, pp 10–11.

water resource plans have since had their expiry postponed and the validation provision proposed by the Bill will put beyond doubt that these postponements are valid.⁹⁴

3.2.2 Committee comment

The committee is satisfied that the provisions are appropriate and sufficiently justified.

3.2.3 Right to privacy

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.⁹⁵

Clause 39 inserts various provisions requiring holders of a relevant authorisation to give the chief executive:

1. new sections 217E(e) and 217F(d)—information stated in the regulation or standards made under section 217I about water-taken during stated periods, at the stated times and in the stated way
2. new section 217H—copies of the records a holder of a relevant authorisation must keep in relation to measurement requirements.

Section 217I allows the chief executive to make standards (for the measurement requirements) about a range of matters such as the design, construction, installation and maintenance of measurement devices; and the information about water-taken under a relevant authorisation that must be given to the chief executive under the measurement requirements.

Although the explanatory notes do not include this provision in its consideration of the Bill's consistency with fundamental legislative principles, the provision may engage with the rights and liberties of individuals if holders of an authorisation must also give their personal information to the chief executive.

3.2.4 Committee comment

The committee is satisfied that the provisions are appropriate and sufficiently justified.

3.2.5 Penalties and reversal of onus of proof

A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁹⁶

Clause 45 amends section 808 of the Water Act to make it an offence for holders of an authorisation, to which measurement requirements apply, to take water under the authorisation in contravention of those requirements. The maximum penalty is 1,665 penalty units (currently \$239,343.75).

The explanatory notes only justify the penalty in clause 45, arguing that the penalty of 1,665 penalty units:

... is appropriate, reasonable and proportionate and relevant to the action to which the penalty is applied. As contravening the measurement requirements when taking water is akin to not complying with the current metering requirements, it is appropriate that the same offence and penalty should apply.

The offence provision is necessary to encourage and enforce compliance with the measurement requirements to contribute to achieving sustainable resource management. Given this, the amendment

⁹⁴ Explanatory notes, p 5.

⁹⁵ OQPC, Fundamental Legislative Principles: The OQPC Notebook, p 113.

⁹⁶ OQPC, Fundamental Legislative Principles: The OQPC Notebook, p 120.

is justified on the basis that they strike an acceptable balance between the need to protect water resources, and the rights and liberties of an individual.⁹⁷

Clause 47 amends section 829 to refer to a measurement device. The provision currently provides that if water entitlement holders share an approved meter, and an offence is committed, each holder is taken to have committed the offence.⁹⁸

The Bill creates or amends several offences. Clause 60 creates 2 new offences in the *Water Supply (Safety and Rehabilitation) Act 2008* (Water Supply Act). It is an offence for a service provider (unless the provider has a reasonable excuse) to:

- not have a drinking water quality management plan audited by an auditor, and not give the regulator a report about the audit
- not have the data in a performance report audited by an auditor, and not to give the regulator a report about the audit.

Clause 68 requires a relevant entity for a recycled water scheme to conduct a review of the approved recycled water management plan for the scheme to assess whether the plan is consistent with operation of the scheme, water quality criteria for recycled water and best practice industry standards.

Clause 70 requires an entity for a recycle water scheme to have a suitably qualified person conduct an internal audit of the approved recycled water management plan to assess compliance, and to give the regulator a report about the audit. New section 261 requires the entity to conduct a regular audit of the approved recycled water management plan and to give the regulator a report about the audit.

The penalty for all the above offences under the Water Supply Act is 500 penalty units (currently \$71,875). This penalty is consistent with the existing range of penalties under that Act.

Reversal of onus of proof

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification.⁹⁹ For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.¹⁰⁰

New sections 108(2) and 108A(3) of the Water Supply Act, may be seen to reverse the onus of proof as a person would bear the onus of proving they had a reasonable excuse for not auditing their drinking water management plan, or performance report, and not providing a report of the audit to the regulator. The explanatory notes do not address the issue of the reversal of the onus of proof.

If legislation prohibits a person from doing something ‘without reasonable excuse’ it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse.¹⁰¹ In Queensland, offences providing for an exemption from liability where a reasonable excuse exists tend to be drafted on the basis that the *Justices Act 1886* (section 76) would apply, placing the onus on the defendant to prove the existence of a reasonable excuse.¹⁰² In this case, it

⁹⁷ Explanatory notes, p 11.

⁹⁸ Natural Resources and Other Legislation Amendment Bill 2019, Report No. 27, 57th Parliament, State Development, Natural Resources and Agriculture and Industry Development Committee, April 2019, p 9, 17-18.

⁹⁹ Legislative Standards Act, s 4(3)(d).

¹⁰⁰ OQPC, Fundamental Legislative Principles: The OQPC Notebook, p 36.

¹⁰¹ OQPC, Principles of good legislation: OQPC guide to FLPs, Reversal of onus of proof, p 25.

¹⁰² OQPC, Principles of good legislation: OQPC guide to FLPs, Reversal of onus of proof, pp 8, 25.

would seem likely that facts giving rise to a reasonable excuse would be within the particular knowledge of a defendant.

3.2.6 Committee comment

The committee is satisfied that the penalties proposed for the provisions are reasonable and proportionate, such that the provisions have sufficient regard to the rights and liberties of individuals.

3.2.7 Power to enter premises

Generally, a person should only enter a property with the occupier's consent or with a warrant issued by a judge or magistrate.¹⁰³

Clause 44 amends section 746 of the Water Act to allow an authorised officer, at any reasonable time, to enter land of an owner of land authorised to take, interfere with or use water to inspect, read or obtain information from a device or to check the operation of, or repair or replace the device.¹⁰⁴

According to the explanatory notes, the provision is justifiable because:

- the power to enter is limited to places that are not dwelling houses
- the power is largely limited to the particular purposes referred to above, which are all purposes necessary for sustainable management and efficient use of water
- the State's water resource is located on or under a landowners land, or in an adjacent watercourse to which the State gives the riparian landowner trespass rights. The only way to monitor water, monitor compliance with authorised activity or investigate unauthorised activity is to enter land. Failure to act immediately could result in damage to the environment or damage to the water supply of others including deprivation of domestic water supplies.
- if the entering is for a different purpose, the occupier must consent, the place must be a public place, entry must be by warrant, or the place must be open as a place of business
- the powers of entry must be exercised at a reasonable time (other than where acting on a warrant, with consent or where there is a reason to believe that unauthorised taking, interference or use is occurring).¹⁰⁵

3.2.8 Committee comment

The committee is satisfied any potential impact on the rights and liberties of individuals are sufficiently justified in the circumstances.

3.3 Institution of Parliament

Section 4(2)(b) of the Legislative Standards Act requires legislation to have sufficient regard to the institution of Parliament.

3.3.1 Delegation of legislative power—Clause 39

Clause 39 inserts new sections 217C, 217D (and associated 217E and 217F), 217G, 217H and 217J in the Water Act, which provide for measurement requirements to be dealt with by regulation, rather than primary legislation. Those matters include for example:

¹⁰³ OQPC, Fundamental Legislative Principles: The OQPC Notebook, p 45; Legislative Standards Act, s 4(3)(e).

¹⁰⁴ Section 745 defines land to mean a parcel of land other than the part on which there is erected a building or structure that is a dwelling place; or being used, at the relevant time, as a dwelling place.

¹⁰⁵ Explanatory notes, p 12.

- the authorisations or class of authorisations to take water that will be subject to the measurement requirements (section 217C)
- the requirements for an authorisation holder to attach one or more measurement devices to work through which water is taken under the authorisation and to maintain the measurement device and ensure the device is not faulty (section 217E(a), (b), (c))
- giving information stated in a standard (under new section 217I) to the chief executive (sections 217E(e) and 217F(d))
- having a measurement plan for the authorisation (section 217F)
- the appointment, suspension and cancellation of duly qualified persons, and functions of the chief executive to ensure effective operation of the measurement requirements (section 217J).

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.¹⁰⁶

According to the explanatory notes:

... because water resource risks vary from catchment to catchment and the large variation in the way water authorisations may be specified, it is more appropriate to use instruments which are better able to provide for these catchment specific management requirements. Under the Water Act, this includes water plans and the [Water Regulation 2016].

This regulation-making power is consistent with the existing framework under the Water Act where section 1014 provides regulation-making powers to establish a regulatory framework for metering water entitlements. This amendment seeks to expand this existing regulation-making power to incorporate the measurement requirement provisions necessary to implement the strengthened measurement policy which moves beyond just metering and includes measurement plans for measuring overland flow take and the use of telemetry for reporting water-take data and information.

While it is impractical to identify all matters that are required to accommodate any measurement activity that may be required to support risk-based measurement and management of Queensland water resources, the Bill does provide guidance for this regulation-making power and limits the delegation of this legislative power for particular authorisations to take water.

Regulations made under clause 39 will be subject to tabling and disallowance provisions of the *Statutory Instruments Act 1992* and therefore subject to Parliament scrutiny. Given this, they are justified on the basis the regulation-making powers strike an acceptable balance between the need for the legislation to have operational flexibility and the need to give sufficient regard to the institution of parliament.¹⁰⁷

3.3.2 Delegation of legislative power – Power to make regulations

New section 217I in clause 39 delegates to the chief executive the power to make standards for the measurement requirements.

Whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation sufficiently subjects the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly.¹⁰⁸

¹⁰⁶ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

¹⁰⁷ Explanatory notes, pp 9-10.

¹⁰⁸ *Legislative Standards Act*, s 4(4)(b).

If a delegate may make rules that are not subordinate legislation within the meaning of the *Statutory Instruments Act 1992*, the issue arises of how the delegate's activities are to be monitored by Parliament, as the relevant document is not subject to the tabling and disallowance provisions in Part 6 of that Act: 'The issue ... often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny'.¹⁰⁹

In considering whether it is appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.¹¹⁰

The explanatory notes acknowledge the standards are not subject to the scrutiny of the Parliament and justify the standards on the basis that:

Standards for measurement requirements can be extensive, technical documents, which may be subject to frequent change in line with national standards or industry feedback. While new section 217I lists a range of matters that the standards may cover, for reasons stated above, it is impractical to include full details of any such standard in legislation to the degree required to ensure full visibility and enforceability. It would also be overly burdensome on Parliament's time to consider changes to standards each time they need to be amended. It is therefore more practical and efficient for the chief executive to exercise administrative power to make and amend standards.

The contents of the standards remain controlled by new section 217D which is specific about what a holder of an authorisation subject to the application of the measurement requirements is required to do. Any breach of FLPs is therefore considered justified and appropriately constrained.¹¹¹

3.3.3 Committee comment

The committee is satisfied that sufficient regard has been given to the Institution of Parliament. The committee does however, reiterate its recommendation for the department to provide the Water Engagement Forum with exposure drafts of regulation, standards and guidelines, for comment in advance of implementation.

The committee also notes that the existence of the usual notification, tabling and disallowance provisions, and the fact of scrutiny by a portfolio committee are irrelevant to the issues of whether a delegation of legislative power is appropriate and whether any breach of fundamental legislative principle is justified. The committee considers that it is not appropriate for these matters to be put forward, as done here (see section 3.3.1), as elements in justification for a breach of fundamental legislative principle.

The committee makes a general comment that if available, it is helpful for draft regulation to be available for review at the same time as the Bill, so that all parties have a better understanding of the full impact of the proposed legislation.

3.4 Explanatory notes

Part 4 of the Legislative Standards Act 1992 requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

¹⁰⁹ OQPC, Fundamental Legislative Principles: The OQPC Notebook, pp 154-155.

¹¹⁰ OQPC, Fundamental Legislative Principles: The OQPC Notebook, pp 155-156.

¹¹¹ Explanatory notes, p 10.

3.4.1 Committee comment

Explanatory notes were tabled with the introduction of the Bill. The committee is satisfied that the notes contain the information required by Part 4 of the Legislative Standards Act and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

4.1 Human rights compatibility

The committee must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.¹¹²

A Bill is compatible with human rights if it:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (Human Rights Act).¹¹³

The Human Rights Act protects fundamental human rights drawn from international human rights law.¹¹⁴ Section 13 of the Act provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

4.2 Committee comment

The committee is satisfied that the Bill is compatible with human rights and that any potential breaches to the right to participate in public affairs, indigenous cultural rights and the right to property, are reasonable and demonstrably justified.

Further information on the committee's consideration is provided below.

4.2.1 Right to participate in public affairs and Indigenous cultural rights

Section 23 of the Human Rights Act provides that every person has the right to participate in public affairs freely and without discrimination.

Section 28(1) and 28(2) of the Human Rights Act states that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights, and must not be denied the right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

The Bill proposes amending the Water Act, Water Supply Act and SEQ Water Act to make online publication the preferred publishing method for public notices.¹¹⁵ The rationale is to reduce publishing costs and modernise government publishing requirements. However, online publishing may impact those without easy access to internet and internet devices from participating in public affairs and having a say in decisions that impact their communities. This is especially the case for those with unique cultural rights, such as Indigenous persons.

4.2.1.1 Potential limitation on public participation rights

Participation in decision-making is a critical aspect in a group protecting its way of life.¹¹⁶ The United Nations Human Rights Council has recognised the importance of effective participation in decision-

¹¹² Human Rights Act, s 39.

¹¹³ Human Rights Act, s 8.

¹¹⁴ Protected human rights are set out in sections 15 to 37 of the Human Rights Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

¹¹⁵ Water Legislation Amendment Bill 2022, cl 4-10, 12, 27-28, 39, 66 and 72.

¹¹⁶ Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (2nd ed, Thomson Reuters, 2019) p 181.

making in the context of cultural rights,¹¹⁷ and that sometimes the state needs to implement positive legal measures to ensure the effective participation of minority communities in decisions which affect them.¹¹⁸

There remains a ‘digital divide’ and access to technology does not mean that the individual can use online platforms.¹¹⁹ More recently, the 2022 Australian Government response to the Regional Telecommunications Independent Committee report found that the primary use of the internet to communicate information may not fully recognise the limited internet access faced by a number of indigenous communities in Australia.¹²⁰

Regional and remote Queensland communities having limited internet access, and relying primarily on online publishing could exclude some communities. This is particularly relevant for Indigenous communities which have a special cultural interest in water.

There is some discretion built into the Bill so online publication is not the *sole* means which information may be communicated.

4.2.1.2 Committee comment

The committee is satisfied that the potential limits on human rights regarding public participation and cultural and indigenous rights are reasonable and demonstrably justified. Importantly, the Bill provides discretion for means other than online publication to be considered.

The committee encourages the department to actively consider the need for additional means of publication and address as appropriate, particular where matters impact regional, remote and First nation communities.

4.2.2 Right to property

Section 24 protects the right to own property alone or in association with others, and prohibits the arbitrary deprivation of that property. A water entitlement is considered property.

The Bill proposes to expand the metering and measuring requirements of non-urban water-take, potentially impacting landowners using their property. The rationale is that increased measuring of non-urban water-take ensures a public resource, namely water, is used appropriately and fairly by all parties. Further information on the benefits/justification for the implementation of strengthened arrangements is outlined in Chapter 2.

4.2.2.1 Committee comment

The committee is satisfied that the potential limits on the human right to property is reasonable and demonstrably justified.

4.3 Statement of compatibility

Section 38 of the Human Rights Act requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill’s compatibility with human rights.

¹¹⁷ *Poma Poma v Peru* (Communication No 1457/2006) at [7.6].

¹¹⁸ Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

¹¹⁹ Gerard Goggin, ‘Internet accessibility and disability policy: lessons for digital inclusion and equality from Australia’ (2017) *Internet Policy Review*, policyreview.info/articles/analysis/internet-accessibility-and-disability-policy-lessons-digital-inclusion-and.

¹²⁰ Australian Government response to the 2021 Regional Telecommunications Independent Committee report: 2021 Regional Telecommunications Review - A step change in demand, March 2022, www.infrastructure.gov.au/sites/default/files/documents/rtirc-australian-government-response-2022.pdf

4.3.1.1 *Committee comment*

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the Human Rights Act. The committee is satisfied that the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Water Engagement Forum

The Water Engagement Forum (WEF) acts as the peak body advisory group for the Department of Regional Development, Manufacturing and Water (department) on government-related water matters.

WEF members:

- Provide feedback to the department on Government water business, policy and planning issues, including national and state water reforms.
- May raise specific water issues and ideas for consideration by the department.
- Disseminate approved (i.e., non-confidential) information from the department to their industry and community stakeholders.

The 16 groups currently represented include:

- AgForce
- Association of Mining and Exploration Companies
- Australian Banking Association
- Australian Petroleum Production and Exploration Association Ltd
- Environmental Defenders Office
- Growcom
- Irrigation Australia
- Local Government Association of Queensland
- NRM Regions Queensland
- Queensland Conservation Council
- Queensland Farmers' Federation
- Queensland Resources Council
- Queensland Seafood Industry Association
- State Council of River Trusts
- Seqwater
- SunWater

WEF meetings are held several times a year. Meetings occur on an as-needs basis and are convened as required to address specific topics. WEF members attend WEF meetings in-person or online. The face-to-face meetings suit free-flowing discussions on complex, controversial or sensitive topics such as consultation on legislative reform and facilitate networking opportunities and relationship-building across sectors, which WEF members see as a particular benefit. WEF members also benefit from online meetings through information sharing presentations. Online meetings are characterised as 'efficient, convenient and informative' and encourage greater participation by members outside the metropolitan area.

Source: Departmental of Regional Development, Manufacturing and Water, correspondence, 21 November 2022, Attachment 2.

Appendix B – Submitters

Sub #	Submitter
001	Name withheld
002	Mount Isa Townsville Economic Zone
003	Australian Government Inspector-General of Water Compliance
004	Ben Wilson
005	Queensland Conservation Council
006	Urban Utilities
007	Kalamia Cane Growers Organisation
008	AgForce Queensland
009	Urban Utilities – Supplementary
010	Queensland Resources Council
011	Queensland Water Directorate (qldwater)
012	Lower Burdekin Water
013	Association of Mining and Exploration Companies
014	Border Rivers Food & Fibre
015	Queensland Farmers’ Federation
016	Central Highlands Regional Council
017	Environmental Defenders Office

Appendix C – Officials at public departmental briefing

Department of Regional Development, Manufacturing and Water

- Ms Leanne Barbeler, Executive Director, Water Act Initiatives
- Mr Hamish Butler, Acting Executive Director, South Region
- Mr Jason Douglas, Director, Policy and Legislation
- Ms Toni Stiles, Director, Water Management Implementation and Measurement Initiatives

Department of Environment and Science

- Mr Theo Verrills, Manager, Environmental Policy and Legislation

Appendix D – Witnesses at public hearing

Australian Government Inspector-General of Water Compliance

- Mr Daniel Blacker, Acting Inspector-General of Water Compliance

Queensland Resources Council

- Mr Andrew Barger, Policy Director, Economics

AgForce Queensland

- Dr Dale Miller, Manager Policy
- Mr Kim Bremner, Water Policy

Queensland Farmers' Federation

- Ms Sharon McIntosh, Policy Adviser, Water

Border Rivers Food & Fibre

- Mr John Shannon, Executive Officer

Kalamia Cane Growers Organisation

- Mr Denis Pozzebon, Deputy Chairman

Queensland Conservation Council

- Mr Nigel Parratt, Water Policy Officer

Urban Utilities

- Mr David Wiskar, General Manager, City and Regional Futures
- Mr Ben Wilson, Urban Utilities and in a private capacity.

Statement of Reservation

LNP Members of the State Development and Regional Industries Committee

The LNP supports the principles of the Bill in terms of strengthened requirements for measurement of non-urban water volume in line with water entitlements. Water entitlements are an extremely valuable asset of most farming practices and controls are expected to ensure fairness for all water users.

The Bill enables legislation in response to the Independent Audit of Queensland Non-Urban Water Measurement and Compliance (the independent audit) and the Murray-Darling Basin Compliance Compact (MDB Compact) to improve non-urban water management and compliance. This included making significant improvements to Queensland's measurement and metering framework, improving the ability to report on the volume of all water taken under Queensland's water entitlement framework, and ensuring that water take in the Queensland Murray-Darling Basin is accurately measured by 2025.

The LNP wishes to place on record our concerns with elements of this Bill, which will detrimentally affect Queenslanders, particularly those in rural and regional communities.

The cost of the implementation of this Bill to landholders remains a concern, and feedback has suggested government funding will not be sufficient. As Kim Bremner of AgForce advised, *"Depending on the type of meter you purchase, it can be anything between \$2,000 and \$30,000 for some of the larger patent approved meters"* (p 13 of public hearing transcript). The LNP is concerned the telemetry subsidy will not fully cover the costs of primary producers, with many already affected by high input costs and the effects of natural disasters.

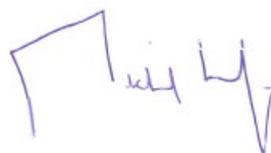
The LNP believes local contractors should be used where possible to install approved meters, and that the meters being installed should be cost effective. Consideration also needs to be given that the most appropriate, accurate and cost-effective meter is being installed, to be flexible in policy to allow for future development and accuracy of meters.

The LNP remains concerned about consultation, with detail lacking when it comes to the development of regulations. Dr Dale Miller of AgForce advised *"We do not know, as far as I am aware, what the department has done with that information in terms of making adjustments to what firstly had been proposed."*

Deputy Chair Jim McDonald MP during the inquiry asked if there had been any learnings from the implementation of the legislation in other states. Evidence presented to the committee by John Shannon of Border Rivers Food and Fibre (BRFF) advised they have learnt from the implementation of the policies in NSW and would look forward to being involved in the consultation with the Water Engagement Forum (WEF) to share their learnings. BRFF was specifically targeted for consultation according to the department's response, even though it wasn't in the WEF (p 6, department response). Non-government members believe the BRFF would add value to the WEF.



Mr Jim McDonald MP
Deputy Chair
Member for Lockyer



Mr Michael Hart MP
Member for Burleigh