

## Water Legislation Amendment Bill 2022

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**Submitted by:** AgForce Queensland  
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**AgForce Queensland Farmers Limited**

ABN 57 611 736 700

Second Floor, 110 Mary Street, Brisbane, Qld, 4000  
PO Box 13186, North Bank Plaza, cnr Ann & George Sts, Brisbane Qld 4003Ph: (07) 3236 3100  
Fax: (07) 3236 3077  
Email: [agforce@agforceqld.org.au](mailto:agforce@agforceqld.org.au)  
Web: [www.agforceqld.org.au](http://www.agforceqld.org.au)

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Committee Secretary  
State Development and Regional Industries Committee  
Parliament House  
George Street  
BRISBANE QLD 4000By Email: [sdric@parliament.qld.gov.au](mailto:sdric@parliament.qld.gov.au)

Dear Ms Galbraith

**Re: Submission to the Committee Inquiry into the Water Legislation Amendment Bill 2022**

AgForce is a peak organisation representing Queensland's cane, cattle, grain and sheep & wool producers. The cane, beef, broadacre cropping, and sheep & wool industries in Queensland generated around \$8.4 billion in on-farm value of production in 2020-21. AgForce's purpose is to advance sustainable agribusiness and strives to ensure the long-term growth, viability, competitiveness, and profitability of these industries. Over 6,400 farmers, individuals and businesses provide support to AgForce through membership. Queensland producers provide high-quality food and fibre to Australian and overseas consumers, and contribute significantly to the social fabric of regional, rural and remote communities as well as stewardship of the state's natural environment.

Thank you to the Committee for the opportunity to make a submission to your inquiry into the Water Legislation Amendment Bill 2022 (the Bill).

**Introduction**

The Bill seeks to amend the *Water Act 2000* (Water Act) to establish a regulatory framework for implementing the state's updated and strengthened policy for measuring the take of non-urban (rural) water. The Bill intends to deliver the policy's following objectives:

- Increase coverage and standard of metering for the measurement of non-urban water take
- Provide for farm scale measurement of overland flow water take
- Reporting and receipt of timely and accurate data on water take
- Ensure fit for purpose compliance and enforcement for measurement of water take.

Holders of a metered entitlement are required under the Act to take water through an approved meter. The Bill proposes to expand existing arrangements to broaden the type of equipment and devices that may be required to ensure that takes of water can be measured, including of overland flow which is proposed to require a management plan of the measurement system to be used. The Bill also allows for the installation of telemetry in some areas.

The Bill also includes other amendments to improve the operational efficiency of water related Acts.

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#### Key Points and Recommendations:

- Support a risk-based, cost-effective approach to water management and any new measurement requirements underpinning it – the assessment of risk and the triggers for inclusion of water users into any measurement framework must be clear and transparent
- See potential benefits in improved measurement where this supports more sustainable resource use, protection of security of rights and facilitated user decision-making
- Benefits of additional measuring must outweigh the costs for affected water users
- Strongly support **not** requiring metering on stock and domestic use, or other low risk takes
- With key details in the Regulation, recommend the Committee consider including in the Act an initial review after 5 years to confirm the public policy outcomes are being achieved
- Support not requiring metering or measurement of non-volumetric authorisations and a required consultation process prior to any expansion to include other authorisations
- The proposed power for the Chief Executive to regulate ‘any other matters necessary’ to ensure that measurement requirements operate effectively requires further consideration
- A ‘reasonableness’ element should be included in the Act for measurement requirements including re-validation, to ensure they are practical, proportionate and cost-effective
- Recommend government consideration of a return to state government managed and implemented meter reading, including meter validation steps, for greatest confidence
- To assist with future costs on water users, AgForce would encourage the Committee to consider recommending the inclusion of a review, potentially within the Act, relating to future certification and validation requirements following evidence of positive compliance outcomes
- Support broadly applied grandfathering provisions for existing meters that are fit for purpose to minimise water user up-front additional costs of compliance
- Support the government subsidising the cost of telemetry across the state where it is a mandatory requirement intended to deliver public good benefits
- The Act amendments must include clear and robust privacy protections for individual entitlement holders and their water use data, to protect their personal and business interests
- Support the appointment, functioning and accountability procedures for duly qualified persons being under the oversight of the Queensland government
- Regarding online notification, retain concerns about access to reliable internet connectivity in many regional, rural and remote areas of the state and so support ensuring government publication methods are actually effective in reaching all affected stakeholders.

#### Overarching Comments

Water is a vitally important resource and needs to be managed to secure its environmental, social and economic values. To sustain water user access and associated ecosystems, planning and management should avoid risks to the long-term sustainability of water resources. AgForce supports the cost-effective use of objective and scientific information to guide water resource management decisions.

The water resource planning process in Queensland is supported as it sets up a system of entitlement security (essential for sustained agricultural investment), enables tradability and is designed to plan for sustainable management to meet future consumptive and environmental water requirements. Where water resources are at risk of over-use, there may be a need to manage demand through the use of targeted regulation – noting the primacy of basic Stock and Domestic (S&D) rights, and that planning and management decisions should be transparent, efficient and equitable.

AgForce has been regularly consulted by the Department throughout the development of the new measurement policy and on the developing associated legislative framework amendments.

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In relation to the strategic direction outlined in the Policy and supporting instruments including the Bill, AgForce sees potential benefits in improved measurement where this supports more sustainable resource use and the protection of security of rights and of access, as well as facilitates water user decision-making and outcomes including a greater capacity to trade water.

However, in this it is vitally important that the costs and impositions of additional measuring requirements are less than the benefits to be gained by users and wider society from their implementation (as noted in the MDB Compliance Compact (p5)) and the focus is on areas of greatest risk. All beneficiaries, including the people of Queensland given the stated need for transparency and confidence in our water management system, should pay their share of these costs. The Independent Audit of Queensland Non-urban Water Measurement and Compliance (the Independent Audit) outlined (their Appendix K) some estimates of additional costs of enhanced measurement scenarios.

#### **Risk-Based Implementation Approach to Water Measurement**

- AgForce supports a risk-based and cost-effective approach to water management and any new measurement requirements underpinning it – the assessment of risk and the triggers for inclusion of water users into any measurement framework must be clear and transparent
- We support a strong focus on communication with affected stakeholders prior to the implementation of any changes and a steady, transparent, clear and publicly available implementation plan and annual reporting
- We strongly support **not** requiring metering on livestock and domestic use, as well as inactive entitlements due to their low or no risk status
- We support not requiring metering for annual water takes at or below 5ML, unless essential for effective water resource management in areas under high water use pressure. We note that the Independent Audit worked scenarios based on metering all volumetric entitlements greater than 20ML, as this was the MDBA Review recommendation. That greater threshold may be appropriate in catchments and should be considered in forward planning.
- We support the water meter standard enabling existing and working meters to remain in service as long as possible, provided the meter is fit-for purpose, maintained and installed correctly (eg, within +/- 5% accuracy in the field as per the Compliance Compact P6).

As stated in the MDB Compliance Compact (p2): *‘Water sharing rules must protect all water users, be based on the best available information and developed through an open, consultative and trusted process.’*

#### **Inclusion of Significant Details within the Regulation**

For responsiveness and flexibility in implementation of the new policy, AgForce understands the government’s approach of including significant implementation detail in the Water Regulation and not within the Act itself.

It should be noted by the Committee that the regulations being established to implement the policy have not yet been provided to external stakeholders, including AgForce, nor provisions related to elements such as overland flow measurement. Given this, the comments in this submission should be read with that understanding and we reserve the right to amend our positions once those details are provided.

AgForce understands from the Department that subordinate legislation must be reviewed and remade every 10 years. Given that much of the key implementation details are contained in the Regulation the Committee may like to consider if an initial Parliamentary review should be included in the Act after a 5-year period to confirm the public policy outcomes are being achieved and any deficiencies of the framework identified by stakeholders can be more promptly rectified.

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### **Comments on Specific Provisions of the Bill**

#### ***Requirements for Supplemented Water***

Clause 36, 37 and 38 seeks to amend s118 (license), s179 (resource operations licence or distribution operations licences) or s210 (operations license) respectively to provide that a condition of a water licence may require the holder to calculate or measure the water taken under the licence and record and report this information. This ensure that new measurement standards apply to the take of both unsupplemented and supplemented water.

AgForce supports the same or similar requirements being applied to supplemented water as for unsupplemented water, including not requiring new meters above 600mm in size to have to be pattern approved meters. A consistent approach across the state is preferable to a two-tier system.

### **Insert a New Part (3A) into Chapter 2 of the Water Act (Clause 39)**

#### **Focus on Volumetric Entitlements**

New s217C states that which authorisations (individual or classes of) the measurement requirements apply to will be provided by the regulation and will be those subject to a volumetric limit (however specified) and other authorisations may also be required to calculate or measure the water taken.

AgForce supports not requiring metering or measurement of non-volumetric authorisations and a significant, responsive consultation process being required prior to any expansion under the regulation to other authorisations.

Of relatively negligible volumes, water used for stock and domestic purposes is a basic landholder right with intrinsic limits related to land capability and should **not** be metered (unless voluntarily). Stock purposes means watering stock of a number that would normally be depastured on the land on which the water is, or is to be, used. Water used for S&D purposes is negligible compared to Queensland's total water use.

The long-term mean (1911 to 2015) runoff in Queensland is 79 mm<sup>1</sup>, equal to 136,190 GL in total across the state (1,723,936 km). Queensland beef herd numbers totalled 11.2 million head in 2014/15 plus 2.2 million sheep and lambs<sup>2</sup>. Using annual Departmental stock water use allowances (20 and 4m<sup>3</sup> respectively<sup>3</sup>), livestock use is in the order of 232 GL or **just 0.17%** of total runoff.

#### **Standards and Measurement Requirements (new s217D and s217I)**

Measurement requirements (s217D) will be specified by regulation and may require the holder to:

- Use and maintain specified measurement devices in accordance with requirements or standards
- Ensure that each measurement device is certified by a duly qualified person as complying with the relevant standard
- Ensure that each measurement device is working properly and if the measurement device becomes faulty, water must be taken under alternate requirements to ensure a record of water taken can still be provided
- Provide information about the water taken under the authorisation - how and when will be specified by regulation or in the relevant standard.

New s217I provides that the Chief Executive may prepare standards in relation to measurement requirements, including:

- Design, construction, installation and maintenance of measurement devices
- Preparation of measurement plans and operation of measurement systems
- Processes for certifying measurement devices and measurement plans, including the validation of *measurement devices*

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<sup>1</sup> Regional water information, [http://www.bom.gov.au/water/rwi/#sf\\_tt/001/2016](http://www.bom.gov.au/water/rwi/#sf_tt/001/2016), accessed 21 June 2017

<sup>2</sup> 7121.0 - Agricultural Commodities, Australia, 2014-15, ABS

<sup>3</sup> Stock or domestic allowance notification form, DNRM, 2016

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- The information about water taken under a relevant authorisation that must be given to the department
- Any other matter necessary to ensure that the measurement requirements operate effectively.

The inclusion of this final broad power for the Chief Executive has been identified as of concern under fundamental legislative principles. We understand that this inclusion is, at least in part, to enable alignment with nationally agreed requirements as they evolve. We question if such an open-ended power is required, or if a more clearly specified scope would be more appropriate.

#### **Certification and Validation Requirements**

Requirements in relation to the period to expiry of a validation certificate need to be reasonable and practical. Revalidation effectively audits that the initially inspected installation has not changed.

For water users with multiple meters revalidation of meters every 5 years as indicated in the new policy will be problematic, particularly where meter installation (or failure and revalidation) has progressively occurred over time and so one or two meters might need revalidating every year at different times. This will then require incurring the costs of getting a validator out (potentially \$1,000 for travel to rural areas plus the actual revalidation costs) multiple times.

A 'reasonableness' element should be included in the Bill in relation to validation and other measurement requirements. For example, to enable excluding from revalidation requirements telemetry-fitted meters with a data chain unbroken since installation, as its accuracy can be verified at any point in time.

If 5-yearly validation is accepted then, to assist with future costs on water users, AgForce would encourage the Committee to consider recommending the inclusion of a review clause, potentially within the Act, relating to moderating certification and validation requirements in future, when a dataset has been accrued that indicates high levels of compliance is being achieved.

With a key driver under the policy to deliver transparency and public confidence in water resource management, AgForce would like to see consideration of a return to state government managed and implemented meter reading and accompanied by validation of the meters by that independent party. This could be on an 'opt in' or 'opt out' basis to allow interested water users to voluntarily continue to self-read meters, where that remains relevant.

The Independent Audit noted that the state government decision to change ownership of irrigation meters to farmers appears to have been short sighted and proposed *'a 24-month plan to resolve the issue of ownership of meters, based on detailed examination of costs and benefits of various options, including public-private partnerships, and extensive community consultation'*.

#### **Meter Standards and Transitional Arrangements for Existing Meters**

Due to the need for certainty and in light of replacement costs and as identified by the Independent Audit, AgForce supports grandfathering provisions for existing meters that are working and fit for purpose to enable their use during their full working life and to minimise water user up-front costs of compliance. This provision should be applied as broadly as possible. There is a significant cost and potential engineering challenges, of integrating pattern approved meters into existing installations – with the cost of pattern approved meters being multiples of expenditure greater than matching non-pattern approved meters.

Accuracy requirements around measurement should be in line with the actual need within water planning and management, rather than imposing additional cost on water users to develop a more precise measure when that additional precision is unwarranted or unused. Non-pattern approved meters can deliver similar (or potentially better) accuracy levels as pattern-approved meters, ie, +/- 2% and within the +/- 5% level required under the legislative framework and MDB compliance compact, so the accuracy benefits for the additional expense may be marginal.

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We also support a staged approach to implementation of any requirement for pattern-approved meter use, and support currently excluding pipes of over 600mm in the standard on cost: benefit grounds.

### **Meter Reading and Telemetry**

The government should be transparent to users about that need for telemetry and the use of the collected information. Frequency of meter reading and data transfer should be aligned to the actual use of the data – more frequently is more acceptable if low cost and supporting of entitlement holder decision-making, but less frequent reads (monthly, quarterly or half-yearly depending on risk) may be more appropriate for simple compliance purposes. AgForce supports the government subsidising the cost of telemetry where it is a mandatory requirement intended to deliver public good benefits. The water user should also be able to access or receive the greatest amount of water use data possible to support water resource management and use decisions.

### **Requirement to Record Information and Report**

New s217H provides that a regulation may prescribe measurement requirements to ensure that records of information about water taken under a relevant authorisation are kept and provided to the Department. A regulation can create offences in relation to complying with these record keeping requirements.

The MDB Compliance Compact (p3) notes that information about water entitlements and trades should be made accessible by the public, but importantly while respecting relevant privacy laws. Recommendation 6d of the Independent Audit is to: *Release information on a catchment basis on water availability, water use and water traded to increase transparency and information available to the community and stakeholders* (emphasis added).

The Act amendments must include clear and robust privacy protections for individual entitlement holders and their water use data, to protect their personal and business interests, particularly if more regular meter reads are to be collected, or if water use data is released publicly in such a way that individual users could be identified.

Departmental representatives have said in a Water Engagement Forum meeting that public reporting was not intended to 'name and shame' individual water users who were not compliant. Only aggregated data where individuals cannot be identified should be released publicly.

AgForce does not condone water theft and supports compliance action in those cases to protect entitlement security, but this must be done by the Department through due and fair processes.

### **Duly Qualified Persons**

New s217J provides that a number of other matters may also be prescribed by regulation including:

- The appointment of duly qualified persons, or appropriately qualified others like Department staff
- The suspension and cancellation of these persons to ensure performance and accountability
- The functions of a duly qualified person and the way these functions are performed
- The functions of the Chief Executive to ensure the effective operation of the measurement requirements, including notifying holders of relevant authorisations of their obligations under the measurement requirements with adequate warning and in monitoring compliance to enable prompt action on non-compliance.

AgForce supports the appointment, functioning and accountability procedures for duly qualified persons seeking to operate in the state being under the oversight of the Queensland government, with adequate due process steps. To deliver the sought-after public good policy outcomes around compliance and public confidence, the government needs to provide the integrity and accountability function.

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The Department should also hold a list of approved validators who can operate in Queensland and make it available to water users. There is a lack of duly qualified people currently.

### **Faulty Measurement Devices or Measurement Systems**

New s217G provides that a regulation may prescribe requirements in relation to dealing with faulty measurement devices or measurement systems. This will include specifying that any fault in the device or systems is identified and rectified, and that the department is notified. A regulation can create offences in relation to complying with these faulty device and system requirements.

AgForce is concerned about the potential imposition of a restrictive (eg, 30-business-day) period for repair of faulty measurement devices or systems due to supply chain issues and availability of validators that are outside of the water user's control, including where parts supply and access to repairers can commonly take longer than this period to secure by diligent water users.

AgForce supports the inclusion of time extension provisions where a reasonable excuse applies and clarity on what alternative use estimation methods and reporting would be acceptable within the permitted period. This may best be contained in the Regulation and so may not be as relevant in relation to consideration of the Bill by the Committee.

### **Measurement Systems**

New s217F clarifies the requirements that apply to a holder of a relevant authorisation in relation to using a measurement plan – where measuring water take is complex and requires a combination of devices and other methods, such as where overland flow water is taken. A holder is required to:

- Outline their measurement system in a measurement plan
- Have their plan certified as complying with the relevant standard by a duly qualified person
- Ensure that water is taken in way that it can be measured or calculated in accordance with the measurement plan
- If the measurement system becomes faulty, ensure they can measure or calculate the water taken using an alternate arrangement
- Provide information about the water taken under the authorisation. The details of how and when this information is to be provided will be specified by regulation or in the relevant standard.

The Department is currently in the early stages of preparing the overland flow (OLF) measurement standard and guideline.

AgForce makes the following points in relation to these OLF measurement policy proposals:

- AgForce are concerned about the costs involved in the proposed measurement requirements – these must be feasible within the context of the affected business and the outcome intended to be delivered
- Within the risk-based approach, as this OLF measurement approach is rolled out beyond the MDB it is vital that potentially affected water users are formally consulted on a catchment-by-catchment basis, and that equitable levels of support and assistance are available as has been provided for the MDB
- There is a limited number (likely < 5) of registered professional engineers in Queensland (hydrologists capable of completing an overland flow plan) and this is a limit to cost and time effective implementation
- Minimum fees apply in engaging the services of a registered professional services provider, even for relatively straightforward tasks eg, recent CQ example of \$15,000 required for a hydrologist's report which did not even involve site attendance
- The replacement of a plan every 5 years when nothing has changed in the system is an unnecessary cost impost – this re-certification requirement should be minimised wherever possible

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- AgForce supports simplification as far as possible of the requirements and the provision of templates, proformas and other aids by the government to minimise the cost of any measurement and certification requirements to be imposed.

### **Other Matters prescribed by Regulation**

#### **Non-compliance**

We support effective education and notification of water users by the Department of their obligations and having a suite of offense-proportionate tools available to address varying levels of non-compliance. Offense provisions (eg, s808, s811, s829) must be proportionate to the impact of the offense on the water resource and other users.

AgForce does not condone water theft and supports compliance action in those cases to protect entitlement security. AgForce supports a risk-based approach and initially focussing on fully, or close to fully, allocated systems and the use of practical and reasonable timeframes for implementation and the provision of adequate support for water users in responding to any changes in policy or regulation.

### **Additional Administrative Amendments**

#### **Publication of Notices**

The Bill seeks to enable online publishing on a government website as a preferred publication method through amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act), the *Water Act 2000* (the Water Act) and the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

While efforts continue to address shortfalls, AgForce retains concerns about the access to reliable internet connectivity in many regional, rural and remote areas of the state and so supports ensuring publication methods are effective in reaching all affected stakeholders. This includes hardcopy availability at government offices, or the use of hardcopy print publications where required. AgForce's interest is primarily in ensuring potentially affected water users are made aware of applications in a timely manner – such as direct notifications of potentially affected entitlements.

#### **Additional Amendments**

*Clause 13* amends s113 of the Water Act to provide clarity that the Chief Executive must consider the public interest when deciding all applications for water licences. This will also apply to an application for a dealing with a water licence that must be assessed as if it were a new water licence. Under current s130 of the Water Act if a proposed water licence dealing increases the take or rate of take, and/or changes the location of take or interference, and/or changes the interference with water, it must be assessed as if it were an application for a new water licence.

*Clause 17* replaces s130 requiring that particular applications for a license dealing be assessed as if the application were for a new licence. An application for a dealing that is a renewal or reinstatement, or that is seeking amendment to add, remove or change a condition of a water licence must be assessed in this way. This reinstates discretion for the Chief Executive to refuse, approve, or approve with conditions, an application. It was noted that some dealings may be captured by the non-discretionary process that may not be straight forward in nature and have wider impacts. *Clause 31* applies the same requirements to resource sector, associated water licenses. Public notification of the application would not be required if the chief executive is satisfied that publishing a notice would not be in the public interest.

AgForce understands that these amendments are to address a limited number of license applications where the simple approval and registration process introduced in 2016 did not allow appropriate consideration of license conditions that were to be removed or changed. The Department advises that simple dealings with no adverse or material impacts can still proceed through the simple process and without a requirement for public notification. This balance between impact management and efficiency is supported.

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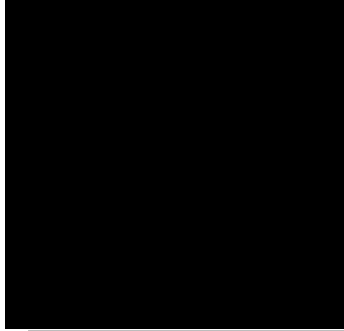
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**Conclusion**

In conclusion, AgForce again thanks the Committee for the opportunity to provide our views on the Bill and raise several matters for further consideration.

Please contact Dr Dale Miller, General Manager – Policy, [REDACTED] with any questions in relation to this submission.

Yours sincerely



Michael Guerin  
Chief Executive Officer