

DRAFT Public Health Act

Showing how Part 6 of the Act could look if the consultation version of the Bill (December 2013) was incorporated into the Act. The mark-ups reflect the proposed changes to that version of the Bill. The changes are proposed as a result of consultation comments and further consideration of Part 6. Note, in drafting the changes, the Office of Parliamentary Counsel may choose an alternative drafting approach to below (without losing the proposed intent).

Part 6 – Water

Division 1 – Interpretation

127A. Interpretation of Part 6

(1) In this Part –

"approval" means an approval, granted under section 129C, that is in force;

"water carrier" means a person who carries on the undertaking of a water carrier as referred to in section 136D(2);

"water quality auditor" means a person to whom an approval relates;

"water quality management plan" means a plan prepared for the purposes of complying with a requirement of a guideline referred to in section 129B(1).

(2) For the purposes of this Act, an Agency, public authority or person is only to be taken to supply water that is obtained from a private water source if the Agency, public authority or person –

(a) supplies the water for human consumption; or

(b) ought reasonably be expected to know that the water so supplied is intended by the person to whom it is supplied to be used for human consumption.

127B. When water quality auditor to be taken to have conflict of interest

(1) For the purposes of this Act, a water quality auditor has a conflict of interest in relation to another person if the auditor –

(a) has, directly or indirectly, a material personal interest in relation to the other person; or

(b) has, under the relevant guidelines, a conflict of interest in relation to the person.

(2) For the purposes of this Act, a water quality auditor does not have a conflict of interest in relation to another person by reason only that the auditor is paid, under a contract or arrangement with the person, to carry out a duty of the auditor under this Part or the guidelines.

(3) In this section –

"material personal interest in relation to the other person"

includes, in relation to a water quality auditor –

- (a) a pecuniary or non-pecuniary interest, of the auditor, in the other person; and
- (b) an interest, in the other person, of a relative of the auditor; and
- (c) the holding of another office by the auditor, where there arises, or may arise, a conflict between his or her duties in that office and his or her duties, in relation to the person, as an auditor.

Division 1A – Orders and notices

128. Notification of quality of water

(1) An Agency or a public authority other than a council that, in the course of carrying out its functions, becomes aware that the quality of water is, or is likely to become, a threat to public health, must give to the council in respect of the municipal area in which the water is situated, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the council.

Penalty: Fine not exceeding 100 penalty units.

(1A) A regulated entity managing or in control of water, on becoming aware that the quality of the water is, or is likely to become, a threat to public health, must give to the Director, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the Director.

Penalty: Fine not exceeding 100 penalty units.

(new) A person managing or in control of water, that becomes aware that the quality of water is, or is likely to become a threat to public health, must give to the council in respect of the municipal area in which the water is situated, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the council.

Penalty: Fine not exceeding 100 penalty units

(1B) A person, other than a water carrier, who supplies, intends to supply, or has supplied water that is obtained from a private water source and who becomes aware that the quality of the water is, or is likely to become, a threat to public health, must, in the manner and form specified in the guidelines, give to the council in respect of the municipal area in which the water is situated the information required by the guidelines to be given to the council.

Penalty: Fine not exceeding 100 penalty units.

(1C) A water carrier who supplies, intends to supply, or has supplied, water and who becomes aware that the quality of the water is, or is likely to become, a threat to public health, must, in the manner and form specified in the guidelines, give to the council in respect of the municipal area in which the water carrier is required under section 136E to be registered, the information required by the guidelines to be given to the council.

Penalty: Fine not exceeding 100 penalty units.

(1D) A council must give to the Director, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the Director if:

- (a) the council receives notice that the quality of water is, or is likely to become, a threat to public health and the council is satisfied of that; or
- (b) the council, in the course of carrying out its functions, becomes aware that the quality of water is, or is likely to become a threat to public health.

Penalty: Fine not exceeding 100 penalty units.

(2) If the Director receives a notification under this section, the Director is to notify any relevant public authority or regulated entity if the notification relates to water it is managing or in control of.

(3) If a council receives a report from an environmental health officer that the quality of water is, or is likely to become, a threat to public health, the council must take any necessary and practicable action in accordance with any relevant guidelines to prevent the threat by –

- (a) restricting or preventing the use of the water; or
- (b) restricting or preventing the use of any food product in which the water has been used; or
- (c) rendering the water safe; or
- (d) giving warnings and information to the public about the safe use of the water or risk of using the water.

(4) If a regulated entity receives a report from an environmental health officer or the Director, or itself identifies, that the quality of water the regulated entity is managing or is in control of is, or is likely to become, a threat to public health, the regulated entity must take any necessary and practicable action in accordance with any relevant guidelines to prevent the threat by –

- (a) restricting or preventing the use of water; or

- (b) rendering the water safe; or
- (c) giving warnings and information to the public about the safe use of water or the risk of using water.

I 29. Orders relating to water quality

(1) The Director or a council may make any one or more of the following orders if satisfied that the quality of water is, or is likely to become, a threat to public health:

- (a) an order closing the supply of the water;
- (b) an order restricting or preventing the use of the water;
- (c) an order restricting or preventing the use of any food products in which the water has been used;
- (d) an order restricting or preventing the taking, harvesting or public supply of fish or shellfish from the water or which have been in the water;
- (e) an order requiring the water to be brought to an approved standard;
- (f) an order requiring the relevant Agency, public authority, regulated entity or person to provide a temporary alternative supply of water.

(2) A person must not fail to comply with an order.

Penalty: Fine not exceeding 100 penalty units.

(3) The Director, an environmental health officer or a public authority may –

- (a) give warnings and information to the public about the safe use of the water; and
- (b) do anything necessary and practicable to render the water safe.

Division 1B – Water quality management

I 29A. Water to be managed so as not to be threat to public health

An Agency, public authority, regulated entity, or other person, that is managing or in control of water must manage the water in a manner that does not pose a threat to public health.

Penalty: Fine not exceeding 100 penalty units.

I 29B. Guidelines in relation to water quality management

- (1) The guidelines may –
- (a) require a person managing or in control of water that is intended for human consumption to prepare, in relation to the water, a plan (a "**water quality management plan**") to promote and maintain the quality of the water; and
 - (b) specify the matters that are to be included in such a plan; and
 - (c) require a person to review, and provide reports in respect of, the operation of a water quality management plan; and
 - (d) require a person to take steps to ensure that a water quality management plan is implemented; and
 - (e) specify that the Director may require a person to vary the provisions of a water quality management plan.
- (2) A water quality management plan may, if permitted by the guidelines, relate to one or more sources, or bodies, of water that is intended for human consumption.
- (3) The guidelines may require a person managing or in control of water that is intended for human consumption –
- (a) to prepare and implement plans to ensure that the requirements of this Act, or any water quality management plan, in relation to water are met; and
 - (b) to provide to the Director the reports, in relation to the management or control of the water or the implementation of a water quality management plan, that the Director requires.
- (4) The guidelines may –
- (a) require a person to ensure that a water quality auditor audits –
 - (i) a water quality management plan; and
 - (ii) the management and control of each of the sources of the water to which such a plan relates or the bodies of the water that contain the water to which such a plan relates; and
 - (b) specify the matters to which such an audit is to relate and that are to be contained in any reports in relation to such audits; and
 - (c) require a water quality auditor to provide to the Director reports in relation to audits conducted by the auditor.

129C. Approval of water quality auditors

- (1) A natural person may apply to the Director for approval as a water quality auditor.

- (2) An application is to be –
 - (a) in the approved form; and
 - (b) accompanied by the prescribed fee, if any.

- (3) The Director may refuse to consider an application by a person unless the person has provided to the Director the information the Director requires in order for the application to be determined.

- (4) The Director may, after considering an application by a person –
 - (a) grant an approval to the person in writing, either on conditions specified in the approval or without conditions; or
 - (b) refuse to grant an approval to a person.

- (5) The Director may only grant an approval to a person if the Director is satisfied the person is competent to carry out the duties of a water quality auditor, having regard to –
 - (a) the persons' technical skills and experience; and
 - (b) the approved competency criteria, if any.

- (6) Without limiting the conditions on which an approval may be granted to a person, an approval may be granted on condition that the person does not conduct an audit in relation to a person specified in the approval.

- (7) If the Director refuses to grant an approval to a person, the Director must give to the person notice of the refusal and of the reasons for the refusal.

- (8) Unless the approval is cancelled under section 129E, an approval remains in force for 12 months from the date on which it is granted.

- (9) An approval is not to be taken to be in force at any time during a period for which the approval is suspended.

129D. Variation of approval

(1) The Director, by notice in writing served on a person who holds an approval, may vary the conditions of the approval.

(2) The variation of the conditions of an approval takes effect –

(a) if an application for review of the decision to vary the conditions is not made under section 160B, 28 days after

the notice of the variation is given under subsection (1); or

(b) if an application for review of the decision to vary the conditions is made under section 160B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

129E. Suspension and cancellation of approval

(1) The Director, by notice served on a person who holds an approval, may suspend or cancel the approval, if the Director is satisfied that –

(a) the person has contravened any provision of this Act or the relevant guidelines; or

(b) the person has contravened a condition of the approval; or

(c) the person has not carried out an audit, or prepared a report, for the purposes of the guidelines –

(i) competently; or

(ii) in accordance with the provisions of the relevant guidelines; or

(d) the person had a conflict of interest in relation to another person at the time at which the auditor carried out, in relation to the other person, an audit or report for the purposes of the relevant guidelines; or

(e) the approval ought to be cancelled for any other reason.

(2) The cancellation of an approval under subsection (1) takes effect –

(a) if an application for review of the decision to cancel the approval is not made under section 160B, 28 days after the notice of the cancellation is served under subsection (1); or

(b) if an application for review of the decision to cancel the approval is made under section 160B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

(3) The Director, at the request of a person who holds an approval, may, by notice served on the person, cancel the approval.

I 29F. Duties of water quality auditors

(1) A water quality auditor must notify the Director as soon as practicable after becoming aware that the auditor has, or may have, a conflict of interest in relation to a person at the time of conducting an audit, or preparing a report, for the purposes of the relevant guidelines, in relation to the person.

(2) A water quality auditor must notify the Director as soon as practicable, but in any case within 24 hours, after becoming aware that water, in relation to which the auditor is conducting or has conducted an audit, is, or is likely to become, a threat to public health.

I 29G. List of auditors to be kept and made available

(1) The Director is to establish and maintain a list of water quality auditors and their contact details.

(2) The list of water quality auditors is to be made available to the public free of charge.

Division 2 – Monitoring water quality

I 30. Monitoring and review

(1) A council is to monitor the quality of water within its municipal area in accordance with any relevant guidelines.

(2) The Director, by notice in writing, may require any Agency, public authority, regulated entity or person to monitor in accordance with any relevant guidelines the quality of water under its management or control.

(3) Any Agency, public authority, regulated entity or person required to monitor the quality of water is to provide the Director with a report of its findings as the Director requires.

131. Samples

- (1) An authorised officer or a council may take a sample from any water.

- (2) The Director may require any Agency, public authority, regulated entity or person to take, in accordance with any relevant guidelines, a sample of any water under its management or control.

- (3) Any sample taken under this section is to be analysed and tested in accordance with the requirements of the Director.

- (4) A person who analyses or tests a sample taken under subsection (2) is to forward the result of the analysis or test to the Director as soon as practicable.

132. Health evaluation

- (1) The Director may require any Agency, public authority, regulated entity or person to carry out a health evaluation of any water under its management or control.

- (2) A health evaluation is to be carried out in an approved manner.

- (3) If any Agency, public authority, regulated entity or person fails to comply with this section, the Director may direct an authorised officer to carry out the health evaluation at the expense of the Agency, public authority, regulated entity or person in accordance with any relevant guidelines.

Division 3 – Registration of suppliers of water from private water sources

I 33. Registration

(1) An Agency, public authority or person must not –

(a) for commercial purposes, supply water that is obtained from a private water source; or

(b) supply to any place that is used for health, educational, imprisonment or detention purposes, water that is obtained from a private water source –

unless the Agency, authority or person is registered under this Division as a supplier of water from a private water source.

Penalty: Fine not exceeding 50 penalty units.

(2) A person who supplies water from a private water source and is not required to be registered under subsection (1) may apply to be registered under this Division.

(3) For the purposes of subsection (1)(a), a person does not supply water for commercial purposes if the person supplies water from a private water source as part of a private rental agreement relating to domestic premises.

I 34. Application for registration

(1) A person may apply to the relevant council to be registered as a supplier of water from a private water source.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council; and

(c) accompanied by the applicable council fee.

(3) For the purposes of this section, the relevant council in relation to a person applying to be registered as a supplier of water from a private water source is the council in respect of the municipal area in which the water is situated.

I 35. Grant or refusal of registration

(1) A council may –

(a) grant an application for registration as a supplier of water from a private water source without conditions or on the conditions the council thinks fit; or

(b) refuse to grant the application.

(2) In determining an application, the council is to have regard to public health, any relevant guidelines, whether the applicant is likely to comply with the Act and any relevant guidelines, and, if the applicant has previously been registered as a supplier of water from a private water source, the extent to which the applicant has complied with the Act, any relevant guidelines and any conditions of registration.

(3) The council, by notice in writing served on the applicant, must notify the applicant of –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

136. Issue of certificate of registration

If a council grants an application under section 135 or section 136AA, it is to –

- (a) issue in an approved form a certificate of registration as a supplier of water from a private water source; and
- (b) endorse the certificate with the conditions, if any, on which the application was granted; and
- (c) specify on the certificate –
 - (i) the name and address of the person to whom it is issued; and
 - (ii) the water to which it relates; and
 - (iii) the date on which the registration is granted and the period for which, subject to this Act, the registration remains in force.

136AA. Renewal of registration

(1) A person may apply to the relevant council to renew the registration of the person as a supplier of water from a private water source.

(2) An application is to be –

- (a) in the approved form; and
- (b) lodged at the public office of the council; and
- (c) accompanied by the applicable council fee.

(3) A council may –

- (a) grant an application for renewal of registration as a supplier of water from a private water source and register the applicant without conditions or on the conditions the council thinks fit; or

(b) refuse to grant an application for renewal of registration as a supplier of water from a private water source.

(4) In determining an application, a council is to have regard to –

(a) public health and any relevant guidelines; and

(b) whether the applicant is likely to comply with the Act and any relevant guidelines; and

(c) the extent to which the person has complied with the Act, any relevant guidelines, and the conditions of the person's registration as a supplier of water from a private water source.

(5) The council, by notice in writing served on an applicant for renewal of registration, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

136AB. Duration of registration

(1) The registration of a person as a supplier of water from a private water source remains in force for 12 months from the date on which the application for registration, or for renewal of registration, is granted.

(2) However, if an application to renew the registration of a person as supplier of water from a private water source is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.

136A. Use or supply of water

A person required to be registered under section 133(1) as a supplier of water from a private water source must ensure that the water is supplied –

(a) in accordance with –

(i) any condition of the registration; and

(ii) any relevant guidelines; and

(b) in a manner that does not pose a threat to public health.

Penalty: Fine not exceeding 50 penalty units.

136BA. Supplier of water from private water source must give notice to public if water unsafe

A person required to be registered under section 133(1) as a supplier of water from a private water source must, if the person becomes aware that the quality of the water that the person has supplied or is intending to supply is, or is likely to become, a threat to public health, take any necessary and practicable action in accordance with any relevant guidelines to prevent the threat by –

- (a) restricting or preventing the use of the water; or
- (c) rendering the water safe; or
- (d) giving warnings and information to the public about the safe use of the water or risk of using the water.

136B. Variation of registration

(1) A council, on its own volition or on application by a person who is registered as a supplier of water from a private water source, may vary the registration by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying the registration, the council is to consider the protection of public health and any relevant guidelines.

(3) The council, by notice in writing served on the holder of the certificate of registration, is to notify any variation of the registration.

(4) The variation of the registration takes effect –

(a) if an application for a review of the decision to vary the registration is not made under , 28 days after service of the notice; or

(b) if an application for a review of the decision to vary the registration is made under and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

136C. Cancellation of registration

(1) A council may cancel the registration of a person as a supplier of water from a private water source if –

(a) a condition of the registration, or a provision of the guidelines that applies to a supplier of water from a private water source, has not been complied with; or

(b) the water source poses, or is likely to pose, a threat to public health.

(2) The council, by notice in writing served on the holder of the certificate of registration, is to notify the cancellation of the registration.

(3) The cancellation of the registration under subsection (1)(a) takes effect –

(a) if an application for a review of the decision to cancel the registration is not made under , 28 days after service of the notice; or

(b) if an application for a review of the decision to cancel the registration is made under and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

Division 4 – Registration of water carriers

136D. Water carriers

(1) In this section –

"water tank" means a receptacle that is designed, or used, for the carriage of liquids in bulk.

(2) For the purposes of this Act, a person carries on the undertaking of a water carrier if the person carries on an undertaking that –

(a) supplies, whether or not for fee or reward , water that is intended for human consumption; and

(b) supplies such water by transporting it in a water tank that is situated in or on, or is attached to, a vehicle.

(3) A person does not carry on the undertaking of a water carrier by reason only of being the driver of a vehicle that carries water.

136E. Water carriers required to be registered

(1) A person must not carry on the undertaking of a water carrier unless the person is registered with the council in respect of the municipal area in which the majority of vehicles, in which water is to be supplied in the course of carrying out the undertaking, will be stored.

Penalty: Fine not exceeding 50 penalty units.

(2) A person who is required under this section to be registered as a water carrier –

(a) must comply with the conditions, if any, of the registration and with any relevant guidelines; and

(b) must supply water, as part of the undertaking of being a water carrier, in a manner that does not pose a threat to public health.

Penalty: Fine not exceeding 50 penalty units.

I 36F. Application for registration

- (1) A person may apply to a council to be registered as a water carrier.

- (2) An application is to be –
 - (a) in the approved form; and
 - (b) lodged at the public office of the council; and
 - (c) accompanied by the applicable council fee.

I 36G. Grant or refusal of registration

- (1) A council may –
 - (a) grant an application for registration as a water carrier and register the applicant without conditions or on the conditions the council thinks fit; or
 - (b) refuse to grant an application for registration as a water carrier.

- (2) In determining an application, a council is to have regard to public health, any relevant guidelines, whether the applicant is likely to comply with the Act and any guidelines, and, if the applicant has previously been registered as a supplier of water from a private water source, the extent to which the applicant has complied with the Act, any relevant guidelines and any conditions of registration.

- (3) The council, by notice in writing served on an applicant for registration, must notify the applicant of –
 - (a) the granting of the application; or
 - (b) the refusal to grant the application.

I 36H. Issue of certificate of registration

- If a council grants an application under section I 36F or section I 36I it is to –
- (a) issue in an approved form a certificate of registration as a water carrier; and
 - (b) endorse the certificate with the conditions, if any, on which the application was granted; and
 - (c) specify on the certificate –
 - (i) the name and address of the person to whom it is issued; and

- (ii) the body of water to which it relates; and
- (iii) the date on which the registration is granted and the period for which, subject to this Act, the registration remains in force.

I 36I. Renewal of registration

(1) A person may apply to the relevant council to renew the registration of the person as a water carrier.

(2) An application is to be –

- (a) in the approved form; and
- (b) lodged at the public office of the council; and
- (c) accompanied by the applicable council fee.

(3) A council may –

- (a) grant an application for renewal of registration as a water carrier and register the applicant without conditions or on the conditions the council thinks fit; or
- (b) refuse to grant an application for renewal of registration as a water carrier.

(4) In determining an application, a council is to have regard to –

- (a) public health and any relevant guidelines; and
- (b) whether the applicant is likely to comply with the Act and any relevant guidelines; and
- (c) the extent to which the person has complied with the Act, any relevant guidelines, and the conditions of the person's registration as a water carrier.

(5) The council, by notice in writing served on an applicant for renewal of registration, must notify –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

I 36J. Duration of registration

(1) The registration of a person as a water carrier remains in force for the period of 12 months from the date on which the application for registration, or for renewal of registration, is granted.

(2) However, if an application to renew the registration of a person as a water carrier is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.

136K. Variation of registration

(1) A council, on its own volition or on application by a person who is registered as a water carrier, may vary the registration of the person as a water carrier by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying the registration, the council is to consider the protection of public health and any relevant guidelines.

(3) The council, by notice served on the holder of the certificate of registration as a water carrier, is to notify any variation of the registration.

(4) The variation of the registration takes effect –

(a) if an application for review of the decision to vary the registration is not made under section 163B – 28 days after service of the notice; or

(b) if an application for review of the decision to vary the registration is made under section 163B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

136L. Cancellation of registration

(1) A council may cancel the registration of a person as a water carrier if –

(a) a condition of the registration, or a provision of the guidelines that applies to a water carrier, has not been complied with; or

(b) the water source, or the supply of water by the water carrier, poses, or is likely to pose, a threat to public health.

(2) The council, by notice in writing served on the holder of a certificate of registration as a water carrier, is to notify the cancellation of the registration.

- (3) The cancellation of the registration takes effect –
- (a) if an application for review of the decision to cancel the registration is not made under section 163B – 28 days after service of the notice; or
 - (b) if an application for review of the decision to cancel the registration is made under section 163B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

136M. Water carrier must give notice to public if water unsafe

A person required to be registered under section 136E as a water carrier must, if the person becomes aware that the quality of the water is, or is likely to become, a threat to public health, take any necessary and practicable action in accordance with any relevant guidelines to prevent the threat by –

- (a) restricting or preventing the use of the water; or
- (c) rendering the water safe; or
- (d) giving warnings and information to the public about the safe use of the water or risk of using the water.