WATER BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The Water Bill 2000 (the Bill) has three main objectives. These are to establish a:

- Sustainable management framework for the planning allocation and use of water and other resources;
- Regulatory framework for service providers covering asset management, customer standards, and dam safety; and
- Governance regime for statutory authorities that provide water services.

In achieving these objectives the Bill will replace a number of existing Acts including the *Water Resources Act 1989* (the Act) and the *Gladstone Area Water Board Act 1984*. The Bill will also consequentially amend the *Sewerage and Water Supply Act 1949* and the *Petroleum Act 1923* and a number of other Acts. In addition, the Bill provides for transitional arrangements in relation to the proposed corporatisation of State Water Projects.[1]

Why the Proposed Legislation is Necessary

Much of the legislation regulating the water industry in Queensland predates the significant changes and institutional reform now occurring. The main piece of legislation regulating the industry is the Act. It is the primary piece of legislation under which water is allocated, and irrigation schemes have been developed and are operated. The Act has a number of deficiencies including:

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1 State Water Projects is a commercialised business unit within the Department of Natural resources and was nominated as a candidate government owned corporation under the *Government Owned Corporations Amendment Regulation (No.1) 2000* on 26 May 2000.

- there is no power to explicitly consider water for the environment;
- there is an incremental licensing system which has the potential to threaten the security of existing entitlement holders;
- water is tied to land under current licensing arrangements and this can impose some restrictions on agricultural expansion in that new land must often be purchased to acquire more water;
- water allocations are tied to licences for works. As part of the implementation of the *Integrated Planning Act 1997* there is a need to separate the water allocation decision from the development approval associated with the construction of works;
- there is no capacity under the current legislation for the sharing of overland flow. This is a significant issue in some parts of the state where the taking of overland flow before it enters the watercourse is affecting the amount of water available to the environment and the water available to existing entitlement holders;
- water resource allocations can be made under various Acts. For example, under the *Petroleum Act 1923*, a lessee has certain entitlements to take water outside the provisions of the Act.
- the chief executive of the Department of Natural Resources (the Department) has varying and potentially conflicting roles as resource manager, infrastructure developer, and water service provider.

Urban water supply is regulated (in conjunction with certain powers in the *Local Government Act 1993*) through the *Sewerage and Water Supply Act 1949* and Standard Laws and the *Metropolitan Water Supply and Sewerage Act 1909* (in respect to the Brisbane City Council's operations). These Acts primarily relate to the provision of water supply, sewerage and stormwater drainage, in urban and town areas. The Bill incorporates relevant provisions from these Acts, with a view to streamlining legislation for the water industry, and amends these Acts to make them consistent with the *Integrated Planning Act 1997*.

As service providers begin to commercialise their operations, it is possible that some trade offs may occur with respect to customer service standards, and the way in which the assets are managed. It is necessary therefore to ensure that there is a regulatory regime in place to ensure that standards of service and long term asset management are not compromised

in the pursuit of commercial objectives.

Currently, the operations of statutory authorities that supply water are regulated through Acts such as the *Gladstone Area Water Board Act 1984* and part 10 of the Act under which rural water and drainage boards are constituted. In addition, the *South East Queensland Water Board (Reform Facilitation) Act 1999* carried into the Act a number of provisions relating to the operation of the newly established South East Queensland Water Corporation. The Acts under which boards are currently constituted include a mix of resource management and governance arrangements. The proposed Bill seeks to separate governance issues from resource regulation by:

- bringing all statutory authorities that provide water under a single governance structure set out in chapter 4 of the Bill; and
- applying the resource allocation and regulatory arrangements in the Bill to all service providers equally, regardless of ownership.

Means of Achieving the Objectives

The objectives of the legislation are achieved through chapters 2, 3 and 4 in the Bill.

Chapter 2 of the Bill deals with the resource regulation issues. It provides for a statutory based water resource planning process to assess, at a strategic level, the water required to meet environmental needs and water available for consumptive use. It then provides for the development of operational plans (known as resource operations plans) to implement the objectives established under each water resource plan. As an outcome of these operational plans, water licences that exist under the Act may be converted to "water allocations" that are separate from land and tradeable within rules set out in the plan. The Bill also provides for the creation of a register to record water allocations, and any dealings for, and interests in water allocations.

Chapter 2 also provides for the regulation of water use to promote sustainable use of water with regard to the effects of water use on land and water resources. The chapter provides for water use plans that set standards for water use in a district. It also provides for land and water management plans for individual properties. The intention is that where possible water

use should be controlled through the district standards established under water use plans. The current requirement that a land and water management plan be approved where water is newly used for irrigation in irrigation areas is continued. However, the intention is to increasingly rely on water use plans to target the lands within the water use plan area that are at high risk of degradation, and require land and water management plans in those parts only, for existing as well as new irrigation.

Chapter 2 also continues some provisions that existed in the Act relating to catchment management, protecting the physical integrity of watercourses and quarry materials. These provisions do not represent a change from the current policy in the Act and will be the subject of subsequent review. However, for the sake of ensuring all matters dealing with water resource management are in the one primary piece of legislation, these have been incorporated into chapter 2 of the Bill.

Chapter 3 deals with asset management and customer service standards for water service providers. It establishes a registration system for all service providers, which brings with it a requirement that the providers have in place strategic asset management plans and customer service standards that are regularly reported upon. It also provides a means for ensuring the safety of hazardous dams through a requirement that failure impact assessments are undertaken as part of development approvals. Chapter 3 also makes amendments to those parts of the *Sewerage and Water Supply Act 1949* that deal with the provision of water supply and sewerage services in urban areas. Other parts of that Act and standard laws that are concerned with "on site" plumbing and drainage issues will remain, and continue to be administered by the Department of Communications, Local Government, Information, Planning and Sport.

Chapter 4 of the Bill deals with governance arrangements for statutory authorities that provide water services, including rural water boards currently constituted under part 10 of the Act, and the Gladstone Water Board that is constituted under its own Act.

Estimated cost of implementation for Government

Implementation of the Bill will require a mix of reprioritisation of existing functions and activities, and new initiatives.

An additional $2M funding has been secured for implementation activities for the first year following commencement of the Bill. These

funds are required for:

- development of resource operations plans in those areas where water resource plans have been finalised, and associated monitoring activities;
- staff training and information sessions for stakeholders will also be a key element of administrative costs in the first year; and
- support for the Local Government Association of Queensland in assisting local governments to comply with matters dealt with in chapters 2 and 3 of the Bill.

A review of the financial implications of the Bill will take place within 12 months of commencement. Other implementation issues to be considered include:

- establishment of the water allocation register contemplated under chapter 2 of the Bill;
- interim resource operations licences for relevant local governments and water boards; and
- matters relating to compliance and enforcement, and review and appeals (including the establishment of referral panels where necessary)

Consistency with Fundamental Legislative Principles

Aspects of the Bill that raise possible breaches of fundamental legislative principles are outlined below.

CHAPTER 2

Qualification of entitlements through administrative notice

Under Clause 42 the Minister may issue a moratorium notice to direct that applications for taking water will not be accepted or dealt with until a water resource plan is approved or the notice withdrawn. This is necessary to allow a stock-take to be taken on water in the plan area. It is justified because:

- there is a provision for a review if the notice extends beyond one year;
- the clause limits matters that can be affected by the notice;

- it enables a plan to take account of the rights of all existing entitlements holders; and
- the decision to publish would be reviewable under the *Judicial Review Act 1991*. Moratoriums will protect the environment while the planning process is carried out.

Appeals against conversions of water licences to water allocations

Chapter 2, part 3 of the Bill provides for the preparation of water resource plans. These water resource plans are subordinate legislation. The water resource plans are implemented through resource operations plans made under chapter 2, part 4. The Bill provides a 2 stage process for conversion of existing water licences to water allocations:

- Water resource plan: this is the strategic plan for an area. They are essentially the water allocation and management plans that are currently underway throughout the state. Under the Bill these plans are subordinate legislation.
- Resource operations plan: this is the implementation plan that gives effect to the water resource plan. The Bill provides that these plans must include details of conversions of people's existing water licences to water allocations that are separate to land and are tradeable. Details of the proposed conversions are made publicly available for comment before finalisation of the resource operations plan. On the day the plan is approved by the Governor in Council, water allocations are issued to licencees in the plan area. The Exposure Draft Bill did not include any appeal against conversions of the water licence to a water allocation. The reason for this is that the water resource plan, which is subordinate legalisation, may specify a total volume of water available in an area, with resource operations plan essentially concerned with how to share the amount available. To allow an appeal against the proposed conversions would mean that every user in the resource operations plan area may potentially be a party to an appeal.

To deal with this issue, the Bill provides that:

- the water resource plan (that is, the strategic document) may include criteria for adjusting existing water entitlements to achieve the plan outcomes;
- the notification of the preparation of the resource operations plan,

and the draft resource operations plan, is provided for all licencees affected by the plan to comment;

- the chief executive may constitute a referral panel to hear submissions on the draft plan and make recommendations to the chief executive on the proposed conversions; and
- appeals can be made to the Land Court (within the constraints of the water resource plan) under allocations consistent with the resource operations plan.

CHAPTER 3

Flood mitigation—storages and approved manuals

Clause 500 provides that an owner of a flood mitigation dam shall not be civilly liable for actions taken or omissions made by the owner honestly and without negligence in operating a dam in accordance with approved procedures. This carries on a provision that existed under the *South East Queensland Water Board Act 1979*. Essentially the provision requires that the operator of the approved flood management storage must have and comply with Ministerial approved manuals as to how the storage is operated. Where releases from the storage may result in some damage downstream (for example, damage to a bridge) the operator is not liable.

The provisions for the storage as nominated in the schedule to the Bill are not matters that the service providers undertake as part of their normal commercial operations. Rather, they are things the operator undertakes to fulfil a broader public purpose, for example, control releases and undertake certain reporting and coordinating activities with local governments about release from the storage.

The Bill provides that if the service provider operates the storage according to the approved manual, and acts honestly and without negligence, the service provider will not be liable. Liability will attach to the State instead.

Exemption from small providers

Clauses 434 provides that a small service provider may apply to the regulator for an exemption from complying with chapter 3, part 3, divisions 1, 2 or 3, which relate to strategic asset management plans, audit reports,

customer service standards and annual reports. These provisions are justified on the basis that:

(a) the discretion to exempt is limited to cases where the regulator is satisfied it is not reasonably practicable for the service provider to comply because costs outweigh benefits to customers;

(b) the exemption is gazetted;

(c) the power of exemption allows the tailoring of requirements to ensure the practical application of regulatory requirements; and

(d) without this provision regulatory obligations may be excessive for some providers.

A similar power exists in section 153 of the *Transport Operations (Road Use Management) Act 1995.*

Power for authorised persons to enter places for restricted purposes

Clauses 381 and 384 allow an authorised employee or contractor of a service provider to enter places to disconnect unauthorised connections to the provider's infrastructure and for other restricted purposes, for example, maintaining and protecting their infrastructure. This is justified on the basis that:

(a) the right to enter is necessary for service providers to carry on their business, and ensure lawful use of water;

(b) prior notice is given to the person making the unauthorised connection to show cause why the disconnection should not happen;

(c) a person in control of the place at the time of entry, is also given notice.

(d) the right is only a right to enter to disconnect the connection, and does not include the right to enter a dwelling house; and

(e) the right is modelled on the right electricity providers currently have.

Clause 381 allows a service provider to enter land to undertake the rectification of equipment not rectified by the customer on receipt of a notice.

Clause 384 enables registered service providers to enter onto private land for the purpose of maintaining and protecting their infrastructure. This power is only exercisable after the giving of 14 days notice, except where urgent action is needed, when notice is given at the time of entry or if prior consent is obtained. These powers are essential for service providers to be able to carry out their business. The right to enter relates only to the service provider's infrastructure and does not apply to entry of a dwelling house.

Delegation of regulator's powers

Clause 520 provides for the making of a regulation that a power of the chief executive as regulator under the Bill may be delegated or not delegated. The power to delegate in the regulation is limited to a particular power and particular person. As it would not be possible for the chief executive to exercise all powers personally, it is appropriate that provision be made for delegation.

CHAPTER 4

Removal of a protection against self-incrimination

Clause 617(13) removes the right of a director of a water authority to be excused from answering a question put in an examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty. Under subclause (15) the answer is not admissible in evidence in criminal proceedings or proceedings for the imposition of a penalty, other than a proceeding for an offence against that clause or for falsity of the answer.

This is justified on the basis that:

(a) the examination is conducted by a judge of the Supreme or District Court;

(b) subclause (14) prevents the answer being used in most criminal proceedings;

(c) the procedure is limited to where the Attorney-General considers a person may have been guilty of fraud, negligence etc or the person may be capable of giving information in relation to affairs; and

(d) this is a necessary tool to elicit the facts on which further

investigations may proceed.

False or misleading information or documents

Clause 619(2)(b) requires that an officer of a water authority not omit from a statement concerning the authority's affairs made to another officer or the Minister anything without which the statement is to the officer's knowledge misleading in a material particular. It is necessary and appropriate that an agent of a water authority disclose all relevant information in such circumstances, since otherwise the authority or the Minister responsible for the authority may be denied information necessary to manage the affairs of the authority. Further the information is required to be supplied only to the authority's officer or the Minister, and not third parties.

CHAPTER 5

Investigation matters

Clause 746, 747 and 748 gives authorised officers a power to enter land to monitor compliance with the Bill, to collect information (relating to water, soil or monitoring equipment) and to ascertain or confirm the unauthorised taking of, interfering with or use of water or other resources (eg quarry materials) and unauthorised drilling of water bores.

This is justified on the basis that:

(a) the power to enter is limited to places that are not dwelling houses;

(b) 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;

(c) 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.

(d) 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; and

(e) 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).

The power in clause 748 relating to unauthorised drilling, taking interference or use is able to be exercised at any time and without warrant, consent or prior notice, as in practice such activities, particularly in respect of water, often occur in remote areas and at night. Often the occupier of the property may not be easily locatable, and any delay, prior warning of entry, or need to locate the owner would cause the loss of resources and evidence. For example degradation of vegetation or excavation in a riverine area may have serious ramifications for water quality and management in the area, which may not be rectified by regrowth for 20-40 years.

Similar powers are to be found in chapter 4, part 2 of the *Environmental Protection Act 1994*.

Consultation

The consultation process undertaken in developing the proposal for the Water Bill 2000, began with the preparation of Draft Policy Papers in December 1998.

At the commencement of this process, a Water Industry Peak Consultation Committee (WIPCC) was established. The WIPCC members include representatives from the Queensland Farmers Federation, Local Government Association of Queensland, Queensland Irrigators Council, Environmental Defenders Office, Queensland Conservation Council, Australian Conservation Foundation, the Brisbane City Council, CANEGROWERS, AgForce, Queensland Fruit and Vegetable Growers and Cotton Australia.

Separate from the formal processes through the WIPCC, the Water Reform Unit has undertaken consultation with a number of key groups including the Infrastructure Association of Queensland, the Australian Bankers Association, the Queensland Mining Council and major water service providers such as the Urban Water Boards (Gladstone Area Water Board and Mt Isa Water Board) and the South East Queensland Water

Corporation. In addition there has been regular consultation with the SUDAW consortium, which is proposing to build a major storage on the Dawson River in Central Queensland.

Within government, consultation occurred through a Directors'-General Steering Committee, and numerous other meetings with Departments that had an interest.

Since December 1998, a number of consultative documents and information and feedback sessions have been provided to industry stakeholders on various components of the Bill.

In general, the purpose of the consultation process was to seek general policy direction through the Draft Policy Paper process, but to concentrate more on detailed feedback on substantial provisions contained in the Exposure Draft Bills. It was seen as critical that the consultation process focus on the Draft Bill so that stakeholders could focus on detailed provisions. In addition to the formal policy documents and Draft Bills, there were also information brochures prepared on specific elements. In addition, at the request of the Local Government Association of Queensland, a detailed summary document on the implications on all the Bills for local government operations was prepared and circulated in November 1999. This was provided to all local governments throughout the State and a series of meetings was held at the time of its release to inform local government views on the three bills that were coordinated through the Local Government Association of Queensland at the end of January 2000. Because of the local government elections in March 2000, an extension of time for feedback on the Exposure Draft Bills was given to the local governments until the end of May 2000.

Consultation on specific parts on the Bill was undertaken as follows:

Exposure Draft Water (Allocation and Management) Bill—December 1999

This Draft Bill forms the basis of chapter 2 in the Water Bill. Consultation was undertaken on the proposed new water allocation and management framework through the release of the Draft Policy Paper in December 1998 and subsequently through the release of a Draft Bill in December 1999. Approximately 4000 copies of the Draft Bill were distributed to stakeholders during the consultation process and a number of information sessions were held across the State in relation to the Draft Bill

during February and March. This included 18 public meetings in regional centres throughout the State, half-day meetings with regional organisations of councils and local governments, and day workshops with regional staff on implementation matters associated with the Bill. Meetings were also held with other key groups (industrial, financial, mining and petroleum industry).

Exposure Draft Water and Sewerage (Infrastructure and Service) Bill—March 2000

This Draft Bill forms the basis of chapter 3 in the Water Bill. Consultation was undertaken on the proposed regulatory framework through the release of a Draft Policy Paper in April 1999, and subsequently through the release of the Draft Bill in March 2000 which set out the legislative framework for service provision in the Queensland water industry.

Approximately 1000 copies of the Draft Bill were circulated to stakeholders during the consultation process, and a number of information sessions provided across the state during March and April 2000. The consultation process on this Bill was focused on major service providers, especially local governments.

Water (Statutory Authorities) Bill—March 2000

This Draft Bill forms the basis of chapter 4 in the Water Bill. A Draft Policy Paper on proposed Government's arrangements for statutory water authorities was released in April 1999 and information sessions were held with rural water boards throughout the State. The provisions in this part apply to existing rural water and drainage boards constituted under the Act. Sessions were held with members of all boards throughout the state and feedback was incorporated into a Draft Bill which was the subject of further consultation during March and April. Approximately 1000 copies of the Draft Bill was circulated to stakeholders during the consultation process.

Arrangements in Relation to the Gladstone Area Water Board

Chapter 4 of the Draft Bill also covers proposed arrangements for the Gladstone Area Water Board (formerly constituted under the *Gladstone and Area Water Board Act 1984*). There has been a consultation process

between the Department, Treasury, the Board and the effected local government and industrial customers of the board about institutional reform that has been ongoing for a period of about 2 years. The Board's establishment Act will be repealed and will come under the governance arrangements contemplated in part 4 of the Water Bill.

CHAPTER 1—PRELIMINARY

Clause 1 provides the short title of the Bill as the *Water Act 2000*.

Clause 2 provides for when this Bill commences.

Subclause (1) provides for retrospective commencement of amendments 18 and 19 of the *Integrated Planning Act 1997* found in schedule 2 (amendments about planning matters). These amendments provide for the effect of the expiry of Commonwealth legislation on 30 June 2000. The provisions are made retrospective to that date.

Subclause (2) sets out the provisions of the Act that are to commence on assent. They include the preliminary provisions in chapter 1, water planning provisions in chapter 2 but only in relation to purpose provisions, water rights, information collection and water resource plans, investigation, enforcement and offences in chapter 5, except for specific offences under chapters 2 and 3 as the relevant substantive provisions will not have commenced, reviews and appeals under chapter 6, legal proceedings, general provisions about watercourse declarations, records to be kept by the registrar, public inspection of documents, protecting officials, delegations and regulation making powers. Certain transitional provisions will also be commenced on assent including most transitional provisions for allocation and sustainable management and provisions that set out how certain licensing decisions are to be made under the *Water Resources Act 1989*, from the date of assent to commencement of the new licensing provisions in chapter 2, part 6. Consequential amendments to some other Acts, including the *Water Resources Act 1989*, will also commence on assent.

Subclause (3) provides that other provisions of this Bill are to commence on a date to be fixed by proclamation.

Clause 3 provides for word definitions used in the Bill, which are shown

in the Dictionary in schedule 4.

Clause 4 provides that all persons are bound by the Bill, including the State, and to the extent of State legislative power, the Commonwealth and other States. However, this provision does not apply to the operation of the *State Development and Public Works Organisation Act 1971* and the powers of the coordinator-general under that Act. The coordinator-general may raise or lower the level of the water in any body of water and take, impound, divert or use water in any body of water for the purpose of or in connection with undertaking authorised works. "Authorised works" are works undertaken by the coordinator-general such as the construction of a dam, that are approved by order in council upon recommendation of the Governor in Council. Consequential amendments to the *State Development and Public Works Organisation Act 1971* are in schedule 3 of the Bill. The consequential amendments place certain limits on the exercise of the coordinator-general's power, for example, if a moratorium has been notified the coordinator-general is bound by the moratorium. Also, consequential amendments require the coordinator-general to consider certain criteria when exercising powers under the *State Development and Public Works Organization Act 1971*.

Clauses 5—9 not used.[2]

CHAPTER 2—ALLOCATION AND MANAGEMENT

PART 1—PRELIMINARY

Clause 10(1) sets out the purpose of chapter 2. The purpose is to promote sustainable management of water and other resources. Other resources are defined as quarry materials and riverine vegetation. Sustainable management recognises the needs of natural ecosystems as well

[2] Because of the size and complexity of the Act some clause numbers have been deliberately left blank at the end of each Part. If the Act is amended in the future this will assist in making the amendments without the necessary of renumbering the whole Act.

as the need to improve planning confidence of water developers and users, now and in the future.

Subclause (2) defines sustainable management. To advance sustainable management each of the requirements of subclauses (2)(a) to (2)(c) must be achieved to the greatest extent possible, recognising that in some cases there will need to be a balancing of competing interests. Subclauses (2)(a) to (2)(c) are equally important to sustainable management of water and other resources.

Subclause (3) in promoting efficient use of water, the systems for the planning, allocation and use of water should address the issues raised in subclauses (3)(a) to (3)(d).

Clause 11 provides that the principles of ecologically sustainable development set out in subclauses (a) to (d) are the same as the principles of ecologically sustainable development in section 3A(a) to (d) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth.).* The principles in subclauses (e) and (f) are based on guiding principles contained in Australia's National Strategy for Ecologically Sustainable Development, December 1992.

Clause 12 provides that every function or power exercised by an entity including the Minister, chief executive, a company and an unincorporated organisation under the chapter about allocation and management must be performed or exercised in a way that advances sustainable management of water, quarry materials and riverine vegetation.

Clauses 13—18 not used. See footnote at end of chapter 1.

PART 2—WATER RIGHTS

Clause 19 vests the 'use, flow and control' of all water in Queensland in the State. Water is defined to include water in a watercourse, lake or spring or underground water or overland flow water or water from any of those sources collected in a dam. The definition of dam expressly excludes rainwater tanks. This means that the State is empowered with the responsibility for determining how water that flows, and is collected, in Queensland is either extracted, or stored or diverted or interfered with, or

allowed to flow. If water is taken, the State's power also extends to managing how water may be used in Queensland. The 'use, flow and control' of water in Queensland was previously vested in the Crown under section 3 of the Act.

Unlike the provision in Section 3 of the Act, it is not considered necessary to say "subject to water entitlements made under the Bill". Once an entitlement is granted, for example, to pump water into an off stream storage, it is not intended that the vesting provisions require a second authority to access that stored water.

Clause 20(1) provides for the exceptions to the general rule that for water that is vested in the State, the State issues entitlements to take or interfere with that water following a prescribed process. This makes it clear that a person does not acquire, except under the authority of the Bill, an entitlement to water.

Subclause (2) provides that a water entitlement is not required for the taking of water in an emergency situation provided the taking is for a public purpose or for fighting a fire that is destroying or threatening to destroy a dwelling house. It is not intended that this clause apply to personal emergencies such as crop failure due to drought conditions however, it would cover bushfires as it is intended that a bushfire would constitute a public purpose.

Subclause (3) establishes a statutory authority for the owners of land abutting a watercourse, lake or spring to take water for watering stock or for domestic purposes from certain water sources. The authority cannot be diminished by a moratorium notice or water resource plan, although the taking of water under this authority can be limited by a regulation under subclause 7. Domestic purposes are defined to include irrigating a garden, not exceeding .25 of a hectare provided the garden is for domestic use and not sale, barter or exchange of goods produced in the garden. Watering stock under this clause means watering stock of a number that in the ordinary course of grazing would normally be depastured on the land. "Depasture" is defined in the Macquarie dictionary as, "to consume the produce (of land) as pasture". The statutory authority to take water for stock watering relates to the taking of water for stock watering at the material time. It does not include the taking of large quantities of water using high capacity pumps for storage and use at a later time when water might not be otherwise available. Such activity is to be subject to the grant of a water entitlement.

Subclause (4) provides a statutory authority for all landowners to take overland flow water that flows over the land or that has been collected in a dam for stock and domestic purposes. The authority cannot be diminished by a moratorium or a water resource plan. Domestic purposes are defined to include irrigating a garden, not exceeding .25 of a hectare provided the garden is for domestic use and not sale, barter or exchange of goods produced in the garden. Watering stock under this clause means watering stock of a number that in the ordinary course of grazing would normally be depastured on the land. "Depasture" is defined in the Macquarie dictionary as, "to consume the produce (of land) as pasture". The statutory authority to take water for stock watering relates to the taking of water for stock watering at the material time. It does not include the taking of large quantities of water using high capacity pumps for storage and use at a later time when water might not be otherwise available. Such activity is to be subject to the grant of a water entitlement.

Subclause (5) authorises any person to take water for the temporary purposes of camping and watering stock while the stock are in the process of being moved from one permanent location to another.

Subclause (6) establishes a statutory authority to take or interfere with overland flow water and subartesian water for any purpose unless a moratorium or water resource plan limits or in some other way restricts the water that may be taken or interfered with. This means that although overland flow and subartesian water vest in the State a person may take or interfere with that water unless a moratorium or water resource plan provides otherwise. For example, if a water resource plan provided that a person needed a water licence to take or interfere with overland flow water for irrigation purposes, then although a water licence would be needed for such activity from the time the plan was approved, other activity such as the construction of contour banks to prevent soil erosion could continue without the need for a water licence.

Subclause (7) provides that a regulation may declare that if specified land abutting a watercourse, lake or spring is subdivided after the making of the regulation, the owners of such subdivided land will not have a statutory authorisation to take water for domestic purposes, although they would have an authorisation to take water for stock watering as provided in subclause (3). The provision is necessary to enable prevention of the proliferation of irrigated gardens on the fringe of urban areas. Such development can have significant impacts on the availability of water for the

environment and other water users.

Subclause (8) contains a definition of land for the purposes of clause 20(3). It is intended that the statutory authorisation to take water from a watercourse, lake or spring by an owner of land where the land adjoins a watercourse, lake or spring, for stock and domestic purposes, include all parcels or lots of land that are owned by the same owner of the land directly adjoining the watercourse, lake or spring, provided they are contiguous. The intention is to ensure grazing properties that include more than one property description can be entitled under clause 20(3), to take water for stock and domestic purposes for the whole of the property. If part of the property is sold to a new owner, only the owner of the land that directly adjoins a watercourse, lake or spring, and any of that owner's land that is contiguous, is authorised to take stock and domestic water under clause 20(3).

Clause 21 provides that the chief executive may prohibit the taking of water under clauses 20(3) or 20(4) for watering a garden. The notice may deal with either or both, restrictions to the time for watering, or the volume of water (actual or estimated). It may also prohibit taking of water for watering a garden. Contravention of the notice constitutes an offence that may give rise to a maximum of 200 penalty units. The provision is necessary to enable priority to be given to in-house domestic water needs during times of drought.

Clause 22 gives the Minister the power to qualify all authorisations and entitlements to take water under the Bill in times of an emergency where, for example, there is an extraordinary shortage of water or toxic pollutants in the water. The notice published under this clause has effect for a maximum period of 21 days and cannot be renewed for a further period in relation to the same emergency. If it is likely that the emergency will continue for a period greater than 21 days, a regulation must be made under clause 23.

Clause 23 gives the Minister the power to qualify all authorisations and entitlements to take water under the Bill in times of an emergency where, for example, there is an extraordinary shortage of water or toxic pollutants in the water. The regulation made under this clause has effect for a maximum period of 1 year.

Clause 24 carries over the current law on bed and banks from that currently existing under the Act and provides that where a watercourse

forms the boundary of land, the bed and banks of that part of the watercourse are, and always have been, for example, notwithstanding the provision of the *Rights in Water and Water Conservation and Utilization Act 1910* and the *Water Act 1926*, the property of the State. This applies if the watercourse becomes a boundary to land before commencement of this clause or becomes a boundary at a further date. It applies even if the same person, whether before or after the commencement of the Bill has been or is the owner of all land adjacent to the bed or banks of the watercourse or lake.

Subclause (3) carries over the current law for exercising rights in relation to beds and banks. Even though the beds and banks are the property of the State, owners of property adjoining the bed and banks of a watercourse or lake may access the bed and banks adjoining their property, graze stock on the bed and banks adjoining their property and bring actions against people who trespass on the bed and banks adjoining their property. It is not intended that the rights under subclause (3) prohibit the State in any way from accessing, grazing stock or bringing actions for trespass on State property.

Clauses 25—34 not used. See footnote at end of chapter 1.

PART 3—WATER PLANNING

Division 1—Preliminary

Clause 35 requires the Minister to plan for the allocation and management of water. To do this the Minister may prepare water resource plans where necessary. The chief executive is to measure and keep records of water resources, and to use for planning purposes information collected by others on the impacts of water management on natural ecosystems, and the future water needs of the State. The chief executive is responsible for coordinating relevant information collected by other departments and agencies such as the agency responsible for administering the *Environmental Protection Act 1994* and the department responsible for administering fisheries legislation. It also requires the chief executive to plan for water use to minimise adverse impacts of water use on land and water. To do this the chief executive may prepare water use plans where

necessary, and prepare guidelines for the making of land and water management plans for the carrying out of irrigation of crops on individual properties.

Clause 36 empowers the chief executive to require all persons with an authority to take or interfere with water under chapter 2, including water entitlement holders, those persons authorised under clause 20 and interim resource operations licence holders and resource operations licence holders, to give information to the chief executive. The purpose for which the information is collected must be consistent with advancing the purpose of chapter 2, as set out in clause 10. The information requested must be information that would reasonably be collected by the holder of the particular authority to take or otherwise interfere with water. Examples include, details of how water infrastructure is being operated and how water allocations are being managed by a resource operations licence holder.

Clause 37 states that the chief executive must not disclose to someone else, other than the Minister, any information provided by a person under clause 36 that could be expected to adversely affect that person's commercial activities. The Minister also must not disclose this information.

Division 2 —Water resource plans

Subdivision 1—Preparing and approving water resource plans

Clause 38 states that the Minister may prepare a water resource plan for any part of Queensland. Only one water resource plan may have effect for any particular part of Queensland at any time, except that there can be an additional separate plan for artesian water and subartesian water and springs connected to artesian water. A water resource plan may be prepared for any purpose, including to:

- define the amount of water available for consumptive use and the water required for natural ecosystems;
- provide a framework for the establishment of water allocations through the conversion of water licences or other entitlements or the granting of new water allocations;
- provide a framework for the allocation and management of water

and management of water use, for example, to put limits on the issue of water licences;

- identify strategies and priorities for meeting future water requirements, for example, by issuing further water entitlements or through the purchase, transfer and conversion of existing entitlements; and
- provide a framework, where practicable, for reversing the degradation of natural ecosystems, where the cause of such degradation relates to water management and use.

Under subclause (4) a water resource plan may regulate the taking of or interfering with overland flow water if the Minister is satisfied that:

- there is a risk that such activity may impact on the outcomes of a water resource plan;
- such activity may significantly affect the availability of water to existing water users;
- such activity may significantly affect the extent of flooding that provides benefit to landholders through replenishment of the moisture content of soil that supports pasture; or
- such activity may significantly affect the frequency and the availability of water to meet the requirements of natural ecosystems.

Regulation under subclause (4) may be in the form of general rules concerning the taking or interfering with overland flow water. For example, it may limit the amount of overland flow water that a person can divert and store in a dam to a specified volume in a specified period of time for each hectare of the person's property. Alternatively or in addition, the regulation may make specified taking and interfering with overland flow water, for example, for the purposes of irrigation, subject to the requirement to obtain a water licence. Under such circumstances the taking or interfering with overland flow water for other purposes, for example, the construction of contour banks to prevent erosion of soil, would not be subject to the requirement to obtain a water licence.

Similarly, under subclause (5) a water resource plan may regulate the taking of or interfering with subartesian water if the Minister is satisfied that there is a risk that such activity may impact on the outcomes of a water resource plan, or may significantly affect the—

- availability of water to existing water users;
- availability of water to meet the requirements of natural ecosystems; or
- quality of water.

Regulation under subclause (5) may be in the form of general rules concerning the taking of or interfering with subartesian water. For example, it may limit the proximity of any bore to specified watercourses in the plan area. Alternatively or in addition, the regulation may make specified taking of and interfering with subartesian water subject to the issue of a water licence. For example, it may make the taking of or interfering with subartesian water for purposes other than stock and domestic supply, subject to the issue of a water licence.

Clause 39 states that the Minister must prepare an information report on issues in the plan area. The information report is to contain a summary of reasons for the plan or amendment to a plan, including particular water allocation and sustainable management issues relevant to the plan area. It must also contain proposed arrangements for establishing a community reference panel to provide advice to the Minister throughout the plan process, and proposed arrangements for technical assessment using best scientific information available. It is not intended that this report be lengthy or complex, but rather a concise summary to inform people who may be affected or otherwise interested in the preparation of a water resource plan. The report must be prepared before publishing a notice of the Minister's intention to commence preparation of a water resource plan.

Clause 40 states that before preparing a draft water resource plan the Minister must publish a notice of intention to prepare the plan. "Publication" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The notice must—

- state the purpose for which the plan is to be prepared. If the intention is to establish water allocations this must be stated in the purpose. The purpose will include reference to the relevant issues and reference to any supporting data;
- state the geographic area of the plan;
- state the water to which the plan is to apply. For example, it

might apply to water in watercourses lakes and springs, and/or underground water, and/or overland flow water;

- state where copies of the information report may be inspected or purchased;
- invite submissions on the proposed draft plan and on the proposed arrangements for community consultation; and
- state arrangements for providing submissions to the Minister on the notice.

The notice must state that submissions must be received by a set date no earlier than 30 business days (6 weeks) after publication of the notice. A copy of the notice must be forwarded to all local governments whose areas are included in all or part of the proposed plan area. The local government must make the notice available for inspection by the public. The notice also may be sent to any other entity the Minister considers appropriate.

Clause 41 states that at the same time or after the notice is published, the Minister must establish a community reference panel comprising representatives of cultural, economic and environmental interests in the plan area. This could include consumptive water users, for example, farming, industrial and town users as well as recreational users, environmental and catchment management interests, and indigenous interests.

The purpose of the community reference panel is to provide advice on community views on a range of issues relevant to the development of the water resource plan. It is not expected that the community reference panel will provide recommendations or that a consensus view will necessarily be agreed for all issues by the panel. It is recognised that, associated with the diverse range of interests and backgrounds of panel members, there will often be divergent views on a number of issues to be addressed by the plan. Whilst the panel does not have any decision making capacity, it does provide an important input to the water resource planning process as a sounding board on community concerns, views and attitudes on various aspects of the plan.

Clause 42 states that at the same time or at a time after a notice under clause 41 is published, the Minister may publish a moratorium notice. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The purpose of a moratorium is to provide for preservation of the status quo in

an area during the preparation of the plan so that any increase in the taking or interfering with water will be subject to the plan that is to be prepared. The notice may provide that any application for a licence under the *Water Resources Act 1989* or an entitlement under the Bill will not be accepted or that it will be kept on hold and not considered until the outcomes of the planning process are known and strategies for achieving those outcomes, as well as other plan contents, are approved. The notice can only be used by the Minister to either halt or delay incremental decision making in relation to water the subject of a water resource plan if the of granting or otherwise dealing with the application could have any one or more of the effects set out in subclause 42(2).

The notice applies equally to applications made before and after the notice.

For all water the subject of a proposed water resource plan, the notice may state that the construction of works, including the starting or completing of construction cannot be progressed while the notice has effect. This clause can be applied to any development or works to take overland flow water and sub-artesian water that had not been the subject of any regulation, as well as to development or works for the taking of or interfering with water under existing entitlements.

It is intended that, where needed, a moratorium be announced on the same day, or shortly after, a notice of proposal to prepare a water resource plan is published. This should minimise the potential for opportunistic development activities during the period when the plan is being prepared. The provision for the moratorium notice to be published on or after the day a notice to prepare a water resource plan is published, allows the Minister some flexibility, particularly where there may be uncertainty as to whether a moratorium is needed.

Works are not considered to have started for the purposes of this clause unless construction has physically commenced or a legally binding contract has been entered into for the imminent commencement of the construction. The contract would need to be more than a verbal agreement only. Some demonstration of the bona fides of the contract such as payment of a deposit or purchase of materials prior to the moratorium date would also need to be proven. Also, a construction program and detailed plans showing the extent of the works to be undertaken must have existed prior to the date of the moratorium notice. Also, all permits required under the *Local Government Act 1993* and the *Integrated Planning Act 1994* for the works must also

have been issued or given prior to the moratorium date. The program of works construction must be independently verifiable as a program for construction of the works.

The moratorium has effect until the draft water resource plan is either approved or the Minister publishes a notice of intention not to proceed with the making of a water resource plan under clause 52.

Clause 43 states that if a moratorium notice remains in force after 12 months, the Minister must review the need for continuation of the moratorium in its current form and amend it if necessary. This is to ensure that a moratorium does not unnecessarily continue for a period without being updated.

Clause 44 states that the Minister must publish a notice about any amendment to a moratorium. An amendment to a moratorium may contain anything that a moratorium notice under clause 42 could contain.

Clause 45 states that a moratorium cannot prevent the issuing of a permit to take water, or an authority for the taking of water from a watercourse, lake or spring, or overland flow water for domestic or stock watering purposes, or for temporary camping purposes or emergency purposes.

It also states that the Minister can exempt other matters. This will enable the Minister to design the moratorium so that it will only impose restrictions that are necessary to minimise the risk of significant negative changes to the status quo in an area during the planning process. For example, it may be necessary to prohibit the construction of works that would increase the taking of or interfering with overland flow water in an area. However, construction of flood mitigation works for a public purpose by a local government in the same area may be specifically exempted from the general prohibition where there is a public benefit.

Clause 46 provides that a water resource plan must contain details about the plan's purpose, area, types of water it covers such as water in watercourses, lakes and springs, underground water and overland flow water, monitoring requirements for water and natural ecosystems, plan outcomes, periodic reporting requirements and a schedule of proposed arrangements for implementing the draft plan after it has been approved. Outcomes that must be stated include ecological outcomes such as improving riverine environments in a measurable way and managing water in a sustainable way, recognising specific environmental water needs. Outcomes may also include achieving greater security for water users and

greater security for infrastructure operators or further water development in an area. Periodic reporting requirements refer to the reports the Minister must prepare in relation to progress of the plan during the plan's ten year period. The plan must state how often the reports will be prepared such as annually or biannually. The schedule of proposed arrangements for implementing the plan will contain a list of priority areas within a water resource plan area. Existing water entitlements in identified priority areas will be converted under the resource operations plan to transferable water allocations in preference to other water entitlements in the same catchment. Alternatively, areas may be identified as preferred areas for proceeding under a resource operations plan with further water development in priority to other areas. Economic, environmental, social and cultural needs must all be considered in setting the priorities.

The plan may also contain maps, details of areas where the taking of, or interfering with overland flow, sub-artesian water (or both) is intended to be regulated, the types of works that will be assessable development or self assessable development for the taking of overland flow or sub-artesian water, information about future water needs and priorities (including whether particular unallocated water will be granted or reserved and if it is to be granted, how decisions about unallocated water will be made), criteria for sharing overland flow, criteria for adjusting existing water entitlements if this is necessary to meet environmental flow objectives and other plan outcomes. Other plan outcomes include criteria for addressing degradation that has occurred in natural ecosystems and for improving the quality of naturally occurring water and other resources including reversing degradation to promote sustainable management.

If the plan provides a framework for establishing water allocations, the plan must contain details of the objectives for environmental flow and water allocation security together with the performance indicators for these objectives and priority areas for conversion or granting of water allocations. It is intended that a draft plan may present a range of scenarios in order to facilitate public discussion and submission on the draft plan.

Clause 47 provides that the Minister must consider certain things when preparing the draft water resource plan that is released for public consultation and review. The Minister must consider the State's water rights as set out in chapter 2, part 2 and the volume of water and quality of the water covered by the plan. The Minister must consider objectives and priorities for promoting sustainable development, including policies set at

national, state and regional levels. Water flows needed to support natural ecosystems must be considered using the best scientific information available to the Minister, and underground water levels and underground water recharge processes necessary to support natural ecosystems must also be considered. Existing authorisations and entitlements for the taking of water as well as future cultural, economic, environmental and social requirements of the State such as whether new water development is required to service industry and proposed industry in an area, must be considered. Cultural, economic and social values of and within the plan area, advice form community reference panels, technical assessments, effects the plan will have on other water not covered by the plan (such as underground water if the plan only relates to water on the surface), effects the plan will have on water covered by the plan, environmental values set out in the *Environmental Protection (Water) Policy 1997*, sustainable resource management strategies and policies and all submissions properly made, within the definition in Schedule 4, must also be considered. In some instances there may be an overlap between cultural values, economic values, environmental values and social values. Cultural values include indigenous values, recreational values and aesthetic values. Social values include community developments needs, location and relocation of people and industries and managing any change in a sustainable way.

Clause 48 provides that on or before the publication of the notice about the draft plan, the Minister must prepare an overview report. The purpose of this report is to provide an overview of issues being addressed by the plan, possible management strategies, technical and other information on which the strategies are based and other information relevant to the development of the draft plan.

Clause 49 provides that a notice must be published when the draft plan has been prepared. The notice must state where copies of the draft plan can be inspected and purchased. It must also provide that submissions may be made by any person about the draft plan and submitted to the Minister by a set date no earlier than 30 business days (6 weeks) after publication of the notice. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. A copy of the draft plan and the public notice must be forwarded to all local governments whose areas are included in all or part of the proposed draft plan area and may be forwarded to any other organisation considered appropriate. Local governments are required to make the draft

plan available for public inspection.

Clause 50 provides that when preparing a final draft of a water resource plan all properly made submissions must be considered. "Properly made submission" for the purpose of this clause means a written submission made and signed by a person or representative of an entity, that is received by the person stated in the notice, for example, the chief executive, on or before the last day for the making of submissions and that states the name and address of each person or representative of an entity making the submission, the grounds of the submission and the facts and circumstances relied on in support of the grounds. Submissions will include any reviews or audits of scientific and other information used to prepare the plan that are prepared by agencies such as the agency responsible for administering the *Environmental Protection Act 1994*, requested by the Minister. To be effective, the final draft plan must be approved by the Governor in Council as the water resource plan for an area. Each approved water resource plan will be effective for 10 years unless, as a result of a review, a new plan is prepared and approved. The content of the final draft plan must comply with the requirements of clause 46.

Clause 51 provides that a report must be prepared on a water resource plan within 30 business days (6 weeks) of its approval. The report must contain a summary of issues dealt with during the consultation process.

Clause 52 applies if a decision is made not to proceed towards the preparation of a final draft water resource plan. A notice of the decision and the reasons for the decision must be published. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. A copy of the notice must also be sent to each local government or entity in receipt of a notice of the proposed preparation of a plan and/or the draft plan. The local government is required to make a copy of the notice available for public inspection.

Subdivision 2—Periodic reports and accountability matters

Clause 53 provides that periodic reports as specified in the approved water resource plan must be prepared within the timeframe mentioned in the plan.

Clause 54 provides that each report to be prepared for a reporting period outlined in the plan, must include a number of matters to assess the effectiveness of the implementation of the plan in meeting its objectives.

Subdivision 3—Amending or preparing new, water resource plan

Clause 55 provides that a plan may be amended or replaced with a new plan at any time. Where the Minister is satisfied that a periodic report shows environmental flow objectives or water allocation security objectives are not being met, the Minister must review the plan.

Clause 56 provides that the process for amendment of a water resource plan is the same as the process for preparation of a water resource plan provided for in clauses 38 to 52 inclusive.

Clause 57 provides that a minor amendment may be made if it is to correct a minor error or other change that is not of substance, or the type of change was contemplated in the plan. An example of a change that may be specifically contemplated in a plan is the extension of water allocation security objectives or environmental flow objectives to additional parts of the plan area in relation to water to which the plan applies.

Subdivision 4—General

Clause 58 provides that a regulatory impact statement under the *Statutory Instruments Act 1992* is not required for preparation of or amendment to a water resource plan because of the extensive notification and consultation processes prescribed in chapter 2, part 3, division 2 of the Bill.

Division 3—Managing water use

Subdivision 1—Preliminary

Clause 59 provides that the purpose of division 3 is to allow for the regulation of water use where there is a risk of land and water degradation as a result of water use. Water use regulation is necessary because some

water use practices have been adopted without sufficient recognition of the fragility of the land, the interactions between water use practices, and delicately balanced ecosystems. Inappropriate land development and excessive or inappropriate use of water can cause serious problems such as erosion of cropping land, water quality problems and rising water tables. It is not the intention that this division deal with the efficiency of water use, although some water efficiencies may result from implementation of land and water management planning requirements.

Subdivision 2—Preparing and approving water use plans

Clause 60 enables the Minister to prepare a water use plan for any part of Queensland if there are risks that water use in a particular area of Queensland may cause harmful effects on land and water resources.

Subclause (1) provides examples of negative effects on land and water which may be caused by water use including rising underground water levels, increasing salinisation, deteriorating quality of water, water logging of soils, destabilisation of bed and banks of watercourses, damage to riverine environment, and increasing soil erosion.

Subclause (2) provides that only one water use plan may have effect for any part of Queensland at any time, except, as subclause (2A) provides, where there is be an additional separate water use plan in the same area for artesian water and sub-artesian water and springs connected to artesian water, such as the Great Artesian Basin. The plans in the same area cannot refer to the same water.

Subclause (3) provides that the Minister must prepare a draft water use plan, before proceeding to recommend that a final water use plan be approved by the Governor in Council.

Clause 61 sets out the procedure for the public notice of a proposal to prepare a draft water use plan.

Subclause (1) provides that the Minister must publish a notice of the intention to prepare a draft water use plan for the area. "Publish" for the purposes of this subclause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet.

Subclause (2) provides that the notice must state the purpose for which

the draft plan is being prepared, the proposed plan area, details of how it is intended that community and technical consultation for the preparation of the draft plan will take place, that written submissions may be made by any person and details of where and when submissions are to be made.

Subclause (3) provides that the day by which submissions must be made must not be earlier than 30 business days (6 weeks) after the day the notice is published.

Subclause (4) provides that the Minister must send a copy of the notice to each local government whose area includes all or part of the proposed plan area.

Subclause (5) provides that each local government receiving a notice of the proposal must make a copy of the notice available for inspection by the public.

Subclause (6) provides that the Minister may send a copy of the notice to any other entity the Minister considers appropriate.

Clause 62 sets out the content of draft water use plans.

Subclause (1) provides that the draft water use plan must state the purpose of the draft plan, contain a map of the proposed plan area, state the types of water use subject to the plan, state the standards for water use practices, state the objectives for water use efficiency, water reuse and water quality and the monitoring requirements and responsibilities of the Department, water services providers and water users.

Subclause (2) provides that the draft plan may also include a description of land within the proposed plan area for which a land and water management plan must be approved for the use of water by a person for irrigation and schedules for the progressive implementation of the draft plan's requirements. When a water use plan is approved it overrides other provisions of the Bill that require a person to prepare a land and water management plan. If a water use plan requires that a land and water management plan be prepared for irrigation of specified land, then this will apply to existing irrigation as well as new irrigation enterprises. Similarly, if a water use plan does not require that a land and water management plan be prepared for other lands, the land and water management plan need not be prepared even if a water allocation is purchased for new irrigation. The intention is to use district standards established under the water use plan to minimise the need for land and water management plans. The intention is that land and water management plans should be required for areas where

risk of land or water degradation is high.

Clause 63 provides that when preparing the draft water use plan the Minister must have regard to changes to water use practices that will reduce the risk to land and water resources arising from the use of water on land and to existing industry codes of practice for water use.

Clause 64 provides that a notice must be published when the plan has been prepared. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The notice must state where copies of the plan can be inspected and purchased and invite submissions on the plan. A copy of the plan and the public notice must be forwarded to all local governments whose areas are included in all or part of the proposed plan area. The local governments are required to make the plan available for public inspection.

Clause 65 requires that when preparing a final draft of a water use plan all properly made submissions must be considered. "Properly made submission" is defined in schedule 4 of the Bill. To be effective, the final draft plan must be approved by the Governor in Council. The approved plan has effect for 10 years, is subordinate legislation and is binding on water users for the types of water use identified in the plan.

Clause 66 requires that the chief executive must as soon as practicable after the final draft or amendment of a water use plan is approved publicly notify the requirements of the plan or amendment for water users and conduct public meetings to explain the requirements. The intention is that all reasonable efforts are to be made to ensure that water users affected by the plan are aware of their obligations under the plan.

Clause 67 applies if a decision is made not to proceed with the preparation of a final draft water use plan or amendment. A notice of the decision must be published and a copy sent to each relevant local government. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The local government is required to make a copy of the notice available for public inspection.

Subdivision 3—Amending or preparing new, water use plans

Clause 68 provides that the Minister may at any time amend a water use plan or prepare a new plan to replace an existing water use plan. The intention is to enable the Minister to act when the Minister is satisfied that an existing water use plan is not addressing the risk to land and water arising from the use of water on land.

Clause 69 provides that a water use plan may be amended or a new water use plan prepared, in the same way that an initial water use plan is prepared under clauses 61 to 67 inclusive.

Clauses 70 provides that a minor amendment may be made to a water use plan if it is to correct a minor error or other change that is not of substance, or the change is a type of change identified in the water use plan. A minor amendment may be approved by the Governor in Council without following the steps for preparation of a water use plan under clauses 61 to 67 inclusive.

Clause 71 provides that a regulatory impact statement under the *Statutory Instruments Act 1992* is not required for preparation of or amendment to a water use plan because of the extensive notification and consultation processes prescribed in chapter 2, part 3, division 3 of the Bill.

Subdivision 4—Preparing and approving land and water management plans

Clause 72 sets out the procedure for preparing guidelines for land and water management plans by individuals. A land and water management plan is a plan relating to the irrigation of an individual property.

Subclause (1) provides that the chief executive may issue guidelines for the preparation of land and water management plans.

Subclause (2) provides that before issuing the guidelines the chief executive must prepare draft guidelines and publish a notice when the draft guidelines have been prepared. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet.

Subclause (3) provides that the notice must state where copies of the draft guidelines may be inspected and on payment of a fee, purchased. It provides that written submissions may be made by any person about the draft guidelines.

Subclause (4) provides that the day by which the submissions must be made must not be earlier than 30 business days (6 weeks) after the day the notice is published.

Subclause (5) provides that the chief executive may send a copy of the notice to any entity the chief executive considers appropriate.

Subclause (6) provides that the chief executive may amend any guidelines provided the sane procedures are followed.

Clause 73 subclauses (1) and (2) specify the persons who must have a land and water management plan approved before using water for irrigation. They are:

- Persons who propose to use for irrigation water taken under a water allocation or interim water allocation, except where the water allocation or interim water allocation was obtained by conversion of an existing water licence or was purchased along with land as an ongoing irrigation enterprise for which the previous owner did not need a land and water management plan; and
- Persons irrigating, with water from any source, land that a water use plan specifies as land which is only be irrigated under an approved a land and water management plan.

Subclause (3) provides that persons identified in subclauses (1) and (2) must not use the water for irrigation of the land unless the chief executive has approved a land and water management plan or deferred the requirement to submit a plan for approval.

Clause 74 provides that a person may apply for approval of a land and water management plan that has been prepared in accordance with guidelines for the preparation of land and water management plan mentioned in clause 72.

Clause 75 provides that the chief executive may require the applicant to provide additional information to support the application for approval of a land and water management plan for the use of water on land, or that this additional information be verified by statutory declaration.

Clause 76 provides that when the chief executive is deciding whether to approve or refuse a land and water management plan, the following must be considered:

- consistency with any guidelines for the preparation of land and water management plans issued by the chief executive;
- the application and any additional information given in relation to the application;
- the risk to natural resources arising from the use of water on land, including, for example, rising ground water tables, salinisation or soil erosion;
- existing industry codes of practice for water use;
- policies developed in consultation with local communities for the use of water; and
- the public interest.

Clause 77 sets out the procedures associated with approving or refusing a land and water management plan.

Subclause (1) provides that if the chief executive is satisfied the land and water management plan should be approved, the chief executive must approve the plan or approve the plan as amended by the chief executive for a period of not more than 10 years.

Subclause (2) provides that if the chief executive is not satisfied with the application, the land and water management plan must be refused.

Subclause (3) provides that the applicant must be given notice of the chief executive's decision and the reasons for it within 30 business days (6 weeks) of the decision.

Subclause (4) provides that the chief executive must give the applicant a copy of the approved land and water management plan, with or without amendments, within 30 business days (6 weeks) after approving the land and water management plan.

Subclause (5) provides that the land and water management plan has effect from the day the chief executive gives the applicant the information notice.

Subdivision 5—Amending land and water management plans

Clause 78 provides that the owner of the land to which the land and water management plan relates can apply to amend the plan. Application for amendment of a land and water management plan is dealt with in the same way as application for a land and water management plan under clauses 74 to 77 inclusive.

Subdivision 6—Deferring requirement for approved land and water management plans

Clause 79 provides that a person may apply for a deferral of the requirement to submit a land and water management plan. The application must be made to the chief executive in the approved form, be supported by sufficient information for the chief executive to decide the application and be accompanied by the prescribed fee.

Clause 80 provides that the chief executive may require the applicant to give additional information to support the application for deferral or to verify additional by statutory declaration.

Clause 81 sets out the criteria for deciding deferral applications. The chief executive must consider the following the:

- hardship the applicant would suffer if the application were not granted;
- susceptibility of the land and water, the subject of the application, to degradation;
- application and additional information given in relation to the application; and
- public interest.

Clause 82 sets out the procedure for deciding an application for deferral of the requirement for a land and water management plan.

Subclause (1) provides that if the chief executive is satisfied the application for deferral should be approved, the chief executive must approve the application and defer the requirement for a period of not more than one year.

Subclause (2) provides that more than one application may be made under subclause (1).

Subclause (3) provides, however, that the approval of an application made under subclause (1) must not defer the requirements under clause 73(3) for more than one year after the date of the first application.

Subclause (4) provides that if the chief executive is not satisfied an application should be approved, the chief executive must refuse the application.

Subclause (5) provides that within 10 business days (2 weeks) of deciding the application, the chief executive must give the applicant notice of the decision and the reasons for the decision.

Subclause (6) provides that the deferral has effect from the day the chief executive gives the applicant an information notice. "Information notice" is defined in schedule 4 of the Bill.

Clauses 83—93 not used. See footnote at end of chapter 1.

PART 4—IMPLEMENTING WATER RESOURCE PLANS

Division 1—Preliminary

Clause 94 provides that the purpose of this part is to implement water resource plans through the development of resource operations plans.

A resource operations plan is a plan that details how the objectives of a water resource plan are to be achieved. The resource operations plan for a water resource plan will be developed progressively in accordance with the implementation schedule detailed in the water resource plan. In certain circumstances, a resource operations plan or an amendment to a water resource plan may be developed in parallel to the development of or amendment to a water resource plan.

The part implements a water resource plan through the:

- Preparation of a resource operations plan;

- Granting of resource operations licences to water infrastructure operators;
- Conversion of existing entitlements to water allocations that are separate from land and transferable within rules set in the resource operations plan; and
- Grant of water allocations, including allowing for their registration.

Division 2—Resource operations plans

Subdivision 1—Preparing and approving resource operations plans

Clause 95 provides that a notice must be given to water infrastructure operators, for example, a dam operator, requesting that the operator provide details of the proposed operating arrangements for their infrastructure. The arrangements must demonstrate how the infrastructure will be operated to comply with an approved water resource plan. The notice must set a date, no earlier than 30 business days (6 weeks) after the notice is given, by which time the operator must provide details of the proposed arrangements.

Clause 96 provides that a notice must be published advising of an intention to prepare a resource operations plan. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The notice must state the proposed plan area, the water to which the plan will apply, details of consultation processes and where and when submissions may be made.

Clause 97 provides that all holders of an interim resource operations licence, resource operations licence or other authorisation to operate water infrastructure in the plan area, be requested to provide their proposed arrangement for the management of the water including for example proposed water allocation transfer rules and proposed water and natural ecosystem monitoring practices. These arrangements must demonstrate how the holder proposes to manage the water to meet the environmental flow objectives and water allocation security objectives set out in the water resource plan.

Clause 98 sets out the information to be contained in a resource operations plan. Subclause (1) provides that a resource operations plan must include:

- Reference to the water resource plan for which the draft plan is being prepared;
- A map of the proposed plan area;
- Details of the water to which to plan will apply (for example, overland flow);
- Water infrastructure in the plan area and how it is to be operated (based on arrangements supplied under clause 97);
- How water will be managed by the chief executive;
- Monitoring practices and responsibilities for monitoring water and aquatic ecosystems; and
- How the draft plan addresses water resource plan outcomes.

Subclause (2) states that the draft plan may also include—

- A map or diagram or series of maps or diagrams showing water information for the proposed plan area;
- Rules applying to environmental management, seasonal water assignments and water sharing for the draft resource operations plan;
- Information about future water needs and priorities including whether particular unallocated water will be granted or reserved and if it is to be granted, how decisions about unallocated water will be made. Processes for granting or otherwise dealing with water, as defined in schedule 4, include public auctions, public ballots and public tenders.
- Changes to be made to existing water entitlements; and
- Implementation schedule setting out a 5 year progressive implementation plan.

Subclause (3) provides that if the draft plan is to provide for the regulation of overland flow, then the draft plan must state the minimum share of overland flow that each owner of land in the proposed plan area may divert. In some circumstances, the minimum share of water may be no more than that necessary to meet the water requirements of the owner of

land for watering of stock or domestic purposes. The share of overland flow could, for example, limit the amount of overland flow that an owner of land can divert and store in a dam to a specified volume for each hectare of the owner's property. The minimum share may be described in a schedule in the resource operations plan.

Subclause (4) provides that if the draft plan is to provide for water allocations, it must state the rules for, and details of, the conversion of existing entitlements to water allocations including the environmental management and transfer rules for the water to which the plan is intended to apply.

Subclause (5) provides that the transfer rules may contain limits on the volume of water that may be transferred between different locations and for different purposes. The intent of this clause is to ensure that transfers that could cause significant cultural or economic impacts on an area do not occur without prior assessment of whether the proposal is in the public interest.

Clause 99 provides that before a final version of the resource operations plan is submitted to the Governor in Council for approval, the chief executive must consider:

- The water resource plan or draft water resource plan, including any proposal for an amendment or review of the water resource plan;
- All properly made submissions about the draft plan, including the conversion of existing entitlements;
- Proposed operating arrangements as mentioned in clause 97; and
- The public interest.

Clause 100 provides that a notice must be published when the draft plan has been prepared. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. The notice must state where copies of the draft plan can be inspected and purchased for a prescribed fee. The notice must also invite submissions on the draft plan by any entity by a set date that is no earlier than 30 business days (6 weeks) after the publication date. A copy of the draft plan and the public notice must be forwarded to all local governments whose areas are included in all or part of the proposed plan area and also to each water infrastructure operator who provides details of

operating arrangements under clause 97. A copy of the notice may also be forwarded to any other organisation (incorporated or unincorporated) considered appropriate by the chief executive. Local governments in receipt of a copy of the draft plan are required to make the copy available for public inspection.

Clause 101 provides that the notice given under clause 100 must also state that notices may be given to the chief executive by existing water entitlement holders or entities who have or claim to have an interest in the water entitlement that is to be converted to a water allocation.

In respect of existing water entitlement holders the notice that may be given is about the holders' request to be recorded on the water allocations register, other than as tenants in common in equal shares. This will ensure that registration can subsequently be effected under 121(4) in accordance with the notice mentioned in this clause.

In relation to entities who have the consent of the water allocation holder, notice can be given indicating that the interest holder wishes to have their interest recorded on registration of the water allocation (which is effected under clause 121(4)). An example of an interest holder who may wish to take advantage of this provision would be a financier who has an interest in land to which an existing water entitlement attaches.

Where the existing interest holder does not have the necessary consent, but notice is given of the interest holders' intention to take action to have the interest recorded on the water allocations register, the notice triggers a moratorium on the registration of dealings against the water allocation for a period of 20 business days (4 weeks) after registration of the allocation. This will enable time for the bringing of a legal action to either establish the interest, or obtain an order to prevent dealings being registered after the end of the moratorium period until the matter is resolved.

Clause 102 applies if a submission made on the draft plan requests that a change be made to a proposed water allocation, environmental management rule, water sharing rule or an implementation schedule.

Subclause (2) provides that after the closing date for submissions has passed, the chief executive must establish a referral panel if submissions received include submissions about proposed water allocations and each relevant submission is not inconsistent with the water resource plan or related to a matter that the chief executive agrees to amend without further consideration. General provisions about constitution of the referral panel are

set out in chapter 8, part 4. If submissions about proposed water allocations including adjustment arrangements to implement any conversions of existing water entitlements are provided to the chief executive, a referral panel is to be established and the chief executive must provide collated information about all relevant submissions to the panel. The panel has 30 business days (6 weeks) to review the information received and make their recommendations to the chief executive.

Clause 103 provides that when preparing the final draft resource operations plan, the chief executive must consider all properly made submissions and, if clause 102 applies, the recommendations made by the referral panel. "Properly made submissions" are defined in schedule 4 of the Bill. The resource operations plan is not effective until it has been approved by the Governor in Council and approval is notified in the Government Gazette. The content of a final draft resource operations plan must include the contents set out in clause 98.

Clause 104 applies if the chief executive decides not to proceed with the preparation of a final draft resource operations plan. A notice of the decision and the reasons for the decision must be published. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet. A copy must also be sent to each local government or entity in receipt of a notice of the proposed preparation of the draft resource operations plan and/or draft resource operations plan. The local government is required to make a copy of the notice available for public inspection.

Subdivision 2—Amending resource operations plans

Clause 105 provides that a resource operations plan may be amended by the chief executive provided clauses 95 to 104 which refer to preparing a resource operations plan, are followed for the amendment. The amendment may:

- Change the plan area;
- Amalgamate the plan with another or part of another resource operations plan;
- Change the plan's operating arrangements for water

infrastructure; and

- Any other requirements of the plan.

Clause 106 provides that the Governor in Council may approve an amendment of a resource operations plan without clauses 95 to 104 which refer to preparing a resource operations plan, being followed. The amendment may be made if:

- It relates to correction of a minor error in the resource operations plan;
- A change to the resource operations plan that is not a change of substance; or
- The type of change is a change of a type that has been stated in the resource operations plan as a change that can be made in this way.

Division 3—Resource operations licences

Subdivision 1—Granting resource operations licences

Clause 107 provides that upon a resource operations plan coming into effect:

- All interim resource operations licences for water infrastructure covered by the plan automatically cease to exist; and
- All interim resource operations licences for management of water covered by the plan automatically cease to exist; and
- On the same day the chief executive must grant to each former interim resource operations licence holder, a resource operations licence in accordance with the terms and conditions, including where relevant water infrastructure operating arrangements, that are set out in the resource operations plan.

Clause 108 applies where a resource operations plan provides a process for the granting of a resource operation licence to meet future water requirements. "Process" is defined in schedule 4 to mean selling or dealing with water entitlements or interim resource operations licences by public auction, public ballot or public tender. Under this clause, the chief executive must follow the process outlined in the resource operations plan and grant

resource operations licences in accordance with the process.

Subdivision 2—Content and conditions of resource operations licences

Clause 109 sets out the contents of a resource operations licence including the details of the licencee, for example, name, address and Australian Company Number, the resource operations plan to which the resource operations licence relates, any water infrastructure to which the resource operations licence relates and any specific conditions applying to the licence. Conditions may be set out in a resource operations plan or through a resource operations licence.

Clause 110 requires a resource operations licence holder to comply with the conditions of a resource operations licence contained in both the Bill and where expressly referred to, in the resource operations plan also. The types of conditions that may be included in a resource operations licence include requiring a holder of a resource operations licence to supply information to the chief executive for the administration or enforcement of the Bill. Requests for information must be reasonable and must relate to the activities authorised under the resource operations licence such as releases made from a dam, or flow levels in the relevant part of a watercourse and other types of information that an operator of a dam would ordinarily collect as part of its normal operations. Resource management aspects of a resource operations licence holder's activities includes data that a responsible licence holder would reasonably be expected to collect as data in the usual course of business having regard to the activities authorised under the licence, the type of catchment, whether the licence holder's operations are capable of significantly impacting on other water and natural resources in the catchment and general public health and safety.

Subdivision 3—Amending resource operations licences

Clause 111 provides for amendment of a resource operations licence consistent with an amendment to a related resource operations plan. It is anticipated that most of the operating conditions of the resource operations licence will be set out in the resource operations plan and cross-referenced to a particular resource operations licence. It will therefore be necessary to

amend a resource operations licence following an amendment to the resource operations plan.

Clause 112 provides that the chief executive may amend a condition of a licence if the chief executive is satisfied that the resource operations licence holder has made a false or misleading representation or declaration at any stage or the licence holder has contravened a provision of the Bill. Amendment is one of the options available to the chief executive if the chief executive is satisfied that any of the above acts or omissions have occurred. Other options include prosecution for breach of a condition of a licence or if necessary, cancellation of the licence. Before making an amendment under the clause, the chief executive must give the resource operations licence holder a show cause notice. The requirement for a show cause notice is set out in clause 779.

Any properly made submission by the resource operations licence holder must be considered by the chief executive when deciding whether to proceed with the amendment. The resource operations licence holder must be notified by the chief executive of the decision to either proceed or not to proceed with the amendment and is effective from the day the information notice is given.

Clause 113 provides that the chief executive may amend a licence without complying with the provisions of subdivision 3, if the amendment is to correct a minor error or other change that is not of substance, or is of a type of amendment contemplated in the resource operations licence or the licensee agrees to the amendment.

Subdivision 4—Transferring resource operations licences

Clause 114 provides that a resource operations licence holder may apply to transfer the resource operations licence. The application must be made in the approved form together with supporting information and be accompanied by the prescribed fee. The application of transfer can only be in relation to change of beneficial ownership of the licence. It cannot refer to relocation of the water infrastructure.

Clause 115 provides that the chief executive may require the applicant for the transfer of a resource operations licence to provide additional information, which, included with information contained in the application,

may need to be verified by statutory declaration if the chief executive requires verification.

Clause 116 provides that the chief executive's decision about the application of the resource operations licence must be made within 30 business days (6 weeks) of the application.

Clause 117 provides that if the transfer is approved, the resource operations licence holder and transferee must be notified and the existing resource operations licence must be cancelled or amended to give effect to transfer of responsibility of a part or all of the water infrastructure, the subject of the original resource operations licence. The new resource operations licence must be issued to the transferee and the new resource operations licence takes effect from the date the notice is given to the transferee.

Clause 118 provides that if the transfer is refused, the applicant must be notified within 30 business days (6 weeks) of the decision and the reasons for the refusal.

The transfer may be refused if, in the chief executive's opinion, the applicant does not have the necessary experience to be a licensee or is not a suitable person to hold a resource operations licence based on the following grounds:

- The applicant has been convicted of an offence against the Bill or an interstate law, or has held a resource operations licence that was cancelled or suspended under the Bill or an interstate law;
- If the applicant is a corporation and, an executive officer of the corporation:
- has been convicted of an offence against the Bill or an interstate law, or has held a resource operations licence that was cancelled or suspended under the Bill or an interstate law; or
- is or has been an executive officer of a corporation that has been convicted of an offence against the Bill or an interstate law, or that held a resource operations licence that was cancelled or suspended under the Bill or an interstate law.

Subdivision 5—Cancelling resource operations licences

Clause 119 provides the grounds on which the chief executive may cancel a resource operations licence. If a resource operations licence holder is first convicted of an offence under section 813 for non-compliance with the conditions of the licence, the chief executive cannot require that the resource operations licence holder's licence also be cancelled under this clause. It is not intended that any action taken by the chief executive under this clause, would prevent a third party from claiming for compensation for loss or damage in any way.

Clause 120 provides that if the chief executive is satisfied that grounds exist for the cancellation of a resource operations licence, the resource operations licence holder is to be given a show cause notice. The requirements for the show cause notice are set out in clause 779. The resource operations licence may be cancelled if, after considering any properly made submissions by the resource operations licence holder, the chief executive decides that sufficient grounds exist for cancellation. The resource operations licence holder must be given notice within 10 business days (2 weeks) of the decision.

The decision takes effect on the later of the day when the appeal period ends, or the appeal is withdrawn, or the appeal is decided. However, if cancellation is based on the conviction of a person for an offence, the cancellation does not take effect until—

- The day the period for appeal against the conviction ends; and
- If an appeal is made, the appeal is finally decided.

Cancellation does not take effect if the conviction is quashed on appeal.

Division 4—Water allocations

Subdivision1—Converting water entitlements and granting water allocations

Clause 121 provides for the conversion of existing water licences and interim water allocations to water allocations. On the date the resource operations plan has effect, details of converted water allocations are to be

recorded on the water allocations register.

Subclause (2) provides that despite subclause (1), the registrar must not record converted water allocations on the water allocation register for water allocation's supplied by a resource operations licence holder until the registrar has received notice from the resource operations licence holder that a supply contract between the water allocation holder and resource operations licence holder has been entered in to. It is necessary for the resource operations licence holder to provide this notice as the subclause has been inserted to protect the resource operations licence holder's interests. Subclause (2) does this by ensuring that only water allocation holders with contractual arrangements to be supplied may be registered for water allocations in those parts of a watercourse or other body of water where water infrastructure is operated and supply of water is controlled by a resource operations licence holder.

Subclause (3) provides that the subclause (2) requirements for a pre-existing supply contract as a precondition to registration of water allocations, do not apply if the resource operations licence holder and water allocation holder are one and the same person.

Subclauses (4) and (5) provide that the chief executive must record the details of the holder of a water allocation in the way notified under clause 101(a), for example, as joint tenants instead of as tenants in common and must record the interests notified under clause 101(b)(1) if consent of the water allocation holder is provided.

Subclauses (6) and (7) also provide for the recording of interests that existed in relation to land to which licences for water attached under the Act, prior to their conversion to a water allocation. Where notice is given with the consent of the water allocation holder under clause 101(b)(i) at the time of the conversion, the interest is to be recorded in accordance with the priority the interest has in the land registry for the land to which the former water entitlement attached. Interests that may be recorded under these subclauses may include, for example, the interest of a financier under the terms of a loan agreement and related security documentation, which would be noted on the register as a mortgage.

If there has been more than one notice given under clause 101, the interests are to be recorded in the priority the interests have on the land registry for the land to which the former water entitlement related. If the interest is not an interest recorded in the land registry, the interest must be

registered in the priority in which the interest was lodged on another register, for example, the Bills of Sale register or, if unregistered, in the priority in which the interest was lodged for registration on the water allocations register.

Subclauses (6) and (7) also provide for the registration of the interests of multiple holders of a water allocation in accordance with their preference where they have given the necessary notice provided for under clause 101(a). For example, although the presumption is that multiple holders of a water allocation hold their interests as tenants in common (clause 101(a)), all of the holders may consent to having their interests recorded instead as joint tenants. The allocation must be recorded in accordance with the notice as to the preference of the holders. Where no notice is given under clause 101(a), the interests of the holders will be recorded as tenants in common in equal shares under clause 101(a) and 101(1)(a).

If after registration of the water allocation, the holders wish to alter the way in which they hold their interests in the allocation (e.g. from joint tenants to tenants in common), they may use the transfer process under the Bill.

Clause 122 provides for the granting and registration of new water allocations pursuant to the process set out in a resource operations plan. Opportunities for new water allocations are likely to arise where surplus capacity is identified within a particular catchment area. These opportunities will be identified in the water resource plan and resource operations plan. "Process" is defined in schedule 4 of the Bill may include, for example, the sale by public auction or some other means of water allocation. If the water allocation to be granted will be supplied by a resource operations licence holder, the resource operations licence holder must provide the registrar with notice that a supply contract has been entered into by the water allocation holder and resource operations licence holder prior to the registrar recording the water allocation on the water allocation register.

Clause 123 specifies that the water allocation is subject to the resource operations plan and establishes a rule to resolve conflicts between the allocation and the plan, for example, the resource operations plan prevails. This provision recognises that the resource operations plan will be the document that specifies most of the terms and conditions of the water allocation.

Clause 123A provides that if a resource operations licence holder considers security is needed to ensure payment of any outstanding water storage and supply fees, the holder may require water users who benefit from its services to provide, as a precondition to receiving service, a form of security such as a reasonable monetary bond or letter of credit set at a reasonable level.

Clause 124 deals with the consequences for water allocations of the amendment of a resource operations plan. The chief executive may amend a resource operations plan (clause 105), but it must be consistent with the water resource plan approved by the Governor in Council under clause 50. It is mandatory that the registrar amend records for water allocations on the water allocation register in accordance with the amended resource operations plan.

Clause 125 permits the registrar (after calling for any necessary information or statutory declarations) to make necessary corrections to the name of existing water entitlement holders when recording the granting of water allocations. This will assist the registrar to ensure that water allocations are correctly recorded in the name of the appropriate legal entity entitled to the registration. The provision will permit the correction of any existing anomalies in the names recorded in the current database held by the Department in respect of licences under the Act.

Clause 126 specifies the details to be recorded in the water allocation register in respect of water allocations. Subclause (1)(b) mentions the volume of water expressed as a share of total water available and is an entitlement subject to conditions such as availability of water in a particular water year. Subclause (1)(c) mentions the location of the water allocation. The location may be specified as a point, as an area, as a section of a watercourse or in some other way. Purpose is required to assist with monitoring of movement of water between sectors, for example, shifts in agricultural water to urban water or vice versa. Every water allocation will relate to a resource operations plan and water managed by infrastructure, for example, a dam, will also refer to a resource operations licence and the product supplied by the resource operations licence holder under that resource operations licence, for example, high priority water. Where a water allocation is not in relation to water managed by infrastructure, a maximum rate at which water may be removed and the flow conditions of the water at the location will be expressed as part of the water allocation.

Subdivision 2—Dealings with water allocations

Clause 127 defines "change" for the purposes of dealings with water allocations. Change refers to a reconfiguration of any element of a water allocation that is expressed on the water allocation register. A change may increase one element because of a simultaneous change to another element, however, the overall benefit must not be increased. An example of a change is where a water allocation is moved from one location to another location downstream and as a result the volume is adjusted to reflect the fact that further losses and other related factors need to be applied to that water. The methodology for calculating adjustments will often be in the transfer rules for a resource operations plan.

Clause 128 provides for transfers of or changes to a water allocations where the transfer is proposed to be under transfer rules in a resource operations plan.

Under subclause (4), if the application relates to a water allocation managed under a resource operations licence, the application must be made to the resource operations licence holder.

Under subclause (5), if the application relates to a water allocation other than an allocation managed under a resource operations licence, the application and any prescribed fee is to be given to the chief executive. Either the resource operations licence holder or chief executive must then assess the application against the transfer rules and either certify that the proposed transfer or change is permitted under the transfer rules or refuse to certify.

Under subclause (7), when the registrar receives a certificate confirming the transfer or change is permitted under the transfer rules, the registrar must record the transfer or change on the w a register.

The transfer or change is effective when the registrar records details of the transfer or change in the water allocation register.

Clause 129 provides for transfers or changes other than under clause 128. Clauses 129 to 134 specify the procedure to be followed in respect of these transfers or changes.

Clause 130 permits the chief executive to require the applicant or any submitter under clause 129 to give additional information, about the application or a submission made.

Clause 131 provides that a notice advising that an application has been made under clause 129 must be published by the chief executive, and a copy given to each local governments in the area. Publish means "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the Minister considers appropriate and on the Department's website on the internet.

Clause 132 enables the chief executive to require that payment be made by the applicant to correct the cost of researching and investigating an application if it is likely that significant costs will be incurred for example because further hydrologic modelling must be done to assess the application. Subclause 2 provides that the chief executive must provide an estimate of the likely costs to the applicant to enable the applicant to assess whether it is worth proceeding with the application.

Clause 133 provides that the chief executive must approve the application if the chief executive is satisfied it is compatible with environmental flow objectives and water allocation security objectives, is in the public interest and will not significantly affect consumptive users of water and the natural ecosystem in an adverse way.

Clause 134 provides for the recording on the water allocations register of details of the transfer or change by the registrar upon receipt of a certificate and clause 128 or 134.

Clause 135 provides for the lease of a water allocation by a water allocation holder. A lease may be recorded by the registrar as an interest in the water allocation if the changes to the water allocation, for example to location, that will result from the proposed lease would be permitted for a transfer or change under the transfer rules. Subdivision 3 provides that where there are no transfer rules, an application to record the lease may be made following he requirements of clauses 129 to 134 inclusive.

Clause 136 provides for the transfer of a lease of a water allocation either under the transfer rules in a resource operations plan or by following the requirements for a transfer or change in clauses 129 to 134 inclusive.

Clause 137 provides for the forfeiture of a water allocation by the chief executive where the holder of the water allocation has been convicted of an offence against the Bill in certain circumstances. On forfeiture, the chief executive must sell the water allocation by public auction, public ballot or public tender as specified in the clause. The water allocation is forfeited but not cancelled, so that its value is not lost for other interest holders in the

allocation. Registered interest holders will receive part of the distribution of the proceeds of sale, subject to the interests of those stated in the clause to have higher priority to the distribution.

Clause 138 confirms that the Supreme Court has power to make orders regarding water allocations granted, dealt with or recorded on the water allocation register in consequence of a false or misleading representation or declaration.

Clause 139 applies the priorities specified in clause 137(7) to the distribution of the proceeds of forced sales instigated by the resource operations licence holder, the chief executive or another person, for example, a financier who has a power of sale under a mortgage document.

Division 5—Seasonal water assignments of water allocations

Clause 140 limits the application of the division to where a water resource plan or resource operations plan specifically provides for seasonal water assignments for water other than water managed under a resource operations licence. Seasonal water assignments are not leases, which are provided for under clauses 136 and 137.

Clause 141 permits a holder of a water allocation to apply to assign all or part of the benefits of the water allocation to another person for a water year.

Clause 142 permits the chief executive to require that the applicant give additional information or verify of information by statutory declaration information given.

Clause 143 provides for deciding applications for seasonal water assignments by the chief executive. If an application is inconsistent with seasonal water assignment rules the chief executive must refuse the application. If an application is approved, the chief executive by give the proposed assignee a water permit for the water year. Water permits are publicly searchable documents under clause 1010, but are not recorded on the water allocations register. Subclause 7 provides that the assignment does not need to be registered in order to be recognised as an interest at law. This ensures that despite the seasonal water assignment not being part of the water allocations register, it will not be defeated merely by registration of a later interest on the water allocations register.

Clause 144 specifies that a water permit is subject to certain conditions.

Clause 145 provides for the application of clause 243, regarding the surrender of water permits, to seasonal water assignments.

Division 6—Registering interests and dealings for water allocations

Clause 146 establishes that there is a registrar of water allocations. The registrar is to be employed under the *Public Service Act 1996*, and in acting under the Bill is subject to the chief executive. The clause also contains evidentiary provisions regarding the registrar's seal of office, and signature.

Clause 147 requires that the registrar keep a water allocations register. Regulations may prescribe the location of offices of the registry and the documents which may or may not be lodged. A person is taken to have notice of an interest in a water allocation included in the register. The notice deemed to have been given of interests on the register, may have implications for other registers, statutory provisions or contractual provisions with application to the interest held by the water allocation holder. For example under clauses 280(1)(b) and 280(2)(b) of the Corporations Law, the holder of a registered charge may lose priority to an unregistered charge, where the unregistered charge is in fact registered (as a mortgage) on the water allocation register.

Clause 148 provides for the form of the register.

Clause 149 specifies that all interests and dealings which may be registered for land under the *Land Title Act 1994* may be registered for water under the Bill, except those excluded by virtue of clause 150(1)(e).

Subclause (3) recognises a notice given under clause 101 by an existing interest holder in a water entitlement where the holder intends to take action to have their interest recorded on the water allocations register. In effect this subclause establishes a moratorium for 20 business days (4 weeks), during which no dealings will be recorded. This will give the interest holder time to obtain any necessary order (including an interim injunction) to either have the interest recognised or prevent registration of further dealings on the expiry of the 20 business day period pending the Court's final determination of the matter.

Refer to clauses 121(6) and 121(7) for the procedure to be followed in determining the priority for registration of existing interests in a water entitlement at the time of registration of the water allocation.

Subclause (5) provides that an instrument does not transfer or create an interest at law until it is registered on the register. The clause is modelled on section 181 of the Land Title Act 1994. The possibility of there being interests off the register recognised in equity has not been excluded by this provision, and the priorities of such interests as against registered interests would be as established in the Courts. The registrar is required not to register a transfer without a certificate providing the necessary administrative approval under clauses 128 and 133.

Clause 150 specifies that the *Land Title Act 1994* applies, other than the provisions listed and the *Land Title Regulation 1994*, and establishes a rule to resolve conflicts between the Bill and the *Land Title Act 1994*. The clause also alters some of the terminology of the *Land Title Act 1994* as adopted into the Bill.

The modifications made to the *Land Title Act 1994* provisions include the exclusion of the provisions which are not appropriate for water allocations. Provisions not applied include those in respect of easements, covenants and profits a prendre. The paramountcy provision in s.184 of the *Land Title Act 1994* has also been omitted, and related references to "indefeasibility" and compensation excluded. Powers of attorney registered under the *Land Title Act 1994*, are recognised under subclause (4) for the purposes of the water allocation register.

Clause 151 provides for the application of other legislation which refers to the *Land Title Act 1994*, being the *Property Law Act 1974* and the *Stamp Act 1894*. In respect of the *Property Law Act 1974* a reference to the *Land Title Act 1994* is, if the context permits taken to be a reference to the *Land Title Act 1994* as applied by the Bill. References to land are similarly to be taken as references to water allocations.

The reference to section 66A of the *Stamp Act 1894* in this section means that caveats registered on the water allocations register will be chargeable with duty similarly to caveats registered over land.

The provisions of the *Property Law Act 1974* regarding mortgages and leases will therefore be applicable, to the extent that the context permits. Further, in circumstances where water allocations are considered to be personal property, other provisions of the *Property Law Act 1974* will also apply.

Clause 152 permits a person to search and obtain a copy of a water allocation, and other instruments and information, at an office of the

department.

Clauses 153—166 not used. See footnote 1 at end of chapter 1.

PART 5—INTERIM ALLOCATION AND MANAGEMENT ARRANGEMENTS

Division 1—Preliminary

Clause 167 sets out the purpose for chapter 2 part 5 which is to make provision for how water is managed in that part of a catchment where water is managed through infrastructure but a resource operations plan (that is, the plan under which licences and interim water allocations are converted to water allocations) has not been approved.

Division 2—Interim resource operations licences

Subdivision 1—Granting interim resource operations licences for existing operations

Clause 168 provides that regulations may be made nominating the entities required to apply for an interim resource operations licence.

A person who is nominated under the regulation must within 60 business days (12 weeks) of the regulation being made apply for an interim resource operations licence to continue to operate the water infrastructure or to otherwise manage water.

Clause 169 provides that an application for an interim resource operations licence must be made in an approved form and supported by details of:

- The applicants proposed operating arrangements for any water infrastructure;
- All persons who are supplied water by the applicant under water

entitlements, including licences section 15 agreements and other agreements under the Act;

- The applicant's proposal about the total interim water allocation that should be managed under the interim resource operations licence;
- The applicants proposal about the apportionment of the total interim water allocations in the area;
- The applications proposal about water supply arrangements.

Clause 170 provides that in addition to the matters outlined in clause 169 the chief executive may require additional information and any additional information may be required to be verified by a statutory declaration.

Clause 171 provides a process whereby all persons who are supplied with water by the applicant and who are mentioned in clause 169 will be provided an opportunity to make submissions on the applicant's proposal.

Clause 172 provides that the chief executive may invite the applicant and all or any of the persons who's details are given to the chief executive under section 169 to a conference to help decide the application. Notice of when and where the conference is to be held must be provided all relevant persons, however, if it is impracticable to give notice to all persons, the chief executive may publish a notice about the conference. "Publish" for the purposes of this clause means publication in a newspaper circulating generally in the area and any other newspaper the chief executive considers appropriate and on the Department's website on the internet.

Clause 173 provides that based on the applicant's proposal, written submissions received and the views expressed at conferences the chief executive must make a proposed decision on the interim operating arrangements and the grant of interim water allocations.

Clause 174 provides that the chief executive's proposed decision will be notified to the applicant and each entity who's details are supplied under clause 169. All persons notified will be invited to make further submissions.

Clause 175 provides that the chief executive, after considering any submissions must grant an interim resource operations licence that may be subject to conditions and must give the persons mentioned in clause 169 notice of the decision. The applicant and the persons mentioned in clause 169 may appeal against the decision.

Subdivision 2—Granting interim resource operations licences for proposed operations

Clause 176 provides that where a process in a water resource plan makes provision, an interim resource operations licence may be granted. "Process" is defined in schedule 4 of the Bill.

Subdivision 3—Content and conditions of interim resource operations licences

Clause 177 provides the contents that must be included in an interim resource operations licence.

Clause 178 provides a nonexhaustive list of conditions that may be included in an interim resource operations licence.

Subdivision 4—Amending interim resource operations licences on application of licencee

Clause 179 provides that an interim resource operations licence holder may apply to amend its interim resource operations licence.

Clause 180 provides that the chief executive may require additional information about the application from the applicant or additional information about the submission from the submitter. "Submitter" is defined in schedule 4 of the bill.

Clause 181 provides that after the chief executive is satisfied an application has been properly made and the applicant has provided additional information requested, the chief executive must give the applicant a notice to publish the application in the newspaper or newspapers stated by the chief executive. It is the applicants' responsibility to arrange for advertisement of the application and the applicant must provide proof of the application the chief executive within 10 business days (2 weeks) after the notice is published. Subclause 6 provides that the chief executive may also send a copy of the notice to any entity the chief executive considers appropriate.

Clause 182 sets out the matters that the chief executive must consider when deciding applications for amendment of an interim resource operations licence.

Clause 183 provides for the decision making in relation to an application to amend and interim resource operations licence.

Subdivision 5—Amending interim resource operations licences by chief executive

Clause 184 provides that the chief executive may amend and interim resource operations licence if the chief executive is satisfied the interim resource operations licence should be amended. Subclause 2 provides limits on the chief executive discretion to exercise this power. The chief executive must not increase the volume, rate or times when water may be taken under the licence or increase the interference of the flow of water or the location for which water may be taken or interfered with under the licence. Any amendment required by the chief executive must not significantly affect natural ecosystems, quality of water, water entitlement holders, or water users who rely on beneficial flooding, in an adverse way. Subclause 3 ensures that a resource operations licence holder is given an opportunity to show cause prior to the chief executive making a decision about the proposed amendment. Show cause requirements are set out in clause 779 of the Bill.

Clause 185 provides for the chief executive to make a minor amendment to correct a minor error in a resource operations licence or another change that is not a change of substance, without regard to the limitations of the chief executive discretion in clause 184.

Subdivision 6—Transferring and cancelling interim resource operations licences

Clause 186 provides that an interim resource operations licence may be transferred or cancelled in the same way as a resource operations licence may be transferred or cancelled under part 4 division 3 of the bill.

Division 3—Interim water allocations

Subdivision 1—Interim water allocations managed through existing water infrastructure

Clause 187 provides that where the chief executive grants an interim resource operations licence the chief executive must also grant interim water allocations in accordance with the decision. Subclause 2 provides that the interim water allocation granted will replace any authorisation issued under the Act that remains in force at the time the interim water allocation is granted. An interim water allocation is similar to a water licence under chapter 2 part 6 in that it relates to specified land. However, subclause 4 does not require that an interim water allocation held by an interim resource operations licence holder, local government, water authority or other entity prescribed under a regulation be attached to land. Although this will not mean that these entities can transfer the interim water allocation they hold to others, it will enable them to hold interim water allocation without being land owners.

Clause 188 provides that the arrangements that a person had for the supply of water at the time the interim water allocation was granted are taken to be the supply arrangements for the supply of the interim water allocation. This means that the grant of the interim water allocation does not change existing supply arrangements.

Subdivision 2—Interim water allocations to be managed through new infrastructure

Clause 189 provides that following granting of an interim resource operations licence under chapter 2, part 5, division 2, subdivision 2, interim water allocations must be granted in accordance with the process stated in the water resource plan. An interim water allocation granted under this clause attaches to the land of the grantee unless the grantee is an interim resource operations licence holder, local government, water authority or other entity prescribed under a regulation.

Subdivision 3—Amending, renewing, transferring, forfeiting or cancelling interim water allocations

Clause 190 provides that an interim water allocations may be amended, renewed, transferred or cancelled in the same way as a water licence is amended, renewed, transferred or cancelled under chapter 2 part 6 of the Bill, except for transfers of interim water allocations by interim resource operations licence holders which are dealt with under clause 191 and clause 192, and also transfers provided for under a regulation made under clause 192A.

Clause 191 provides for applications by an interim resource operations licence holder to transfer all or part of an interim water allocation. The transfer must be in favour of either the owner of land upon which the water will be used or a local government or a water authority or an entity prescribed under a regulation.

Clause 192 provides for decision making about applications to transfer interim water allocations by the chief executive.

Clause 192A provides that a regulation may be made in an area, such as the Mareeba Dimbulah Water Supply Scheme area, for transfer of interim water allocations from the land to what they attach to other land. The provision will allow the transfer trial operating in the Mareeba Dimbulah Water Supply Scheme to continue. Strict regulations will apply to any transfers permitted prior to approval of a resource operations plan.

Clause 192B provides that an interim water allocation can be forfeited in the same way that a water allocation can be forfeited.

Clauses 193—203 not used. See footnote 1 at end of chapter 1.

PART 6—WATER LICENCES AND PERMITS

Division 1—Preliminary

The water licensing and permitting processes provided in part 6 are essentially a carry-over of the licensing and permitting processes from

part 4 of the Act. However, an essential difference is that where licences under the Act authorise works such as pumps and bores, licences under the Bill will authorise the taking of or interference with water. The works used to take or interfere with water will be authorised separately as developments under the *Integrated Planning Act 1997*.

The requirement for a person to hold a licence or permit to take, use or interfere with water is subject to the provisions of chapter 2, part 2, clause 12 of the Bill.

Clause 204 provides the power for the chief executive to issue water licences for taking and interfering with the flow of water, and water permits to take water.

Clause 205 specifies that the chief executive must make decisions under part 6 in accordance with any water resource plan or resource operations plan that is approved for the area to which the decision relates.

Division 2—Water licences

Subdivision 1—Granting water licences

Clause 206 defines who may apply for a water licence and the sources of water in relation to which an application for a licence to take and use water, or to interfere with water, may be made.

Subclause (1) provides for an owner of land, or the owners of two or more contiguous parcels of land, to apply for a water licence to take water and use the water on the land or to interfere with the flow of water on, under or adjoining any of the land.

The intention of the provision for an application for a water licence to be made by owners of contiguous land is to enable the operators of a common enterprise to jointly hold a water licence to relate to land that is separately owned, for example in the circumstances of a family enterprise. Contiguous land includes land that is nearly touching, such as land separated by a road reserve or a watercourse.

Subclause (2) clarifies that an application for a water licence to take water may be made to take water from a watercourse, lake or spring on or adjoining any of the land; or an aquifer under any of the land; or water

flowing across any of the land.

Subclause (3) makes provision for the owner or owners of land that does not adjoin a watercourse, lake or spring, or that does not overlie an aquifer to make application for a water licence to take water from that watercourse, lake, spring or aquifer provided that all the owners of land between the source of the water and the applicant's land agree to give the applicant a registrable lease or easement over the intervening land to the extent necessary to enable water to be accessed and to be delivered to the applicant's land. This provision is similar to section 39 of the Act, although it is more rigorous in requiring a registrable instrument. In this regard, the provision is intended to overcome some of the difficulties that have been experienced in relation to agreements under section 39.

Subclause (4) provides for a local government or a water authority to apply for a water licence to take or interfere with water, even though the local government or the water authority may not be the owner of any or all of the land to which the licence would relate. This provision accommodates circumstances such as town water supply where the land on which the water is used is not owned by the entity taking the water. This subclause also provides that resource operations licence holders and interim resource operations licence holders may apply for water licences, for example, to enable them to take unregulated water. Other entities prescribed under a regulation may also apply for a water licence regardless of whether the entity owns the land where the water will be used.

Subclause (5) clarifies that an application for a water licence must be made to the chief executive in the approved form and establishes the requirement that an application must contain sufficient information for the application to be decided. The application must also be accompanied by the prescribed fee.

Clause 207 enables the chief executive to require an applicant for a water licence to give additional information about the application. It also enables the chief executive to require a person who has made a submission about an application to give additional information about the submission. The chief executive may also require any information submitted to be verified by statutory declaration. The chief executive may exercise the discretion to require further information at any time prior to deciding the application.

Clause 208 specifies requirements relating to the publication of a notice of an application for a water licence.

Subclause (1) specifies that publication of a notice of an application may proceed only if the chief executive is satisfied that the application has been properly made and the applicant has provided any additional information requested by the chief executive.

Subclause (2) requires the applicant to publish notice of an application in the newspaper or newspapers, and within the time, specified by the chief executive. However, the chief executive must provide the applicant with the notice that is to be published. This arrangement differs from the arrangement under the Act which requires the chief executive to publish notice of an application. It is, however, consistent with the arrangement under the *Integrated Planning Act 1997* which obliges the applicant to publish notice of an application for a development approval.

Subclause (3) clarifies that the mandatory requirement about the publication of notice of applications does not apply to the particular applications identified in clause 209.

Subclause (4) specifies the minimum information that is to be included in the published notice of an application, including the specification of requirements regarding submissions that may be made. There is no limitation on who may make a submission on an application. This differs from the arrangements under the Act which limits the right to object to certain landowners whose land is located within a specified distance of the land subject of the application.

Subclause (5) provides a minimum period of 30 business days (6 weeks) that must be allowed following publication of the notice for submissions to be made about an application.

Subclause (6) obliges the applicant to give the chief executive a copy of the page of the newspaper containing the published notice within 10 business days (2 weeks) of publication. This provision is to ensure that the notice is properly published and to enable the chief executive to track the publication process.

Subclause (7) enables the chief executive to send a copy of the properly published notice to any other entity that may have an interest in the application. The clause also clarifies that the chief executive may proceed to decide the application only following the expiry of the period allowed for submissions.

Subclause (8) defines the meaning of the term “properly published” for the purposes of Clause 208.

Clause 209 provides for the chief executive to decide particular licence applications without publishing a notice of the application under clause 208.

Subclause (1) requires the chief executive to refuse an application for a water licence without notice of the application being given if the granting of the application would be inconsistent with a water resource plan or a resource operations plan. This provision is intended to minimise the decision period and administrative processes in those cases where the statutory planning process directs that the application cannot be granted.

Subclause (2) provides also that the chief executive may decide an application for a water licence to take underground water for domestic purposes or for watering stock without notice of the application being published. This provision is consistent with arrangements under the Act which allow for applications for artesian and subartesian bores for stock and domestic water supply purposes to be decided without publication of a notice.

The provision to enable the chief executive to decide applications for water licences to take water for stock and domestic water supply without publishing a notice recognises the low volume and intensity of water use involved and the fact that often applicants will have limited access to alternative sources of water for these essential purposes. The provision does not, however, oblige the chief executive to approve the application.

Clause 210 establishes the criteria which the chief executive must consider when making a decision on an application for a water licence. The criteria provides more specific definition of relevant matters for consideration than is provided under the corresponding section of the Act.

Clause 211 defines the decisions that the chief executive is able to make in relation to an application for a water licence and specifies the procedures that the chief executive must follow once a decision is made.

Subclauses (1) and (2) in combination provide for the chief executive, upon consideration, to approve an application; or approve an application subject to conditions; or refuse an application. Where an application is approved, it must be approved for a period.

Subclause (3) requires the chief executive to give notice of a decision on an application to the applicant or, if subclause (4)(b) applies, to the registered owner of the land, and to any persons who made a proper submission on the application, within 30 days of making a decision.

Subclause (4) provides a period of 30 business days (6 weeks) within which the chief executive must issue a water licence to the applicant when an application is approved. This subclause also provides for the licence to be issued to the registered owner of the land to which the application relates if the applicant ceases to be the owner of the land after making the application. While this provision would be most frequently used in the case where the applicant sells the land, it is also relevant in circumstances where land is transferred upon the death of the applicant or where an applicant partnership is dissolved and one of the parties to the application becomes the owner of the land.

Subclause (5) specifies that a licence takes effect from the day that the applicant or the licencee is given an information notice under subclause (3). This places beyond doubt the date from which a licensee may commence taking or interfering with water under the licence.

Clause 212 enables the chief executive to issue a water licence without an application if a water resource plan or a resource operations plan provides a process for the future allocation of water in a plan area by water licence. The intent of this clause is to enable water licences to be issued to authorise the taking of water that has been allocated to a person under arrangements specified in a water resource plan, for example by ballot. The provision is analogous to provision made in section 90 of part 5 of the Act for the issue of a licence to a person who has purchased a water entitlement as a consequence of a specified process.

Subdivision 2—Contents and conditions of water licences

Clause 213 specifies the mandatory attributes of a water licence. The licence must state the period for which the licence is issued and it must state the water to which it relates and the location at which that water may be taken or interfered with. The clause also provides generically for the amendment, renewal, reinstatement, transfer, amalgamation, subdivision, surrender and cancellation of a water licence although the specific processes for dealing with these actions are established in the subsequent provisions of subdivisions 3, 4 and 5 of Division 2. Very importantly, the clause further specifies that a water licence for which application was made under clause 206(1), or a licence granted under clause 212 to a person other than a registered water service provider, a local government or a water authority,

attaches to land and must be held by the owner of land.

Clause 214 enables conditions to be applied to a licence and specifies, without limiting the conditions that the chief executive may apply to any particular licence, conditions that may be applied under which the licensee may be required to do certain things in connection with the licence including to provide and maintain alternative water supplies for other water entitlement holders whose water supplies would be affected by activity under the licence.

Clause 215 clarifies that water that is authorised to be taken under a water licence that is attached to land may be used only on the land to which the licence attaches.

The provisions in clauses 213 and 215 clarify the interest that water licences attach and relate to particular land.

Subdivision 3—Amending water licences

Clause 216 makes provision for a licensee to apply for the amendment of a licence at any time. An application made under this clause must be dealt with as an application for a licence in the first instance under clause 206 and is therefore subject to all the procedural requirements of such application, including the publication of notice where required.

Clause 217 provides for the chief executive to amend an existing water licence if the existing licence is inconsistent with a water resource plan or resource operations plan, and provides the process that the chief executive must follow in amending the licence.

Subclause (2) requires the chief executive to amend a licence that is inconsistent with a water resource plan or a resource operations plan as soon as possible after the plan is approved. The chief executive must advise the licensee of the aspects of the licence that are inconsistent with the plan and must issue an amended licence.

Subclause (3) specifies that a licence amended under this clause takes effect from the day that the chief executive gives the licensee the amended licence.

Clause 218(1) provides for a water licence to be amended at any time on the initiative of the chief executive should it be considered necessary or

desirable to do so.

Subclause (2) limits the amendments that can be made to a water licence on the initiative of the chief executive to amendments that do not increase the licensee's access to water under the licence, including increasing the volume of water that can be taken or increasing the area of land that can be irrigated; or that do not increase the impact of the licence, on natural ecosystems or other water users; or that do not change the location of the activity authorised under the licence.

Subclause (3) sets out that if the chief executive considers that it is necessary or desirable to amend a water licence, the licensee must be given a show cause notice about the proposed amendment.

Subclauses (4), (5) and (6) deal with the decision that the chief executive may make in relation to a proposed amendment to a water licence. If the chief executive decides to amend the licence, the chief executive must give the licensee an amended licence and an information notice about the decision within 30 business days (6 weeks) of the decision. However, if the chief executive decides not to amend the licence, a notice must be given to the licensee advising that the licence will not be amended.

Subclause (7) specifies that an amended licence takes effect from the day the licence is given to the licensee.

Clause 219 provides for the chief executive to take administrative action to amend a licence to correct a minor error, or to make another change that is not a substantial change to licence. It also enables the chief executive to amend a licence in a way that is provided under the licence. An amendment under this clause arises in limited circumstance and may be dealt with without the need to comply with any of the other provisions that relate to the amendment of a licence. Examples of amendments that would be intended under this clause include: to record a change of name by marriage or to include a new partner's name on the licence; to record a change in the description of the land to which the licence attaches (but not a change of the land).

Subdivision 4—Other dealings with water licences

Clause 220 deals with the renewal of water licences. This provision is necessary because licences are issued for a period.

Subclause (1) requires a licensee to apply for the renewal of a licence before the licence expires.

Subclause (2) specifies that the application must be made to the chief executive in the approved form and accompanied by the prescribed fee.

Subclause (3) provides, where a licensee applies for the renewal of a licence before the expiry date, for the licence to remain in force until the applicant has been advised of the decision on the application or, where the application is refused and the applicant has appealed against the decision, until the appeal has been decided. This is an important provision that ensures that the activity authorised under the expired licence may lawfully continue, and the applicant's interests under the licence are not prejudiced, pending a decision on the renewal application or on an appeal.

Subclauses (4) and (6) establish the options available to the chief executive in making a decision on a renewal application. The provisions enable the chief executive to approve an application to renew a licence; or to approve an application subject to a variation of the licence; or to refuse an application.

Subclause (5), however, expressly provides that, if the chief executive decides to vary the licence in consequence of a renewal application, the variation must not increase the licensee's access to water under the licence including by increasing the volume of water that can be taken or increasing the area of land that can be irrigated; or increase the impact of the licence on natural ecosystems or other water users; or increase the interference with the flow of water or change the location of the activity authorised under the licence.

Subclause (7) establishes the procedures that the chief executive must follow to notify the applicant of the decision on a renewal application. Within 30 business days (6 weeks) of making the decision, the chief executive must give the applicant an information notice about the decision and, if the application is approved, must also issue a new licence to the applicant, or if the applicant has ceased to be the owner of the relevant land, to the registered owner of the land.

Subclause (8) provides that the renewed licence takes effect from the day that the applicant or, if the applicant has ceased to be the owner of the land, the registered owner, is given the licence.

Clause 221 makes provision for a licensee to apply to reinstate an expired licence. This reinstatement provision provides the opportunity for a licensee

who has failed to apply for the renewal of a licence before its expiry to seek the continuity of a licence. The provision effectively replaces the discretionary arrangement provided in the Act under which the chief executive could deal with a renewal application lodged up to four months after the expiry of a licence. The provision is important in circumstances where the limitations in a water resource plan or a resource operations plan might prevent the licensee from obtaining a fresh licence, even though the impact of the original licence was considered in the development of the plan. The period during which a reinstatement application may be made by either the licensee or if the licensee ceases to be an owner of the land another owner of the land, is 6 weeks after the day the licence expires.

Subclause (4) an expired licence is automatically taken to be in force again from the date an application for reinstatement is lodged with the chief until a decision is made. After expiry of the former licence and prior to making a reinstatement application any taking or interfering with water will be without authority and will constitute an offence under the Bill.

Subclause (5) establishes procedural matters in relation to dealing with an application to reinstate a licence. The decision options and procedures for dealing with a reinstatement application are specified to be the same as for the renewal of a licence under clause 220.

Clause 222 provides for a water licence to be transferred to another owner of the land to which the licence relates. This provision would be most commonly used in the context of the sale of land to which a licence relates or in the change of occupancy of land under lease arrangements. However, it can also be activated to transfer a licence from the registered owner of the land to an occupier (for example, lessee etc) of the land where the registered owner is moving off the land or where the registered owner has acquired the licence under the default arrangement provided in clause 192.

Subclause (1) enables the licensee of a water licence to apply to transfer the licence to either another owner, or to an incoming owner, of the land to which the licence relates.

Subclause (2) provides mandatory procedural requirements in relation to the submission of an application to transfer a licence. The application must contain sufficient information to enable the licence to be transferred and include the consent of the transferor and transferee to the transfer.

Subclause (3) obliges the chief executive to replace the licence with a new

licence under the same terms and conditions that have the same effect as the terms and conditions that applied to the previous licence. The only substantive change reflected in the new licence would be the changed name and address of the licensee, although the provisions are framed to allow latitude for the chief executive to make administrative adjustments to the licence. It is noted that the new licence must be issued to the transferee within 30 business days (6 weeks) after the transfer application is made, or, if the application relates to a person who will be the owner of the land, within 30 business days (6 weeks) after the transferee confirms that the transferee has become the owner of the land.

Clause 223 enables a regulation to be made to provide for the transfer of all or part of the authority to take water under a water licence so that the authority relates to other land. It is clear under the Bill that water licences attach to land and it is intended that transfer of water entitlements to other lands would generally occur only in relation to water allocations established within water resource plan areas, and then only in accordance with transfer rules established under resource operations plans. However, it is necessary to preserve present arrangements under the Act that provide for the transfer, under regulation, of water allocations held under licences until such time as those allocations are converted to transferable water allocations under the Bill. Furthermore, circumstances may arise where the transfer of water licences in a particular area is appropriate in a planned and controlled way. Because these circumstances will be limited and specific it is appropriate to specify arrangements for each area on a case by case basis under a regulation.

Clause 224 provides for the licensee or licensees of two or more licences that attach to the same or contiguous land to amalgamate the licences into one licence. This provision is intended to address the expediency and operational efficiency priorities of common or joint operations, for example as arise in family partnerships. The intent in limiting the amalgamation option to licenses on contiguous land is to ensure that amalgamation is not used as a mechanism to transfer licenses outside the provisions of clause 223.

Subclause (2) provides requirements regarding the form of an application that is made to amalgamate licences and the payment of fees in relation to such application.

Subclause (3) specifies that an application for amalgamation of water licences must be dealt with as an application for a new licence in the first

instance, that is, the application is to be dealt with as if it were a new application under division 2, subdivisions 1 and 2 of the Bill. The requirement to adopt the new application process recognises the potential for local impacts that could arise as a consequence of the changed location from which some of the water could be taken or interfered with and the concentration of extraction or interference.

Clause 225(1) enables a licensee to apply to subdivide a water licence into two or more licences to relate to the land to which the original licence related.

Subclause (2) provides requirements regarding the form of an application that is made to subdivide a licence and the payment of fees in relation to such application.

Subclause (3) specifies that an application for subdivision of a water licence must be dealt with as an application for new licences in the first instance, that is, the application is to be dealt with under clauses 206 to 215 of the Bill. The requirement to adopt the new application process recognises the potential for local impacts that could arise as a consequence of the multiplication of locations from which some of the water could be taken.

Subclause (4) obliges that the chief executive to ensure that any licence or licences issued as a consequence of an application to subdivide a licence relate only to the land that the original land related. This provision is important because it prevents subdivision arrangements from being use to effectively transfer licence entitlements outside the provisions of clause 223.

Clause 226(1) makes provision for a licensee to surrender a water licence by giving the chief executive a notice of surrender.

Subclause (2) clarifies both that the surrender of a licence is effective from the date that the surrender notice is received by the chief executive and that the surrender does not release the licensee from any obligations that the licensee had in relation to works before the surrender.

Clause 227(1) enables the chief executive to cancel a water licence at any time if circumstances warrant. This is a substantial power that has existed in the Act and in earlier legislation. While the provision is exercised infrequently and with care, it is a provision that is necessary to enable the chief executive to take effective action in a range of changing circumstances in which it might be no longer appropriate for a licence to continue.

Subclause (2) requires the chief executive, where it is proposed to cancel

a licence, to follow the process specified under clause 218 of the Bill for the amendment of a licence. This process ensures that the licensee is given notice of the chief executive's proposal to cancel the licence and has the opportunity to make a submission to the chief executive in that regard.

Subdivision 5—Effects of land dealings on water licences

Clause 228 specifies the arrangements that apply in relation to a water licence when the licensee ceases to be the owner of the land to which the licence relates. The provision creates a default arrangement that establishes responsibility for a licence when a licensee disposes of land to which the licence relates and no arrangements have been effected to transfer the licence to the new owner of the land. The provision overcomes difficulties that have been experienced in identifying responsibility for licensed works and activities in the absence of a similar provision in the Act. It is noted that the framing of this provision recognises that the "owner" of the land under the Bill includes an occupier and is not limited to the registered owner.

Subclauses (2) and (4) provide that either the transferee under a section 222 transfer arrangement or if there is no transferee, the registered owner of land are to become the new licensee if the original licensee ceases to be an owner of the land to which the licence attaches.

Subclause (5) requires the registered owner to inform the chief executive, within 30 business days (6 weeks) of becoming the licensee under subclause (1), that the person who previously held the licence has ceased to be the licensee. The intention of this provision is to enable the chief executive to issue a licence to the registered proprietor at the earliest possible time.

Subclause (6) obliges the chief executive to replace the licence with a new licence under terms and conditions that have the same effect as the terms and conditions that applied to the previous licence. The intention is that the only change reflected in the new licence would be the changed name and address of the licensee, although the provision allows latitude for the chief executive to make administrative adjustments to the licence.

Clause 229 deals with the effect on a water licence of the disposal of part of the land to which the licence is attached. The purpose of the provision is to prevent confusion or dispute regarding the ownership of a licence where

part of the land to which it is attached is disposed of and the licensee has not obtained the amendment or subdivision of the licence to reflect the land arrangements before the disposal of part of the land. The provision is based on a similar provision in the Act, but it is more comprehensive than the latter in that it provides for the replacement of a licence that has expired as an immediate consequence of the disposal of part of the relevant land. The provision applies regardless of whether the relevant land is subdivided before or after the issue of the licence and the circumstances that would trigger the provision include not only the disposal of a subdivision (for example, a part) of the land but also the disposal of all of the subdivisions (parts) to separate owners. The provision would not be triggered where the subdivided land was disposed of in total to the same owner.

Subclause (1) provides that a water licence expires if the registered owner disposes of part of the land to which the licence relates.

Subclause (2) clarifies that the licence expires on the day that the registered owner disposes of the part of the land.

Subclause (3) provides, however, for one or more of the subsequent owners of the land to which the expired licence related to apply for one or more licences to replace the licence that expired. This application must be made within three months of the expiry of the original licence.

Subclause (4) provides requirements regarding the form of an application that is made to replace a licence and the payment of fees in relation to such application.

Subclause (5) provides, where a subsequent owner or owners apply for a replacement licence or licences, that the original licence is taken to have been in force from the time the application is made until the applicant has been advised of the decision on the application or, where the application is refused, until any appeal against the decision has been decided. This is an important provision that ensures that any ongoing activity authorised under the expired licence may lawfully continue, and the applicant's interests under the licence are not prejudiced, pending a decision on the reinstatement application.

Subclause (6) specifies that an application made to replace an expired licence must be dealt with as an application made under clause 225, which calls up clauses 206 to 214 and means in effect that the application must be dealt with as an application for a licence in the first instance. The requirement to adopt this process recognises the potential for local impacts

that could arise as a consequence of any change in location from which all or some of the water could be taken or interfered with. A decision about an application for a replacement licence is not apellable.

Subclause (7) requires the chief executive to notify all the registered owners of the land to which the expired licence related of the application. This is in addition to the requirement to publish notice of the application under clause 208.

Subclauses (8) and (9) specify that the notice that is to be given to the registered owners must inform the registered owners that a submission may be made regarding the application within a period that is not less than 30 business days (6 weeks) after the notice is given.

Division 3—Seasonal water assignment of water licences

Division 3 makes provision for the licensee of a water licence to assign, under certain circumstances, the water that may be taken under the licence to another person.

Clause 230 establishes the limits of application for division 3. The effect of the clause is that the seasonal assignment of water authorised to be taken under a water licence may occur only if a water resource plan, or the resource operations plan that implements a water resource plan, allows for seasonal water assignment or, where there is no water resource plan or resource operations plan, a regulation allows for seasonal water assignment and sets out the rules for such assignment. Accordingly, the seasonal assignment of water under a water licence is contemplated only in very limited and specific circumstances.

Clause 231(1) establishes the right of a licensee to make application to assign the benefits of a water licence to another person for the water year in which the application is made. This provision effectively limits the period of the assignment to a maximum of one year.

Subclause (2) provides requirements regarding the form of an application that is made to assign the benefits of a licence and the payment of fees in relation to such application. The clause requires that the application be supported by sufficient information for the chief executive to be able to decide the application.

Clause 232 empowers the chief executive to request the applicant for a

seasonal water assignment to provide additional information to enable the application to be decided.

Clause 233 deals with the decision that the chief executive may make on an application for the seasonal assignment of water.

Subclause (1) provides that the chief executive must approve an application, with or without conditions, if the application is in accordance with the seasonal assignment rules that have been specified.

Subclause (2) specifies that the chief executive must refuse an application for seasonal water assignment if the application is not in accordance with the rules.

Subclause (3) requires the chief executive to give the applicant for seasonal assignment an information notice as soon as possible after deciding the application.

Subclause (4) requires the chief executive to give the assignee a water permit for the water year as soon as possible after approving, with or without conditions, an application for a water assignment. The water permit provides the authority for the assignee to take the water that is assigned as a consequence of the approval of an application.

Subclause (5) clarifies that a water assignment has effect from the day that the information notice about the decision is given to the applicant.

Clause 234 restricts the licensee of a water licence from taking water under licence to the extent of any seasonal assignment that has been approved.

Clause 235 provides for a water permit that is issued to give effect to a seasonal water assignment to be subject to the same conditions to which the water licence is subject. This clause also provides for the permit to be subject to any conditions prescribed under a regulation or that the chief executive may impose having regard to the circumstances of a particular permit.

Clause 236 clarifies that a permit issued to the assignee of a seasonal water assignment is subject to the provisions of clauses 243, 244 and 246 of division 4 of part 6 (Water Permits). Accordingly, a water permit issued for a seasonal water assignment may be surrendered or cancelled and the taking of water under the permit may be limited during periods of water shortage.

Division 4—Water permits

Clause 237(1) enables a person to apply for a water permit to take water for an activity. It is noted that the provision does not require the applicant to be the owner of land and, in specifying that water may be taken for an activity, does not require that water taken be used on land.

Subclause (2) specifies, however, that the activity for which water is proposed to be taken under a water permit must have a foreseeable conclusion date. Therefore, while the provisions do not mandate the period of a water permit, the expectation is that the taking of water would be of a temporary nature and that the permit would be issued for the period of the activity. Common examples of activities for which water would be taken under a permit include infrastructure construction and mineral or petroleum exploration.

Subclause (3) specifies that an application for a water permit must be made to the chief executive in the approved form and establishes the requirement that an application must contain sufficient information for the application to be decided. The application must also be accompanied by the prescribed fee.

Clause 238 enables the chief executive to request the applicant for a water permit to provide further information about the application. The chief executive may also require any information given in relation to the application to be verified by statutory declaration.

Clause 239 provides the criteria which the chief executive must consider in deciding an application for a water permit. The criteria are comprehensive while providing clear direction to the chief executive as to relevant matters for consideration.

Clause 240(1) and subclause (2) provide for the chief executive, upon consideration, to grant an application for a water permit; or grant an application subject to conditions; or refuse an application. If the application is granted, it must be granted for a period that is stated in the permit.

Subclauses (3) and (4) establish the procedures that the chief executive must follow to notify the applicant of the decision on an application for a water permit. The chief executive must notify the applicant of the decision on the application by an information notice given within 30 business days (6 weeks) of the decision and must, if the application is approved, with or

without conditions, also give the applicant a water permit within 30 business days (6 weeks) of the decision.

Subclause (5) clarifies that a water permit has effect from the day that is specified in the permit.

Clause 241 specifies the content of a water permit. The clause clarifies that a permit relates to a particular location or locations and must be issued for a specified activity and for a specified period. The clause further clarifies that a permit may not be transferred, amended, renewed or suspended. The ability to transfer, amend or renew a permit are not required since these functions are readily advanced in effect by an application for a fresh permit.

Clause 242 provides for conditions to be applied to a water permit. The conditions that are applied may be conditions that are prescribed under a regulation or that the chief executive imposes for a particular permit.

Clause 243(1) makes provision for a permittee to surrender a water permit by giving the chief executive a notice of surrender.

Subclause (2) clarifies both that the surrender of a permit is effective from the date that the surrender notice is received by the chief executive and that the surrender does not release the permittee from any obligations that the permittee had in relation to works before the surrender.

Clause 244(1) enables the chief executive to cancel a water permit at any time if circumstances warrant. This is a substantial power that has existed in the Act and which is exercised infrequently and with care. The power is necessary to enable the chief executive to deal with circumstances that might arise under which it is no longer appropriate for the permit to continue.

Subclause (2) requires the chief executive, where it is proposed to cancel a permit, to follow the process specified under clause 218 of the Bill for the amendment of a licence. This process ensures that the permittee has the opportunity to make a submission on the chief executive's proposal to cancel the permit.

Division 5—General

Clause 245(1) provides for a license or permittee to apply to the chief executive for a replacement document if a water licence or a water permit has been lost or destroyed.

Subclause (2) provides requirements regarding the form of an application

that is made to the chief executive to replace a water licence or permit and the payment of fees in relation to such applications.

Subclause (3) requires the chief executive to issue a replacement licence or permit if the applicant complies with the requirements in respect of the application established under subclause (2).

Clause 246 provides for the chief executive to exercise discretion to limit the amount of water that may be taken under water licences and water permits if there is a shortage of water. This provision is carried across from the Act. It is a provision that has been used frequently during local seasonal water shortages or drought to ensure equitable sharing of diminished water supplies and to maintain the availability of water for high priority uses.

Subclause (1) specifies that a limitation on the amount of water that can be taken is invoked by a notice published by the chief executive. It is noted that a notice for the purposes of this clause is published by a notice given to an affected licensee or permittee or in a newspaper circulating in the relevant area.

Subclause (2) enables a limitation to be established by limiting the times when water may be taken, the purposes for which water may be taken or the quantity of water may be taken. The detail of the limitation would be given in the notice published in each case. The chief executive is not limited as to the extent of the limitation that can be applied; that is, the limitation may extend to a total prohibition on taking water from the subject source.

Subclause (3) provides that a limitation on taking water extends for the period specified in the published notice or, if there is no period specified in the notice, until the chief executive publishes a notice withdrawing the first notice.

Subclause (4) creates an offence for a person to contravene a notice. The maximum penalty for the offence is substantial to reflect the impact that taking water during a period of shortage, other than in accordance with a notice, could have.

Clauses 247—257 not used. See footnote at end of chapter 1.

PART 7—CATCHMENT AREAS

The purpose of this part is to provide for the designation of areas of land in order to control land use activities on those areas that may have an adverse impact on water quality in a water storage, lake or groundwater area. It carries over similar powers that exist in the Act, and mirror provisions that existed in other Acts such as the *Gladstone Area Water Board Act 1984.*

Clause 258 provides a regulation may be made to declare an area as a catchment area for the purposes of preserving water quality.

Clause 259 deals with regulating land use in a catchment area.

Subclause (1) provides that a regulation may regulate the use of land in the catchment area. This allows certain land uses and practices to be prohibited or conditioned where they are likely to cause water quality degradation of downstream water bodies or groundwater recharge areas. Examples of such land uses and practices are non-perennial cropping, non-sewered urban development, and the application of nutrients, pesticides and other toxicants to crops. The clause also provides that a regulation may regulate the construction and use of buildings and structures on that land. This covers the establishment of things such as feedlots, piggeries, septic systems and other features that will discharge significant quantities and densities of nutrients or other contaminants.

Subclause (2) provides that a regulation made under this part overrides any planning scheme or local law developed by a local government under the *Integrated Planning Act 1997.* This provision is to remove any doubt where there may be conflicting requirements on land use, buildings or structures.

Subclause (3) provides that a development approval under the *Integrated Planning Act 1997* cannot override a requirement of a regulation made under this part. The provisions of subclauses (2) and (3) recognise that regional or State water quality interests represented by a regulation made under this part exceed the interests of a local government. Also the power can provide over-arching consistency across adjoining local governments where the catchment area is within more than one local government area.

Subclause (4) provides that a regulation made under this part does not limit powers made under this Bill or other Acts to protect water quality

within the catchment area. There may be a number of means for protecting water quality in a water body or groundwater area and these means should not be limited by the requirements of a single regulation.

Clauses 260—265 not used. See footnote at end of chapter 1.

PART 8—RIVERINE PROTECTION

This part brings into the Bill the existing provisions of division 5 of part 4 of the Act— "*Protecting and improving the physical integrity of watercourses*". The title is amended for simplicity and to reflect common reference to the provisions. Minor amendments to the provisions have been made as required for consistency within the framework of the Bill. However, there is no substantial amendment to the provisions, so that the practical effect remains the same as originally enacted.

Division 1—Granting permits for destroying vegetation, excavating or placing fill in a watercourse, lake or spring

Clause 266 specifies the activities for which a permit must be obtained and also specifies who may apply for a permit. The clause also deals with procedural matters concerning applications for permits. Permits must be sought for the destruction of vegetation, the excavation or the placing of fill.

Clause 267 empowers the chief executive to request the applicant for a permit to destroy, excavate or fill to provide additional information, including a statement of environmental effects if deemed necessary, to enable the application to be decided.

Clause 268 specifies the matters to be considered by the chief executive in deciding whether to issue a permit. Matters include the likely effects on the physical stability and water quality, cumulative effects on the whole stream system, the quantity, location and timing of the activity, and the type of material or vegetation to be disturbed.

Clause 269 requires the chief executive to issue a permit, with or without conditions, if the application is approved. The permit must state the time period for the permit. Decisions regarding permits are appealable by an applicant or permittee to the Land Court. Such appeals were previously to the Magistrates Court under the Act.

Division 2—Dealing with permits to destroy vegetation, excavate or place fill in a watercourse, lake or spring

Clause 270 deals with the cancellation and amendment of permits. The clause provides the grounds for cancellation and amendment, including non-compliance with permit conditions or the impacts of the activity being greater than was anticipated when the permit was issued. Prior to making a decision, the chief executive must ask the permittee to show cause why the permit should not be amended or cancelled.

Clause 271 deals with the procedure that the chief executive must follow in making a decision to cancel or amend a permit. The permittee is to be notified of the decision and, if the decision was to amend, be issued with an amended permit.

Clause 272 provides that, in exceptional circumstances, the chief executive may give a permit holder a written notice that immediately suspends the permit. The suspension is effective from the date the notice is given to the permittee. An offence is also created for non-compliance with a suspension notice. The chief executive must withdraw the suspension if satisfied that the suspension should no longer continue.

Division 3—Notices

Clause 273 provides for the chief executive, in certain circumstances, to give written notice requiring the owner or occupier of any land to take specified action in relation to vegetation, litter, refuse or other matter on the land. Circumstances include where the matter has or is likely to enter a watercourse, lake or spring and significantly cause obstruction of the water flow, disturbance of the physical integrity, or reduction of the water quality. The notice is a compliance notice and so provides the chief executive scope, if the notice is not complied with, to undertake the specified action and to recover costs. Also a compliance notice can be used to stop and/or reverse an unauthorised activity, as previously covered in section 76 of the Act.

Clauses 274—278 not used. See footnote at end of chapter 1.

PART 9—QUARRY MATERIALS

Division 1—Preliminary

Clause 279 clarifies the State's ownership of certain quarry materials. Such resources (within watercourses or lakes) are situated on State lands and on those freeholded State lands where the quarry materials have been reserved in the deed of grant. Being a State resource, these quarry materials attract a royalty when removed. This is the only distinction from general quarry materials, ie all quarry materials are treated the same in terms of allocation and management arrangements. This clause also clarifies the chief executive's control of all quarry materials.

Division 2—Granting and selling allocations of quarry material

Clause 280 specifies the process for applying for a quarry material allocation.

Clause 281 provides that the chief executive may ask for additional information to support an application or for information provided to be verified or for a contribution to be paid toward the cost of investigating the application. An application will lapse if the applicant does not provide requested information, verification or contribution within the time set.

Clause 282 provides specific criteria by which the chief executive must consider an application for allocation. These include the likely impact of extracting the allocated material on the physical integrity of the watercourse or lake, on the condition of the watercourse or lake, on the supply of sediments to estuaries and the sea, and on the rights of existing allocation holders. Overall consideration is on the long term sustainable use of the watercourse or lake.

The chief executive no longer needs to seek the views of the holder of a State lease when considering an application for allocation. This matter is now a pre-condition for an application under the *Integrated Planning Act 1997* to take quarry material, for example, the applicant will need to secure the leaseholder's consent as a pre-requisite for a valid development application. This requirement will apply to all applicants, including local

governments and State agencies. If the applicant cannot obtain the lessee's consent, the matter is to be resolved by a Magistrate (see clause 734).

On other State-owned lands, the State will continue to exercise its right to provide or withhold its owner's consent to such an application, based on whether or not the proposal will be a suitable use for the land. Similarly, landholder consent for the taking of quarry material not owned by the State is now a matter for the *Integrated Planning Act 1997*.

The chief executive no longer needs to seek the consent of the Minister administering the *Mineral Resources Act 1989* in regard to lands subject of a mining tenement or licence when considering an application for allocation as this matter is covered under the *Integrated Planning Act 1997* as part of the authority to take quarry material. The Department of Mines and Energy will be included as a concurrence agency for the *Integrated Planning Act 1997* applications in such circumstances. This will allow the Department to consider the possible impacts of the application on existing mines and to either reject the application or to impose conditions. The established mine may be adversely affected by the proposed quarry material operation either directly (eg, possibly removing mineral-bearing sediments from an alluvial mining lease in the watercourse or lake) or indirectly (eg, competing for quarry material resources which are required to construct or maintain nearby mine infrastructure such as roads, etc).

It is no longer necessary to clarify the situation where there is an inconsistency between the terms of a quarry material permit and a local law or other subordinate legislation of a local government as all operational requirements will now be coordinated under the *Integrated Planning Act 1997*. Also an allocation notice will not authorise the taking of quarry material so there is no potential for the terms of an allocation notice to conflict with the operation of local government local laws.

Clause 283 specifies the process for the chief executive to decide an application. The applicant is to be notified of the decision and, if the application was granted, be issued with an allocation notice, with or without conditions. The maximum term for an allocation has been extended from 3 years to 5 years, allowing larger operations to have greater resource security on which to base investment. There remains no appeal against this decision.

Clause 284 allows the chief executive to sell an allocation of State quarry material by auction or tender. The chief executive must consider the criteria given in section 282. An allocation notice must be given to the buyer.

Division 3—Content and conditions of allocation notices

Clause 285 requires an allocation notice must state the quantity of an allocation and the maximum rate of extracting the quarry material.

Clause 286 provides that an allocation notice is subject to conditions, including the need for the allocation holder to submit monthly returns on material extracted.

Clause 287 provides for the imposition of a condition that requires the allocation holder to give financial assurance to the chief executive in regard to the allocation. The assurance may be in a form and for an amount decided by the chief executive and will continue in force until all conditions of the allocation notice have been with satisfactorily. In essence the assurance is retained to meet the cost of any mitigation or stream protection works required. For example, where the taking of the allocated quarry material may increase the risk of short-term damage to the watercourse or any infrastructure in that reach of the watercourse (such as a bridge or pipe crossing), the allocation notice may require the holder to undertake certain works to protect these features before the quarry operation begins. In addition, it is expected that the development permit issued under the *Integrated Planning Act 1997* for the taking of the quarry material will also be subject to separate security arrangements to cover compliance with the terms of that authority, particularly rehabilitation requirements. Security may take the form of a deposit, a bond, or other suitable arrangement such as an insurance policy.

Division 4—Dealings with allocations of quarry material

Clause 288 provides for the voluntary transfer of all or part of an allocation from the holder to another person. The chief executive may effect the transfer if the chief executive is satisfied that the transfer would not alter the original decision to grant the allocation, for example, the overall benefit of the parts of the allocation do not exceed the benefit of the original allocation. If the whole allocation is to be transferred, there is no reason for the chief executive to reject the transfer. If part of the allocation is to be transferred, the chief executive may amend or reject the transfer if it does not meet the criteria on which the original allocation was granted. Parts of the allocation that may be transferred include the quantity of material that

can be removed, the rate at which the material can be removed, and the time over which the material can be removed. The applicant (allocation holder) may appeal against the chief executive's decision in the Land Court. To effect the transfer, new allocation notices will be issued.

Clause 289 provides for the voluntary renewal of an allocation. Currently quarry material permits are limited to 3-year maximum terms and are not renewable, providing little security for operators, particularly large businesses. By increasing the maximum term to 5 years (see clause 283) and allowing renewal of the allocation, operators will be able to better plan and manage their quarry operation. In assessing the application to renew, the chief executive must consider the criteria on which the original allocation was granted. If the allocation is renewed, it can be varied if the chief executive believes such variations are necessary to ensure the long term sustainable use of the watercourse or lake. The applicant can appeal against the decision in the Land Court.

Clause 290 provides for the amendment, suspension or cancellation of an allocation of quarry material in response to an unforseen change in the condition of the watercourse or lake (such as after a large flood event which removes most of the available material) where continuation of the quarry operation would cause unacceptable damage to the watercourse or lake. There is also scope for the allocation to be amended, suspended or cancelled if the allocation was granted in error or if the allocation holder fails to comply with the conditions of the allocation notice. The chief executive cannot increase the benefit of the allocation notice under this provision. The chief executive must invite the holder of an allocation to show cause why the allocation should not be amended, suspended or cancelled.

Clause 291 specifies the process for the chief executive to decide whether to amend, suspend or cancel an allocation notice. The chief executive must consider any valid show cause submission or representation made. If the chief executive decides to amend, suspend or cancel the allocation notice, the allocation holder is to be notified of the decision and, if the allocation notice is amended, be issued with an amended allocation notice. The amendment, suspension or cancellation takes effect from when the allocation holder is given notice of the decision. A suspension does not extend the original expiry date of the allocation notice. The allocation holder may appeal the decision in the Land Court.

Division 5—General

Clause 292 provides that the holder of an allocation over State quarry material is required to pay a royalty or, where the allocation is sold, the sale price for the material removed. The royalty, which is prescribed by regulation, presently provides rates for material taken for local government uses, for State uses, and for other uses. Failure to pay the royalty or sale price is an offence and outstanding amounts can be recovered as a debt to the State.

Clauses 293—298 not used. See footnote 2 at end of chapter 1.

PART 10—WATER BORE DRILLERS

Division 1—Granting Water Bore Driller's Licences

Clause 299 provides that an individual person (not corporation or other legal entity) may apply for a water bore driller's licence.

Applications are to be made to the chief executive in the approved form. The approved form will include all application forms, interview sheets and internal examinations as approved by the chief executive and noted in the gazette.

Water bore drillers are to be defined by class. The class of driller relates to the nature and type of aquifer system in which a driller may operate and the skill level required.

Classes of bore driller's licence—

Class 1 licence: A driller with this licence is restricted to drilling operations in non-flowing (sub-artesian) single aquifer systems.

Class 2 licence: A driller with this licence in addition to operating in class 1 licence conditions is permitted to engage in drilling operations in a non-flowing (sub-artesian) aquifer systems.

Class 3 licence: A driller with this licence in addition to operating in class 1 and class 2 licence conditions, is permitted to engage in drilling operations in flowing (artesian) aquifer systems.

Specific equipment authorised for use by a licensed water bore driller will also be endorsed on the licence. Endorsements will relate to the drilling and construction equipment for which the licensed water bore driller has proven proficiency.

Endorsements on bore driller's licence—

Cable Tool: This endorsement permits drilling operations using cable tools or cable percussion drilling methods.

Auger: This endorsement permits drilling operations using bucket auger, hollow stem and solid stem auger techniques.

Rotary air: This endorsement permits drilling operations which use rotary drilling methods with air or foam as the drilling fluid. This endorsement includes the use of down hole hammers.

Rotary mud: This endorsement permits drilling operations which use rotary drilling methods with water or drilling fluids based on water.

A person will be entitled to a licence if the chief executive is satisfied that the person has successfully completed examinations, interviews and met other qualification and experience criteria approved by the chief executive for a particular licence class and drilling equipment endorsement.

Details of classes, endorsements, minimum qualification and experience standards, mutual recognition of interstate licences and fees will be set out in a bore drillers regulation.

Clause 300 provides that the chief executive may require an applicant to provide additional information to assist the chief executive to make a decision. Requests for further information are limited to relevant information about the applicant's experience or history in the water bore drilling business. Information about any prior convictions of an offence relevant to water bore drilling or about previous cancellation or suspension of a similar licence would be reasonable for the purposes of this clause. Information about an applicant's general criminal history would not be

relevant. If the applicant fails to comply with the request, without a reasonable excuse, the application will lapse.

The chief executive may require that the correctness of any information provided be sworn before a Justice of the Peace in statutory declaration form. This requirement is not mandatory and where it is impractical or not considered necessary, information may be supplied in a form that is not verified by statutory declaration.

Clause 301 provides that the chief executive is required to decide an application. If the chief executive approves an application, a driller's licence showing the class, any endorsements and any conditions must be given to the applicant. The licence is valid for 5 years. If the chief executive grants a licence that is different to the application received, the applicant must also be notified of the decision. This may occur where a person applies for a certain class or endorsement but is not adequately qualified. Rather than require a fresh application with further fees, the chief executive can grant a licence based on the person's qualifications and experience.

The applicant can appeal in a Magistrates Court any decision of the chief executive in regard to a driller's licence. Prior to lodging an appeal, the applicant must make application for an internal review. This process involves a review of the original decision by an officer of equal or greater authority than the original decision maker.

Clause 302 provides that specific conditions can be placed on an individual water bore driller's licence. This will enable the chief executive to restrict licensed water bore drillers in relation to specific water bore drilling or construction activities not adequately covered by the generic licence classes or endorsements. Examples of conditions include: restrictions in relation to geographical areas, aquifer types, aquifer depth, aquifer diameter, bucket auger only, and non-contaminated sites only.

All driller's licences will be required to include any condition specified by regulation. One such condition is likely to be compliance with minimum standards such as, for example, *Minimum Construction Requirements for Water Bores in Australia* (ARMCANZ, 1997). This document defines the minimum standards applying to construction, modification, repairing and decommissioning of all water bores.

If special restrictions are to apply to a water bore driller's licence in particular areas those restrictions must be referred to separately on the licence. For example, where artesian bores must be constructed to comply

with the *Specifications for construction, reconditioning or plugging of bores tapping aquifers of the Great Artesian Basin in Queensland* this condition may be referred to on the driller's licence.

Alternatively, a code setting out conditions applying to construction of bores may be incorporated as a condition of *Integrated Planning Act 1997* development assessment.

Clause 303 provides that if an application is refused the chief executive must, within 30 business days (6 weeks), notify the applicant of the decision which is appealable.

Division 2—Dealings with water bore driller's licences

Clause 304 provides that the holder of a driller's licence may apply to upgrade or otherwise amend his or her licence at any time. The process for application to amend or upgrade is the same as the original application process outlined in division 1.

This provision enables a driller who gains additional qualifications to apply to have the class upgraded or to have endorsements added to his or her licence during the licence period (before it is due for renewal).

The chief executive may approve, approve with conditions or refuse an application to amend within 30 business days (6 weeks). By way of example, the chief executive may decide to refuse an application to upgrade a licence if:

- The licensee is not eligible for the class of licence or the licence upgrading applied for;
- The licensee does not have sufficient drilling and/or bore construction experience;
- The licensee has not successfully completed all driller's licence application requirements for a particular class or endorsement;
- Reports by referees or alleged regulatory offence matters have not been resolved;
- Consumer complaints about the driller have not been resolved;
- The licensee has provided false or incorrect information in support of his or her application.

Clause 305 provides that the chief executive may amend a licence if the chief executive is satisfied the class or endorsements or conditions require amendment because the licensee's competence is considered to have diminished since the time the driller's licence was granted.

Prior to amending the licence the chief executive must give the licensee a written notice, called a show cause notice (see section 626), asking the licensee to show cause why the licence should not be amended. The notice must state the proposed amendment and grounds for the amendment, outline the facts and circumstances that form the basis of the grounds, and must invite the licensee to make a submission within a specified time, of not less than 30 business days (6 weeks), to a specified place.

Clause 306 provides that the chief executive may amend the licence if, after considering all submissions made within the specified time, the chief executive still believes that the licence should be amended in the manner specified in the show cause notice.

If the chief executive decides to amend the licence, the chief executive must give the licensee a written notice, called an information notice, stating—

(a) That the licence will be amended as specified in the show cause notice;

(b) The reason for the decision; and

(c) That the licensee may appeal against the amendment of the licence within 30 business days (6 weeks) after the notice is given.

If the chief executive and licensee agree to an alternative amendment to the licence, the agreement must be recorded in writing and signed by both parties. The chief executive may amend the licence in accordance with the agreed alternative without providing a further show cause notice. The chief executive must however provide notice that the licence is to be amended in accordance with the written agreement.

If the chief executive amends a licence the chief executive must give the licensee an amended licence within 30 business days (6 weeks). The amended licence takes effect from the day it is given to the licensee. There will be no compensation in relation to the amendment of a licence.

If the chief executive decides to not proceed with amending the licence, the licensee is to be notified of the decision.

Clause 307 provides that minor changes may be made to a water bore driller's licence without the need to give a show cause notice and without appeal. Any change amounting to a diminution of a water bore driller's licence would be beyond the scope of a minor change.

This intention is that this provision be used to correct clerical mistakes or to make standard modifications to all driller's licences.

Clause 308 provides that a licensee may apply, using the approved form, to the chief executive for the renewal of a licence before the licence expires. If an application for renewal of a licence is made, the existing licence remains in force until the licensee is notified of the chief executive's decision in relation to the application. The licensee must be given an information notice within 30 business days (6 weeks) of the decision.

Applications for renewal may be approved, approved subject to variation of the class, endorsements or conditions, or refused. The decision may be appealed in the Magistrates Court. There will be no compensation in relation to the refusal to renew a licence.

If the renewal is approved, with or without variations to the class, endorsements or conditions, the chief executive must issue a new licence within 30 business days (6 weeks) from that date.

If a licensed water bore driller does not renew his or her license prior to its expiry, the person cannot operate as a driller until a new license has been issued. A driller who allows his or her license to expire must apply under section 299 for a new license and pay the relevant application fee.

Clause 309 provides that the chief executive may suspend a driller's licence for a particular period if the chief executive is satisfied or believes on reasonable grounds that any of the following have occurred:

- The licensee has been convicted of an offence against the Bill or a relevant interstate law; or
- The licensee has carried out unauthorised water bore activities; or
- The licensee has failed to comply with conditions or endorsements on the licence; or
- The licensee has failed to keep suitable records in the approved form.

The licensee must be given an opportunity to show cause why the licence should not be suspended. After considering properly made submissions,

the chief executive must make a decision and give the licensee an information notice regarding the decision. If the chief executive suspends the licence, the suspension is effective from the day the information notice is given to the licensee. The licensee may appeal against the suspension decision. Suspension of a licence does not give rise to compensation.

An 'interstate law' is defined in the Bill dictionary to mean a law of a State (including a law that has been repealed) regulating the taking or using of water or interfering with the groundwater resource. Hence a drilling offence committed in another State will impact on the driller's Queensland licence.

Clause 310 provides that the chief executive may cancel a driller's licence if the chief executive is satisfied or believes on reasonable grounds that any of the following have occurred:

- The licence was issued or renewed or amended in error or as a consequence of a false or misleading representation or declaration made in writing or verbally; or
- The licensee has been convicted of an offence against the Bill or a relevant interstate law; or
- The licensee has carried out unauthorised water bore drilling activities; or
- The licensee has failed to comply with conditions or endorsements on the licence.

The licensee must be given an opportunity to show cause why the licence should not be cancelled. After considering properly made submissions, the chief executive must make a decision and give the licensee a notice regarding the decision. If the chief executive cancels the licence, the licence is cancelled as of the day that the notice is given. The licensee may appeal against the cancellation decision. Cancellation does not give rise to compensation.

Division 3—General

Clause 311 provides that a licensed driller is required to produce his or her licence upon the request of an authorised officer in circumstances where the authorised officer has information about or reasonably suspects that the

driller is carrying out, or has just carried out, a water bore drilling activity in an area. The authorised officer must warn the driller that it is an offence to fail to produce a licence unless the driller has a reasonable excuse.

The purpose of this 'on the spot production of a licence' provision is to assist authorised officers with enforcement of the regulations applicable to water bore drillers. Although the drilling community is quite familiar with one another, drillers may move to other areas and in some cases interstate drillers may seek to operate in Queensland. In order to carry out water bore drilling in Queensland, a driller must have a Queensland driller's licence.

To enable efficient processing of licence checks, particularly as the locations of many drilling activities are in remote areas, drillers are required to keep photographic water bore drilling licences on their person while engaging in activities or supervising activities for which a licence is required.

However individuals carrying out an activity authorised under the *Petroleum Act 1923* or the *Mineral Resources Act 1989*, if that activity does not result in a functional water supply bore, are exempt from this provision. Such drillers are not required to hold a water bore driller's licence.

It is an offence to fail to produce a valid licence when requested, without a reasonable excuse. The maximum penalty for failing to produce a valid licence is 50 penalty units ($3750).

Clause 312 provides that if a drilling licence is suspended or cancelled, the licensee must return the licence within 15 business days (3 weeks) of date of notice of suspension or cancellation . It is an offence to fail to return a suspended on cancelled licence within the time period provided, without a reasonable excuse.

The chief executive must return to the licensee a suspended licence once the period of suspension ends.

Clause 313 provides that information to be obtained and recorded by a water bore driller in relation to the activities the licensee carries out in Queensland will be prescribed by regulation. Specific forms approved by the chief executive will also be made available to assist water bore drillers with record keeping requirements.

A water bore driller must keep information about a borehole as the hole is being drilled and then record the information in the approved form. It is not acceptable that information be written up when the licence holder returns

to his or her office after drilling a number of bores.

Completed forms must be forwarded to the chief executive within 30 business days (6 weeks) of the completion of the borehole.

Clause 314 provides for the chief executive to issue a replacement licence if a driller's licence is lost or destroyed. Drillers must apply for the replacement including any prescribed fees.

Clauses 315—325 not used. See footnote 2 at end of chapter 1.

PART 11—OPERATIONS LICENCE

Division 1—Preliminary

The purpose of part 11 is to provide a system for control of the taking of water as a single operation by a person as an agent for two or more water entitlement holders.

Clause 326 provides that the chief executive may issue an operations licence for the taking of water as a single operation by a person as an agent for two or more water entitlement holders. The entitlement may be either a water allocation or a water licence. The operations licence must state the water entitlements that are to be supplied under the operations licence and the total volume that may be taken and the rates and times that the water may be taken. The volumes, rates and times will be a consolidation of the volumes, rates and times that apply to the related water entitlements. The operations licence may be transferred, amended, suspended or cancelled.

Clause 327 provides that an operations licence is not required in respect of water allocations managed under a resource operations licence. Resource operations licence holders will be accountable for water supplied to customers whether the customers take the water themselves or whether it is taken for them by an agent.

Division 2—Granting Operations licences

Clause 328 provides that any person may apply for an operations licence. The application is made to the chief executive in the approved form and is supported by sufficient information to enable the chief executive to decide the application. The application must be accompanied by the written consent of the holders of the related water entitlements.

Clause 329 provides that the chief executive may require additional information to be given about the application.

Clause 330 provides that in deciding whether to grant or refuse the application the chief executive may consider whether the applicant has been found guilty of an offence under the Bill, the Act or an interstate law.

Clause 331 provides for the approval of the application or approval subject to conditions or refusal. If the application is refused or approved subject to conditions, a notice is sent to the applicant advising of a right to appeal against the decision. The licence takes effect on the day stated in the licence. Any taking of water by a holder of en entitlement after the licence has effect is unauthorised and any taking of water will constitute an offence under the Bill.

Clause 332 enables conditions to be applied to an operations licence. Without limiting the conditions that may be applied to a licence, the clause specifies certain requirements that may be imposed on a licensee as a condition of licence.

Division 3—Dealings with operations licences

Clause 333 provides that a licensee may apply to amend an operations licence and that any such application is dealt with in the same way as an application for a licence.

Clause 334 provides the procedure by which the chief executive may amend an operations licence. The chief executive must first give the licensee a show cause notice about the amendment and consider any submissions made in response to the notice. If the chief executive does amend the licence, then a notice is sent to the operations licence holder advising of the right of appeal.

Clause 335 describes the circumstances under which the chief executive must amend a resource operations licence. If the holder of a water entitlement to which the operations licence relates, notifies the chief executive that the entitlement holder no longer wishes the licensee to take water as their agent then the chief executive must amend the operations licence accordingly. Also, if the holder of a water entitlement to which the water licence relates ceases to be the holder of the entitlement, then the chief executive must amend the operations licence.

Clause 336 provides that the chief executive may amend an operations licence if the amendment is only to correct a minor error or to make a change that is not a change of substance.

Clause 337 provides that an operations licence may be transferred to another person on the same terms and conditions.

Clause 338 provides that a licensee may surrender an operations licence.

Clause 339 provides that the chief executive may cancel an operation s licence if the chief executive considers it necessary or desirable. The chief executive must give the licensee a show cause notice about the proposed cancellation and must consider any submission made about the show cause notice. If the chief executive is satisfied that the cancellation is necessary then the chief executive must give a notice to the licensee advising of the right to appeal against the decision.

Clauses 340—360 not used. See footnote 2 at end of chapter 1.

CHAPTER 3—INFRASTRUCTURE AND SERVICE

PART 1—PRELIMINARY

Clause 361 sets out the purpose of chapter 3 which is to:

- provide for a regulatory framework for the provision of water and sewerage services in Queensland;
- provide for the functions and powers of service providers;
- protect the interests of customers;

- provide for the regulation of referable dams; and
- provide for flood mitigation activities.

The regulatory matters covered under the Bill do not include drinking water quality, as this matter is already regulated under the *Health Act 1937*.

Clause 362 clarifies that nothing in this chapter affects the powers of local governments or authorised persons under the *Local Government Act 1993*. This clause is required because there is some overlap between the powers and functions of service providers under this Bill (which includes local governments) and the powers and functions of local governments under the *Local Government Act 1993*.

Clauses 363—369 not used. See footnote 2 at end of chapter 1.

PART 2—SERVICE PROVIDERS

Division 1—Registration of service providers

Clause 370 sets out a requirement for local governments, water authorities or any person who owns infrastructure for supplying water or sewerage services to be registered. The regulatory framework under the Bill is based on a process of registration for service providers, with regulatory obligations stated in legislation (rather than, for example, in a licence). It should be noted that the requirement to be registered captures the owner of the infrastructure, rather than the operator. In cases where the operator of the infrastructure is not the owner of the infrastructure, the onus will be on the owner (for example, through contractual arrangements) to ensure that the operator complies with the owner's obligations under the Bill.

Registration is a prerequisite to a service provider being able to utilise the powers granted to service providers under chapter 3, part 2, division 2 of the Bill.

This clause should be read with clause 823, which makes it an offence to supply water services or sewerage services unless the person is registered or is operating infrastructure for a service provider who is registered.

Clause 371 sets out the process by which a service provider may apply to become registered. An application for registration must be in the approved form and accompanied by the prescribed fee. This clause should be read in conjunction with clause 516(4), which details the information which the regulator will require in order to register a service provider. Under subclause (2), the regulator may require the service provider to give additional information or verify, by statutory declaration, the information contained in the service provider's application.

Clause 372 specifies that the regulator must register an applicant for registration if the regulator is satisfied that the applicant has complied with the requirements of 371. The regulator must also give the applicant notice of the registration. Registration takes effect from the day the regulator registers the applicant in the register.

Clause 373 makes provision for a service provider to apply to change its registration details by either including or removing information about infrastructure or services relevant to the service provider's registration.

Clause 374 provides for circumstances where there is a transfer of ownership of a service provider's infrastructure (for example, through a sale of the infrastructure). Where there is to be such a transfer, the Bill requires that the transferor (that is, the currently registered service provider) give the regulator notice of the proposed transfer, including any relevant information required by the regulator to register the new owner (the transferee). The notice must be in the approved form and accompanied by a fee which has been prescribed by regulation. The regulator may require the transferor or transferee to provide further information and may require that the information provided in the notice be verified.

Clause 375 provides that the regulator must register the transferee as a service provider for the infrastructure and services if the regulator is satisfied that the requirements of clause 374 have been complied with, and give both the transferor and transferee notice of the registration. Registration of the new owner will take effect either on registration of the transferee by the regulator or at a later date nominated in writing by both the transferor and transferee.

Subclause (5) provides that, if the regulator has given a compliance notice under clause 780 to the transferor while the transferor was registered as a service provider, the transferee is taken to have been given the compliance notice. A compliance notice under clause 780 is one of the enforcement

mechanisms under the Bill, and subclause (5) seeks to ensure that a service provider cannot avoid their obligations under the Bill by transferring ownership of the infrastructure.

Clause 376 creates an obligation for a service provider to inform the regulator if the service provider is likely to stop supplying a registered service (for example if the service provider is about to become insolvent), and there is no other entity willing to take over providing the service. It is an offence for a service provider to fail to give the regulator 20 business days notice without reasonable excuse. The purpose of this clause is to make provision for the regulator to be notified in circumstances where the regulator may need to take action to ensure the continued provision of an essential service. Under Clause 955, the Governor in Council may authorise the regulator take over the operation of the infrastructure to ensure the continued provision of services.

Clause 377 clarifies that registration as a service provider does not entitle a person to a water entitlement or a resource operations licence.

Clause 378 makes it an obligation for a service provider to annually review its registration details and to notify the regulator about any changes in information relating to the service provider's registration. The regulator must include the changes in the register. This clause is to be distinguished from clause 373 that allows a service provider to apply to the regulator for an amendment to the service provider's registration details, if the service provider wishes to do so.

Division 2—General powers of service providers and authorised persons

The provisions of division 2 of part 2 are required because service providers, like other utility operators, need to have certain powers to enter land to service and protect their assets. These powers already exist for service providers who are local governments or water boards under the *Local Government Act 1993* and the *Water Resources Act 1989*. Where a service provider is given a power under division 2, part 2, the service provider may appoint an "authorised person" to exercise those powers on the its behalf. Provisions relating to the appointment of authorised persons are in division 3, part 2.

Clause 379 expressly states that powers provided under division 2, part 2

do not apply to a part of a place used for residential purposes. This relates to the powers of entry provided for under division 2.

Clause 380 clarifies that the exercise of powers by a service provider under this division must be related to services for which the service provider is registered.

Clause 381 gives the service provider the power to take action to protect the service provider's infrastructure, where a person has illegally connected to the service provider's infrastructure. The service provider may give the person who has made the unauthorised connection a notice asking the person to state why the service provider should not disconnect the connection. The notice must state a time, which is not less than 48 hours, within which the person must respond. If the person does not satisfy the service provider why the connection should not be disconnected, an authorised person may disconnect the connection. The provision also enables the service provider to recover the cost of the disconnection and the value of any service used by the person. However, if the unauthorised disconnection is causing damage to the service provider's infrastructure, the service provider may take immediate action to disconnect the unauthorised connection. If a service provider enters a place, without at least 48 hours notice, to disconnect an unauthorised connection, the service provider must give a notice to the owner, or person in control of the place, stating the purpose of entry.

Clause 382 enables a service provider to issue a notice to a person, requiring the person to rectify defective or improper equipment that is connected to or adversely affecting the service provider's infrastructure. If the person does not rectify the equipment, the service provider may enter the place and do the work required, and recover the cost of the work from the person, as a debt due.

Clause 383 provides that a service provider may install or approve an installation of a meter on infrastructure supplying water to premises. The position of the meter is decided by the service provider. The meter is the property of the service provider even if installed inside the boundary.

Clause 384 provides for an authorised person to enter a place for those operational matters stated in this clause in relation to the service provider's infrastructure. Notice of at least 14 days must be given of the entry and the purpose of the entry unless the occupier consents to the entry or the service provider needs to take urgent action to protect its infrastructure. In the case

of emergencies, the authorised person must give notice at the time of entry advising of the entry. If there is no person at the place at the time of entry, the notice must be left at the place in a reasonably secure and conspicuous place.

Clause 385 provides for when an authorised person, in exercising powers under this division, damages anything. The authorised person must immediately give notice of the damage to the owner of the thing damaged. If for any reason this is not practicable, the authorised person must leave the notice at the place in a reasonably secure and conspicuous place.

Clause 386 provides for compensation being claimed from the service provider if a person incurs loss or expense because of the exercise or purported exercise of a power under this division. Payment of compensation may be claimed and ordered in a proceeding in a court of competent jurisdiction.

Clause 387 provides for a service provider to recover costs from a person who damages its infrastructure or causes the service provider to suffer loss. The service provider may recover, as a debt due, the amount of the loss or the reasonable cost of repairing the damage.

Division 3—Power to restrict water supply

Clause 388 enables a service provider to restrict water supply to its customers because of climatic conditions or water conservation needs. Such a restriction may be in relation to the amount of water used, the hours when water may be used or the way water may be used. This clause seeks to ensure that a service provider is not made liable for restricting the supply water, where such restriction is necessary because of, for example, a drought. The clause is also aimed at facilitating restrictions on water use where such restrictions are part of a demand management strategy and the restriction is essential to ensure that the aims of the strategy are met.

Clause 389 provides that where a service provider imposes water restrictions, the service provider must give notice of the water restriction to anyone affected by the restriction. The restriction does not have effect until the day after the notice is given. Once the restriction is in effect, this clause makes it an offence for a person to contravene the restriction.

Clause 390 enables a service provider to temporarily shut off water

supply to premises in order to perform work on the provider's infrastructure. The service provider must give at least 48 hours notice of the intention to shut off supply to affected persons. The requirement to give 48 hours notice does not apply if there is a serious risk to public health, risk of injury or damage or other emergency. However, where the service provider shuts off water supply without notice, the service provider will be required to give subsequent notice of the action to affected persons explaining the reasons for the interruption to water supply and, if the interruption is ongoing, information about how long the interruption will continue.

Division 4—Authorised persons

Clause 391 enables the service provider to appoint a person to be an authorised person if the service provider is satisfied the person has the necessary expertise or training. Authorised persons would generally be employees or agents of the service provider who have the function of running the service provider's business and/or operating the service provider's infrastructure.

Clause 392 sets out the requirement for the service provider to provide authorised persons with an identity card.

Clause 393 makes it an offence for a person to fail to return an identity card within 15 business days (3 weeks) of ceasing to be an authorised person, unless the person has a reasonable excuse.

Clause 394 requires that an authorised person display their identity card when exercising a power under division 2.

Division 5—Liability of service providers

Clause 395 provides that a service provider is not liable for damages arising from an event beyond the control of the service provider. However, this clause does not affect, or in any way limit, the liability of the service provider for negligence.

Clauses 396—407 not used. See footnote 2 at end of chapter 1.

PART 3—SERVICE PROVIDER OBLIGATIONS

Division 1—Strategic asset management plans

Subdivision 1—Preparing, certifying and approving strategic asset management plans

Clause 408 requires that each service provider have an approved strategic asset management plan. The strategic asset management plan must identify the services and infrastructure to which it applies, and:

- specify standards for key performance matters for the infrastructure and services; and
- document an operation, maintenance and renewals strategy to ensure the standards are met.

The plan must identify the methodology used by the service provider for developing the standards, have regard to best practice industry standards and be prepared in accordance with guidelines issued by the regulator.

It is not intended that the regulator will specify minimum standards for a service provider's strategic asset management plan. This is because standards will necessarily vary from provider to provider, according to the class of customer being supplied and the type of service being provided. For example, standards for urban domestic water supply would include standards requiring high levels of continuity and reliability of supply. Water for irrigation, on the other hand, would include varying levels of reliability depending on the agreed conditions of supply.

Clause 409 requires that the strategic asset management plan be certified by a registered professional engineer. This is to ensure that the plan is approved by a qualified person (this may be an employee of the service provider) as being appropriate for the service provider's infrastructure and services. In certifying the strategic asset management plan, the registered professional engineer must include the engineer's name and registration details.

Clause 410 sets out the requirement for a service provider to submit its strategic asset management plan to the regulator for approval, within 1 year of being registered. It should be noted that, for existing service providers,

transitional timings for compliance with the requirements of chapter 3, part 3, divisions 1 to 3 are set out in clause 1061. These timings range from 2 to 4 years from the commencement of the Bill.

Clause 411 states that the regulator must approve the strategic asset management plan within 3 months unless the plan was certified by a person who did not have the necessary qualifications or experience, or the plan is inadequate in a material particular. In determining whether a plan is inadequate in a material particular, the regulator must take account of cost considerations for the service provider and its customers in addressing the material particular. This is to recognise the reality that a service provider can generally only provide a level of service for which its customers are able to pay.

When the regulator approves the strategic asset management plan, the regulator must also tell the service provider the intervals at which regular reviews of the plan must be conducted. The interval at which reviews are required must not be less than one year. The purpose of the regular reviews is to ensure that the plan is updated on a regular basis. Clauses 415 and 416 set out the process for regular reviews.

The regulator may also, in some instances, require that the service provider arrange for a regular audit, by an independent engineer, of its plan. Clauses 417 and 418 set out the process for regular audits. If the regulator requires the service provider to arrange for a regular audit, the interval at which such audits are required must not be less than two years.

Clause 412 sets out the process to be followed by the regulator where the regulator does not approve the strategic asset management plan. If a registered professional engineer did not certify the plan, the regulator must return the plan to the service provider with a notice requiring certification and return of the plan to the regulator within the reasonable time stated in the notice.

If the plan is inadequate in a material particular, the regulator must return the plan to the service provider with an information notice stating how the plan is inadequate in a material and requiring that the plan be revised and returned to the regulator, or that a new plan be prepared, certified and given to the regulator. The service provider must comply with the notice.

Clause 413 provides that a service provider may make changes to its strategic asset management plan with the agreement of the regulator.

Clause 414 places an obligation on a service provider to comply with its

strategic asset management plan when supplying services to its customers.

Subdivision 2—Audit reports and reviews

Clause 415 requires each service provider to review its strategic asset management plan, in accordance with the approval notice given to the service provider under clause 411. The purpose of the review is to ensure the plan remains current, having regard to relevant best practice industry standards. The outcomes of the review must be documented in the service provider's annual report.

Clause 416 provides that, if a review of the strategic asset management plan indicates that the plan should be changed, the service provider may modify the plan and submit the modified plan to the regulator for approval. The approval process under clause 411 will then apply to the plan.

Clause 417 will apply to a service provider if, as part of the approval notice for a strategic asset management plan, the regulator requires a service provider to arrange for regular audits of the plan. The purpose of the regular audit is to verify the accuracy of data provided in the service provider's annual report and assess the service provider's technical ability to meet the standards identified in the strategic asset management plan. The regular audit must be prepared by a registered professional engineer who is independent from the service provider.

Clause 418 sets out requirements for declarations to accompany a regular audit report. The service provider must provide a declaration stating that the service provider has given all relevant information to the auditor and has not knowingly given the auditor any false or misleading information. The auditor must provide a declaration stating the auditor's qualifications and experience, that he or she has not knowingly given any false or misleading information and has not knowingly failed to reveal any relevant information.

Clause 419 enables the regulator to arrange for a spot audit of a service provider's infrastructure if the regulator believes that a service provider is not complying with its strategic asset management plan or that the plan is no longer current. The regulator may only arrange for a spot audit if the regulator has given the service provider a show cause notice under clause 778, inviting the service provider to show cause why the spot audit should not be conducted. The regulator must give the service provider a

copy of the spot audit report within 30 business days (6 weeks) after completion of the spot audit. If the spot audit reveals significant deficiencies in the service provider's strategic asset management plan or that the service provider has not complied with the plan, the regulator may recover the cost of the spot audit from the service provider. The regulator must also give the service provider an information notice requiring the service provider to rectify any deficiency identified through the spot audit or implement the plan.

Clause 420 specifies that the spot audit report must be accompanied by a statutory declaration by the auditor, addressing certain matters.

Clause 421 requires the service provider to allow free and uninterrupted access to the service provider's infrastructure and any records relating to the infrastructure. However, the auditor must not enter the premises of a customer of the service provider without the customer's consent.

Division 2—Customer service standards

Clause 422 clarifies that the purpose of this division is to provide a mechanism, customer service standards, to protect customers who do not have a supply contract with their service provider.

Clause 423 clarifies that the requirement to prepare customer service standards only applies where a service provider does not have a supply contract with all its customers. This is because customer service standards are intended to be a mechanism for customers to be informed about the terms and conditions of their relationship with their service provider, where those terms and conditions are not already documented in a written supply agreement.

This clause also specifies that clauses 426 (customer complaints) and 427 (revision of customer standard) do not apply to agencies to which the *Parliamentary Commissioner Act 1974* applies. This is because that Act provides a complaints mechanism through the Queensland Government Ombudsman. The complaints mechanism in clause 426 is intended to provide a process for customers of service providers who are not subject to the Ombudsman's jurisdiction.

Clause 424 requires that a service provider must prepare customer service standards within one year of registration. The service provider must

provide a copy of the standard to the regulator and all of the service provider's customers who do not have a supply contract.

Clause 425 provides that the customer service standard must specify the level of service to be provided, processes for dealing customers and any matters specified in guidelines issued by the regulator.

Clause 426 provides that a service provider must comply with its customer service standards when supply services to its customers.

Clause 427 provides for a customer giving a notice of complaint about a service provider's customer service standard to the regulator and the regulator's response where there is a significant deficiency in the standard. Importantly the customer must first attempt to resolve the complaint through negotiation with the service provider.

Clause 428 provides that if the regulator requires a revision of the customer service standard after inquiring into a customer complaint, the service provider must revise the standard accordingly.

Clause 429 provides that a service provider must review its customer service standard each year. If the standard changes as a result of the review, the service provider must give a copy of the revised standard to the regulator and each of its customers.

Division 3—Annual reports

Clause 430 provides that a service provider is required to prepare, for each financial year after the strategic asset management plan and customer service standard has been approved, an annual report. The clause states the matters which must be addressed for each report. A copy of the report must be given to the regulator within 120 business days (24 weeks) of the end of the financial year. Where a service provider is a local government, the local government can include the reports within a report required under the *Local Government Act 1993.* A copy of the report must be available for inspection and purchase.

Division 4—Water for fire fighting purposes

Clause 431 clarifies that division 4 only applies to service providers who

provide retail water services (this would primarily be in urban areas).

Clause 432 provides that a water service provider cannot charge for water taken from a fire fighting system for fire fighting purposes. "Fire fighting system" and "fire fighting purposes" are defined in the Dictionary in Schedule 4. However, the water service provider may fix a meter to any private fire system. The purpose of fixing a meter would be to monitor water use from the system, for the purpose of identifying any water which might be taken from the fire system for reasons other than fire fighting purposes (this is an offence under clause 433).

Clause 433 makes it an offence to take water from a fire system for purposes other than to fight a fire. Where a person is convicted of an offence under this clause, the service provider may recover from the person the cost of the water taken.

Division 5—Exemptions for small service providers

Clause 434 provides for a small service provider to apply to the regulator for an exemption from complying with division 1 (strategic asset management plan), division 2 (customer service standards) or division 3 (annual reports) of part 3 of this chapter. Small service provider is further defined in the dictionary to mean for:

- a retail water or sewerage service—a service provider with 1,000 or less connections to a registered service; or
- an irrigation service—a service provider with 100 or less users and less than 20,000 ML throughput.

Clause 435 provides for how the regulator grants an exemption to a small service provider from complying with divisions 1, 2 and 3. The exemption may be for 1 or more of these divisions. If the regulator is satisfied it is not reasonably practicable for the small service provider to comply because the cost of complying would outweigh the benefits to the service provider's customers, the regulator may exempt the small service provider. The regulator may grant the exemption subject to conditions and if so, the exemption operates only if the conditions are complied with.

Clause 436 provides for the regulator to give a notice to a small service provider if the regulator exempts the provider. In addition, the regulator must give notice of the exemption in the gazette. The clause states the

details that the notice must contain. The *Statutory Instruments Act 1992*, sections 24 to 26, apply to an exemption as if it were a statutory instrument.

Clause 437 provides that the small service provider must advise the regulator of any change in its circumstances, if the exemption was given under such circumstances. The clause also provides that the regulator may amend or cancel an exemption after being advised of the change in circumstances, or if the regulator becomes aware of the change in circumstances through some other means. Where the regulator amends or cancels an exemption, the regulator must give the service provider an information notice about the amendment or cancellation (this make it a reviewable decision) and, as soon as is practicable, give notice of the amendment or cancellation in the gazette.

Clauses 438—447 not used. See footnote 2 at end of chapter 1.

PART 4—SERVICE AREAS

Division 1—Preliminary

Clause 448 provides that this part applies to a service provider who supplies a retail water service or sewerage service in a service area. A retail water service and sewerage service is further defined in the dictionary. This division applies in relation to urban and town water supply and sewerage and essentially incorporates relevant provisions found in the *Sewerage and Water Supply Act 1949* and its subordinate legislation, the *Standard Water Supply Law* and *Standard Sewerage Law*, about the provision of water supply and sewerage services. A substantial change however is that this division will apply not only to a local government providing water supply and sewerage services as a service provider (as currently under the *Sewerage and Water Supply Act 1949* and its subordinate legislation) but also a private sector service provider.

Division 2—Service areas

Clause 449 provides for the establishment of a service area in which a service provider may supply a retail water service or sewerage service in that area. A service area is further defined in the dictionary to mean an area declared for the provision of a retail water service and a sewerage service. A local government may, by resolution, declare all or part of its local government area to be a service area for a retail water service or sewerage service and declare the service provider for the service area. If the local government is not intending to be the service provider for the service area, the local government can only declare another entity to be the service provider if the entity has agreed in writing to the declaration before the declaration is made. This clause reflects in part the position currently under the Standard Water Supply Law and Standard Sewerage Law about a water supply area and a sewered area. It is the intention of this clause to allow a local government to declare a service area for a private sector service provider which intends to supply the services.

The service area may be amended by further declaration by the local government. If the local government is amending a service area in which another entity is declared to be the service provider, the local government must receive the entity's written agreement. It is intended that only one service provider may provide services in a declared service area. Therefore a local government must not declare an area to be a service area if the area has already been declared for another retail water service or sewerage service.

Clause 450 provides that if a local government declares a service area, the local government must publish a notice of the declaration or amendment of a declaration in a newspaper circulating generally throughout the local government area and make the notice available for inspection and purchase under the *Local Government Act 1993.*

Clause 451 provides that a service provider for a registered service in a service area must keep a map that details the limits of the service area and the location of the service provider's infrastructure for the registered service. A non-local government service provider must provide a copy of the map to the local government in whose area the service area is declared. In addition the service provider, whether or not it is a local government, must update the map at least annually and make the map available for inspection and purchase.

Division 3—Access to services in service areas

Clause 452 requires that, within a service area, a service provider must ensure that all premises can be connected to its water supply and/or sewerage services and that its infrastructure can deal with the service requirements of the premises. The design of the service provider's infrastructure must allow for a connection point which must be located within the boundary of premises. In addition, the property service, that part of the service between the property boundary and the water main and the sewer, is taken to be owned by the service provider.

Clause 453 provides that a service provider may recover from a customer the reasonable cost of the service provider providing access to its services in a service area.

Clause 454 provides that a service provider is not obliged to supply water from its infrastructure to premises above the level at which the premises can be supplied with water at a satisfactory pressure from the service provider's system. However the service provider may agree to supply water to such premises subject to the condition that the owner installs enough tanks and pumps to ensure that water can be supplied to the premises at a satisfactory pressure and flow.

Division 4—Connecting to registered services

Clause 455 provides that an owner of a property in a service area may ask the service provider to supply it with services. The service provider may require the owner of premises to carry out necessary work on the premises and pay a reasonable connection fee to enable the services to be supplied. When the owner has satisfactorily completed the work and paid any reasonable connection fee, the service provider must connect the premises to its services.

Clause 456 provides that a service provider may issue a notice to an owner of premises in the service area requiring works to be undertaken for the premises to be connected to its service. The service provider may require the owner of premises to carry out necessary work on the premises to enable its services to be supplied. When the owner has satisfactorily completed the work, the service provider must connect the premises to its

services.

Division 5—Restricting domestic water supply

Clause 457 allows a service provider to reduce the water supply to premises used for domestic purposes in certain circumstances. Service providers can do this if:

- the owner or occupier of premises contravenes a water restriction or does not pay the water rates or charges for the service; and
- the owner or occupier of the premises has been given notice not to continue to contravene the restriction or to pay the rate or charge; and
- the owner or occupier continues to contravene the restriction or refuses to pay for the service.

The service provider may reduce the water supply to the premises to the minimum level necessary for health and sanitation purposes but must not completely cut off supply.

Clauses 458—468 not used. See footnote 2 at end of chapter 1.

PART 5—TRADE WASTE

Part 5 provides for the approval of trade waste. The Bill incorporates the relevant provisions about trade waste approval found in the *Standard Sewerage Law* under the *Sewerage and Water Supply Act 1949*. The admission of substances other than sewage into a sewerage system involves a risk of damage or failure to both the infrastructure and the treatment processes used to render the sewage fit for disposal to the environment. This part provides for a local government which is a sewerage service provider (local government sewerage service provider) to approve the acceptance of trade waste into its sewerage infrastructure. The trade waste generator may be another service provider or an individual trade waste generator.

For example, the local government sewerage service provider may own the sewerage treatment plant into which another sewerage service provider discharges trade waste. The other sewerage service provider is taken to be the person who must obtain approval from the local government sewerage service provider. The other sewerage service provider itself deals directly with individual trade waste generators by way of contract or other arrangement. Alternatively, the local government sewerage service provider may be the only sewerage service provider and in those circumstances accept trade waste directly from individual trade waste generators.

Clause 469 provides for a person, being a trade waste generator, to apply to the local government sewerage service provider for approval for admissions of trade waste into the local government's infrastructure.

Clause 470 states that approval for trade waste may be subject to conditions under which a local government sewerage service provider may approve discharge of trade wastes to sewerage.

Clause 471 provides for the procedure for the suspension or cancellation of a trade waste approval. It also provides the means to appeal against a decision to suspend or cancel the approval.

Clauses 472—479 not used. See footnote 2 at end of chapter 1.

PART 6—REFERABLE DAMS AND FLOOD MITIGATION

Division 1—Referable dams

Currently under the Act, the chief executive regulates referable dams. Under the Bill, the chief executive will continue to regulate referable dams (in accordance with the new meaning of what is meant by a referable dam). The Bill provides for what dams are referable and the process for making that determination through a failure impact assessment. A substantial change however, is that where a licence was issued under the Act, a referable dam will be approved as development within the meaning of the *Integrated Planning Act 1997.*

Subdivision 1—Preliminary

Clause 480 provides for a specific definition for water for this division. For the purposes of this division, water includes any other liquid or a mixture that includes water or any other liquid or suspended solid.

Clause 481 defines a referable dam in relation to a failure impact assessment rating. A dam is, or a proposed dam after its construction will be, a referable dam if:

(a) a failure impact assessment is required to be carried out under this part; and

(b) the assessment states that the dam has, or will have, a category 1 or category 2 failure impact rating.

The meaning of a failure impact rating is further defined in clause 482. For the purposes of the Bill, a referable dam specifically does not include a dam or proposed dam containing hazardous waste. Hazardous waste is further defined in the dictionary to refer to waste as a result of the processing of minerals. This represents a significant change from the meaning of a referable dam under the Act. Under the Act, a referable dam not only includes a dam which falls within a specified threshold size and capacity but also includes a dam or a works, containing hazardous waste resulting from the processing of minerals, that is a risk to life and property and declared by the chief executive to be a referable dam.

It is the intention of the Bill to capture only a water storage dam, for example, a water supply dam or a recreational dam containing water, and to regulate such dams on the basis of population at risk in the event of dam failure and for a dam containing hazardous waste to be regulated by environmental licensing under the *Environmental Protection Act 1994.* As a consequence, conditions about the safety of the dam will be included in the environmental authority regulating the dam.

In addition a referable dam does not include a weir other than a weir that has a variable flow control structure on the crest of the weir.

Clause 482 provides for what is a meant by a failure impact assessment and how it is to be carried out. A failure impact assessment is an assessment that has been certified by a registered professional engineer in accordance with prescribed guidelines "Dam Failure Impact Assessment Guidelines" prepared by the chief executive and published in the Gazette. A

registered professional engineer is further defined in the dictionary. The certification must include the engineer's name and registration. The purpose of a failure impact assessment is to assess the risk to the population in the event of the dam failing and determine an appropriate failure impact rating. This represents a significant change from the Act that requires the chief executive to control referable dams not only for the protection of life but also property that would or could be endangered by the failure of a dam.

Subdivision 2—Failure impact assessing dams

Clause 483 details when an owner of a proposed dam must have the dam failure impact assessed. A failure impact assessment must be carried out if the proposed dam, after its construction, will be:

(a) more than 8 m in height and have a storage capacity of more than 500 ML; or

(b) more than 8 m in height and have a storage capacity of more than 250 ML and a catchment area that is more than 3 times the surface area of the dam at full supply level. At "full supply level" is defined to mean the level of the water surface when the reservoir is at maximum operating level when not affected by flood.

In addition, the owner of an existing dam or a proposed dam may be given a notice by the chief executive, requiring the owner to have the dam failure impact assessed. The notice will state the reasonable time in which the failure impact assessment must be completed and given to the chief executive. The chief executive may give a notice requiring a failure impact assessment only if the chief executive reasonably considers that the dam, or the proposed dam after its construction, would be assessed with a category 1 or a category 2 failure impact rating. A change of circumstances, for example the encroachment of residences near an existing dam, may result in the dam potentially posing a risk to life. In this case the chief executive may require the dam owner to carry out a failure impact assessment. It is noted that the owner of a dam in these circumstances is not given a right of appeal against the chief executive's decision, however the owner of the dam is subsequently not required to meet the cost of the failure impact assessment in the event the assessment determines the dam is not referable. (See clause 486).

The threshold size and dimensions of a dam captured by this clause is a change from the Act. Under the Act, a dam that meets the threshold size and dimensions of 10 m or more in height and a storage of 20,000m^3 or 5 m or more in height and a storage capacity of 50,000m^3 is a referable dam. The new provisions under the Bill are intended to capture only those dams that pose a risk to population in the event of dam failure by requiring dams over specified dimensions to be failure impact assessed.

The effect of the change in the threshold size and capacity dimensions is to avoid the owner of a smaller structure being required to meet the cost of a failure impact assessment when the dam is unlikely to pose any risk to population should the dam fail.

Subject to the exceptions discussed further, a dam, or a proposed dam, which is required to failure impact assessed must be reassessed every 5 years and the failure impact assessment submitted to the chief executive. However if a dam is failure impact assessed and given a category 2 failure impact rating under its initial or last assessment, the referable dam does not need to be reassessed every 5 years. It is considered that it is unlikely that such a referable dam would be reassessed and be given a lower failure impact rating. This means that a dam which is failure impact assessed and assessed as a category 1 rating or assessed as not a category 1 or category 2 rating will need to be failure impact assessed every 5 years. If a dam is required to be failure impact assessed by way of notice given by the chief executive, and the dam is failure impact assessed and assessed as either a category 2 failure impact rating or not given a failure impact rating, the dam does not need to be reassessed every 5 years.

Clause 484 defines the meaning of a failure impact rating. A failure impact rating is defined in relation to the population at risk in the event of failure of the dam. The meaning of ‘population at risk’ is included in the clause to mean—“the number of persons, calculated under the guidelines mentioned in section 482(1)(b), whose safety will be at risk if the dam, or the proposed dam after its construction, fails”. A category 1 failure impact rating means that the population at risk is 2 or more persons and not more than 100 persons. A category 2 failure impact rating means that the population at risk is more than 100 persons. “Population at risk” is determined in accordance with the principles outlined in the Dam Failure Impact Assessment Guidelines. The “population at risk” is calculated by undertaking a dam break analysis using data collected about the dam and its environs and default equivalent populations set out in the guidelines. For

example, while only 1 person may live in a dwelling downstream of a dam being assessed, the default equivalent population for that household for the purposes of the dam break analysis may be 2.8 persons. Because the number of persons in a house may change over time with changes in family size or ownership, the default population at risk is calculated on the average number of persons per occupied dwelling in Queensland (based on the latest census) rather than counting the number of persons actually residing in the residence at the time of the assessment.

Clause 485 provides for offences in relation to the carrying out of a failure impact assessment.

Clause 486 provides for when the owner of the dam or the chief executive pays the cost of the failure impact assessment. The chief executive must pay the reasonable cost of preparing and certifying the failure impact assessment only where the chief executive requires an owner of a dam to carry out a failure impact assessment and the dam is subsequently assessed as not being referable. In all other cases, the owner of the dam must pay the cost of the assessment. It is noted that the cost of preparing the assessment includes the cost of any review of the assessment under clause 489.

Clause 487 provides for how the chief executive deals with a submitted failure impact assessment. The chief executive may accept, reject or require a review of the assessment. However the chief executive may request information from the owner in the first instance for the purpose of clarifying an assessment which may or may not lead to the chief executive requiring a review of the assessment or rejecting the assessment.

Clause 488 provides that if the chief executive accepts the failure impact assessment, the chief executive must give notice of the acceptance to the owner of the dam within 30 business days of acceptance.

Clause 489 provides for when the chief executive may ask for a review of a failure impact assessment. It is not intended that the role of the chief executive is to formally approve an assessment nor is it intended that the chief executive must simply accept the assessment. The chief executive may ask for a review where the chief executive considers an assessment is incorrect or incomplete in a material particular or not completed in accordance with the guidelines prepared by the chief executive under clause 482. A request for a review must be made within 30 business days of the chief executive being satisfied that the assessment in incorrect or

incomplete. If the chief executive asks for a review, the chief executive must return the assessment to the owner and give the owner of the dam an information notice requiring a review of the assessment. In addition to the standard details in the information notice, the chief executive must also ask that that owner have the assessment reviewed, corrected or completed and recertified. The owner must then return the corrected or completed assessment to the chief executive within the time stated in the notice. The owner of the dam may appeal against the chief executive's decision to request a review of the assessment.

Clause 490 provides for the chief executive rejecting a failure impact assessment. The chief executive may reject the assessment in the first instance if the chief executive reasonably considers that the assessment is incorrect or incomplete in a material particular or not completed in accordance with the guidelines mentioned in clause 482. If the chief executive has requested a review of an assessment because it required correction or completion—the chief executive may reject the resubmitted assessment if it has not been corrected or completed or the chief executive is not satisfied that the resubmitted amended assessment corrects or completes the matters of concern. If the chief executive rejects the assessment, the chief executive must give an information notice to the owner of the dam. The owner of the dam may appeal against the chief executive's decision to reject the assessment.

Clause 491 provides for how the chief executive is to assess a constructed referable dam to determine conditions to be imposed about the safety of the dam. This clause does not apply to the construction of a new dam as this will be assessed under the *Integrated Planning Act 1997* as "development being operational work". The framework proposed under the Bill is to separate the process for determining what is a referable dam, through failure impact assessment, and the process for the approval of the construction and operation of a dam, being development within the meaning of the *Integrated Planning Act 1997*. Whilst the *Integrated Planning Act 1997* will provide the system for the approval of a new referable dam, an existing referable dam is assessed under the Bill, with the assessed conditions about the safety of the referable dam being deemed to be a development permit, including conditions, within the meaning of the *Integrated Planning Act 1997*. This allows the chief executive to utilise the offence and enforcement provisions under the *Integrated Planning Act 1997* in respect to conditions, about the safety of a referable dam, assessed under the Bill.

The chief executive has the power to apply safety conditions to an existing referable dam. The chief executive may request information from the owner of a referable dam for the purpose of deciding conditions about the safety of the referable dam. The information may include, for example, emergency action plan; dam operating procedures; dam maintenance procedures; inspection and evaluation report; dam data book and dam safety review and design report. After assessing the information, the chief executive will determine the conditions which are to apply to the referable dam. The chief executive must decide the safety conditions within 40 business days after receiving the requested information or any extended time as agreed to by the owner of the referable dam. The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or reasonably required for the dam. This is in essence a test similar to the test for imposing conditions under the *Integrated Planning Act 1989*. The chief executive must give the owner of the referable dam an information notice about the dam safety conditions. The owner of the referable dam may appeal against the chief executive's decision about safety conditions.

The decision, including the safety conditions, of the chief executive are taken to be a development permit, including conditions, within the meaning of the *Integrated Planning Act 1997*. If a development permit has been previously given by some other entity in relation to the dam, the dam safety conditions are taken to be further conditions attaching to the existing development permit. If a development permit has not been previously given by some other entity in relation to the dam, the chief executive's decision, including the dam safety conditions, is taken to be a development permit with attached dam safety conditions.

Clause 492 provides for the chief executive changing safety conditions of a referable dam. The chief executive may change a safety condition where the chief executive thinks it is necessary or desirable to make the change in the interests of dam safety. If the chief executive decides to change the conditions, the chief executive must give the owner of the referable dam an information notice about the decision. The change of conditions has effect from the day stated in the notice. It is noted that the chief executive's power to change conditions includes the power to add conditions. The changed conditions are taken to be conditions attaching to the development permit mentioned in clause 491(7) or (8). The owner of the dam may appeal against the chief executive's decision to change or add a safety condition.

Clause 493 states that if a referable dam is subsequently assessed as no

longer being a referable dam within the meaning of the Bill, any existing dam safety conditions no longer apply to the dam. This may apply where a dam is required to be failure impact assessed every 5 years and there has been a change of circumstances leading to a change in the failure impact rating.

Subdivision 3—Chief executive's powers

Clause 494 provides the chief executive with certain powers and rights in specific circumstances where there is danger of the failure of a referable dam. This clause only applies where the chief executive is satisfied, on reasonable grounds, there is danger of failure of a dam and action is necessary to prevent or minimise the impact of the failure. The chief executive has the power to direct the owner or operator of a referable dam, by way of written notice, to take stated reasonable action within a stated reasonable time. It is an offence to fail to comply with the notice.

For the purposes of this clause, the notice is taken to be a compliance notice under the Bill but not a compliance notice which requires a show cause notice being given to the person in the first instance. A show cause notice would delay the effect of the notice and the carrying out of the urgent remedial work. In addition the notice has the effect that it runs with the land and binds the owner of the land, the owner's successors in title and any occupier of the land. The notice is also taken to be a remedial action notice under the *Land Act 1994*. This has the effect that the stated action required by the chief executive becomes a condition of the licence or lease under the *Land Act 1994*. In these circumstances, if the licensee or lessee fails to comply with such a condition, the licence may be cancelled or the lease may be forfeited under the *Land Act 1994*. These measures go to ensuring that the urgent remedial action is actually carried out. However it is provided that in the event the cost of carrying out the stated action outweighs the cost of removing the dam, the owner or operator of the dam has the option of removing the dam on notice to the chief executive.

Failure to comply with the notice of the chief executive has the effect of failure to comply with a compliance notice under the Bill. (See clause 783). Consequently if the owner or operator of the dam fails to comply the notice of the chief executive, the chief executive may carry out the stated action or alternatively take any action necessary to prevent or minimise the impact of

the failure of the dam. Although the chief executive may utilise clause 783(4) to recover as a debt any expense incurred, this clause specifically provides that any expense incurred by the chief executive becomes a charge on the land. The chief executive may give the owner or operator an information notice about the amount of the expense incurred, under either clause 783(1) or (4). The owner or operator may appeal against the amount of the expense incurred by the chief executive, however this right of appeal does not extend to the operation of the charge itself.

Subdivision 4—General matters for referable dams

Clause 495 states that nothing in the Bill affects a referable dam owner's or operator's liability for any loss or damage caused by the failure of, or escape of water from, a referable dam. This clause essentially states the position at common law and the legal position that exists under the Act.

Division 2—Flood mitigation

Clause 496 provides that the owner of each dam nominated in a regulation under the Bill must prepare a flood mitigation manual of operational procedures for flood mitigation for the dam in accordance with the time nominated in the regulation. A dam nominated in the regulation will be a dam which was constructed for the purpose of flood mitigation. A flood mitigation manual ensures that such dams make controlled releases of water for flood mitigation purposes in accordance with pre-agreed conditions.

Clause 497 states that the owner must give the chief executive a copy of the flood mitigation manual for the chief executive's approval. The chief executive's approval is notified in the gazette. The approval of a flood mitigation manual is for a period of not more than 5 years. The chief executive may obtain advice from an advisory council before approving the manual.

Clause 498 provides that the chief executive may ask the owner, by notice at any time, to amend the flood mitigation manual. The chief executive must approve the amended manual by notice in the gazette. The owner must comply with the chief executive's request to amend the manual.

The chief executive's approval of the amended manual may be either for the balance of the approval period before the amendment or for a period of not more than 5 years from the date the manual was approved. The chief executive may obtain advice from an advisory council before approving the amended manual.

Clause 499 provides that before a flood mitigation manual expires, the owner must review, and if necessary update the manual and give a copy of the manual to the chief executive for the chief executive's approval.

Clause 500 provides that the chief executive or a member of the committee will not be civilly liable for an act done or omission made honestly and without negligence under this division. It also provides that an owner of a dam (which includes a director, employee or agent of the owner) who observes the operational procedures contained in a flood mitigation manual approved by the chief executive, will not be civilly liable for an act done or omission made honestly and without negligence in observing the operational procedures. In both cases, the liability attaches to the State instead.

Clauses 501—513 not used. See footnote 2 at end of chapter 1.

PART 7—REGULATOR

Clause 514 states that the chief executive of the department is the regulator. It is proposed that on the commencement of the Bill, the Department of Natural Resources will be responsible for the Bill. However, in the future, the regulator function may be undertaken by a person other than the Chief Executive of a Department. Consequently, the Bill has been drafted using the generic terminology of "regulator" rather than simply referring to the chief executive.

Clause 515 provides for the general functions of the regulator. The regulator must consider the purposes of the Bill when performing its functions.

Clause 516 provides for a register of service providers to be kept by the regulator and the details the information the register must contain. The regulator must, as soon as practicable after 1 January in each year, publish

in the government gazette a list of the registered service providers as at 1 January in that year.

Clause 517 states that the regulator may require a service provider, by way of written notice, to provide information to enable the regulator to perform its functions. The notice must state the reasonable time in which the service provider must provide the information to the regulator. The service provider, however, is not required to give any information which might tend to incriminate the service provider.

Clause 518 provides that the regulator must not disclose to any person other than the Minister any commercially sensitive information received under clause 517. This clause also defines what is information of a 'commercially sensitive nature'.

Clause 519 provides that the regulator may prepare annual reports about the regulator's activities under this part. The annual report may include information the regulator obtained under part 3, division 3 about annual reports provided by a service provider or information obtained by the regulator under clause 517.

Clause 520 states that the regulator may delegate a power of the regulator to an officer of the department or an authorised person if the regulator is satisfied the person has the necessary experience and expertise. A regulation may be made stating that a power of the regulator may not be delegated or only delegated to a particular person.

Clauses 521—541 not used. See footnote 2 at end of chapter 1.

CHAPTER 4—WATER AUTHORITIES

PART 1—PRELIMINARY

Clause 542 sets out the purpose of the chapter which is to create a framework that enables water authorities to be established and allows for them to operate. The framework requires water authorities to be efficient in carrying out their water activities by applying commercial principles. The framework also sets out governance arrangements, accountability

requirements, and encourages community involvement in making and implementing arrangements for using, conserving and managing water.

Clauses 543—547 not used. See footnote 2 at end of chapter 1.

PART 2—ESTABLISHING WATER AUTHORITIES

Division 1—General

Clause 548 provides that a water authority can be established by regulation. The authority may be formed to carry out any or all of the defined water activities including the supply of water, drainage services or sewage services. The authority may carry out these activities anywhere in the State or the authority may be restricted to a particular area of the State. The regulation will set out this information as well as the name of the authority, the category of the authority, and how its board of directors is composed.

Clause 549 stipulates that a water authority may be a category 1 water authority or a category 2 water authority. A category 1 water authority is treated differently to a category 2 water authority in some respects. For instance, a category 1 water authority is subject to commercialisation and cannot rate for provision of its functions (although a category 1 water authority can still charge for provision of its functions). A category 2 water authority is not subject to commercialisation and can rate or charge for the provision of its functions. A category 1 water authority is also subject to different reporting requirements.

The dictionary in Schedule four of the Bill provides that a category one authority means the Gladstone Area Water Board or Mt Isa Water Board. All other water authorities are category 2 authorities.

Clause 550 provides that a water authority is a body corporate that has all the powers of an individual and all the powers granted by the Bill or any other Act. A water authority does not represent the State.

Clause 551 provides that the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982* apply to a water authority. A category 1 water authority is not required to have a strategic plan under the *Financial Management Standard 1997* because the Bill requires them to have a corporate plan which is substantially similar.

Division 2—Procedure

Clause 552 provides that before a regulation establishes a water authority the chief executive must publish a notice of the proposal in the gazette and in a newspaper. A range of matters must be included in the public notice including works it intends to build, land it intends to acquire and how the board of directors will be composed. The public may make submissions in respect of the establishment proposal.

Clause 553 states that the chief executive has to consider each submission before establishing the water authority. The chief executive only has to consider those submissions that were properly made.

Clause 554 states that the chief executive may change the proposal as a result of submissions or for another reason the chief executive considers appropriate. A changed proposal must be readvertised and submissions may again be forwarded for the chief executive's consideration.

Clause 555 provides that the chief executive must consider any further submissions on a changed proposal before the water authority is established. Once again the chief executive only has to consider those submissions that were properly made.

Clause 556 provides a process for the amendment of an establishment regulation. Before the regulation is amended, a notice of the proposed amendment must be published in the same way stated in clause 552(1). The notice must contain details of the proposed amendment.

Clause 557 states that the chief executive has to consider each submission before amending the establishment regulation. The chief executive only has to consider those submissions that were properly made.

Clauses 558—568 not used. See footnote 2 at end of chapter 1.

PART 3—FUNCTIONS AND POWERS OF WATER AUTHORITIES

Division 1—Functions

Clause 569 provides that a water authority's main function is to carry out the water activities it decides. The following are defined as water activities in the dictionary in schedule 3:

- Water conservation;
- Water supply;
- Irrigation;
- Drainage, including stormwater drainage;
- Flood prevention;
- Flood water control;
- Underground water supply improvement or replenishment;
- Sewerage; or
- Anything else dealing with water management.

A water authority can decide which particular water activities that it will carry out. The water authority may decide to carry out only one of the above water activities. Alternatively, a water authority may decide to carry out all of the above water activities.

A water authority that is established to carry out its water activities, generally in the State is not restricted to any particular area.

However, a water authority that is established for a particular area may carry out a water activity outside its area only if doing this does not limit its ability to perform water activities within its area and the authority or its ratepayers or customers are not prejudiced financially. Additionally, a category 1 authority with an area can only carry out a water activity outside its area if carrying out this activity is in accordance with the authority's performance plan.

Clause 570 provides that a water authority (regardless of whether it has an area or not) may carry out other functions including, managing recreational areas on land owned by the authority or under its control and

controlling soil erosion. A water authority may accept external funding to carry out other functions but only if the water authority wants to carry out the functions. A water authority may only carry out other functions on land not owned by the authority or under its control with the consent of the landowner.

Clause 571 declares that the establishment of a water authority, or a decision by it to carry out the other functions in clause 570 does not of itself, entitle the water authority to any water entitlement, resource operations licence, or any other resource management approval that may be necessary.

Division 2—Powers

Subdivision 1—Rates and charges

Clause 572 enables a category 1 water authority to charge for carrying out its functions. It will not be able to levy rates on a property basis. A category 2 water authority may, for carrying out its functions, make or levy a charge and if it has an area it may make or levy rates on a property basis.

Clause 573 exempts certain lands from rating.

Clause 574 enables a water authority to charge interest on overdue rates or charges at a rate of interest decided by it, provided that the rate of interest is not larger than 15% or larger than another percentage prescribed under a regulation.

Clause 575 enables a water authority to offer a discount for payment of a rate or charge levied by it, provided that the discount cannot be larger than 15% of the rate or charge unless otherwise prescribed by regulation.

Clause 576 provides that a water authority can recover any overdue rate or charge together with interest owing. The water authority can only recover the rate or charge from the person on whom the rate or charge is made or levied. For instance, if a property is leased and the rate or charge is levied upon the lessee then the authority cannot recover an overdue rate or charge from the owner of the property.

Subdivision 2—Taking land

Clause 577 provides that a water authority may take any land. The processes of the *Acquisition of Land Act 1967* apply for the taking of freehold land. The processes of the *Land Act 1994* apply for the taking of land other than freehold land.

A category 1 water authority or a category 2 water authority may take land stated in the authority's establishment proposal (or amendment of the proposal), as land the authority intends to acquire, by following the processes in the above acts.

A category 2 water authority can take land other than land stated in the authority's establishment proposal (or amendment of the proposal), by following the processes in the above acts.

A category 1 water authority can also take land other than land stated in the authority's establishment proposal (or amendment of the proposal), by following the processes in the above acts. However, before the authority embarks on the processes in either of the above acts, the authority must obtain the Minister's written approval to do so.

Clause 578 states that a water authority can take land for carrying out works and any other purpose, within the authority's main functions.

Subdivision 3—General

Clause 579 provides that a water authority can delegate any of its powers to a director or an appropriately qualified employee. A person cannot exercise the delegated power if the person has a direct or indirect financial or personal interest in the matter.

Division 3—Reporting requirements

Clause 580 requires a water authority to notify the Minister of significant actions, for example, if a category 2 water authority wants to buy something that costs more than $100,000 or if a category 1 water authority wants to buy something that costs more than $1,000,000. This requirement will

ensure that the Minister is kept informed of significant actions of the water authority. A water authority will not have to notify the Minister of a significant action if the action has already been previously noted in the annual report or performance plan of an authority.

Clause 581 provides that the Minister can ask a water authority for information about the performance of any of its functions or operations and the water authority must provide the Minister with the information requested.

Clause 582 requires a category 1 water authority to include a statement of operations in its annual report. The following information is an example of what must be included in the statement:

- A comparison of the authority's performance with it's performance plan;
- Any amendments to the performance plan during the year; and
- Particulars of any directions given to the authority by the Minister or jointly with the Treasurer.

Clause 583 requires a water authority that charges on a volumetric basis for water supplied to include in its annual report a statement identifying and disclosing all cross-subsidies between classes of customers and disclosing the classes of customers for whom a water activity is carried out at an amount below the full cost of the activity; and the amount.

Division 4—Water authority employees

Clause 584 provides that a water authority may employ the staff it needs to perform its functions.

Division 5—Water authority officers' duties and responsibilities

Clause 585 provides that a director, chief executive officer, other person concerned or taking part in the authority's management or other employee has the following duties and responsibilities:

- The duty to act honestly in the exercise of powers and discharge of functions;

- The duty to exercise the degree of care and diligence that a reasonable person in a like position in a water authority would exercise in the authority's circumstances;
- The duty not to make improper use of information acquired because of his or her position; and
- The duty not to make improper use of his or her position in the authority.

The clause includes offence and recovery provisions.

Clauses 586—596 not used. See footnote 2 at end of chapter 1.

PART 4—BOARD OF DIRECTORS

Division 1—Appointment etc. of board of directors

Clause 597 provides that a water authority must have a board of directors. The board of directors control the water authority.

Clause 598 provides that the regulation establishing a water authority must contain the numbers of directors comprising the board, how the board is comprised and the procedure for comprising the board. If the water authority is to have an authority area, then the regulation may contain a board composed of elected directors or nominated directors. If the water authority is not to have an authority area, then the regulation may stipulate how the board is composed, but directors may only be nominated and not elected

Clause 599 stipulates the composition of the board of directors for the Gladstone Area Water Board.

Clause 600 requires that all directors are to be appointed by the Governor in Council. Directors will be nominated or elected in accordance with the water authority's establishment regulation. The names of the nominated directors and the names of the elected directors will be forwarded to the Governor in Council who will give effect to the nominations and the results of the election by appointing all the directors to the board.

Clause 601 provides that the chairperson of a water authority is the director who is chosen by the board. If the board does not choose a chairperson within one month of the date appointed for the board's first meeting then the chief executive may choose a director to be the chairperson. The chairperson will hold office until the next annual meeting of the board. This provision does not apply to the Gladstone Area Water Board, because this board has an independent chairperson nominated by the chief executive.

Clause 602 provides that the Minister may appoint the chief executive to administer a water authority until the authority's first board is appointed. The Minister has the power to appoint specified persons to administer a water authority if the Governor in Council removes all the directors of a water authority's board from office.

Clause 603 specifies in what circumstances a person is not eligible to be elected, or nominated for appointment as a director of a water authority. A person is disqualified from becoming a director if the person is an undischarged bankrupt or if the person is not mentally or physically able to do the job satisfactorily. A person is also unable to become a director if the person has been convicted of an indictable offence or is an employee of the water authority. Lastly, a person cannot become a director if the person has a direct interest in an agreement with the water authority. However, a person is still eligible to be appointed as a director if the agreement is for the supply of water by the authority to the person.

Clause 604 provides that a director is appointed for a term of 3 years, unless the person is being appointed to fill a vacancy in the board. If a person is appointed to fill a casual vacancy on the board then the person is only appointed for the remainder of the vacating director's term. Directors continue to hold office until successors have been appointed. This clause does not apply to the Gladstone Area Water Board.

Clause 605 provides for the term of office for directors of the Gladstone Area Water Board..

Clause 606 provides that a director (who is not the chairperson) can resign by handing a notice of resignation to the chairperson. A chairperson (other than the chairperson of the Gladstone Area Water Board) can resign as the chairperson and remain a director of the water authority by handing a note of resignation to the board. Alternatively, that chairperson could resign as both the chairperson and as a director at the same time by utilising the

same method.

The chairperson of the Gladstone Area Water Board may tender his or her resignation by handing a note of resignation to the board. However, the chairperson cannot tender his or her resignation in respect of the chair only. If the chairperson wishes to resign then the chairperson must resign from the office of director and the office of chairperson at the same time.

Clause 607 provides that the Governor in Council can terminate the appointment of a director in the following circumstances:

- The director misses three consecutive meetings without an excuse; or
- The director becomes ineligible to be elected or nominated; or
- The director refuses to act as a director; or
- The director is convicted of an offence under the Bill, for example, the director has been convicted of a breach of the duty of honesty, or;
- The director is prohibited from being a director of a body corporate by the Corporations Law for a reason other than the persons age.

Clause 608 provides that the office of director becomes vacant in the following circumstances:

- The director dies during the director's term of office;
- The director resigns from office; or
- The Governor in Council removes the director from office.

Additionally, the office of a director that is a nominee and councillor of a local government becomes vacant if the director ceases to be a councillor of the local government for a reason other than:

- Defeat at an election of councillors of the local government; or
- Failure to contest the election.

Clause 609 provides that the Governor in Council may remove all the directors of a water authority's board from office for certain reasons.

Division 2—Director's duties

Clause 610 requires a director who has an interest in an issue being considered by the board which could conflict with the proper performance of the director's duties to declare that interest as soon as possible. After the director has declared the interest to the board the director has to leave the room while the remaining directors decide whether the director with the interest should vote on the issue.

Clause 611 requires a director of a water authority to act in the best interests of the authority, in exercising powers, and discharging functions.

Clause 612 sets out a prohibition on loans to directors and others and a prohibition on guarantees or security in connection with loans made to directors and others.

Clause 613 prohibits indemnities and exemptions from liability incurred as an officer of a water authority. An exception from the prohibition applies so that a water authority is not prevented from indemnifying a person against civil liability (other than liability to the water authority) unless the liability arises out of conduct involving lack of good faith.

Clause 614 prevents a water authority from paying a premium for insuring an officer against liability arising out of wilful breach of duty in relation to the water authority and in breach of the improper use of information or improper use of positions provisions in part 3 division 5.

Clause 615 provides that a person who is a director of a water authority or takes part in its management during insolvent trading commits an offence against this clause. Defences are set out in the clause.

Clause 616 provides that a person who is found guilty of an offence against the previous clause is personally responsible for payment to the water authority of the amount required to satisfy so much of the debts of the authority as the Supreme or a District Court considers proper.

Clause 617 provides for examination by the Supreme or a District Court of persons who have been or may have been guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to a water authority or of persons who may be capable of giving information in relation to the management, administration or affairs of the water authority.

Clause 618 provides for the Supreme or a District Court to grant relief to

a director, chief executive officer, person concerned or taking part in the authority's management or an employee of a water authority from liability for specified matters if the person ought fairly to be excused.

Clause 619 provides that an officer of a water authority must not provide false or misleading information or documents and if he does so commits an offence under the provision.

Division 3—Board proceedings

Clause 620 stipulates that the board may hold their meetings at their own discretion, provided that the chief executive will decide the time and the place of the board's first meeting and that the board holds at least one meeting a year.

Clause 621 provides that the board may conduct its proceedings as it considers appropriate provided that:

- The chairperson presides over all meetings the chairperson is present;
- A director is chosen to preside in the chairperson's absence;
- A quorum is present at each meeting;
- A question is decided by a majority of votes of the directors present and voting; and
- Each director present has a vote on each question and if the votes are equal the chairperson has an additional casting vote.

Clause 622 provides that a director may participate in a meeting by telephone, closed circuit television or by another means of communication with the board's permission.

Clause 623 requires the board to keep minutes of its proceedings

Division 4—Directors' fees and allowances

Clause 624 provides that a director is entitled to be paid the fees and allowances approved by the Minister.

Clauses 625—636 not used. See footnote 2 at end of chapter 1.

PART 5—CATEGORY 1 WATER AUTHORITY MATTERS

This part outlines matters that only affect category 1 water authorities including commercialisation, payment of tax equivalents, dividends and debt neutrality fees, and adoption of an annual performance plan. Many of these provisions are based on the *Government Owned Corporations Act 1993.*

To address variability in board sizes, two categories of water authorities are established for accountability, reporting and asset management requirements. Both category 1 and 2 water authorities are required to meet existing legislative reporting requirements. In addition, a category 1 water authority is subject to commercialisation and is required to have a commercialisation charter and complete an annual performance plan.

Division 1—Commercialising category 1 water authorities

Subdivision 1—Preliminary

Clause 637 outlines the meaning of ‘commercialisation’.

Clause 638 outlines the 4 key commercialisation principles.

Subdivision 2—Category 1 water authorities subject to commercialisation

Clause 639 stipulates that a category 1 water authority is subject to commercialisation.

Clause 640 outlines the key objectives of a category 1 water authority under commercialisation. These key objectives are to be commercially successful, and efficient and effective in the provision of goods and the delivery of services (including those activities that are considered to be

community service obligations). The success of a water authority achieving these objectives will be measured against the performance targets outlined in the authority's performance plan.

Division 2—Commercialisation charter for category 1 water authorities

Clause 641 provides that the Minister may prepare a commercialisation charter for a category 1 water authority. The Minister may determine whether, in the circumstances, a commercialisation charter is necessary.

Clause 642 specifies the content of a commercialisation charter. A Category 1 water authority's commercialisation charter outlines how the key commercialisation principles will be applied to the water authority's operations and the timetable for implementation.

Clause 643 provides that a category 1 water authority must implement their commercialisation charter that the Minister has prepared.

Clause 644 provides that a commercialisation charter expires 1 year after the authority becomes a category 1 water authority. It is intended that the commercialisation charter should assist water authorities to make the transition to commercialised entities. It is expected that once a water authority has operated as a commercialised entity for 1 year, it would no longer require a mandatory commercialisation charter.

Division 3—Corporate plan for category 1 water authorities

Clause 645 specifies that a category 1 water authority must have a corporate plan. These plans outline the strategic direction for a water authority. The corporate plan is reviewed on an annual basis.

Clause 646 specifies that the Minister may issue guidelines about the form and content of corporate plans and category 1 water authorities are required to comply with the guidelines.

Clause 647 provides that a category 1 water authority must prepare and submit to the Minister for the Minister's agreement a draft corporate plan within the time limits set out in the clause.

Clause 648 sets out the procedures and time limits for the Ministers to

request or direct the contents of and other matters in relation to the draft corporate plan.

Clause 649 provides for a water authority's draft corporate plan to become its corporate plan for the relevant financial year upon the Minister's agreement.

Clause 650 provides that where a corporate plan has not been agreed to. The last plan submitted to the Minister, by the water authority will become the water authority's corporate plan until a further plan has been agreed to by the Minister.

Clause 651 provides for the modification of the corporate plan with agreement of the Minister or by the Minister's direction to the water authority.

Division 4—Performance plan for category 1 water authorities

Clause 652 requires that a category 1 water authority must have a performance plan that is consistent with the corporate plan for each financial year. The performance plan is the means through which a category 1 water authority is directly accountable to the Minister. The performance plan facilitates a commercial focus in the water authority's operations.

Clause 653 sets out the matters that must be included in the performance plan. It is intended that the performance plan not be limited to the matters outlined in this clause. The performance plan must also contain details regarding a water authority's community service obligations. Community service obligations are non-commercial activities which a category 1 water authority is directed to pursue by the State. However, it is important to make a distinction between community service obligations which are specifically imposed by the State and arrangements adopted by the water authority as "good business".

Clause 654 requires the water authority to prepare and submit to the Minister for the Minster's agreement a draft performance plan within the times specified in the clause. The water authority and the Minister must endeavour to reach agreement on the draft performance plan as soon as possible.

Clause 655 sets out the procedures for the Minister to request or direct modifications to the performance plan and other matters within times

referred to in the clause.

Clause 656 provides that once a draft performance plan has been agreed to by the Minister, it becomes the authority's performance plan for the relevant financial year.

Clause 657 provides for a draft performance plan to be taken to the water authority's performance plan for a limited time.

Clause 658 provides that a water authority's performance plan may be modified and outlines the process for doing this.

Division 5—Tax equivalents manual for category 1 water authorities

Clause 659 provides that the Treasurer may issue a tax equivalents manual to category 1 water authorities. A tax equivalents regime is consistent with the concept of 'competitive neutrality' which is the term used to describe the process which ensures that government businesses are competing on equal terms with their competitors. A tax equivalents manual may require a category 1 water authority to pay tax equivalents to the Minister for payment to the consolidated funds.

Division 6—Dividends payable by category 1 water authorities

Clause 660 set out the procedure and the requirements for determining the dividend to be paid by a category 1 water authority for a financial year. Dividend payments to the State are consistent with the concept of 'competitive neutrality'.

Clause 661 sets out the procedure and requirements for payment of an interim dividend.

Clause 662 provides for the Minister's discretion to be used regarding the dividend payable for the financial year in which a water authority becomes a category 1 water authority.

Clause 663 provides for the Minister's discretion to be used regarding an interim dividend payable for the financial year in which a water authority becomes a category 1 water authority.

Clauses 664—674 not used. See footnote 2 at end of chapter 1.

PART 6—RESERVE POWERS OF MINISTER AND TREASURER

In order to ensure that the State retains the power to protect the public interest, the Minister, and in some cases the Minister and the Treasurer will have specific reserve powers, for example, to give directions in the public interest and to notify the board of public sector policies.

Clause 675 provides a reserve power for the Minister to notify a water authority in writing of a public sector policy that is to apply to the water authority if the Minister is satisfied that it is necessary to give the notification in the public interest.

Clause 676 provides for the Minister to give a water authority a written direction if the Minister is satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.

Clause 677 enables the Minister and Treasurer to give a written joint direction to a category 1 water authority, to support the restructuring of the water industry, or help or give effect to the objects of the Bill. This provision is intended to deal with transitional issues and as such will expire 3 years after it commences.

Clause 678 provides that should a water authority be given a Ministerial direction(or a joint direction of the Minister and the Treasurer), that would in the opinion of the authority cause it to become insolvent, the authority should notify the Minister of its suspicions immediately. If the Minister (and the Treasurer when the direction has been a joint direction) is satisfied that the authorities suspicion is well founded, then the Minister (and Treasurer where relevant) must revoke the initial direction.

Clauses 679—689 not used. See footnote 2 at end of chapter 1.

PART 7—AMALGAMATING, DISSOLVING AND TRANSFERRING FUNCTIONS OF WATER AUTHORITIES

This part provides a process by which a water authority may be dissolved, its assets and liabilities dealt with, its area abolished and to provide for the amalgamation with another water authority. A water authority may be dissolved for a number of reasons, including for the purpose of converting to an alternative institutional structure such as a company or trust.

Division 1—Amalgamating or dissolving water authorities

Clause 690 enables the amalgamation of 2 or more water authorities by regulation. The new amalgamated water authority may adopt part or all of the area of the former water authorities or may be formed without an area.

Clause 691 provides that a water authority may be dissolved for a number of reasons. A water authority and/or area may be dissolved by regulation for the purpose of:

- Converting the water authority to an alternative institutional structure;
- Terminating the water authority because all of its functions have been transferred to a local government (which includes a joint local government);
- Appointing the chief executive to perform the water authority's functions; and
- Terminating the functions of the water authority as they are no longer required by the community.

Clause 692 provides that before a regulation dissolves a water authority or amalgamates water authorities, the chief executive must publish notice of the proposed amalgamation or dissolution.

Clause 693 sets out the mandatory contents of the notice of proposed amalgamation or dissolution required under the previous clause.

Clause 694 requires the chief executive to consider submissions regarding a proposed water authority amalgamation or dissolution prior to amalgamation or dissolution occurring. The chief executive only has to consider those submissions that were properly made.

Clause 695 provides that a water authority may request its dissolution to enable it to convert to an alternative institutional structure. A water authority with an area may only request its dissolution for the purpose of converting to an alternative institutional structure, after a special resolution of the water authority's board and an affirmative special ballot of ratepayers. A water authority without an area can request its dissolution for the purpose of converting to an alternative institutional structure after a special resolution of the water authority's board. The water authority's board must make a written request for conversion to the chief executive. The written request must specify the particulars of the proposed conversion.

Clause 696 provides that prior to dissolving a water authority for the purposes of converting it to an alternative institutional structure, the new entity must be established. In addition, the Minister and the Treasurer must be satisfied that the State has obtained satisfactory indemnity for civil liabilities and appropriate consideration for the transfer of the authorities assets to the new entity.

Clause 697 provides that the State may recover from the water authority the cost of publishing a notice about its proposed amalgamation or dissolution.

Division 2—Transferring water authority's functions to local government

Clause 698 provides that a water authority and a local government may agree to the transfer of all or part of the authorities functions to the local government and outlines the matters to be considered in deciding how to implement the proposed transfer.

Clause 699 provides that, the following agreement on how to implement the proposed transfer, the water authority and the local government must give the Minister and the Treasurer a joint report on the agreement and the proposed transfer. This clause also specifies matters to be included in the report.

Clause 700 provides that a regulation may approve an agreement to transfer a water authority's functions to a local government. Before the regulation is made approving the agreement, the Minister and the Treasurer must consider the report, the financial and other implications for the state and the authority's financial viability.

Prior to the regulation being made the local government may be required to pay the State considered for the assets being transferred to it. This clause also provides that the requirement to pay consideration for transferring assets to a local government does not apply to the Gladstone Area Water Board.

Division 3—Effect of amalgamating, dissolving, converting to alternative institutional structure, and transferring functions to local government

Clause 701 sets out definitions to be used in division 3.

Clause 702 provides for the vesting of assets, rights and liabilities of a former water authority in the new entity on the changeover day (a term defined in the previous clause).

Clause 703 provides for any outstanding legal proceedings by or against the water authority on the changeover day to continue and be finished by or against the new entity.

Clause 704 provides for the existing employees of a water authority to be employees of the new entity in the event of an amalgamation of a water authority or the conversion to an alternative institutional structure.

Clause 705 provides that the State will take over any civil liability that, at law, can not be transferred from the water authority to the new entity.

Clauses 706—716 not used. See footnote 2 at end of chapter 1.

PART 8—MISCELLANEOUS

Clause 717 provides that the State can recover specified costs incurred as a result of establishing a water authority.

Clauses 718—738 not used. See footnote 2 at end of chapter 1.

CHAPTER 5—INVESTIGATIONS, ENFORCEMENT AND OFFENCES

PART 1—INVESTIGATION MATTERS

Division 1—Authorised officers

Specific powers are set out under this chapter to assist the chief executive and the regulator to achieve the purposes of the Act.

Division 1 sets out provisions for the appointment and qualifications of authorised officers and their functions and powers.

Clause 739 empowers the chief executive, and the regulator where applicable, to appoint a person as an authorised officer if the person has the necessary expertise and experience.

Clause 740 sets out the functions and powers of authorised officers. An authorised officer may collect information, conduct investigations and inspections to monitor and enforce compliance with the Bill or the *Integrated Planning Act 1997* as far as that Act relates to a development condition and works associated with the taking and interfering with water. The reference to development conditions allows an authorised officer to conduct investigations and monitor and enforce compliance with respect to those development conditions imposed by the chief executive as an assessment manager or referral agency—in relation to works associated with the taking and interfering with water, a referable dam or extraction of quarry materials. The functions and powers of an authorised officer are subject to the direction of the chief executive or the regulator. The powers may also be limited by a regulation or under a condition of appointment or by notice given by the chief executive or the regulator. This provision is modelled on section 130 of the *Environmental Protection Act 1994*.

Clause 741 states that the authorised officer only holds the position on the conditions stated in the instrument of appointment. The appointment is

only for a term and when that term expires the authorised officer is no longer authorised. The officer may resign from the appointment by submitting a signed notice of resignation.

Clause 742 states that an authorised officer must be given an identity card and provides details about the identity card.

Clause 743 provides that if a person ceases to be an authorised officer, they must return their identity card to the chief executive or the regulator as soon as practicable, but within 15 business days, unless they have a reasonable excuse.

Clause 744 provides that an authorised officer may only exercise powers if the officer first produces an identity card to a person or has it displayed so that it is clearly visible to the person. If the authorised officer cannot produce the identity card they must produce it at the first reasonable opportunity.

Division 2—Powers of entry of authorised officers

This division provides for where an authorised officer may enter land without consent.

Clause 745 defines land for this division 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 material time, as a dwelling place. Authorised officers cannot enter a dwelling house without consent.

Clause 746 provides for a specified power of entry on land by an authorised officer. This clause permits an authorised officer to enter land of an owner of land authorised under the Bill:

- to take, interfere with or use water to read any device used to record the taking of water, calculate or measure water taken by other means, check the accuracy of a device or replace or repair a device and ensure the conditions of the authorisation or the provisions of a plan under the Bill are being complied with; and
- to take, interfere with or destroy other resources (for example, quarry materials) to calculate or measure the resource taken, interfered with or destroyed and ensure the conditions of the authorisation are being complied with.

In addition this clause permits an authorised officer to enter land at any reasonable time, where an activity mentioned under clause 311 in relation to bore drilling is being carried out to ensure compliance with the Bill.

In addition this clause permits an authorised officer to enter land, at any reasonable time to ascertain if the *Integrated Planning Act 1997* is being complied with so far as that Act relates to a development condition. This permits an authorised officer to enter land monitor compliance with development conditions in relation to, for example, the removal of riverine quarry materials, works for taking and interfering with water or a referable dam.

Clause 747 permits an authorised officer to enter land to collect information for specified purposes. The purposes include:

- reading and monitoring the quantity of water and taking samples as part of the resource management obligations of the State;
- calculating and measuring other resources (for example, quarry materials) and taking samples of the resources; and
- constructing monitoring equipment (monitoring equipment is further defined in the clause).
- measuring the health of watercourses, lakes, springs and aquifers.

In addition this clause permits an authorised officer to enter land or other land in relation to a dam or referable dam for:

- inspecting a dam or a referable dam and any records about a referable dam; and
- ascertaining the impact a failure of a dam or referable dam would have; and
- ascertaining if there are factors likely to cause a failure of a dam or referable dam; and
- if a failure impact assessment of the dam or referable dam should be requested.

Clause 784 provides for a person bringing a proceeding in the Supreme Court or the District Court for 1 or more of the following orders detailed. Subclauses (2)–(4) state where the proceeding may only be brought by either the regulator or a local government. In these instances, it is the

regulator or a local government which regulates these matters under the Bill. Subclause (5) provides that a person may bring a proceeding under subclause (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of the commission of the offence.

Subclause (6) requires every person, other than the chief executive or his or her representative, to notify the chief executive of the commencement of any proceedings under clause 784 within one week.

Clause 749 permits an authorised officer to enter a place for a purpose other than those detailed in clauses 746, 747 or 748. This is only permitted if the occupier consents to the entry, or if it is a public place and it is open to the public, or the entry is authorised by a warrant or if it is a place of business related to the Bill and the entry is made when the place is open for entry. Consent or a warrant is not required to enter a public place or place of business during business hours. For the purpose of asking for consent to enter, an authorised officer may enter the place without the occupier's consent or a warrant.

Division 3—Procedure for entry

Division 3 sets out the procedure for entry into a place and matters pertaining to the issuing of warrants.

Clause 750 sets out the procedure the authorised officer must follow when intending to enter a place with consent.

Clause 751 sets out the obligations of an authorised officer when making application to a magistrate for a warrant for a place.

Clause 752 provides that a magistrate may issue a warrant and the details to be stated in the warrant.

Clause 753 provides for circumstances where a special warrant is required.

Clause 754 sets out the obligations of an authorised officer if the officer intends to enter a place under a special warrant. This aims to safeguard a person's privacy and ensures the person is given a clear explanation of the authorised officer's powers under the warrant.

Division 4—Powers of authorised officers after entering a place

Division 4 sets out the powers of authorised officers after entering a place.

Clause 755 sets out the general powers of an authorised officer for monitoring or enforcing compliance with the Bill after entering a place, if consent is given to enter a place or entry is otherwise authorised.

Clause 756 creates an offence where a person fails to give reasonable help to an authorised officer.

Clause 757 creates an offence where a person fails to give requested information to an authorised officer.

Division 5—Power to obtain information

Division 5 sets out the powers of authorised officers in relation to obtaining information.

Clause 758 provides a power to an authorised officer to require a name and address.

Clause 759 creates an offence where a person fails to provide a name and address to an authorised officer without a reasonable excuse. However, if it is proved that the person did not commit an offence against the Bill, they have not committed an offence against this clause.

Clause 760 provides a power to an authorised officer to require production of documents issued to the person under the Bill or a document required to be kept by the person under the Bill.

Clause 761 creates an offence where a person fails to certify a copy of a document unless the person has a reasonable excuse.

Clause 762 creates an offence where a person fails to produce a document unless the person has a reasonable excuse. A reasonable excuse may be that the document production might tend to incriminate the person.

Clause 763 provides a power to an authorised officer to require the person to give information if an offence has been committed against the Bill and a person may be able to give information about the offence.

Division 6—Compensation for damage caused when exercising power

Division 6 sets out a procedure to be used by an authorised officer when damage is caused when exercising powers under the Bill. It also provides for a person to claim compensation as a result of damage.

Clause 764 sets out the procedure an authorised officer must follow when damage is caused by exercising a power under the Bill.

Clause 765 states that a person may claim compensation from the State if they incur loss or expense as a result of an authorised officers actions under subdivisions 2 and 4. Compensation may be claimed and ordered to be paid in a proceeding brought in a court for the recovery of the amount of compensation claimed or for an offence against the Bill which is brought against the person claiming compensation.

Clauses 766—777 not used. See footnote at end of part 1.

PART 2—ENFORCEMENT MATTERS

This part sets out matters pertaining to compliance notices and enforcement by civil remedies.

Division 1—Show cause and compliance notices

Clause 778 provides for when the regulator may give a show cause notice. If the regulator proposes to conduct a spot audit of a strategic asset management plan or give a service provider a compliance notice, the regulator must first give the service provider a show cause notice. The show cause notice invites the service provider to show cause why the spot audit should not be conducted or the compliance notice should not be given.

Clause 779 states the general requirements of a show cause notice.

Clause 780 provides for when the chief executive, regulator or authorised officer proposes to give a compliance notice in relation to contravention of provisions of the Bill. The chief executive, regulator or authorised officer

may give a compliance notice, generally in relation to a contravention of a provision under the Bill. However the regulator may only issue a compliance notice to a service provider if, after considering all representations made by the service provider about the show cause notice within the time stated in the notice, the regulator still believes it is appropriate to give the compliance notice (See clause 778).

Clause 781 sets out the general requirements of a compliance notice.

Clause 782 provides that the person must comply with a compliance notice unless they have a reasonable excuse.

Clause 783 provides that the chief executive or the regulator may take the action under the compliance notice if the person fails to comply with the compliance notice. Subclauses (2) and (3) apply where the chief executive has issued a notice under clause 494(2) requiring stated action in respect of a referable dam and there has been non-compliance with the notice. The chief executive may, as an alternative to carrying out the stated action, take any action necessary to prevent or minimize the impact of the failure of the dam. For example, delay in complying with the required remedial action may lead to such a risk of failure of the dam, that decommissioning or removal of the dam is necessarily now required. Subclause (4) provides that any reasonable costs or expenses incurred by the chief executive or regulator in taking action may be recovered by the chief executive or regulator as a debt owing to it by the person who contravened the compliance notice.

Division 2—Enforcement orders

Clause 784 provides for a person bringing a proceeding in the Supreme Court or the District Court for 1 or more of the following orders detailed. Subclauses (2)—(4) state where the proceeding may only be brought by either the regulator or a local government. In these instances, it is the regulator or a local government which regulates these matters under the Bill. Subclause (5) provides that a person may bring a proceeding under subclause (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of the commission of the offence.

Clause 785 provides that a person may bring a proceeding under clause 784(1) on their own behalf or in a representative capacity.

Clause 786 provides that a court may make an interim enforcement order

pending a decision of the proceeding if the court considers it to be an appropriate measure. The order may be subject to condition including requiring the applicant to give an undertaking to pay cost if the proceeding is unsuccessful.

Clause 787 provides for a person bringing a proceeding for an enforcement order without notice to the other party and the court may, without limiting the court's equitable jurisdiction, grant the order including with conditions or for a limited period.

Clause 788 provides that the court may make enforcement orders if the court is satisfied the offence has been committed or will be committed unless restrained. If the court is satisfied there has been an offence, the court may make an enforcement order even where there has been no prosecution for the offence under division 2. The court may also an order for exemplary damages. The court may have regard to an impact on water available to other water entitlement holders and natural ecosystems, resulting, or likely to result, because of the commission of the offence and any financial saving or other benefit the person who committed the offence received or is likely to receive because of the offence. The exemplary amount must be paid to the consolidated fund.

Clause 789 provides for the matters an enforcement or interim enforcement order may direct a person to do.

Clause 790 provides details for when the court may exercise its power to make an enforcement or interim enforcement order to stop or not to start an activity.

Clause 791 provides for contributing to the cost of a proceeding brought in a representative capacity.

Division 3—Costs for proceedings under division 2

Clause 792 provides that each party to a proceeding under division 2 must pay their own costs, subject to special circumstances where the court may order costs as it considers appropriate.

Subclause (3) confirms that in addition to any order in respect of costs, the court may also make any order it decides appropriate to compensate a party for loss or damage suffered as a result of commencement of a proceeding that the court determines was commenced to delay or obstruct

an activity or other matter, or finds to have been frivolous or vexatious.

Clauses 793—807 not used. See footnote at end of part 1.

PART 3—OFFENCES

Division 1—Offences for chapter 2

Clause 808 creates an offence for a person to take, supply or interfere with water without an authority under the Bill. The maximum penalty provided for this offence is substantial because the penalty must be a realistic deterrent in circumstances where sustainable management of the resource is required and, as the value of water is increasingly recognised, the temptation to take, supply or interfere with water without authority will increase.

Clause 809 creates an offence for a person to use water contrary to a water use plan that is made for an area. The maximum penalty provided for this offence is substantial because the penalty must be a realistic deterrent to ensure that water is not used in a way that puts land and water resources at risk of degradation.

Clause 810 creates an offence for a person to use water on land contrary to any land and water management plan that has been approved for the land. The maximum penalty provided for this offence is substantial because the penalty must be a realistic deterrent to ensure that water is not used in a way that puts land and water resources at risk of degradation.

Clause 811 creates an offence for tampering with a device that is required to measure the volume of water taken, or the rate at which water is taken, or the time for which water is taken. A "device" in relation to this offence is broad and would include facilities such as a water meter, an event recorder or a weir board.

Clause 812 creates an offence for a person to contravene the conditions of a water allocation, an interim water allocation, water licence or water permit.

Clause 813 creates an offence for a person to contravene the conditions

of a resource operations licence, an interim resource operations licence or an operations licence. If the licence has already been cancelled, a person cannot proceed with a further action under this provision.

Clause 814 creates an offence for the destruction of vegetation, the excavation or the placing of fill in a watercourse, lake or spring unless authorised by a permit under the Bill. A number of situations are given for which a permit is not required for these activities. A permit is not required for the destruction of vegetation, excavation or placing a fill, for example, for activities on lakes or springs wholly contained on a person's property, activities associated with works or operations authorised under other parts of the Act or the *Integrated Planning Act 1997* and the works of river improvement trusts. A permit for the destruction of vegetation is not required, for example, for works of electricity boards, activities associated with the harvesting of forest products, activities undertaken in emergency situations, and any activities identified by regulation as not requiring a permit and to protect property and provide for emergency access. Protecting property my include, public infrastructure. Providing for emergency access may include, for example, the maintenance of emergency access and trafficability of State controlled roads and railways. A court may order a person convicted of an offence under this clause to compensate the State for the cost of any remedial work or rehabilitation, in addition to any penalty imposed.

Clause 815 provides for offences for removing quarry materials without an allocation notice or in non-compliance with the conditions of an allocation notice. Subclause (3) provides that on conviction for an offence for unlawfully removing quarry material, the court in addition to imposing a penalty may order the offender to pay a royalty at the rate prescribed under a regulation.

Clause 816 provides for offences for persons, carry out drilling activities, who are not licensed as required under chapter 2 part 10. Subclause (1) will not apply:

- to an unlicensed or inappropriately licensed person who is carrying out water bore drilling activities under the constant physical supervision of a water bore driller appropriately licensed under chapter 2, part 11; or
- to an individual carrying out an activity under the *Petroleum Act 1923* or the *Mineral Resources Act 1989* if the activity would not

result in a water bore being left as a functional bore for the supply of water at the end of the activity.

Clause 817 provides for an offence for an individual who is decommissioning a water bore under subclause 8168(2)(b) and fails to comply with the standards prescribed under a regulation.

Clause 818 provides that it is an offence for a licensed water bore driller to fail to carry out a water bore drilling activity in accordance with any condition for a licence, including any codes or specifications referred to in the conditions of the licence. It also creates as an offence, the carrying out of water bore activity if the licensee is not licensed to carry out that particular type of water bore drilling activity. For example, a water bore driller with a class 1 licence will commit an offence against the Act if he or she drills a water bore in a multiple aquifer as this is beyond the authorisation of a class 1 water bore drilling licence. Only drillers licensed for the type of works proposed and endorsed for the construction method used may drill, deepen, enlarge or case a water bore, or remove, replace, alter or repair the casing, lining or screen of a water bore or decommission a water bore.

Clause 819 creates an offence for a person to advertise in relation to water bore drilling activities in a way that is false or misleading or in a way that holds the person out as willing to undertake drilling activities for which the person is not licensed.

Clause 820 provides for an offence where a person, as a single operation, takes water as an agent for 2 or more water entitlement holders under water allocations not managed under a resource operations licence unless the person holds an operations licence.

Division 2—Offences for chapter 3

Clause 821 makes it an offence to supply services unless the owner of the infrastructure is registered as a service provider for the service.

Clause 822 makes it an offence to connect to a service provider's infrastructure without the service provider's written consent.

Clause 823 makes it an offence to interfere with a service provider's infrastructure without the service provider's written consent.

Clause 824 creates offences relating to discharging trade waste or

prohibited substances into a service provider's infrastructure.

Division 3—General offences

Clause 825 creates an offence for a person to make a statement to an authorised officer that the person knows to be false or misleading in a material way.

Clause 826 creates an offence for a person to give an authorised officer a document that the person knows is false or misleading in a material way. Subclause (2), however, clarifies that subclause (1) does not apply if, when the person gives the authorised officer the document, the person tells the officer about the inadequacies of the document and, if possible, gives the correct information.

Clause 827 creates offences for a person to obstruct an authorised officer in the exercise of a power and for a person to pretend to be an authorised officer. Subclause (4) defines "obstruction" for the purposes of this clause to include assault, hinder, threaten and attempt to obstruct.

Clause 828 provides that executive officers of a corporation must ensure the corporation complies with the Bill and matters about evidence and defences open to an executive officer.

Clauses 829—850 not used. See footnote at end of part 1.

CHAPTER 6—REVIEWS AND APPEALS

PART 1—INTERPRETATION

This Part outlines the processes under which a decision made under the Bill may be reviewed and, if necessary, appealed and heard by a court or determined by arbitration. Appeals or arbitration are commenced by an interested person seeking an internal review initially before proceeding to court or arbitration. Where decisions are made, but the decisions have been preceded by an extensive consultation and submission process, there will be

no appeal (for example, proposed conversion of existing licences following a water resource plan).

Clause 851 defines who an interested person is for the purposes of lodging an application for review and appeal of a decision under the Bill. An interested person is any person who receives an information notice or a compliance notice under the Bill. Every person who makes a properly made submission in response to public consultation procedures will receive an information notice. Water resource plans are subordinate legislation and the chief executive is therefore bound to follow the requirements of a water resource plan. Resource operations plans are not subordinate legislation, however, subclause 851(2) provides that appeals against decisions made under a resource operations plan may only be appealed to the extent that the decision is inconsistent with the plan or to the extent a different decision, consistent with the plan, could have been made. For example, a plan may establish a range within which existing licences to take water are to be converted. In this case a water user may appeal against a conversion decision, requesting a more favourable application of the conversion rule, and the decision may have to be remade. The new decision could only ever be amended to provide for a conversion within the range set in the resource operations plan. Any extension of these appeal rights would mean that following every appeal other water users in the same catchment could potentially lose access to water as a result and security for existing water entitlement holders could never be achieved. Subclause (3) refers to an interested person as a person who has received an information notice or compliance notice by the regulator. Subclause (4) refers to an interested person as a rate payer or customer of a category 2 water authority who is dissatisfied with the authority's decision about a rate or a charge made and levied on the rate payer or customer. The decision referred to in this clause is termed an 'original decision'.

Clauses 852—860 not used. See footnote 2 at end of chapter 1.

PART 2—INTERNAL REVIEWS OF DECISIONS

Clause 861 provides that every appeal against an original decision must first be by way of an application for an internal review. The purpose for this

process is to enable interested parties a cost-effective option for having a matter reconsidered before referring it to the court or arbitration.

Clause 862 provides that an interested person may, for an internal review of an original decision, apply to the reviewer, who is the:

- chief executive for an original decision mentioned in clause 851(1); or
- regulator for an original decision mentioned in clause 851(3); or
- chief executive officer of the category 2 water authority for an original decision mentioned in clause 851(4).

Clause 863 provides for applying for an internal review of an original decision. The application does not stay the original decision (Clause 865 deals with how an applicant may apply for a stay of the original decision). The internal review must not be dealt with by the person who made the original decision or by a person in a less senior office. However these requirements do not apply to an original decision made by either the chief executive or a category 2 water authority. Given the size of a category 2 water authority there may not in fact be another person senior to the decision maker, able to review the original decision.

Clause 864 sets out the procedure for the reviewer to make a review decision.

Clause 865 provides that an applicant for an internal review of an original decision may apply to the court for a stay to delay the commencement or operation of the original decision, while the appeal is being heard or the matter arbitrated.

Clauses 866—876 not used. See footnote 2 at end of chapter 1.

PART 3—APPEALS

This part provides that appeals for certain reviewed decisions under the Act will be to the Land Court, Magistrates Court or Planning and Environment Court.

Clause 877 provides that if an interested person has applied for a review

of an original decision, any interested person for that original decision may appeal against the review decision to the relevant court detailed in subclause (1). Paragraph (a) states that if the review decision relates to a water bore driller's licence the relevant court is the Magistrates Court. Paragraph (b) states that if the review decision relates to a matter in clause 851(1) or (4) (other than about a water bore driller's licence) the relevant court is the Land Court. Paragraph (c) states that if the review decision relates to a matter in clause 489, 490 or 492 (failure impact assessment and dam safety conditions) the relevant court is the Planning and Environment Court.

Clause 878 sets out the procedure for starting an appeal.

Clause 879 provides that a stay of the decision appealed against or arbitrated on may be granted on conditions as the court deems appropriate. However, the review decision remains in place until the appeal is determined or the arbitration determined or a stay granted.

Clause 880 provides for the appeal to be heard in accordance with the rules of the relevant court to the appeal, or if the rules make no provision or insufficient provision, in accordance with the directions of the judge. An appeal is be way of rehearing, unaffected by the reviewer's decision.

Clause 881 provides that, if the judge or member is satisfied the appeal involves a question of special knowledge and skill, the judge or member may appoint 1 or more assessors to help the judge or member in deciding the appeal.

Clause 882 sets out the powers of the court on appeal. Each party to an appeal is required to pay its own costs unless a court determines otherwise based on grounds set out in subclause 882(4). In addition to any order in respect of costs, the court may also make any order it decides appropriate to compensate a party for loss or damage suffered as a result of commencement of a proceeding that the court determines was commenced to delay or obstruct an activity or other matter, or finds to have been frivolous or vexatious.

Clauses 883—890 not used. See footnote at end of chapter 1.

PART 4—ARBITRATION

Clause 891 provides that an interested person who is dissatisfied with a review of a decision about specified matters under Chapter 3 (but not including provisions about failure impact assessment and assessment of referable dams) may apply to the Queensland Competition Authority for arbitration on the decision. The application will be made by way of a dispute notice given to both the authority and the regulator. The dispute notice must be given within 30 business days after the day the interested person receives notice of the decision or the decision is taken to be made.

Clause 892 provides that, on receiving the dispute notice, the Queensland Competition Authority must give an acknowledgement notice to both the interested person and the regulator

Clause 893 provides that the interested person may withdraw the dispute notice at any time before the authority makes a determination on the dispute.

Clause 894 clarifies that the parties to the arbitration are the interested person and the regulator.

Clause 895 sets out matters relating to determination of the arbitration dispute by the authority. The authority must make a written determination in arbitrating on a dispute, and set out its reasons for making the determination. The clause also provides that the authority is not required to make a determination if it considers that the giving of the dispute notice was vexatious, trivial, misconceived or lacking in substance.

Clause 896 provides that part 7 of the *Queensland Competition Authority Act 1997* applies to an arbitration under this Bill. Part 7 of the *Queensland Competition Authority Act 1997* sets out the process for the conduct of arbitration proceedings. It should be noted that Schedule 4 of this Bill consequentially amends the *Queensland Competition Authority Act 1997,* so that Part 7 of that Act applies to an arbitration under the *Water Bill 2000.*

Clauses 897—917 not used. See footnote at end of chapter 1.

CHAPTER 7—LEGAL PROCEEDINGS

PART 1—EVIDENCE

Clause 918 provides for this division to apply to a proceeding under the Bill.

Clause 918A provides that a party to a proceeding under the Bill (including an appeal, application for an enforcement order or any other proceeding) may represent themselves or be represented by an agent whether the party or the party's agent is legally qualified or not. This is modelled on clause 4.1.13 of the *Integrated Planning Act 1997.*

Clause 919 provides that it is not necessary to prove the appointment or the authority of the chief executive, the regulator or an authorised officer.

Clause 920 specifies that if a certificate contains any of the specified matters, such as whether or not an authority was in force on a stated day, it is considered to be evidence of the matter.

Clauses 921—930 not used. See footnote at end of chapter 1.

PART 2—PROCEEDINGS

Clauses 931 provides for proceedings for offences and jurisdiction of a Magistrate. These clauses have been modelled on the *Government Owned Corporations Act 1993.*

The clause provides that a proceeding for an offence against the Bill may be instituted in a summary way under the *Justices Act 1886.* The prosecution for an offence against the Bill must be commenced within 1 year after the commission of the offence or within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

The clause further provides the maximum penalty that may be imposed on a summary conviction of a prescribed offence. A prescribed offence is further defined in the dictionary.

Clause 932 provides for a range of proceedings that may be brought by the Attorney-General, a local government or regulator for offences against various section of the Bill.

Clause 933 provides that a person may bring a proceeding under clause 932(1) on their own behalf or in a representative capacity. However, if a person is representing someone else they obtain either the consent of the individual or if they are representing a body of person or a corporations they must obtain the consent of the governing body.

Clause 934 provides that the Magistrates Court may make orders it considers appropriate.

Clause 935 provides that if the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

Clause 936 provides for responsibility for acts or omissions of a representative.

Clauses 937—954 not used. See footnote at end of chapter 1.

CHAPTER 8—MISCELLANEOUS

PART 1—APPOINTMENT OF ADMINISTRATOR

Clause 955 provides the power for the Governor in Council to appoint an administrator to operate infrastructure. Subclause (1) provides that the clause applies if the Minister is satisfied that a service provider has not complied with a compliance notice or is likely to stop supplying a registered service and there is no other entity willing to take over the operation of all or part of the service provider's infrastructure for the service or the chief executive has cancelled a resource operations license. The Governor in Council will appoint the regulator where the Minister is satisfied that a service provider has not complied with a compliance notice or if there is no other entity willing to take over the operation of the infrastructure where the service provider is likely to stop supplying a registered service. The

Governor in Council will appoint the chief executive or other appropriate person where the chief executive has cancelled a resource operations license or interim resource operations license.

The exercise of this power will be a measure of last resort to ensure continuity of supply of services to customers of service providers or continuity of supply of water to water entitlement holders or to ensure compliance with conditions in a resource operations license. It is intended that the appointment of the administrator will only be for an interim period until another entity is able to take over the operations of the infrastructure.

Clause 956 outlines the effect of the administrator operating the infrastructure.

Clause 957 provides for the effect of the appointment of an administrator on the registration of the service provider. The registration is suspended from the day the notice is published in the gazette until the withdrawal of the appointment of the administrator is published in the gazette.

Clause 958 provides that the Governor in Council may withdraw an administrator's authorisation by publishing a notice in the gazette.

Clauses 959—965 not used. See footnote 2 at end of chapter 1.

PART 2—RELATIONSHIP WITH *INTEGRATED PLANNING ACT 1997*

This part deals with the relationship of the Bill and the *Integrated Planning Act* 1997. Firstly, this part directs the considerations of the chief executive, in the role of either the assessment manager or a referral agency, for a development application under the *Integrated Planning Act 1997*. The Act contains assessment and approval processes for the taking of riverine quarry material, works associated with taking and interfering with water and dam safety aspects for the construction and operation of a referable dam. These processes, in so far as these relate to "development" within the meaning of the *Integrated Planning Act 1997*, are to be replaced by IDAS (Integrated Development Assessment System) and IDAS becomes the mechanism for assessing and approving these matters. Secondly, this part provides for certain prerequisites, obtained under the Bill, to support the

making of a development application under IDAS.

Clause 966 provides for the assessment of a development application by the chief executive in relation to operational work for the taking or interfering with water; the removal of quarry material or operational work that is the construction and maintenance of a referable dam. The chief executive must assess a relevant development application against the purposes of the Bill to the extent the purposes relate to the taking or interfering with water, other resources, such as quarry material, or a referable dam. Subclause (3) makes it clear that the considerations specified in the *Integrated Planning Act 1997* for consideration of an application by an assessment manager or concurrence agency are not limited by the criteria in the Bill.

Clause 967 provides that where development requires a water entitlement, either the water entitlement, or alternatively, the written consent of the chief executive permitting the application being made without evidence of an entitlement, is a necessary pre-requisite for a valid application under IDAS for the works for the taking or interfering with, water. However subclause (4) provides that the chief executive may give, where the chief executive is an assessment manager or concurrence agency for the taking or interfering with water, an entitlement and a development permit or concurrence agency response, as the case may be, at the same time.

Clause 968 applies in relation to works that are used, or could be used, for the taking or interfering with water and for which a development permit would be required under the *Integrated Planning Act 1997*. Whilst the Bill separates the allocation of water from the works associated with the taking or interfering with water, this clause carried over a current power under the Act for the chief executive to direct such works to removed or modified if necessarily required by the chief executive. Despite the *Integrated Planning Act 1997*, the chief executive may issue a show cause notice as to why the works should not be required to be modified or removed. If the chief executive is still satisfied that the works should be removed or modified, the chief executive may give the person a compliance notice requiring removal or modification of the works. The person may appeal against the compliance notice.

Clause 969 provides that evidence of an allocation for quarry materials granted under the Bill, is a prerequisite for a development application under IDAS for the removal of the quarry material. In addition, if the land, the subject of the development application, is land leased under the *Land Act*

1994, a further prerequisite is the written consent of the lessee to arrangements about the route the applicant may use across the lessee's land (or arrangements decided by a Magistrates Court).

Clause 970 provides that the allocation notice authorises the allocation holder to access the material but does not authorise the holder to take the quarry material. The power to take the quarry material will be provided through an *Integrated Planning Act 1997* development permit. An allocation notice is a necessary pre-requisite for a valid development application under IDAS to remove quarry material. A development permit for the removal of quarry material is a reference to the categorisation of assessable development in Item 6 of Schedule 8, Part 1 of the *Integrated Planning Act 1997*. The removal of quarry material is related to development that is a material change of use of premises for an environmentally relevant activity (see section 63A of the *Environmental Protection Regulation 1994*). There is scope for the chief executive to grant the allocation notice at the same time as the development approval (if the chief executive is the assessment manager) or as the concurrence response (if the chief executive is not the assessment manager).

Compliance and enforcement arrangements for the quarry operation are under the *Integrated Planning Act 1997*, including powers to stop an unauthorised activity and to seek remediation for damage caused.

Clause 971 applies if a person makes a development application for the construction and maintenance of a referable dam. An accepted failure impact assessment by the chief executive, and if the person is required to be a water entitlement holder to operate the dam, evidence that the person is a water entitlement holder for the dam, are necessary pre-requisites for a valid application under IDAS for the construction and operation of a referable dam.

Clause 971A provides for when an appeal may be made to the Land Resource Tribunal rather than the Planning Environment Court in relation to certain development applications. This is to facilitate a more streamlined appeal process for those mining activities that also require a development approval in relation to assessable development that involves the Department as a referral agency or assessment manager. In these circumstances, an appeal in relation to both the mining authority under the *Mineral Resources Act 1989* and any assessable development referred to in items 3B and 3C of Schedule 8 Part 1 of the *Integrated Planning Act 1997* where the Department is the assessment manager or referral agency will be heard in

the Land and Resources Tribunal.

Clauses 972—983 not used. See footnote 2 at end of chapter 1.

PART 3—COMPENSATION

Clause 984 outlines the definitions that apply in this division.

Clause 985 provides for the payment of compensation under the Bill. The clause does not affect compensation that may be paid under clause 765.

Clause 986 provides for an owner of a water allocation to be paid reasonable compensation by the State, in the case of a change in the value of the allocation and the change is made within 10 years after the water resource plan is approved.

Clause 987 lists the circumstances in which compensation is not payable.

Clause 988 requires that a compensation claim must be given to the chief executive within 6 months after the day the approval of the plan or the amendment of the plan reducing the value of the water allocation.

Clause 989 outlines the time limits when the chief executive is deciding and advising on a compensation claim.

Clause 990 provides for how the chief executive decides a claim for compensation.

Clause 991 provides for the calculation of compensation based on the difference between market values of the authority to take water immediately before the change and immediately after. This amount can be adjusted after regard to several matters has been undertaken.

Clause 992 outlines when compensation is to be paid.

Clauses 993—1003 not used. See footnote 2 at end of chapter 1.

PART 3A—PROVISIONS ABOUT THE CORPORATISED ENTITY

Clause 993A enables the corporatised entity to collect drainage rates, as prescribed under a regulation.

Clause 993B exempts certain lands from drainage rates.

Clause 993C provides that overdue drainage rates bears interest at a rate decided the chief executive of the department, provided that the rate of interest is not larger than 15% or larger than another percentage prescribed under a regulation.

Clause 993D provides that the chief executive of the department may allow a discount for payment of a rate, provided that the discount is not larger than 15% of the rate or charge or the percentage otherwise prescribed under a regulation.

Clause 993E provides that the corporatised entity can recover any overdue rate or charge together with interest owing. The corporatised entity can only recover the rate from the person on whom the rate is made or levied. For instance, if a property is leased and the rate is levied upon the lessee then the authority cannot recover an overdue rate or charge from the owner of the property.

Clause 993F provides for an exemption from the application of the *Freedom of Information Act 1992* in relation to certain activities of State Water Projects in the event it is corporatised. State Water Projects is the commercialised business unit in the department and was nominated as a candidate government owned corporation on 25 May 2000. The exemption in this clause in mirrored by an amendment to Schedule 2 of the *Freedom of Information Act 1992* found in Chapter 10 of the Bill.

PART 4—GENERAL PROVISIONS

Clause 1004 sets out the establishment, function and membership of a referral panel.

Clause 1005 provides that the Minister may appoint advisory councils, as appropriate, to facilitate administration of the Bill. Advisory councils may be established to advise on matters such as providing feedback on guidelines prepared by the department, general water policy recommendations, flood mitigation, referable dam safety and technical standards.

Clause 1006 provides that a regulation may be made to declare the downstream or upstream limit of a watercourse.

Clause 1007 provides for the notification of certain actions taken by the chief executive to be made to the registrar of titles.

Clause 1008 provides for an exemption of stamp duty despite the *Stamp Act 1894* on the conversion of a water licence or an interim water allocation to a water allocation under chapter 2.

Clause 1010 provides that the chief executive or the regulator must keep documents and make them available for inspection and purchase by the public.

Clause 1011 outlines the protection of officials from liability.

Clause 1012 provides that the Minister may delegate his or her powers conferred by the Bill to an appropriately qualified public service officer or employee.

Clause 1013 provides that the chief executive may delegate his or her powers conferred by the Bill to an appropriately qualified public service officer or employee.

Clause 1014 provides that the chief executive and the regulator may approve forms for use under the Bill.

Clause 1015 provides that the Governor in Council may make regulations under the Bill. Without limiting the scope of the subject material for regulations, the clause details matters a regulation may be made about. For example, a regulation may approve a code against which development applications under the *Integrated Planning Act 1997* may be assessed. In addition, a regulation may state minimum standards for the design and construction of water and sewerage infrastructure.

Clauses 1016—1036 not used. See footnote at end of chapter 1.

CHAPTER 9—TRANSITIONAL PROVISIONS AND REPEALS

PART 1—TRANSITIONAL PROVISIONS FOR ALLOCATION AND SUSTAINABLE MANAGEMENT

Clause 1037 provides that if a local government had an authority to take to interfere with water, it continues until it is replaced with a water entitlement under this Bill. The intention of this clause is to continue all existing orders in council and other authorities that local governments have been granted over the years, but for which there is currently no instrument (such as a licence) in existence.

Clause 1038 provides for water management plans made in accordance with part 3A of the Act to be recognized as water resource plans under chapter 2, part 3. The only such plan in existence is the *Water Management (Cooper Creek) Plan 2000*. (Subordinate Legislation 2000 No. 27). The reference to section 25K of the Act in the *Water Management (Cooper Creek) Plan 2000* is to be read as if it referred to section 57 of the Bill until the plan is otherwise amended.

Clause 1039 provides for water management plans currently being made in accordance with part 3A of the repealed Act to be recognized as water resource plans currently being made under chapter 2, part 3. The public notice of the proposed preparation of a water management plan under the Act is taken to be a notice under clause 40 and a moratorium notice for the proposed plan.

As these plans are already under development, clauses 39 and 41 requiring information reports and establishment of community reference panels do not apply.

Clause 1040 provides for draft water management plans that have been publicly notified under part 3A of the repealed Act to be recognized as draft water resource plans publicly notified under chapter 2, part 3. As draft plans have already been published, clauses 39 to 49 do not apply provided the plan complies with the requirements as to the contents of a water resource plan set out in clause 46. This includes a requirement that the plan must advance the sustainable management of water.

Clause 1041 provides for the *Water Allocation and Management Plan (Fitzroy Basin) 1999*, which has already been approved and released as a final plan to be recognized as a water resource plan under chapter 2, part 3 that provides a framework for establishing water allocations. The plan may be reprinted under the *Reprints Act 1992* and may be amended to make it consistent with the current drafting style without the need to advertise the amendment under chapter 2, part 3.

Clause 1042 provides for water allocation management plans and flow management plans currently being made to be recognized as water resource plans currently being made under chapter 2, part 3. The public notice of the proposed preparation of a water resource plan is taken to have been published for each of the following plan areas:

- Barron Basin (incorporating a portion of the Mitchell Basin);
- Border Rivers;
- Logan Basin; and
- Pioneer Valley.

As these plans are already under development, clauses 39 and 41 do not apply.

In the final draft water resource plan for the Border Rivers, priority may be given (in relation to provisions about restricting the granting of new entitlements to take or interfere with water or to amend existing entitlements or in relation to water sharing) to water users in the plan area who have constructed or started to construct works (within the definition of 'started' provided in the Bill) to take or interfere with overland flow water before 25 November 1999. Priority may also be given to water users with entitlements to take or interfere with water the subject of the plan before 25 November 1999.

On 25 November 1999, the Minister made a public announcement about an agreement between Queensland and New South Wales for future management of water resources in the Border Rivers.

Any restrictions on future development in the Border Rivers will not affect development of farm dams that store water for stock and domestic purposes as this is authorised by the Bill in clause 20(3).

Clause 1043 provides that the draft WAMP for the Burnett Basin and the draft WAMP for the Condamine-Balonne Basin both publicly released in

June 2000 are taken to be draft water resource plans for establishing water allocations. As draft plans have already been published, clauses 39 to 49 do not apply provided the plan complies with the requirements as to the contents of a water resource plan set out in clause 46. This includes a requirement that the plan must advance the sustainable management of water.

In the final draft water resource plan for the Condamine-Balonne basin, priority may be given to water users in specified areas, if those water users have constructed or have started construction of works before the dates provided in this clause.

The first relevant date is 14 June 2000 when the Minister made a public announcement of the release of the draft Condamine-Balonne WAMP. The draft WAMP proposes that limitations will be placed on the taking of overland flow water in areas identified in the draft WAMP as areas to be subject to overland flow restrictions.

The second relevant date is 14 August 2000 when the Minister made a public announcement about any new water diversions from the Condamine-Balonne river system. This refers to taking or interfering with overland flow water in the whole of the plan area. It also refers to the construction of any new works to take or interfere with water under an existing licence or to take or interfere with overland flow water.

Any restrictions on future development in the Condamine-Balonne basin will not affect development of farm dams that store water for stock and domestic purposes as this is authorised by the Bill in clause 20(3).

Clause 1044 provides for the draft water management plan released for the Boyne River Basin in May 2000 to be recognized as draft water resource plans publicly notified under chapter 2, part 3 that provides a framework for establishing water allocations. The overview report accompanying the draft plan contemplated this proposal, which is to allow a resource operations licence and water allocation to be issued in relation to the proposed raising of Awoonga Dam. Again, the final plan will need to comply with the requirements of chapter 2, part 3 with respect to the contents of a draft water resource plan.

Clause 1045 provides for the draft water management plan currently being prepared for the Atherton subartesian area to be taken to be part of, and amalgamated with, the water allocation management plan being prepared for the Barron Basin. This is required as the Atherton subartesian

area is wholly contained within the boundaries of the proposed Barron Basin water allocation and management plan area. (Clause 38(2) requires that there be only one plan for any part of Queensland).

Clause 1046 provides for a continuation of the declaration of subartesian areas. A regulation establishing a subartesian are may specify the water taking and works construction that is subject to regulation. This will allow continuation of the existing regulatory arrangements for subartesian underground water until water resource plans are completed. As water resource plans are progressively developed the need for regulations to declare subartesian areas will decrease.

Clause 1047 provides for transitional arrangements about existing land and water management plans.

Subclause (1) provides that applications for approval of, or deferral of a requirement for, a land and water management plan made before the commencement of this clause shall be dealt with using the provisions of the Act.

Subclauses (2) and (3) provide that land and water management plans or deferrals approved under the Act or under subclause (1) are taken to be approved under the Bill (clauses 77 and 82).

Subclauses (4) and (5) provide that plans or deferrals approved under the Act take effect from the day they were originally approved.

Subclause (6) expressly saves the *Guidelines for Land and Water Management Plans Mareeba-Dimbulah Irrigation Area July 1999.*

Clause 1048 provides transitional arrangements for existing applications, licences and permits.

Subclause (1) provides that applications for licences and permits made before the commencement of this clause shall be dealt with using the provisions of the Act.

Subclause (2) provides that if part of the application under subclause 1 is for a referable dam (eg a waterworks licence that may include dam safety conditions), the criteria and failure impact assessment provisions outlined in this subclause will be used to assess the conditions about the safety of the dam.

Subclause (3) provides that any application about a referable dam under the Act, that is less than 8m in height, does not have to address the criteria in

1048(2) or any criteria under the Act. To the extent the application refer to safety conditions for referable dams, those parts of the application lapse.

For applications in areas where a plan has been approved, the decision must be consistent with the approved plan and any inconsistent application must be refused without publication of the application.

Subclause (7) provides that on commencement—

- If a waterworks licence has been granted under the Act or under subclause (1) and is in force, the licence is taken to be a water licence under the Bill in relation to the water component of the licence and is taken to be a development permit for the works component.
    - If a waterworks licence has been granted under the Act or under subclause (1) and is in force and the water component has already become an interim water allocation, the works component is taken to be a development permit.
    - If a permit has been granted under the Act or under subclause (1) and is in force and relates to a permit issued to a department of the government for activities such as school bores, the permit is taken to be a water licence under the Bill in relation to the water component of the permit and is taken to be a development permit for the works component.
    - If a permit has been granted under the Act or under subclause (1) and is in force and relates to a permit issued for a period not exceeding 1 year, the permit is taken to be a water permit under the Bill in relation to the water component of the permit.
    - If a permit has been granted under the Act or under subclause (1) and is in force and relates to a permit issued to a riparian land owner abutting a watercourse, lake or spring, the permit ceases to exist in relation to the water component of the permit and is taken to be a development permit for the works component.
    - If a permit has been granted under the Act or under subclause (1) and is in force and relates to a issued to a riparian land owner abutting a weir, barrage or dam, the permit is taken to be a water licence under the Bill in relation

to the water component of the permit and is taken to be a development permit for the works component.

- permit to take quarry material under section 58 of the Act – the permit is taken to be an allocation notice and under chapter 2, part 9 and conditions related to the removal of the quarry are taken to be a development permit,
- riverine protection permit under section 71 of the Act – the permit is taken to be a permit under chapter 2, part 8; and
- drillers licence – the licence is taken to be a water bore drillers licence under chapter 2, part 10.

Subclause (8) provides that licences or permits mentioned in subclause (5) and taken to be made under the Bill, are for the periods originally granted under the Act.

Subclause (9) provides that for 1 year after the commencement clauses 311 and 818 do not apply to a person carrying out the drilling activities for a subartesian bore in an area that was not a declared subartesian area under the Act.

Clause 1048A provides that applications made under the Act about licences or permits to take water or increase the volume, rate or times when water may be taken, in relation to any water managed by State Water Projects, must be refused without publishing. The chief executive will not grant any further licences for water managed by State Water Projects. Applications for temporary transfers of water managed by State Water Projects must also be refused.

Clause 1048B provides that applications for temporary transfers of water, other than water managed by State Water Projects, must be decided under the Act and if approved the temporary transferee is to be given a permit, taken to be a water permit under chapter 2 part 6.

Clause 1048C provides that from the date of assent to the date chapter 2 part 6 commences, any application to amend a licence to attempt to add other non contiguous land to that licence or any land owned by another person cannot be approved. The practice of shifting water from location to location through the amendment of existing licences can have a detrimental affect on water and natural ecosystems and for this reason any amendments that have this effect are to be refused until water resource plans are approved and proper transfer rules are established.

Clause 1048D provides that from the date of assent to the date chapter 2 part 6 commences, plans approved under chapter 2, part 3 for water must be considered in any decision making process involving that water.

Clause 1048E provides that holders of interim water allocations must not apply for approval to temporarily transfer the allocation under the Act. Any temporary transfer arrangements will be a matter for the interim resource operations licence holder and the interim water allocation holder, within any constraints provided by the interim resource operations licence.

Clause 1048F saves the *Declaration of Downstream Limits Notification (No.1) 2000* for a period of 2 years after the date the Bill is assented to.

Clause 1048G provides that licences issued under the Act may be amalgamated, subdivided or amended with the consent of all entitled under the licences. This will allow the full benefit of the separation of water licences from works to be achieved by simplifying licence holdings.

Clause 1048H provides that until chapter 2 part 6 commences, interim water allocations managed in former irrigation areas under the Act are to be dealt with as if they were a part 9 licence under the Act and other interim water allocations are to be dealt with as if they were a part 4 licence under the Act. This clause does not apply to transfers of interim water allocations by interim resource operations licence holders as those transfers are dealt with under clauses 191 and 192, or to transfers of interim water allocations under a regulation made under 192A.

Clauses 1049—1059 not used. See footnote at end of chapter 1.

PART 2—TRANSITIONAL PROVISIONS FOR SERVICE PROVIDERS, SERVICE AREAS, FAILURE IMPACT ASSESSING OF DAMS AND FLOOD MITIGATION

Division 1—Service providers and service areas

Clause 1060 provides that existing owners of infrastructure which provide water or sewerage services will not be in breach of sections 370

(requirement to be registered) or 821 (offence to supply services without being registered), if the infrastructure owner has applied for registration before 1 January 2001.

Clause 1061 provides that existing service providers must comply with the requirements of part 3, divisions 1 to 3, of the Bill as follows:

- within 2 years for a large service provider;
- within 3 years for a medium service provider; and
- within 4 years for a small service provider (if the small service provider has not been exempted under division 5 of part 3)

"Large service provider", "medium service provider" and "small service provider" are defined in the Dictionary at schedule 4 of the Bill.

Clause 1062 provides that part 3, division 4 (water for firefighting) applies to a local government, water board or other person as if they were a registered service provider on the commencement of this section.

Clause 1063 provides that an area that has been declared by resolution of a local government under the *Sewerage and Water Supply Act 1949* to be a water supply area or sewered area prior to the commencement of this section is a service area under this Bill.

Clause 1064 clarifies that, for the purposes of chapter3, part 4, divisions 3 and 4, the local government which declared a water supply area or a sewered area under the *Sewerage and Water Supply Act 1949* is to be the service provider for the area.

Division 2—Failure impact assessing for dams

Subdivision 1—Hazardous dams

Clause 1065 provides for how a licence, with referable dam safety conditions issued under the Act for a dam containing hazardous waste, will be transitioned at the commencement of this clause. On the commencement of this clause, a hazardous waste dam is an environmentally relevant activity within the meaning of *Environmental Protection Act 1994* and any existing referable dam safety conditions that applied to its licence will be taken to be conditions of the dam's environmental authority or development approval

as the case may be.

Subdivision 2—Other dams

Clause 1066 provides that the provisions of chapter 3, part 6, division 1 (other than clauses 483(1) and 486) apply to each failure impact assessment under this subdivision in relation to existing dams, not previously licensed as a referable dam under the repealed Act. This ensures that all relevant provisions about failure impact assessment apply to a dam caught by the transitional requirements to be failure impact assessed.

Clause 1067 provides for how existing dams, unlicensed as a referable dam under section 43 of the Act at the commencement of this clause, will be transitionally failure impact assessed. At the commencement of this section, an owner of an existing unlicensed dam, except those dams mentioned in a prescribed regulation, (with a prescribed failure impact rating) must have the dam failure impact assessed within 1 year, if the dam is:

(a) more than 8 m in height and has a storage capacity of more than 500 ML; or

(b) more than 8 m in height and has a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level.

The prescribed regulation will mention those existing dams for which the chief executive is satisfied of, and has accepted, a failure impact rating of either a category 1 or category 2 rating, which is to apply at the commencement of this clause.

Clause 1068 provides for how specific existing dams, licensed as a referable dam under section 43 of the repealed Act, will be transitioned. These dams will not be required to be failure impact assessed at the commencement of this clause. The purpose of this clause is to transition a licence, including the conditions about the safety of the dam, issued under the repealed Act for a referable dam, within the new threshold size and capacity dimensions under the Bill, as a development permit under the *Integrated Planning Act 1997.* It is noted that under the Act, a licence for a referable dam is the same type of licence issued under Part 4 of the Act for all other dams or weirs. Where applicable, a licence issued under Part 4 of

the Act will contained conditions about the safety of the dam in addition to other resource management conditions.

The prescribed regulation will mention those existing licensed dams for which the chief executive is satisfied of, and has accepted, a failure impact rating of either a category 1 or category 2 rating, which is to apply at the commencement of this clause. A dam mentioned in the prescribed regulation is taken to:

- be a referable dam; and
- have the failure impact rating shown for the dam in the regulation; and
- the licence, including the conditions about the safety of the dam, is taken to be a development permit as defined under the *Integrated Planning Act 1997*, subject to the conditions about the safety of the referable dam.

Clause 1069 provides for how certain existing dams, licensed as a referable dam under section 43 of the Act, and not mentioned in a prescribed regulation, will be transitioned. These dams will not need to be failure impact assessed at the commencement of this clause. The purpose of this clause is to transition a licence, including the conditions about the safety of the dam, issued under the Act for a referable dam, within the new threshold size and capacity dimensions under the Bill, as a development permit under the *Integrated Planning Act 1997*.

At the commencement of this clause, an existing licensed dam, except a dam mentioned in the prescribed regulation, where the dam is:

(a) more than 8 m in height and has a storage capacity of more than 500 ML; or

(b) more than 8 m in height and has a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level;

the dam is taken to be a referable dam under the Bill and the licence, including the conditions about the safety of the dam, is taken to be a development permit as defined under the *Integrated Planning Act 1997*, subject to the conditions about the safety of the dam.

The owner of a dam subject to this clause must also ensure that a failure impact assessment is carried out within 5 years after the commencement of

the Bill and given to the chief executive. Accordingly the owner of the dam will need to comply with clauses 483(6) and (7) about the requirement for a 5 yearly failure impact assessment.

Where an existing licensed dam is failure impact assessed and assessed as not having a category 1 or category 2 failure impact rating, the dam is taken to be no longer referable and the development permit is no longer taken to be subject to the conditions about the safety of the dam.

Clause 1070 provides for how specific existing dams, licensed as referable dams under section 43 of the Act, will be transitioned. These dams will no longer be regulated under the Bill as the dam does not fall within the new threshold size and capacity dimensions under the Bill. On the commencement of this clause, the licence conditions about the safety of the dam of an existing licensed dam that is not:

(a) more than 8 m in height and does not have a storage capacity of more than 500 ML; or

(b) more than 8 m in height and does not have a storage capacity of more than 250 ML and a catchment area that is not more than 3 times its maximum surface area;

will no longer apply.

Division 3—Flood mitigation

Clause 1071 provides that a flood mitigation manual approved under the Act or taken to be a flood mitigation manual approved under the repealed Act are taken to be the flood mitigation manual approved by the chief executive under part 6.

Clauses 1072—1082 not used. See footnote at end of chapter 1.

PART 3—TRANSITIONAL PROVISIONS FOR WATER AUTHORITIES

Clause 1083 provides for the continuation of former water areas and

former water boards in existence immediately before the commencement of the Bill. All water authorities with the exception of Mt Isa Water Board are taken to be category 2 water authorities.

Clause 1084 provides for the continuation of the Gladstone Area Water Board as established under the *Gladstone Area Water Board Act 1984*, but does not limit the Board to a particular water area. Gladstone is taken to be a category 1 water authority.

Clause 1085 provides that a person who was a member of a board before commencement of the Act continues as a director of the authority for the remainder of the person's term of appointment.

Clause 1086 provides for Gladstone Area Water Board directors to continue as a director of the Gladstone Area Water Board for the remainder of the person's term of appointment.

Clause 1087 provides that a person who was an employee of a water board immediately before commencement of this clause becomes an employee of the water authority on commencement of this clause. The person must be employed on existing or equivalent terms and conditions of employment and remains entitled to all existing and accruing rights of employment. The employee is entitled to contribute to the same superannuation scheme. Likewise, the water authority must continue to pay to that scheme contributions to that scheme on behalf of the employee.

Clause 1088 provides that a water authority is taken to hold a development permit for works that were authorised under the Acts. For a water area where there is no water authority, the chief executive is taken to hold a development permit for the works.

Clause 1089 provides that if a water authority (or the chief executive as administrator of a water area) was authorised under the Acts to take or interfere with water, the authorisation continues until it is replaced with a water entitlement.

Clause 1090 provides that despite the repeal of the GAWB Act, sections 53, 54, 117 and 118 continue to apply to any contract between the Gladstone Area Water Board and another entity for the supply of water that is in force immediately before the commencement of the clause. The contract is taken to have been made under this Bill.

Clause 1091 clarifies that a reference (in an Act or other document) to a former water area may be taken to be a reference to an authority area. In

addition, a reference to a former water board is intended to be taken to be a reference to a water authority with the same.

Clause 1092 provides for the continuation of the *Water Resources (Areas and Boards) Regulation 2000*. Under the repealed Act, a person could be appointed, nominated or elected to a water board. Under the Bill, a person can be elected or nominated to a board. The Governor-in Council then appoints all elected and nominated members to the board of directors. In the *Water Resources (Area and Boards) Regulation 2000*, in respect of the composition of the board of directors of some water authorities, the Governor in Council directly appoints a director to the board. In this case, the regulation is to be read as if the requirement were for the person to be nominated by the chief executive.

Clause 1093 provides for the continuation of by-laws (in force under the *Gladstone Area Water Board Act 1984* and the repealed Act) that were in existence immediately before the commencement of this clause. It is intended that such continuation should only be for a period of 2 years after commencement.

Clauses 1094—1106 not used. See footnote at end of chapter 1.

PART 4—TRANSITIONAL PROVISIONS ABOUT STATE WATER PROJECTS AND ITS CUSTOMERS

Division 1—State Water Projects before corporatisation

Clause 1107A all powers a person had a delegation to exercise under the Act as at 30 June 2000, including officers of State Water Projects, (including powers delegated prior to the abolition of the Primary Industries Corporation) are validated and the persons exercise of those powers are validated from 30 June 2000 to 18 August 2000.

Clause 1107 provides that despite the Bill binding the State, chapter 3, part 6, division 1 about referable dams does not apply to State Water Projects until it is corporatised under the *Government Owned Corporations Act 1993*. State Water Projects is currently a commercialised business unit in the Department, but has been nominated as a candidate Government

Owned Corporation. Until corporatisation, it is not intended that State Water Projects, as part of the State, is to be bound by the provisions about failure impact assessment for dams under its control.

Division 2—State Water Projects after corporatisation

Subdivision 1—Preliminary

Clause 1108 defines "authority" within this division as meaning:

- a licence under part 4 or 9 of the repealed Act;
- an order in council under which water is supplied;
- an agreement for the supply of water under s.15 of the repealed Act; or
- another agreement for the supply of water under the repealed Act.

"Customer" is defined within the division as meaning a person who is supplied water by the corporatised under one of the authorities outlined above.

Clause 1109 provides when the division applies to the entity. If State Water Projects is corporatised *before* commencement, the division applies on the commencement day. If State Water Projects is corporatised *after* commencement, it applies on the day it is corporatised.

Subdivision 2—Granting interim resource operations licences and interim water allocations

Clause 1110(1) provides that within 30 days after the division commences, the chief executive must give the corporatised entity an interim resource operations licence for each piece of water infrastructure it operates. Because not all of the State Water Projects current assets may be transferred to the corporatised entity, the clause provides that it relates to those pieces of infrastructure that the entity operated both before the commencement and after. It is also provided that in addition to the irrigation areas and projects, an interim resource operations licence must be granted for Julius Dam.

Subclause (2) provides that each interim resource operations licence must state:

(a) all the matters stated in chapter 2, part 5, division 2, subdivision 3 about the content of an interim resource operations licence;

(b) all interim water allocations to be granted to the corporatised entity for; water losses, unallocated water and water that the entity will then supply to customers who *will not* hold an interim water allocation;

(c) details of existing customers of the corporatised entity who *will* be granted interim water allocations other than those customers who hold existing licences (the existing licensees being dealt with through clause 1113); and

(d) details of existing customers of the corporatised entity who are not to be granted or taken to hold interim water allocations;

(e) Details of other existing water supply responsibilities. This is intended to cover requirements such as those that exist in the Burdekin River and the Pioneer River for the supply of water to the Pioneer Valley Water Board and the North and South Burdekin Water Boards.

Subclause (3) provides that within 30 days of giving the interim resource operations licence, the chief executive must give the customers detailed in subclauses 2(c) and (d) an information notice.

The clause also provides that the granting of the licences is made subject to the provisions in chapter 2, part 5. It is specifically provided that although a customer is not granted an interim water allocation, the customer is entitled to the continued supply of water under the authority.

Clause 1111 provides what water will be granted to the corporatised entity.

Subclause (1)(a) provides that the chief executive must grant to the corporatised entity interim water allocations in accordance with each interim resource operations licence given under clause 1110(1). This will be water for losses, unallocated water and water for delivery to customers who will not hold interim water allocations.

Currently, State Water Projects controls and uses volumes of water to operate infrastructure in addition to that water that it delivers. For example,

there are losses of water through distribution systems, and in some storages there may be spare water available for future allocation.

Subclause (1)(b) provides that if the corporatised entity was taking water (other than that referred to in the previous paragraph) the entity may be granted a licence for the activity. This is intended to cover the situations where, in some schemes, State Water Projects currently takes high flow water (known as water harvesting) for sale to customers. It is proposed that licences would be issued to the entity for those activities. The licence granted under this section is taken to be a licence granted under part 4 of the repealed Act.

Clause 1112 provides that the chief executive must grant each customer, mentioned in clause 1110(2)(c) an interim water allocation in accordance with the interim resource operations licence. Subclause 2 provides that before granting the interim water allocation the chief executive must consider for the granting of that allocation, the following matters:

- whether the authority stated that the customer was granted nominal allocation of the water;
- whether the authority was in existence when the relevant irrigation area or project was established;
- whether the supply of water under the authority had an end date;
- whether the customer has over the term of the authority paid the full commercial value for the supply of water under the authority; and
- whether the customer has paid the full commercial value for all or part of the supply of the water and it is reasonable that a proportion of the authority should be granted as an interim water allocation.

Subclause (4) provides that an interim water allocation attaches to the land of the grantee unless the grantee is a local government, water authority or entity prescribed by regulation. Interim water allocations take effect from the day the grantee is given the allocation.

Subclauses (6) and (7) provide that if a person was supplied water under an authority and an amount of money was owed to the State under a financial arrangement under the authority for the nominal allocation (for example, instalment contracts); and the person is granted an interim water allocation, then on the grant of the allocation, the amount owed by the

person is a debt due to the corporatised entity and the payment of the amount is a condition of the interim water allocation.

Clause 1113 provides for the "unbundling" of existing licences in irrigation areas or projects operated by the corporatised entity. The clause provides that if there is a water user in an irrigation area or project currently supplied by State Water Projects, then on commencement, that part of the licence dealing with the water becomes an interim water allocation of the volume of water on the licence known as the nominal allocation.

The purpose of this clause is to allow for the "unbundling" of existing licences, and accordingly the characteristics of interim water allocation are similar to those for water allocations set out in clause 126. That is (as provided for in subclause 2) the interim water allocation is those parts of the former authority that relate to matters such as volume and location.

Subclause (3) provides that the interim water allocation attaches to land to which the authority attached unless the holder was a local government, a water authority or an entity prescribed by regulation.

Subclauses (4) and (5) provide that if an amount of money was owed to the State because of some financial arrangement under the authority (such as instalment contracts), then the money owned becomes a debt due to the corporatised entity, and repayment becomes a condition of the interim water allocation.

Clause 1114 provides for a review of the grant of an interim water allocation. The customer may apply for review about the grant an interim water allocation based on one or more of the following grounds:

- whether the authority stated that the customer was granted nominal allocation of the water;
- whether the authority was in existence when the relevant irrigation area or project was established;
- whether the supply of water under the authority had an end date and the customer has over the term of the authority paid the full commercial value for the supply of water under the authority;
- whether the customer has paid the full commercial value for all or part of the supply of the water and it is reasonable that a proportion of the authority should be granted as an interim water allocation.

Subdivision 3—Supply contracts

Clause 1115 provides that standard supply contracts must be approved by the Minister for the storage and delivery of water for interim water allocations other than those mentioned in clause 1116. The contracts must be notified in the Gazette and continue in force until renegotiated by the customer and the entity. To the extent that there is an inconsistency between the contract and the interim water allocation granted under clause 1113(2), (except where the terms of the interim water allocation relate to resource management issues) the contract prevails.

Subclause (7) contemplates that these supply contracts will be reviewed by customer councils that the corporatised entity will be required to establish as part of its Statement of Corporate Intent.

Clause 1116 relates to supply of water for all interim water allocations other than those dealt with in clause 1113(2). If:

- there was a written agreement for the supply of water managed under an interim resource operations licence; and
- the agreement was effective immediately before the granting of the interim resource operations licence,

then the provisions of the agreement, other than those provisions that deal with the allocation of water continue to have effect.

Clause 1117 provides that the money due under the *Water Resources (Rates and Charges) Regulation 1992* is money due to the corporatised entity applies both in respect of that owed for interim water allocations, but also in respect of any drainage rates that may be payable. The charges under the regulation are the charges of the corporatised entity until the entity sets new charges. Where charges are not being dealt with as part of the development of price paths for the irrigation areas and projects, for example, drainage charges, these will continue under the regulation as payable to the entity.

Clause 1118 provides that until chapter 2, part 6 of the Bill commences, interim water allocations will continue to be dealt with under the provisions of parts 4 and 9 of the repealed Act.

Clause 1119 provides a reserve power for the Minister and Treasurer to give the corporatised entity a written joint direction on a matter if they are

satisfied that it is necessary to give effect to the Bill, or facilitate reform of the water industry, or ensure a financially viable industry. Any such direction must be published in the gazette within 21 days. The power sunsets after 3 years.

Clause 1119A provides that from the day that the division commences until the interim resource operations licences are granted under clause 1110, the corporatised entity must exercise the powers of an interim resource operations licence holder even though the corporatised entity does not have an interim resource operations licence. This provision, when read with clause 1110 allows a period of thirty days from the time of commencement for the chief executive to consider the matters necessary before granting interim resource operations licences. However during that period, the corporatised entity has jurisdiction to operate its schemes, and is obliged to supply its customers.

Clauses 1120—1128 not used. See footnote 2 at end of chapter 1.

PART 5—GENERAL

Clause 1129 provides for how references to Acts or documents that that references in Acts or documents to:

- the *Gladstone Area Water Board Act 1984* may be taken in reference to this Act if context permits;
- the repealed Act or Acts that dealt with water prior to that Act (eg the *Water Act 1926*) can be taken to a reference to this Bill if the context permits;
- a water entitlement under the repealed Acts can be taken to be an entitlement under the Bill is the context permits;
- a water entitlement holder under the repealed Acts can be taken to be the holder of an entitlement under the Bill is the context permits;
- the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910* may be taken to be a reference to this Act, if context permits; and

- a section of the repealed Act, or the *Land Act 1987*, the *Land Act 1902* or the *Land Act 1910* may be taken to be a reference to the corresponding section in this Act.

Clause 1130 gives a transitional regulation making power to make provision about a matter for which it is necessary to provide for the transition from the repealed Act to the Bill and the Bill does not make provision for sufficient provisions.

Clause 1130A sets out the regulations and orders in council that are to be saved until 1 July 2002 despite progressive repeal of provisions of the Act.

Clauses 1131—1136 not used. See footnote 2 at end of chapter 1.

PART 6—REPEALS

Clause 1137 provides for the repeal of the *Gladstone Area Water Board Act 1984* and the *Water Resources Act 1989.*

Clauses 1138—1143 not used. See footnote at end of chapter 1.

CHAPTER 10—CONSEQUENTIAL AMENDMENTS

Clause 1144 states that schedule 2 amends the Acts it mentions. These are amendments to the *Integrated Planning Act 1997*, *Local Government Act 1993* and *Vegetation Management Act 1999* and relate specifically to matters about planning matters.

Clause 1145 states that schedule 3 amends other Acts. These are all other Acts that include reference to the repealed Act, or otherwise deal with water.

SCHEDULE 1—PROHIBITED SUBSTANCES

Schedule 1 defines prohibited substances.

SCHEDULE 2—AMENDMENTS ABOUT PLANNING MATTERS

Integrated Planning Act 1997

Clause 1 amends section 1.3.5 by inserting a new paragraph (g) in the definition of "operational" work to bring operations of any kind and all things constructed or installed for taking, or interfering with, water under the Bill within the definition of "development" under the *Integrated Planning Act 1997*. As a consequence works associated with the taking and interfering with water, within the scope of the meaning of water under the Bill is brought within the concept of development to allow the development to be regulated under the *Integrated Planning Act 1997*and IDAS in accordance with schedule 8. Amendments to schedule 8[3] make works associated with taking, or interfering with, water assessable development and self-assessable development.

Clause 2 amends section 3.2.1 by inserting subclause (5)(a) to provide if the development relates to taking or interfering with a resource of the State, for example water or quarry materials, another Act may require the application to be supported by evidence of an allocation of, or entitlement to, that resource.

Clause 3 amends section 3.2.1 (6) by inserting 5(a). This provides for the evidence of an allocation of, or entitlement to, that resource being a requisite part of a properly made application.

Clause 4 amends section 3.2.1 by inserting a new subclause (9) which provides the assessment manager can not accept an application as a properly made application if that application should require the written consent of the owner of land to which the application applies and also contain evidence of

3 *See clause 14 and 15*

an allocation of, or entitlement to, a resource of the State.

Clause 5 amends section 3.3.15 (1) to clarify that a concurrence agency must assess an application against concurrence agency codes, in addition to the laws and policies it applies.

Clause 6 amends section 3.3.15(2)(a) by removing the word "relevant". That word becomes redundant by the amendment of the section by clause 7 that, apart from adding a reference to codes, qualifies the applicable planning schemes, policies or codes by referring to those in the previous subclause.

Clause 7 amends section 3.3.15(2)(a) as stated above.

Clause 8 amends s 3.3.18(4)(a) and (b) for consistency with amended section 3.3.15 by adding a reference to concurrence agency codes. The amendment clarifies that a concurrence agency may direct the assessment manager to refuse an application if development the subject of an application does not comply with its laws and policies, or any code against which the particular concurrence agency is required to assess the proposed development.

Clause 9 and *clause 10* below amend section 3.5.4 to remove doubt about the relationship between the subclauses (2) and (3). It has been suggested that the clauses read together imply that concurrence agency codes are not part of the laws and policies referred to in subclause (3) and are therefore not applicable codes for the purposes of subclause (2)(b).

The intent of the clause is that when the assessment manager for an application is not a local government, the alternative assessment manager must assess the application against the:

(a) Laws and policies applied by the alternative assessment manager (that are taken to be applicable codes); and

(b) Particular codes (also applicable codes) the entity would apply to the development if they were a concurrence agency for the application, for example, the concurrence agency codes.

Clause 10 amends section 3.5.4(3) as stated above.

Clause 11 amends section 4.1.33 by inserting a new paragraph (c) to provide a further exception to the general rule that when a notice of appeal about an enforcement notice is lodged, the operation of the enforcement notice is stayed until the Court decides otherwise, or the appeal is dismissed or withdrawn. The removal of quarry material cannot be undone and it is

important that unauthorised removal can be stopped quickly and not recommenced until the alleged offence is properly dealt with. The amendment provides for an enforcement notice relating to removal of quarry material cannot be stayed by the lodgement of a notice of appeal against the enforcement notice. Although the person may appeal against the enforcement notice, it remains in force until the appeal is heard.

Clause 12 amends section 4.3.8 by inserting a new paragraph (e) to provide a further exception to the general rule that an assessing authority must give a show cause notice to a person before they can give the person an enforcement notice. The amendment provides that no show cause notice is required when an assessing authority proposes to give an enforcement notice about removal of quarry. A show cause notice would delay the effect of an enforcement notice and may result in continued or increased removal of quarry that cannot be remedied.

Clause 13 inserts new section 5.8.5 to allow the Minister the discretion to delegate any power or function, including the forming of an opinion, the Minister has under the IPA to an appropriately qualified officer of the Public Service. For example, if the Minister delegates his functions and powers under s 4.1.46 to the chief executive, the chief executive is the one who, as the Minister's delegate, may form the opinion that the appeal involves a State interest, and may elect to join in the appeal.

Clause 14 amends schedule 8, part 1 by inserting new items 3B and 3C as assessable development. Item 3B makes the carrying out of operational work that is operations of any kind and all things constructed or installed for taking, or interfering with, water under the Bill assessable development where the operations are for:

(a) Paragraph (a) provides for those operations for taking, or interfering with, water from a watercourse, lake or spring (other than under the Bill, clause 20(2), (3) or (5));

(b) Paragraph (b) provides for those operations for those operations for taking, or interfering with, artesian water;

(c) Paragraph (c) provides for those operations for taking, or interfering with, overland flow water mentioned in a water resource plan or subartesian water mentioned in a water resource plan or prescribed under a regulation.

Item 3C makes assessable the carrying out of operational work that is the construction and operation of a referable dam under the Bill.

Clause 15 amends schedule 8, part 1, item 6 for the purpose of inserting a footnote to that item. The purpose of the footnote is to note that item 6 may trigger the removal of quarry materials as assessable development under the *Environmental Protection Regulation 1998,* section 63A for which the chief executive may be an assessment manager or referral agency.

Clause 16 amends schedule 8, part 2 by inserting a new item 9A as self-assessable development. Item 9A makes the carrying out of operational work that is operations of any kind and all things constructed or installed for taking water under the Bill self assessable development where the operations are for:

(a) taking water from a watercourse, lake or spring, under section 20(3); or

(b) taking or interfering with subartesian water mentioned in a water resource plan or prescribed under a regulation, or overland flow water mentioned in a water resource plan.

Clause 17 amends schedule 8, part 3 by amending item 13(a) by providing that 2 exemptions are aspects of management for an agricultural use on freehold land are not exempt development:

(a) The clearing of native vegetation on freehold land: or

(b) Operations of any kind and all things constructed or installed for taking, or interfering with, water under the Bill.

Paragraph (a) has been referred to as part of the formatting of this item. This paragraph had been previously inserted under the *Vegetation Management Act 1999*.

Clause 18 inserts a new item 21B in part 3 of schedule 8, to provide that operational work for installing subscriber connections to premises to a line that forms part of an existing telecommunications network is exempt development under planning schemes. The *Commonwealth Telecommunications Act 1997* provided an exemption from regulation for this type of connection. This exemption will expire on 30 June 2000. This provision will ensure these connections remain exempt from regulation, and are not unintentionally regulated by any provisions existing in planning schemes that would automatically apply when the exemption under the Commonwealth legislation expires.

Clause 19 inserts a definition of “subscriber connection” in part 4 of schedule 8 for the purposes of new item 21B inserted in part 3.

Local Government Act 1993

Clause 1 amends the definition of "local government Act" by inserting a reference to the *Water Act 2000*, chapter 3. The intention of this amendment is to allow a local government to exercise its powers under the *Local Government Act 1993* when it is a service provider within the meaning of the Bill.

Clause 2 insets a new subsection (5) in section 854 of the Local Government Act 1993 to provide that a local law is void to the extent it regulates subscriber connections to premises from a line that forms part of an existing telecommunications network. The *Commonwealth Telecommunications Act 1997* provided an exemption from regulation for this type of connection. This exemption will expire on 30 June 2000. This provision will ensure these connections remain exempt from regulation, and are not unintentionally regulated by provisions existing in local laws which would automatically apply when the exemption under the Commonwealth legislation applies. A definition of "subscriber connection" is inserted for the purposes of subsection (5).

Clause 3 amends section 942(1) to delete the reference to the *Water Resources Act 1989* and replace it with a reference to the *Water Act 2000*.

Vegetation Management Act 1999

Clause 1 deletes sections 78, 79 and 80 from the *Vegetation Management Act 1999*. Under the *Vegetation Management Act 1999*, these provisions have not yet been proclaimed into force. It is necessary for these sections to come into force at the time of the commencement of certain parts of the Bill dealing with the *Integrated Planning Act 1997*. As an alternative to proclaiming into force these sections under the *Vegetation Management Act 1999*, the sections have been omitted from that Act and inserted into the Bill.

Clause 2 amends section 84(2) as stated above.

Clause 3 amends section 85 by omitting the definition for 'concurrence agency code' as this definition has previously been inserted by the *Integrated Planning Act and Other Amendment Act 1999*.

SCHEDULE 3—OTHER AMENDMENTS

Aboriginal Land Act 1991

Clause 1 amends the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000*.

Century Zinc Project Act 1997

Clause 1 amends the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000*.

Fisheries Act 1994

Clause 1 amends the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000*.

Forestry Act 1959

Clause 1 amends the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000*.

Fossicking Act 1994

Clause 1 amends the Act by deleting the reference to "quarry materials permit" and replacing it with a reference to an allocation of quarry material.

Clause 1A changes the definition of a "referable dam" in the Water Resources Act 1989. Unless the current provisions of the Water Resources Act 1989 are amended to provide an interim solution, owners of dams that do not meet the new threshold size and capacity dimensions as detailed in this clause, will be put to expense of having a dam licensed when the dam may no longer be a referable dam when the Bill commences.

Therefore, in the interim period until the commencement of the Bill, only those dams that meet the size and capacity dimensions as detailed in this clause, will fall within the definition of a "referable dam" under the Water Resources Act 1989. In addition, in this interim period, a referable dam will not include a weir other than a weir that has a variable flow control structure on the crest of the weir. The meaning of "full supply level" is specifically

defined to mean the level of the water surface when the water storage is at maximum operating level when not affected by flood.

Clause 2 and *3* amend the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000.*

Freedom of Information Act 1992

Clause 1 amends Schedule 2 of the Act to provide for an exemption from the application of the Act in relation to certain activities of State Water Projects in the event it is corporatised. State Water Projects is the commercialised business unit in the department and was nominated as a candidate government owned corporation on 25 May 2000.

Petroleum Act 1923

The *Petroleum Act 1923* provides extensive rights to lessees and permittees under that Act to take and interfere with water. The amendments to the *Petroleum Act 1923* amend those rights such that the lessees and permittees retain the right under that Act to deal with underground water as a part of petroleum and gas operations, but to remove the rights under that Act to take and interfere with water in watercourses lakes and springs. Petroleum and gas explorers and producers, like any other entity, will nevertheless be able to apply for an authorisation to take or interfere with underground water under the *Water Act 2000.*

Licensee and permittees also will be required to provide annually to the Minister administering the *Petroleum Act 1923,* information on the volume of underground water taken under the authorisation of the *Petroleum Act 1923* mentioned above.

Clause 1 deletes section 35(1)(a) of the *Petroleum Act 1923*, under which a permittee has the right to take and divert water from any natural spring, lake, pool or watercourse situated on the land which is covered by the permit and to use the water for any purpose necessary or incidental to the holder's prospecting and mining operation.

Clause 2 deletes section 51(1)(b) of the *Petroleum Act 1923,* under which a lessee has the right to take and divert water from any natural spring, lake, pool or watercourse situated on the land the subject of the lease and to use the water for any purpose necessary or incidental to the mining lessee's mining operations and to the occupation of the land.

Clause 3 deletes the reference to the *Water Resources Act 1989* and replacing it with a reference to the *Water Act 2000.*

Clause 4 deletes section 86(d) of the *Petroleum Act 1923,* under which the Minister administering the *Petroleum Act 1923* can direct a landholder to supply underground water to a lessee or permittee.

Clause 5 deletes a reference to a licence under the *Water Resources Act 1989* and replaces it with a reference to a water licence under the *Water Act 2000.*

Clause 5A provides for how an application and a licence for a referable dam, being a water supply dam, will be transitioned as a result of the change to the threshold size and capacity dimensions referred to in clause 1A. The safety conditions of a currently licenced referable dam, that is below the threshold size and capacity dimensions, will no longer apply to the licence. If, before the commencement of this section, an application is made under clause 43 for a licence in relation to a referable dam and the dam is below the threshold size and capacity dimensions, the application will lapse and will not need to be processed.

Licences and applications in relation to hazardous waste dams will not be affected.

Clause 6 deletes section 94 of the *Petroleum Act 1923,* under which the drilling of a bore by a landholder for the purposes of taking underground water, on any land that is the subject of a permit or lease, must be approved by the Minister administering the *Petroleum Act 1923.*

Clause 7 establishes a duty for permittees or lessees to report to the Minister administering the *Petroleum Act 1923,* the volume of underground water taken each year. This will be the amount of water taken both for the purposes of producing petroleum or gas products as well as the water that is produced from a petroleum or gas well along with the petroleum or gas (sometimes referred to as the "water cut"). The will not necessarily involve accurate measurement of water volumes by use of a water meter. The volumes will only need to be measured or estimated to the accuracy necessary to enable an understanding to be reached as to the impacts of the water extraction on water levels or water pressures in the aquifer in the region.

Queensland Competition Authority Act 1997

It is proposed under the Bill to amend the *Queensland Competition Authority Act 1997* to provide the Queensland Competition Authority with an arbitration function for certain regulatory matters under Chapter 3. The arbitration function applies to certain matters for which an information notice has been given by the regulator, including:

- Where the regulator refuses to approve a strategic asset management plan, because it is deficient in a material particular.
- Where the regulator requires a service provider to take action following a spot audit under clause 419.
- Where there is any action taken by the regulator following inquiry into a complaint by a customer under clause 426.
- Where the regulator grants or refuses to grant an exemption from divisions 1, 2 or3 of Chapter 3, Part 3 to a small service provider.

Clause 1 amends section 10 by adding paragraph (gb) a further function to conduct arbitration hearings about decisions made by the regulator in respect of a service provider's obligations for strategic asset management plans.

Clause 2 amends section 188 by adding subclause (c) to provide for part 7 to apply to an arbitration for an application under the Water Act 2000.

Clause 3 amends the definition of 'party' in the dictionary by adding a reference to another party as a party to an arbitration for an application under the Water Resources Act 1989.

Clause 4 amends the definition of "public facility" in the dictionary by deleting a reference to water board and replacing it with water authority.

Clause 5 amends the definition of "water board" in the dictionary by deleting the reference to water board and replacing it with water authority within the meaning of the Water Act 2000.

Recreation Areas Management Act 1988

Clause 1 amends the Act by deleting the reference to the *Water Resources Act 1989* and replacing it with the *Water Act 2000.*

Sewerage and Water Supply Act 1949

Clause 1,2 and *3* amend section 17 by omitting the definition of 'sewerage' and other references to 'sewerage' within the clause.

South East Queensland Water Board (Reforms Facilitation) Act 1999

Clause 1 amends section 1 to delete the reference to "to amend the *Water Resources Act 1989*"

State Development and Public Works Organisation Act 1971

The clauses to be inserted in section 89 of the Act clarify the relationship between the operation of the this Act and the Bill. The powers of the Coordinator-General are to take water for authorised works under that Act. The amendments provide that:

- If a moratorium notice has been published under the Bill, the power of the coordinator-general does not apply to water to which the notice applied or water to which any amended notice applies.
- If, at the time the power of the Coordinator-General is to be exercised, a water resource plan has been approved, the power of the coordinator-general does not apply to water to be supplied to water entitlement holders or persons with authorisations under clause 20 of the Bill or water required to meet environmental flow objectives or water allocation security objectives.

Where the Coordinator-General does act under subsection (1) there must be consideration of the social and economic benefits of the proposed works and any 1 or more of the matters listed in the clause. To ensure that any exercise of the power is transparent, a statement of reasons must be published in the gazette and also tabled in the Assembly.

Torres Strait Islander Land Act 1991

Clause 1 amends the Act by replacing the reference to *Water Resources Act 1989* with *Water Act 2000* in the meaning of "bed and banks", "lake" and "watercourse" in the definition of "water".

Townsville/Thuringowa Water Supply Board Act 1987

Clause 1 amends the Act by replacing the reference to *Water Resources Act 1989* with *Water Act 2000* in section 33.

Water Resources Act 1989

Clause 1 amends section 93 by stating that a notice issued by the chief executive under subsection (1) attaches to the land and binds the owner and the owner's successors in title. If the chief executive gives an owner of a referable dam a notice, the chief executive must also give a copy of the notice to the Registrar of Titles and the Registrar of Titles must maintain the title records in a way that a search of the register relating to the land will show that a notice has been issued and that particulars of the notice may be obtained from the chief executive.

Clause 2 amends section 224J to include in the meaning of compliance section, a reference to section 93. This allows a notice issued by the chief executive under section 93 to be enforced under the enforcement injunction provisions of part 11, division 1(b) of the repealed Act.

Clause 3 repeals a number of sections, with the intention that these sections will be repealed to coincide with the commencement of certain provisions in the *Water Act 2000*. The balance of the Act would then be repealed upon the commencement of chapter 9, part 6.

Clauses 4 and *5* amend the Act by deleting sections 215K, 215L and 234. The omission of sections 215K & L will coincide with the grant of any interim resource operations licence or resource operations licence to the South East Queensland Water Corporation.

Whistleblowers Protection Act 1994

Clause 1 amends the Act by replacing the reference to the *Water Resources Act 1989* with *Water Act 2000* together with a reference to specific sections.

SCHEDULE 4—DICTIONARY

Clause 3 provides that the dictionary appears in this schedule. Many are self-explanatory, however below is a note of a definition that requires further explanation.

"**dam**" means works that includes a barrier whether permanent or temporary that does, could or would impound water and the storage area created by those works. In addition a dam includes an embankment or other structure that controls the flow of water and is incidental to another dam. For example, if in relation to a referable dam, an embankment is required to be constructed to contain or control the level of inundation, that embankment is taken to be a dam within the meaning of the Bill. It is noted that the term does not include a rainwater tank.

Clause 3 provides that the dictionary appears in this schedule. Many are self-explanatory, however below is a note of a definition that requires further explanation.

"executive officer", of a corporation, means a person who is concerned with, or takes part in, the corporation's management (whether it is internal or external management), whether or not the person is a director or the person's position is given the name of executive officer.