QUEENSLAND COMPETITION AUTHORITY AMENDMENT BILL 2000

EXPLANATORY NOTES

Short Title

The short title of the Bill is the *Queensland Competition Authority Amendment Bill 2000.*

Policy objectives of the Bill and the reasons for them

The policy objectives of the Bill are to:

- extend the application of the State's monopoly prices oversight regime and third party access regime to local government;
- establish an independent prices oversight regime for private water suppliers; and
- make miscellaneous amendments (mainly to the State's third party access regime).

(a) Prices oversight and third party access for local government

The application of the State based monopoly prices oversight and third party access regimes to local government is in fulfilment of a policy commitment to apply the State-based regimes to local government.

In relation to the prices oversight regime, the objective of the policy is to ensure that there is independent regulatory oversight for the pricing practices of monopoly (or near monopoly) local government business activities. Many monopoly government business activities provide essential utility services (eg water supply) to the community and have a vital impact on the efficiency of those industries which are reliant upon these essential inputs. In the absence of a competitive market, there may be little incentive for a monopoly business to ensure that its services are provided at the most efficient level possible and at the most efficient price. Hence, the need for

an independent regulatory oversight of pricing to act as a substitute for the discipline of a competitive market.

In relation to the application of the State's third party access regime, the previous Government made an undertaking (endorsed by this Government), at the time that the regime was being developed, to extend the regime to local government only after further consultation and a clear decision to apply the regime to local government. This decision was made in April 1998.

The regime provides for a legislative right to negotiate for access to a declared service, with a compulsory arbitration process should commercial negotiations fail. The objective of the third party access regime is to promote competition by allowing persons to utilise services provided by those facilities, which cannot be economically duplicated, access to which is essential in order to compete in another market. The reason for the policy is to encourage greater competition, leading to lower prices and/or better quality of service.

(b) Prices oversight for private sector water suppliers

The policy objective underpinning the establishment of a prices oversight regime for private sector water suppliers to provide independent regulatory oversight to counter the possibility of misuse of market power (eg hoarding of water or monopoly pricing) in the supply of water by private water suppliers. It carries the same objective as the policy underpinning oversight of government business activities but its application is limited to water supply activities. Unlike the private suppliers of other major utility services (eg. electricity and gas), who are already subject to economic regulation under a series of national regulatory regimes, the supply of water is not the subject of economic regulation.

The application of the regime to limited to entities whose primary business is the the supply of water or water storage and delivery services.

(c) Amendments to the third party access regime

I. Information disclosure by access providers

The objective of the amendments regarding the disclosure of information by access providers to access seekers is to enhance the effectiveness of the negotiation component of the negotiate/arbitrate model for third party access. While there is a broad statutory obligation to satisfy the reasonable requirements (including information requirements) of an access seeker during the course of access negotiations, there is considerable scope for the

negotiations to be unduly lengthened by extended disputes about the scope and level of disaggregation of information to be provided.

Specifically, the objective of the amendment is to ensure that an access seeker has sufficient information with which to form an informed view about the reasonableness of the price and terms of access being offered. There is a growing acceptance, reflected in legislative provisions in other access regimes around the country, about the essential items of information that are necessary to achieve this objective. The amendment lists these items as the minimum level of disclosure, thus reducing the possibility of unnecessary delays to the negotiation process.

II. Separate accounting records

The Act currently requires the owner of a declared service to prepare, within six months of declaration, and keep separate accounting records for a declared service. There is no provision specifying the form in which the accounting records are to be kept. The objective of the amendment regarding the separate accounting records to be kept by the owner of a declared service is to clarify what form of accounting records are to be kept. The amendment states that the form of the records must be acceptable to the Queensland Competition Authority (QCA).

The amendment also allows the QCA to determine whether these records should be published. The policy objective underpinning this provision is similar to the objective in section (c)(i) above, ie, to provide a means of informing access seekers and the QCA about the basis upon which access prices are calculated.

III. Access undertakings

The objective of the amendments to the access regime regarding access undertakings is to enhance the effectiveness of the regime by clarifying the status of access undertakings and enabling the QCA to require dispute resolution processes and reporting arrangements to be included in access undertakings.

The amendments to the access regime will increase the QCA's regulatory powers in relation to the enforcement of approved undertakings by:

- confirming the status of access undertakings by incorporating a statutory obligation to comply with an approved undertaking;
- providing that an undertaking may spell out that an access provider provide information to another person (eg. an

independent auditor or expert) with an enforceable outcome with respect to disputes about matters specified in the undertaking;

- providing that an undertaking may contain terms about reporting to the QCA about compliance with the undertaking and specified performance indicators.

The confirmation that there is a statutory obligation to comply with an approved undertaking removes any doubt as to the effectiveness of section 158A (Orders to enforce an approved undertaking). Without a primary obligation to comply with an approved undertaking, the effectiveness of section 158A may be open to challenge. The proposed amendment therefore removes any possibility that, without a clear obligation to comply with an undertaking, an access provider could opt to breach an undertaking, with repercussions only if a party to the access negotiations lodges a dispute notice and an arbitration ensues.

Without an effective s158A, there is scope for a provider to make many "small" breaches without repercussions, thus undermining the rights of access seekers and access users, if access seekers or access users are not inclined to proceed with a possibly lengthy and costly arbitration. Section 158A also provides a mechanism for enforcement of breaches incurred after an access agreement has been entered into, as opposed to the arbitration mechanism which only applies during negotiations for an access agreement.

The second amendment will allow the QCA (or another person, eg. an independent auditor or technical expert) to resolve a dispute in relation to a matter specified in an undertaking (eg. in relation to ringfencing or a technical matter) during the period of the operation of the undertaking and make a decision which must be complied with. These provisions, based on similar provisions in the access regime contained in the *Trade Practices Act 1974*, are primarily designed to allow the regulator to require (enforceable) dispute resolution provisions to be included in an access undertaking.

The third amendment, about reporting to the QCA about compliance with the undertaking and specified performance indicators, has been made on the basis that it is desirable to incorporate a performance regime, where a regime does not already exist, regarding quality of service in the context of a regulatory framework for access. The prime reason is to provide a mechanism to ensure that the regulated access provider does not have an incentive to reduce the level of service quality (eg. reliability of service) in

response to regulation of the price (and costs) to be charged for its declared service.

(d) Amendments to competitive neutrality provisions

The amendments to s.38 provides clarification for the QCA as to what the Government's intentions are in relation to the application of the principle of competitive neutrality to government significant business activities.

The QCA will be able to investigate a competitive neutrality complaint where allegedly a government agency enjoys an advantage over its competitors solely because it is not required to pay debt guarantee fees, or where it is not subject to tax equivalent regimes, or where it enjoys procedural and regulatory advantages.

The way that the Bill achieves the policy objectives and why this way is reasonable and appropriate

(a) Prices oversight and third party access for local government

The extension of the current prices oversight regime in the Act is a reasonable and appropriate response to the problem of the pricing practices of monopoly or near monopoly local government significant business activities because it ensures independent scrutiny of pricing practices by the QCA while allowing local governments the opportunity to consider pricing recommendations in the context of their overall policy responsibilities.

There is a potential conflict of interest for local governments in current arrangements whereby they, as owner of these enterprises, become directly involved in the regulatory price setting process. That is, there is little or no structural separation of ownership, responsibility from regulatory responsibilities. This conflict has increased under commercialisation reforms, under which local governments have responsibility for performance monitoring and setting rates of return.

The best way to overcome this conflict is to establish an independent oversight regime to depoliticise the price setting process. The QCA will investigate the pricing practices of monopoly local government significant business activities and publicly report the outcomes of its investigations. This establishment of independent prices oversight is also consistent with developments in other jurisdictions.

The policy objective of applying third party access to local government is essentially already achieved in the sense that local government facilities may be considered "private facilities" as defined in the Act.

(b) Prices oversight for private sector water suppliers

The Bill achieves the policy objective of providing a mechanism to address the possible misuse of market power by private sector water suppliers by establishing a regulatory framework which allows water suppliers to operate freely in the market on the basis that if they misuse their market power an aggrieved party may seek compulsory arbitration with an enforceable outcome. The model places an obligation on defined water suppliers who hold market power to negotiate in good faith with a water seeker. This framework, based on a commercially focussed negotiate/arbitrate model, provides maximum flexibility for the market to operate with minimum interference by government. Of all the alternative regulatory models, (eg. prices set by the Government or the QCA) designed to address market failure of this kind, it provides the most reasonable framework for private operators.

(c) Amendments to the third party access regime

The Bill achieves the policy objective of enhancing the effectiveness of the access regime by removing doubt about the effectiveness of section 158A and inserting provisions that allow access undertakings to address the matters in question.

Legislative amendments are the only way of achieving the policy objectives.

(d) Amendments to competitive neutrality provisions

The Bill achieves the Government's policy objective of ensuring that private sector competitors of Government agencies are not disadvantaged by special treatment available only to public sector agencies. By requiring Government agencies, declared as significant business activities under s.39 of the Act, to pay a fee to neutralise any cost of funds advantages that they may enjoy because of their Government ownership (debt guarantee fee), and to pay tax equivalents, their private sector competitors will not be disadvantaged when competing in the same markets. Further, Government agencies should not be given a competitive advantage through exemption from the procedural and regulatory requirements which their private sector competitors must comply with.

Reasonable alternatives for achieving the policy objectives and why the alternatives were not adopted

(a) Prices oversight and third party access for local government

In relation to the amendments to incorporate local government within the State based monopoly prices oversight and third party access regimes, the alternative considered was the application of the Commonwealth prices oversight and third party regimes.

The option of utilising the Commonwealth regimes was put to representative local government organisations. These organisations expressed in writing a preference for the application of the State based regimes for prices oversight and third party access, as opposed to the Commonwealth regimes. The key reasons for preferring a State based regime are that:

- considerable benefits accrue from the synergies and simplicity of having one regulator for one piece of infrastructure (as opposed to, say, the QCA for prices oversight and the NCC and the ACCC for access);
- it would be preferable to have one regulator for interconnected State and local government owned infrastructure.

(b) Prices oversight for private sector water suppliers

The alternatives considered were:

- application of the state based recommendatory prices oversight regime; or
- reliance upon the Commonwealth's prices oversight regime in *the Prices Surveillance Act 1983*; or
- reliance upon the anti-competitive conduct provisions in Part IV of the *Trade Practices Act 1974* or the State's Competition Code.

The application of the State based recommendatory regime was considered undesirable from the perspective of unnecessary intrusion by the Government into private commercial matters. In preparing a regime for the private sector, the paramount concern is to establish a regime which is as "commercial" as possible. Private operators would be averse to the

Ministers[1], as opposed to the QCA, having the final say over their pricing. Further, the added uncertainty associated with Ministerial involvement in pricing could act as a disincentive to private sector involvement and investment in water infrastructure development in Queensland. Accordingly, it was felt that the Ministers should not have a hand in setting prices for private sector water suppliers. Rather, the market should be allowed to operate as freely as possible with an independent check on monopoly pricing. This check would be the QCA, whose jurisdiction would be triggered by any party to a pricing dispute.

The Commonwealth's prices oversight regime is administered by the Australian Competition and Consumer Commission (ACCC). To fall under the Commonwealth regime, a business or industry must be 'declared' by the Commonwealth Treasurer. If declared, the Treasurer may refer the business to the ACCC for investigation. Depending upon the terms of the referral, the ACCC may have powers to vet price increases, or monitor the prices, costs and profits of a business or industry.

In addition, the Commonwealth Treasury (which advises the Commonwealth Treasurer on the declaration of businesses and industries) considers that prices oversight by the ACCC should concern the supply of goods or services on a national scale rather than a regional or State level. Further, the Commonwealth Treasury considered it would not be desirable for prices oversight to be regulated by both the QCA (for public providers) and ACCC (for private providers) in the same industry.

Advice was sought about the option of relying upon the anti-competitive conduct provisions of Part IV of the *Trade Practices Act 1974*. It was felt that, while these provisions may provide a remedy if an aggrieved water seeker instigated legal action, it was unlikely that individual water seekers would utilise this option and, moreover, it has traditionally been quite difficult to prove a case under the provision most likely to be invoked (ie section 46, Misuse of market power). Accordingly, this option was not adopted. This course of action is still open to a person who wishes to utilise it.

In summary, it was considered that private sector oversight by the QCA, rather than the ACCC, was preferable because (i) the QCA is better placed

[1] The Ministers are the ministers responsible for the QCA Act, namely, the Premier and the Treasurer.

to take into account Queensland specific issues; (ii) there would be synergies in having one regulator for both monopoly pricing issues and third party access issues; (iii) the ACCC's jurisdiction is only triggered if the Commonwealth Treasurer declares a business or industry; (iv) it would not be desirable for prices oversight to be regulated by both the QCA (for public providers) and ACCC (for private providers) in the same industry; and (v) Part IV of the *Trade Practices Act 1974* may not be suitable.

(c) Amendments to the third party access regime

There are no alternatives, apart from legislation, for achieving these policy objectives.

(d) Amendments to competitive neutrality provisions

The amendments to the Act requiring Government agencies to be subject to the payment of debt guarantee fees and tax equivalents, and the same procedural and regulatory requirements as their private sector competitors, is consistent with Clause 3 (4) (b) of the *Competition Principles Agreement* to which all Australian Governments are a signatory.

This amendment to the Act provides clarification as to the Queensland Government's policy regarding the application of the principle of competitive neutrality to its significant business activities declared under s.39 of the Act.

Administrative cost (including staffing and program costs) to the government of implementing the Bill

The enactment of this Bill will impose administrative costs for the Government in terms of additional Budget funding required by the QCA. The QCA will be required to perform two new regulatory roles (ie as prices oversight regulator for both local government monopoly businesses activities and private sector water suppliers) in addition to its existing roles as regulator for:

- the State's monopoly prices oversight regime for State government business activities;
- the State's third party access regime;
- the State's competitive neutrality complaints mechanism;
- the State's gas distribution pipelines;

- the State's electricity distribution businesses.

These additional roles may increase the funding requirement for the QCA. The QCA's current annual budget is $5million. The required increase in funding, as a result of the amendments, will be dependent upon the number of:

1. investigations into local government monopoly business activities; and

2. supply arbitrations or investigations which will eventuate once the prices oversight regime for private water suppliers is enacted.

The number of water supply arbitrations will be dependent upon the number of dispute notices lodged by either water suppliers or water seekers. It is difficult to predict what this number will be. However, it is not likely that there will be large numbers of dispute notices unless and until the water trading market matures and the regime is extended to cover a broader range of participants in this regime. This environment is not expected to occur for two to three years.

The number of investigations about local government monopoly business activities will be dependent upon the number of declarations (and subsequent referrals) made by the Premier and the Treasurer. It is not expected that there would be more than two or three of these investigations per year.

Consistency of the Bill with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation on the Bill

The Bill, with an accompanying Explanatory Memorandum, was released for public consultation in October 1999. The Bill was sent to key stakeholders including: owners of private water infrastructure; public water suppliers (ie State Water Projects, urban water boards, local government); local government; major users of central Queensland water infrastructure; the Queensland Irrigators Council; the Queensland Farmers Federation (QFF); and the Queensland Chamber of Commerce and Industry.

The Bill was posted on Queensland Treasury's website and was available to any interested persons. Several information seminars were held (for local government, the general public and individual stakeholders) and written

submissions were received during November and early December 1999. Nine formal submissions were received as well as informal responses from some local governments.

Stakeholders who made submissions were consulted during the course of February and March on the issues they raised. Several changes were made to the Bill as a result of this second round of consultation. The revised draft Bill was then circulated to these stakeholders during the week of 15 March to 22 March.

Clause 1 states the short title of the Act.

Clause 2 states that the Bill amends the *Queensland Competition Authority Act 1997*.

Clause 3 amends s 10 (Authority's functions) by adding the functions of:

- declaring a candidate water supply activity to be a monopoly water supply activity;
- conducting investigations about monopoly water supply activities;
- mediating to resolve access disputes or water supply disputes;
- conducting arbitration hearings for resolving water supply disputes; and
- approving water supply undertakings.

Clause 4 renumbers part 3 (Pricing practices relating to government monopoly business activities), division 1 (Criteria for declarations of government monopoly business activities) as part 3, division 1A.

Clause 5 inserts a new part 3, division 1 (Application of part) which provides for the application of the part to local government entities. This part spells out how the part applies to situations where a responsible local government consists of more than two local governments; and where a local government entity and the responsible local government are the same person. It also specifies how notices are to be given in each of these situations.

Clause 6 amends s 18 (Request for declaration) by providing that the authority may ask the Ministers to declare a government business activity, whether or not it is a significant business activity. Note that, for the purposes of part 3, a significant business activity is defined as being a significant business activity under the *Local Government Act 1993*, section

545. This means that the request for declaration can relate to either a local government significant business activity or a State government business activity.

Clause 7 inserts new s 18A (Notice of requests relating to significant business activities) which requires the authority to notify a local government entity about a request for declaration. It also inserts new s 18B (Requests by local government entities and responsible local governments) which allows local governments or a local government entity to request a declaration.

Clause 8 amends s 19 (Declaration by Ministers) to require the Ministers, in deciding whether to declare a local government business, to consult with a local government entity and the responsible local government. The amendment requires the Ministers to notify the local government entity of their intention to declare, and allow the entity 90 days to make submissions to the Ministers about the intended declaration.

Clause 9 amends s 21 (Public availability of requests) by requiring the authority to keep a list of requests relating to local government entities made during the preceding 2 years.

Clause 10 amends s 23 (Investigations by authority—Ministerial reference) by requiring the Ministers, in deciding whether to refer a significant business activity, to consult with a local government entity and the responsible local government.

Clause 11 amends s 25 (Notice of investigation) by requiring that a notice is given to the local government Minister and the responsible local government.

Clause 12 amends s 26 (Matters to be considered by authority for investigation) by providing that, where the authority investigates a government business activity that involves the supply of water, the authority must have regard to water pricing and water supply determinations made under part 5A[2]. This amendment requires the authority, when investigating a government water supply business, to have regard to prices which it is determining for private water suppliers.

Clause 13 amends s 30 (Authority to report to Ministers) by requiring the authority also report to the local government Minister and the

[2] Part 5A (Pricing and supply of water).

responsible local government if an investigation relates to a significant business activity.

Clause 14 amends s 34 (Public availability of reports) by requiring that, if an investigation relates to a significant business activity, a copy of a report by the authority must be made available for public inspection by the local government Minister and the responsible local government. The report must be made available within 2 days after the report is received.

Clause 15 amends s 35 (Delaying public availability of reports) by applying the same conditions to delaying the public availability of reports about significant business activities as apply to reports about State government business activities.

Clause 16 amends s 36 (Decision of Ministers about report) by changing the time period within which the Ministers must respond to a report from 30 days to 90 days. It also provides that, before making a decision about a report that relates to a government business activity involving the supply of water, the Ministers must have regard to prices determined for private water suppliers in either:

- water pricing determinations; and
- water supply determinations.

Clause 17 inserts a proposed new s 36A (Decision of responsible local government about report) which provides that a responsible local government must make a decision, within 90 days, about whether to accept or reject the recommendations about pricing in a report that it receives from the authority. Before making a decision, the responsible local government must have regard to prices determined for private water suppliers in either:

- water pricing determinations; and
- water supply determinations.

As soon as practicable after the decision, the responsible local government must notify the decision and the reasons for the decision by gazette notice, and must give a copy to the Ministers, the authority, the local government Minister, and the local government entity carrying on the significant business activity.

Clause 18 inserts a new s 37A which requires the authority to keep a register of recommendations and decisions relating to state government monopoly business activities involving the supply of water. Clause 17 also inserts a new s 37B which requires the authority to keep register of recommendations and decisions relating to local government monopoly business activities that are involved in the supply of water.

Clause 19 amends s 38 by clearly stating that the principle of competitive neutrality should be applied to Government's significant business activities by requiring them to meet the same requirements as their private sector competitors, *viz*, debt guarantee fees, tax equivalents, and procedural and regulatory requirements.

Clause 20 amends s 57 (Decision of Ministers about report) by changing the period within which Ministers must accept or reject a report by the authority from one month to 90 days.

Clause 21 amends s 84 (Making declaration) by inserting a new subsection (3) requiring the Ministers to consult with a local government before making a decision about declaring a service provided by means of a facility owned by a local government.

Clause 22 amends s 85 (Notice of decision) by changing the time within which the Ministers must give a decision about declaring a candidate service from 60 days to 90 days.

Clause 23 amends s 95 (Effect of expiry of revocation of declaration) by clarifying that the expiry or revocation of a declaration of a service does not affect either the arbitration or the mediation of an access dispute for which a dispute notice was given before the expiry or revocation.

Clause 24 amends s 98 (Effect of ending of operation of declaration) by:

- inserting the word "access" before the word "dispute" in paragraphs (b) and (c) to distinguish that the provision deals with an access dispute as opposed to a water supply dispute in proposed part 5A;
- inserting the word "access" before the word "determination" in paragraph (b) to distinguish that the provision deals with an access determination as opposed to a water supply determination in proposed part 5A.

All similar consequential amendments are contained in the Schedule (Minor and Consequential Amendments).

Clause 25 amends s 101 (Obligation of access provider to satisfy access seeker's requirements) by inserting a new subsection (2) which provides that, subject to an approved access code or access undertaking, the access provider must give the access seeker information about: the price of the service; the costs of providing the service; the value of the access provider's assets; an estimate of spare capacity; a map of the facility; the operation of the facility; the safety system; and, any access determinations made about the service.

The aim of this subsection is to enhance the effectiveness of the third party access regime by specifying a minimum level of information to be provided to an access seeker, so as to facilitate access negotiations. It is modelled on similar provisions in other access regimes around the country.

Clause 25 also inserts new subsections (3) and (4) which, together, permit the authority to allow the information listed to be categorised or aggregated so that disclosure is not unduly harmful to the legitimate business interests of the access provider. The authority may also allow some of the information to be disclosed by way of a reference tariff.

Proposed new subsection (5) allows an access provider or an access seeker to seek advice or a direction from the authority about a matter mentioned in section 101.

Proposed new subsection (6) prohibits an access provider or an access seeker from disclosing information disclosed under this section, without the consent of the person giving the information. This provision is designed to protect any confidential information disclosed to an access seeker or an access provider by either party during the course of access negotiations.

Clause 26 amends s 109 (Decision on application) by requiring the authority, when deciding whether to approve an access agreement, to consider whether adequate provision has been made in the agreement for compensation in the event that the rights of an access user are adversely affected.

Clause 27 amends s 113 (Requirements about dispute notice) by clarifying that the dispute notice refers to an access dispute. The amendments in the proposed part 5A (Pricing practices of, water supply agreements with, and water supply undertakings by, water suppliers)

mirror, to a large degree, the provisions in Part 5 (Access to services). It is necessary, therefore, to distinguish between dispute notices and determinations for each part.

Clause 27 also inserts proposed paragraphs (c) and (d) into subsection (2). Paragraph (c) provides that an access dispute notice must specify whether the dispute is to be dealt with by mediation or arbitration.

Clause 28 amends s 115 (Withdrawal of dispute notice) by inserting the word "access" before the word "dispute" to distinguish that the provision deals with an access dispute as opposed to a water supply dispute in proposed part 5A.

Clause 29 inserts a new s 115A (Authority may refer access dispute to mediation) and inserts a new part 5, division 5, subdivision 2A, Mediation of access disputes.

Proposed section 115A allows the authority to request an access seeker and an access provider who are named in an access dispute notice to attend a conference to attempt to resolve the dispute by mediation.

Proposed new subdivision 2A sets out who will be the parties to mediation of an access dispute. It also provides that the authority may permit other persons who apply to take part in a mediation, provided that the persons have a sufficient interest and the parties consent. The subdivision specifies that the conduct of the mediation will be pursuant to the proposed new part 6A (Conduct of mediation).

If a mediated agreement is reached, a copy must be given to the authority.

If the mediator considers that the parties cannot reach a mediated resolution, or not within four months, it must refer the dispute to the authority for arbitration.

Clause 30 replaces s 116 (Parties to arbitration of access disputes). The proposed new section specifies who are the parties to an access arbitration.

Clause 30 also replaces s 117 (Access determination by authority). The proposed new s 117 is the same as the replaced section except that the word "access" has been incorporated in the appropriate places.

Clause 31 amends s 120 (Matters to be considered) by inserting the word "access" in relevant places to distinguish that the section deals with access matters as opposed to water supply matters in proposed part 5A. The clause

also clarifies the related matters that may be taken into account by the authority.

Clause 32 amends s 127 (Register of determinations) by inserting the word "access" in relevant places to distinguish that the subdivision deals with access matters as opposed to water supply matters in proposed part 5A. The clause also specifies that details of the authority's reasons for an access determination must not include details that are likely to damage the commercial activities of the parties to the determination.

Clause 33 amends s 128 (Making codes) by making it clear that the time stated within which persons may make submissions on a draft access code must be a reasonable time.

Clause 34 amends s 137 (Contents of undertaking) by inserting the word "access" in relevant places to distinguish that the section deals with access matters as opposed to water supply matters in proposed part 5A. The clause also amends section 137 by adding new matters that an undertaking may address, including: the provision of information to the authority or another person; and an obligation to comply with a decision of the authority or another person. These provisions are primarily designed to allow the regulator to require (enforceable) dispute resolution provisions, in relation to a matter specified in an undertaking (eg. in relation to ringfencing or a technical matter), to be included in an access undertaking.

The clause also provides that an undertaking may address the provision of information to the authority about compliance with the undertaking and performance indicators specified in the undertaking. This will provide a mechanism to ensure that an access provider with an approved undertaking does not face an incentive to reduce the level of service quality (eg reliability) in response to regulation of the price to be charged for its declared service.

Clause 35 amends s 138 (Factors affecting approval of undertaking) to make it clear that the factors apply to a draft access undertaking given to the authority by the owner of a service that is not a declared service. The clause also amends s 138 (Factors affecting approval of undertaking) by requiring the authority, when deciding whether to approve an access undertaking, to consider whether adequate provision has been made in the undertaking for compensation in the event that the rights of an access user are adversely affected.

Clause 36 inserts a proposed new s 150A (Obligation of responsible person to comply with an approved access undertaking) which makes it an obligation for a responsible person to comply with an approved access undertaking given by the responsible person.

Clause 37 amends s 163 (Responsible operator to keep separate accounting records) by specifying that the records must be in a form approved by the authority and that, despite section 239 (Confidential information), the authority may direct that the records be published if the authority considers that publication is in the public interest and would not be likely to harm the responsible operator's business.

Clause 38 omits part 5, division 10 (Registers). The provision governing all registers is proposed to be new part 8, division 3A (Registers).

Clause 39 inserts a new part 5A (Pricing and supply of water). This new part 5A sets out the regulatory framework for prices oversight of, and the supply of, water by private sector water suppliers.

PART 5A—PRICING AND SUPPLY OF WATER

Division 1—Interpretation

Clause 170A applies if the water supplier or a water seeker is a partnership or joint venture and outlines how the prices oversight regime applies to participants in the partnership or joint venture.

Clause 170B provides for the giving of notices by the authority where there is more than one owner of the water supplier.

Division 2—Declarations and investigations of monopoly water supply activities

Subdivision 1—Criteria for declaration recommendations and declarations of monopoly water supply activities

Clause 170C requires the authority to develop criteria for use by the Ministers for deciding whether a water supplier is a monopoly water supply activity and for it to give written notice of those criteria to the Ministers within 6 months of the commencement of the subdivision. "Monopoly" in this context is not restricted to a situation where there is a single supplier in a particular market, and is intended to extend to "near monopolies", ie where a water supplier conducting a water supply activity has substantial market power.

Clause 170D enables the authority to revise the criteria and for it to give written notice of the revised criteria to the Ministers.

Clause 170E provides that the authority may consult on the criteria whilst they are being developed.

Clause 170F requires the authority to publish the criteria developed under this subdivision.

Subdivision 2—Recommendation by authority for declaration of monopoly water supply activities

Clause 170G allows any person to ask the authority to recommend that a nominated candidate water supply activity be declared by the Ministers. The clause also enables the Ministers to ask the authority to consider whether a particular candidate water supply activity should be declared by the Ministers. Provision exists for the person requesting a declaration be made to withdraw the request before the authority makes a recommendation.

Clause 170H requires the authority notify the water supplier regarding the receipt of a request in relation to the water supply activity provided by the water supplier. The authority must also notify a water supplier of any withdrawal of a request.

Clause 170I requires the authority, upon receipt of a request, to recommend to the Ministers that the candidate water supply activity either

be declared or not be declared. In making its recommendation, the authority may consult with any party it considers appropriate, must make a recommendation within a reasonable time after receipt of an application, and must publish its recommendation and the reasons for the recommendation. Any recommendation that a water supply activity be declared must stipulate the period for which declaration should operate.

Subdivision 3—Investigations about candidate water supply activities

Clause 170K gives the authority the power to conduct an investigation about a candidate water supply activity.

Clause 170L requires the authority give notice regarding an investigation about a candidate water supply activity and sets out the requirements regarding the notice of an investigation about a candidate water supply activity.

Clause 170M provides that an investigation by the authority is subject to Part 6.

Subdivision 4—Declaration by Ministers

Clause 170N sets out the requirements of the Ministers upon receipt of a declaration recommendation from the authority. Ministers must either declare a candidate water supply activity (or part of a water supply activity) or not declare the water supply activity. Any declaration of a water supply activity or part of a water supply activity must state an expiry date of the declaration.

Clause 170O requires the Ministers to publish notice of their declaration decision and the reasons for that decision. This information must be given to the authority. In addition, this information, plus a copy of the authority's signed declaration recommendation must be given to the water supplier and the applicant. Should publication not occur within 90 days after receipt of a declaration recommendation, the Ministers are deemed to have decided to not declare the water supply activity.

Clause 170P requires the Ministers to declare a water supply activity (or part of a water supply activity) if they are satisfied of all of the water supply criteria.

Clause 170Q provides that if there is a decision in favour of declaration, the declaration begins to operate at the time specified in the declaration, however, this date must not be earlier than the day after the declaration is published. A declaration continues in operation until its specified expiry date or until it is revoked.

Subdivision 5—Revocation of declaration

Clause 170R allows for the authority to recommend to the Ministers that a declaration be revoked if it believes that the Ministers would no longer be satisfied on one or more of the matters specified in section 170P.

Clause 170S gives the authority the power to conduct an investigation about the declared monopoly water supply activity which is subject to a recommendation.

Clause 170T requires the authority give notice regarding an investigation about the declared monopoly water supply activity and sets out the requirements regarding the notice of an investigation about the declared monopoly water supply activity.

Clause 170U provides that an investigation by the authority under this subdivision is subject to Part 6.

Clause 170V requires the Ministers, on receiving a revocation recommendation from the authority, to either decide to revoke or not to revoke the declaration. There are two conditions that must be satisfied before a declaration is revoked. First, the Ministers must have received a recommendation from the authority that the declaration be revoked. Second, the Ministers must be satisfied that the water supply activity would not meet the necessary threshold test under clause 170P (refer also to water supply criteria under clause 170C).

Clause 170W requires the Ministers to publish their decision whether or not to revoke a Ministerial declaration. In the case of a decision to revoke, the Ministers must also give written notice of the decision to the authority and the water supplier.

Clause 170X provides for when a decision by the Ministers to revoke a Ministerial declaration takes effect.

Subdivision 6—Other matters about monopoly water supply declarations

Clause 170Y provides that the expiry or revocation of a declaration does not affect things done prior to the revocation.

Clause 170Z requires the authority to keep a register of Ministerial declarations in operation.

Subdivision 7—Investigations about monopoly water supply activities and making water pricing determinations

Clause 170ZA provides for the Ministers to refer a monopoly water supply activity to the authority so that the authority may conduct an initial investigation involving an assessment of the pricing practices of a monopoly water supply activity and then further investigations relating to the ongoing monitoring of the monopoly water supply activity's pricing practices.

Clause 170ZB provides that the Ministers, in referring a monopoly water supply activity to the authority, may direct the authority to perform certain tasks or meet deadlines.

Clause 170ZC provides that the authority must give reasonable notice of an intended investigation under this division in a newspaper circulating throughout the State and provides the requirements that must be included in the notice of an investigation. A notice must be given to the water supplier carrying on the monopoly water supply activity.

Clause 170ZD provides that Part 6 (Investigations by authority) applies to investigations under this subdivision.

Clause 170ZE provides the the circumstances in which the authority's jurisdiction to investigate ends.

Clause 170ZF provides that the authority must make a determination and sets out the matters which the determination must address. Before making a determination, the authority must give a draft determination to the water supplier but is otherwise not required to consult with any entity before making a water pricing determination.

Clause 170ZG provides that a water pricing determination may state how the price is to be calculated.

Clause 170ZH provides that there are restrictions on the determinations that the authority may make, including that it must be consistent with other determinations relating to the water supply activity.

Clause 170ZI requires that the authority, when conducting an investigation, must have regard to the following matters (although it may consider any other issues it considers relevant):

(a) *the need for efficient resource allocatio*n—monopoly or near monopoly business activities can interfere with efficient resource allocation in two ways. First, by charging excessive prices, monopolists can cause resources to be allocated to less highly valued uses in the economy (alternatively, setting a business's prices too low will ultimately result in shortages). Second, the absence of competitive pressures can create an environment where monopolists or near monopolists produce outputs inefficiently;

(b) *the need to promote competitio*n—competitive forces encourage pricing to reflect the true cost of production and supply. The authority could stifle the emergence of competition if it determined prices that were too low. Accordingly, the authority's focus when conducting prices oversight will be on maximum, rather than minimum prices. This consideration also requires the authority to administer prices oversight in harmony with its other competition functions, so that, for example, determinations concerning prices oversight should be consistent with the implementation of third party access;

(c) *the protection of consumers from abuses of monopoly power*— prices oversight should protect consumers by curtailing the abuse of monopoly power by a monopoly business activity. In this regard, the term "consumers" should not be narrowly interpreted. The term is intended to extend to all users of water, or water storage and delivery services, supplied by a monopoly water supply activity;

(d) *decisions by Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water;*

(e) *the legitimate business interests of the water supplier carrying on the monopoly water supply activity to which the investigation relates;*

(f) *the legitimate business interests of persons who may have, or may acquire, rights to have the activity provided to them by the water supplier*;

(g) (i) *the cost of providing the activity in an efficient way having regard to relevant interstate and international benchmark*s—the very nature of the markets and activities subject to prices oversight suggests that there exists little, if any, competition. In order to gauge the appropriateness of pricing policies, it becomes useful, therefore, to consider the cost of supplying the water relative to similar firms in other jurisdictions (although care must be taken to ensure that appropriate comparisons are made);

(ii) *the actual cost of providing the activity*—the actual production costs of water or water storage or delivery services must be considered by the authority when making pricing determinations;

(iii) *the quality of the activities constituting the water supply activity;*

(iv) *the quality of the water being supplied* -efficient pricing should not be at the expense of appropriate standards of quality, reliability or safety. The authority, as part of an investigation, should take account of relevant regulation, including safety, which applies to a monopoly water supply activity's water and water storage and delivery services.

(h*) the appropriate rate of return on water supplier's assets*;

(i) *the effect of inflation*;

(j) *the impact on the environment of prices charged by the water supplier*;

(k) *considerations of demand management*;

(l) *social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices*;

(m) *the need for pricing practices not to discourage socially desirable investment or innovation by water suppliers*;

(n) *legislation and government policies relating to ecologically sustainable development*;

(o) *legislation and government policies relating to occupational health and safety and industrial relations*;

(p) *economic and regional development issues, including employment and investment growth*.

Clause 170ZJ provides that the effective date for a water pricing determination is the later of the day the determination is made or the date of effect stated in the determination.

Clause 170ZK provides that a determination may be enforced as provided in division 6.

Clause 170ZL provides that a water supplier carrying on a monopoly water supply activity to which a water pricing determination relates must adopt pricing practices consistent with the determination.

Clause 170ZM requires the authority to keep a register of water pricing determinations and specifies the details on each determination that must be recorded in the register.

Division 3—Water supply agreements

Clause 170ZMA defines "water supply activity" for this division to mean the supply of water and any storage or water delivery services involved in the supply of the water.

Clause 170ZN requires water suppliers to negotiate with a water seeker seeking to make a water supply agreement. "Water supplier" is defined to cover only those entities whose primary purpose is the supply of water or associated services.

Clause 170ZO requires the parties to negotiate in good faith with respect to any water supply agreement.

Clause 170ZP specifically requires water suppliers to make all reasonable efforts to try to satisfy the reasonable requirements of the water seeker in negotiations regarding water supply agreements, including providing information about: the price at which the water is to be supplied; the amount of spare water available for supply; and any determinations made by the authority about the water supply activity.

Clause 170ZQ provides that water supply agreements need not be identical. This provides some flexibility for water suppliers in their negotiations regarding water supply arrangements.

Division 4—Water supply disputes

Subdivision 1—Preliminary

Clause 170ZQA defines "water supply activity" for this division to mean the supply of water and any water storage or water delivery services involved in the supply of the water.

Clause 170ZR clarifies that subdivision 3 in this division refers to arbitrations conducted by the authority of a water supply dispute referred to it under a dispute notice. Provision is also made for the parties to give such a notice only if there is no agreement between them providing for the dispute to be dealt with in any other manner.

Subdivision 2—Notices about water supply disputes

Clause 170ZS provides a mechanism for parties, either the water seeker or water supplier, to notify the authority of a dispute in relation to water supply or the terms of supply for water. Where the dispute concerns the supply of water which is already covered by a water supply agreement, then the parties should rely upon the terms of their agreement. However, parties could enter an agreement relating to the supply of particular water, and have reason to give a dispute notice if they cannot reach agreement for the supply of additional water.

The clause only applies if the water supplier is in a position to exercise market power. Accordingly, the mediation and arbitration processes outlined in the division only apply where the water supplier in question holds a position of market power.

Clause 170ZT specifies details that must be included as part of a dispute notice to the authority.

Clause 170ZU requires the authority to provide written notice of its receipt of a dispute notice to the other party to the dispute as well as any other person the authority considers is appropriate.

Clause 170ZV provides for the withdrawal of dispute notices and the effect of such a withdrawal.

Clause 170ZW provides that the authority may refer a water supply dispute to mediation if there has been no attempt to resolve the dispute my

mediation and the authority considers that a mediated resolution can be achieved.

Subdivision 3—Mediation of water supply disputes

Clause 170ZX sets out who are the parties to the mediation of a water supply dispute.

Clause 170ZY provides that a mediator may allow a person who applies to take part in a mediation conference if the mediator is satisfied that the person has a sufficient interest and the parties to the mediation consent.

Clause 170ZZ provides that the provisions of part 6A apply to the conduct of the mediation.

Clause 170ZZA provides that, if a mediated agreement is reached, it must be put into writing and signed by the parties and a copy given to the authority.

Clause 170ZZB requires the mediator to refer a dispute to the authority for arbitration if the mediator considers the parties cannot achieve a mediated outcome or the dispute has not been resolved within 4 months.

Clause 170ZZC provides that a party to the mediation of a dispute may refer the dispute to the authority if there is a mediation agreement which has not been complied with.

Subdivision 4—Arbitration of water supply disputes and making of water supply determinations

Clause 170ZZD provides that the parties to an arbitration of a water supply dispute are the party who gives the dispute notice and the party stated in the notice to be the other party involved in the dispute, as well as any other party who applies and satisfies the authority that it has a sufficient interest to be a party to the water supply dispute.

Clause 170ZZE provides that unless the authority terminates the arbitration of a water supply dispute for one of the reasons set out in clause 170ZZJ, it must in writing make both a draft determination and a determination in relation to the dispute. The draft determination is provided to the parties to the dispute prior to the authority making a final

determination. The determination does not have to require the water supplier to supply water. A determination by the authority may deal with any matter relating to the supply of water by the water supplier and not necessarily just the particular matter that was the subject of dispute. The authority must give the parties reasons for its determination.

Clause 170ZZF sets out some specific examples of water supply determinations that can be issued by the authority, although the authority is not limited by these examples in making its determinations.

Clause 170ZZG specifies a number of constraints on the authority in making a water supply determination relating to the existing rights of water suppliers. If a water supply determination by the authority breaches any of the constraints it is of no effect. A water supply determination must be consistent with an approved water supply undertaking or water pricing determination for the supply of water by the water supply activity. If the water supply activity is a declared service, the water supply determination must also be consistent with an access determination or access undertaking for the water supply activity.

Clause 170ZZH provides that the authority, in making a determination, may take into account any other matters that it thinks are relevant in addition to those it must take into account. The matters that must be taken into account by the authority are necessary for the effective resolution of water supply disputes.

The requirement that the authority consider the water supplier's legitimate business interests and investment in the facility will require the authority to recognise the water supplier’s past investment in the facility and to ensure its decisions do not discourage the water supplier from undertaking socially desirable investment in the future. If the authority fails to take adequate account of an owner's legitimate business interest, future investment in this State may be jeopardised. However, the phrase is not intended to justify owners continuing to earn monopoly profits under the regime. The firm and binding contractual obligations of the owner, as well as its reasonably anticipated requirements, should also be recognised in the context of its legitimate business interests.

The consideration of legitimate business interests of persons who have, or may acquire, rights to have a water supply activity provided to them, requires the authority to have regard to the interests of all persons holding

contracts for use of the water including the firm and binding contractual obligations of other persons already being supplied.

Together, the limbs (f) and (g) should prevent the authority from distorting competition in the water supply market through water pricing being applied in other than a consistent basis in a particular market.

The other limbs require several other matters also be considered in this context including the public interest, service and water quality, safety and decisions by the Ministers and local governments under part 3 about pricing practices of government monopoly business activities involving the supply of water. The requirement to have regard to the decisions of Ministers and local governments should ensure that, as far as possible, pricing outcomes in the private sector will be consistent with outcomes in the public sector.

Clause 170ZZI provides that an arbitration under this subdivision is subject to Part 7.

Clause 170ZZJ provides for the authority to terminate an arbitration of a water supply dispute at any time if it thinks the dispute is lacking in substance, misconceived or vexatious. In addition, the authority may terminate the arbitration if it feels the party who notified the dispute has not engaged in negotiations in good faith or if the water supplier is not in a position of market power.

Clause 170ZZK provides that the effective date for a water supply determination is the later of the day the determination is made or the date of effect stated in the determination.

Clause 170ZZL provides that a determination may be enforced as provided in division 6.

Clause 170ZZM requires the authority to keep a register of water supply determinations and specifies the details on each determination that must be recorded in the register.

Clause 170ZZN stipulates that a water supply determination is not a substitute for seeking access to a service under Part 5 of the Act.

Division 5—Water supply undertakings

Subdivision 1—Submission and approval of draft undertakings

Clause 170ZZO provides that a water supplier may give the authority a draft water supply undertaking.

The clause stipulates that the authority must consider a draft water supply undertaking given to it and must either approve or refuse to approve the draft undertaking. If the authority refuses to approve the draft undertaking, it must give the water supplier a notice in writing stating the reasons for the refusal and the way in which the authority considers it is appropriate to amend the draft undertaking.

Clause 170ZZP sets out matters which may be detailed in a water supply undertaking, however, this does not preclude other matters from being detailed in water supply undertakings. A water supply undertaking must, however, state the expiry date of the undertaking.

Clause 170ZZQ sets out the approval processes to be followed by the authority in approving draft undertakings, including the matters it should have regard to in giving approval. The authority can only approve a draft undertaking after it has carried out consultation, considered the results of consultation, and if it is satisfied that the undertaking is consistent with any access undertakings or access determinations applying to the water supply activity.

Subdivision 2—Preparation and approval of draft amending water supply undertakings

Clause 170ZZR provides for the authority to require the responsible person to amend, within 30 days of receiving notice, an approved undertaking in order to make the undertaking consistent with either a provision of this Act.

Clause 170ZZS requires the authority consider a draft undertaking given to it under clause 170ZZR and either approve the draft, or require the responsible person amend and resubmit the draft.

Clause 170ZZT empowers the authority to prepare a draft water supply undertaking amending the approved water supply undertaking should the responsible person not comply with the requirements.

Clause 170ZZU provides that a responsible person for an approved water supply undertaking may voluntarily give the authority a draft water supply undertaking to amend the approved water supply undertaking. The authority must consider such draft undertakings and should it refuse a draft undertaking, the authority must provide reasons and must state the way in which it considers the draft undertaking may be amended.

Clause 170ZZV requires the authority to have regard to certain matters before it can approve a draft water supply undertaking amending an approved water supply undertaking given to, or prepared by, it.

Subdivision 3—Investigation about draft water supply undertakings

Clause 170ZZW provides for the application of the subdivision to various draft undertakings.

Clause 170ZZX provides for the authority to conduct an investigation in relation to the approval or refusal of a draft undertaking.

Clause 170ZZY requires the authority to give notice of an investigation under this subdivision and sets out the requirements for a notice of an investigation under this subdivision.

Clause 170ZZZ indicates that Part 6 of the Bill applies to an investigation under this subdivision.

Subdivision 4—Other matters about water supply undertakings

Clause 170ZZZA provides for the authority to agree to the withdrawal of an approved water supply undertaking at any time by the person who gave the relevant draft undertaking to the authority.

Clause 170ZZZB provides that an approved water supply undertaking comes into operation at the time of approval, and continues in operation until the earlier of the expiry date stated in the undertaking, or the withdrawal of the undertaking.

Clause 170ZZZC requires the authority to keep a register of approved water supply undertakings in operation. Any withdrawals of an approved water supply undertaking must be noted in this register.

Clause 170ZZZD requires a responsible person to comply with an approved water supply undertaking given by, or applicable to, the responsible person.

Division 6—Enforcement for part 5A

Clause 170ZZZE describes what the phrase "a person involved in a contravention" refers to in this division.

Clause 170ZZZF provides for the enforcement of determinations by parties. Enforcement is by way of application to the Supreme Court. If the Court is satisfied that a party's conduct or proposed conduct contravenes a determination the Court may make any order it thinks appropriate including, an order granting an injunction restraining the party from contravening the determination or requiring the party to do something, and an order directing the party to compensate the applicant for loss or damage suffered as a result of the contravention. Further, the Court is able to make any other order that it thinks appropriate against a person who was involved in the contravention.

Clause 170ZZZG confers power on the Supreme Court to accept a consent injunction whether or not the Court is satisfied of the contravention.

Clause 170ZZZH confers powers on the Supreme Court to grant an interim injunction. When the authority seeks an interim injunction, the Court must not require the authority or any other person, as a condition of granting the interim injunction, to give an undertaking as to damages.

Clause 170ZZZI provides the Court may grant an injunction restraining a person from engaging in conduct whether or not it appears likely that the person will engage in conduct of that kind in the future, or that there is imminent danger of substantial damage from the conduct.

Clause 170ZZZJ provides the Court may grant an injunction requiring a person to do a thing whether or not it appears likely that the person will engage in conduct of that kind in the future, or that there is imminent danger of substantial damage from the conduct.

Clause 170ZZZK empowers the Court to discharge or vary an injunction order granted or made under this division.

Clause 170ZZZL provides that the authority or another (adversely affected) person may apply to the Supreme Court for an order to remedy a breach of a water supply undertaking.

Clause 40 amends s 171 (Application of part) by clarifying that part 6 (Investigations by authority) applies to investigations mentioned in part 5A.

Clause 41 amends s 176 (Notice of hearings) by specifying that, for an investigation under the proposed part 5A, a notice must be sent to the water supplier carrying on the water supply activity to which the investigation relates.

Clause 42 inserts a new part 6A (Conduct of Mediation).

PART 6A—CONDUCT OF MEDIATION

Division 1—Preliminary

Clause 187A specifies how the part applies.

Division 2—Constitution of mediator for mediation conferences

Clause 187B states how the mediator is to be constituted.

Clause 187C states who is to be the presiding person at a mediation.

Clause 187D provides how a mediator is to be reconstituted if necessary.

Clause 187E provides how questions are to be decided in a mediation.

Division 3—General conduct of mediation conferences

Clause 187F provides that a mediation conference must be held in private, however, the mediator may give written directions about the persons who may be present at the conference.

Clause 187G provides that each party must conduct the party's own case. However, a party may be represented in certain circumstances.

Clause 187H provides that the mediator must act with as little formality as possible; is not bound by technicalities, legal forms or rules of evidence; and may inform himself or herself in any way he or she considers appropriate. The mediator must comply with natural justice.

Clause 187I provides that a party to a mediation conference cannot be compelled to attend.

Clause 187J provides that a person must not make an official record of anything said at a mediation conference.

Division 4—Other matters

Clause 187K provides for the handling of confidential information.

Clause 43 replaces s 188 (Application of part) with a proposed new section which provides that the part applies to the conduct of arbitration hearings for both part 5 and part 5A. The new section also provides that an access arbitration and a water supply arbitration may be consolidated by the authority if the parties are the same in both arbitrations.

Clauses 44 and 45 amend two sections by omitting the word "access" where relevant to ensure the sections apply to both access arbitrations and water supply arbitrations.

Clause 46 inserts a new part 8, division 3A (Registers) which provides how the authority may keep a register under the Act. Registers must be kept available for public inspection by members of the public. The authority must on payment of a fee prescribed by regulation give a person a copy of a register, or part of it.

Clause 47 inserts a new section 244A (Approval of forms) which allows the authority to approve forms for use under the Act.

Clause 48 amends the Schedule which contains the Dictionary which defines particular words in the Act.

The Schedule (Minor and consequential amendments) amends various sections by inserting the word "access" or the words "water supply" where relevant in order to distinguish similar terminology used in Part 5 and proposed Part 5A.