WATER AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy objectives of the legislation (and reasons)

The objective of the Water Amendment Bill ('the Bill') is to allow for a range of amendments to the *Water Act 2000* ('the Act'). The need for the changes has been identified as a result of 12 months of implementation of the Act. Certain limitations have been identified within the existing framework of the Act, and accordingly these amendments are proposed to give greater flexibility to the processes under the Act.

In particular, amendments are necessary to allow for the following:

- To allow for an extension to the completion date set in a moratorium where an individual is unable to complete works by the set date;
- To allow for a requirement for owners to notify the Department of works constructed for taking water under the statutory right to take water. This includes overland works;
- To allow existing applications made under the *Water Resources Act 1989* to be dealt with under the *Water Act*, on commencement of the licensing provisions in the *Water Act*. This is to ensure the more rapid transition to the new licensing system, and to avoid the need to maintain two licensing and database systems;
- To clarify the process when a water resource plan and resource operations plan are prepared concurrently;
- To allow for a resource operations licence to be granted to a person without the person already holding an interim resource operations licence. This is to avoid the interim phase where that is deemed to be not necessary;
- To allow for the recognition of existing authorities to take water, such as Orders in Council, that have not currently recognized by the Act.

How the policy objectives will be achieved

The Bill achieves the policy objectives as follows.

The Bill includes a process for a person who has started works that will not be complete by the completion date stated in a moratorium notice to apply to the Minister for an extension to the completion date. The application is sent to a referral panel for consideration. Extensions may be granted where works are substantially completed or where a change of circumstance has prevented the works being completed by the deadline.

Under the Bill, a regulation may declare an area in which landowners must notify the Department of works used to take overland flow or subartesian water. This mechanism will allow the Department to obtain information necessary for planning purposes, and will allow the regulation to be specific so that it will only be necessary to notify in respect of relevant works in relevant areas;

The amendments provide that existing applications under the *Water Resources Act 1989* are taken to be applications under the equivalent provisions of the *Water Act*. Similarly, where an application has been publicly advertised, or where a person has been given a notice, then the corresponding provisions are taken to have been complied with. This process will ensure a smooth transition to the new licensing system.

The amendments provide for the streamlining of the planning process by clarifying the mechanism by which water resource plans and resource operations plans can be prepared concurrently. The Bill also allows for a resource operations licence to be granted, or amended, in accordance with the process set out in the resource operations plan. Both of these mechanisms will provide for a more flexible planning approach.

The changes allow for the conversion to water entitlements of other authorities, in addition to those already recognized under the Act. This is to ensure that where appropriate, existing authorities to take water are converted and continued under the new regime.

Estimated cost for Government

The Bill will not alter the cost to the government of implementing the Act. In fact it is hoped that simplifying certain administrative procedures may reduce the cost to the government of administering the Act.

Consistency with fundamental legislative principles

The Bill raises one issue regarding consistency with the fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*. Several of the sections are commenced retrospectively. However, none of these sections will affect individuals' rights.

The Bill includes two minor amendments to the *Integrated Planning Act* that were to have commenced on 1 October 2000. As a result of incorrect section referencing in the commencement provisions of the Act, one of those sections was not commenced and a separate section was inadvertently commenced. The Bill amends the Act to allow for those sections to commence in the way they were originally intended to have commenced.

Secondly, a number of the provisions in the Act dealing with service providers refer to activities within "service areas". However, "service areas" has no meaning in the Act without the commencement of section 1063. Therefore, it is necessary that section 1063 be taken to have commenced at the same time as the other provisions in the Act dealing with service providers, to ensure that those sections operate effectively.

Consultation

Government departments affected by the changes have been consulted in respect of the Bill. In addition, AgForce, Queensland Farmers Federation, the Queensland Conservation Council, Queensland Environmental Law Association, Queensland Mining Council, South-East Queensland Water Corporation, the Environmental Defenders Office, the World Wide Fund for Nature, Local Government Association of Queensland, Brisbane City Council, SunWater and other service providers have also been consulted.

NOTES ON PROVISIONS OF THE BILL

Clause 1 sets out the short title to the Bill.

Clause 2 allows for commencement of the provisions of the Bill. Several sections will be commenced retrospectively. This is because those sections were unintentionally not commenced earlier, and their prior commencement is necessary for the operation of the Act.

Clause 3 provides that the Bill amends the *Water Act* 2000.

Clause 4 amends an incorrect section reference in the Act. In addition it allows for the retrospective commencement of section 1063. This section, which gives meaning to the term "service area", is linked to other sections that have already commenced, and it is necessary for this clause to have commenced at the earlier date to give proper effect to those other sections.

The section also provides that a number of sections that are inserted by the Bill are taken to commence (for the purposes of the *Water Act*) on assent to the *Water Amendment Bill*. This is to ensure that those provisions become operative within the Act as soon as the Bill receives assent.

Clause 5 clarifies that an owner's right to access the bed and banks of a watercourse adjoining the owner's land is limited to the part of the bank that adjoins the owner's land, and does not extend to the bank on the opposite side of the watercourse if the owner does not own the land on that side. The amendment also provides that the owner's rights over the bed and bank are limited to the extent that the State may be using the bed and banks for a purpose under the Act, for example where a flow gauging station has been constructed in a watercourse.

Clause 6 allows the chief executive to give a water user a notice under section 36 requesting information about the person's water use. Previously, such a notice was limited to information required to be kept as a condition of an authority to take or interfere with water. The amendment allows the chief executive to request additional information that may be necessary for planning in respect of water use.

Clause 7 omits this section dealing with the use of commercially sensitive information provided to the chief executive. The section will be replaced with a more generic clause (proposed new section 1010A) dealing with the use of commercially sensitive information under the Act.

The clause also inserts a new provision that provides that a regulation may require that an owner of land notify the chief executive about works constructed to exercise the statutory right to take overland flow water or subartesian water under section 20(6) of the Act. The requirement to notify may be limited to particular areas of the State, as well as to particular types of works. For example, notice may only be required of overland flow works, or for works over a certain size, or for works that are used for a certain purpose (eg taking water for irrigation purposes). The regulation may also require that works of the types specified that are not yet completed, but which have been under construction for more than a specified period must be notified as being under construction. This is to

ensure that where works are being constructed over a long period of time notification will still be required even though the works have not been completed.

The purpose of such a regulation is to allow the chief executive to obtain information necessary for water resource planning purposes. In particular, this information may be important prior to preparing a water resource plan to determine whether a plan is needed for a particular area.

Clause 8 clarifies that the Minister may release a further notice of proposal to prepare a water resource plan. This may be necessary where, for example, submissions made on the original notice of proposal highlight issues that it was not originally intended that the water resource plan would address. For example, if a notice of proposal did not include regulation of overland flow water amongst the purposes of the proposed plan, but significant submissions were made in respect of overland flow, then the Minster may decide to issue a further notice of proposal to prepare. The notice could incorporate any additional matters it was now proposed the plan should consider. However, there is no requirement for the reestablishment of the community reference panel or for the moratorium to be republished (although they could be amended if necessary). These apply in respect of the revised notice of proposal.

Clause 9 clarifies several of the terms used in section 42. The amendment:

- clarifies that a moratorium notice may state an end date for the completion of ongoing works;
- clarifies that a moratorium notice may require persons who have started works to advise the chief executive that the works have been started;
- replaces "imminent commencement of construction" with a requirement that a construction be commenced within 60 days; and
- states the date from when a moratorium notice has effect.

Clause 10 provides that the Minister may grant an extension to an individual who is unable to complete works being constructed during a moratorium period by the completion day specified in the notice. A person wishing to continue works past the moratorium's completion day must apply to the Minister prior to the completion day. The application is then referred to the referral panel for consideration. Applications may only be made in respect of an extension of the completion day. No exemptions can

be granted to allow for works that were not started at the time the moratorium notice took effect.

The application must be in the approved form, be accompanied by the prescribed fee and have the information necessary for the panel to consider the application. Extensions may be granted either where:

(a) the applicant has suffered from a material change of circumstance, but for which the works would have been completed by the completion date. Examples could include significant un-seasonal weather interruptions, ill health, mechanical failure or the failure of a contractor to perform work that was required of it; or

(b) the works are substantially completed. However, this section does not allow for a program of works to all be completed merely because one part of the project is near completion.

In deciding the application the referral panel must consider whether the works completed to date can be made functional within a reasonable period of time. This is to allow scope for the Minister to approve the completion of works where works that have been completed to date are unable to be used, for example where only 3 sides of a dam have been completed. It may be appropriate to allow the fourth side to be completed, so that the dam is functional, but not allow other works (e.g. the further raising of the dam). This is designed to reduce the likelihood of works that have been constructed and can serve no useful purpose from being abandoned.

The referral panel must provide the Minister with its recommendation within 20 business days of the matter being referred to it. The Minister then decides the application, and must provide a copy of the notice to the applicant and must publish a copy of the decision in the Government Gazette. A person will not be permitted to continue works contrary to a moratorium notice while an application is being decided. If the Minister approves the application, the Minister must state the day by which the works must be completed and the extent to which the works may be completed. For example, where works have been started on a large program of works, the Minister may allow for the completion of one part of the program but not for the completion of the entire program of works.

Clause 11 clarifies that a water resource plan may both designate areas where overland flow will be regulated as well as how it will be regulated. It has always been the intention that water resource plans would regulate these matters and it is implicit in the wording of the Act that this is possible. This amendment removes any doubt.

The amendment also allows for a water resource plan to continue in force a moratorium on the construction of works or on dealing with applications until a resource operations plan for the area is finalised. This is necessary because a water resource plan will not resolve all matters concerning the allocation of water. Where there are outstanding planning matters that will be addressed in preparing the resource operations plan it will be necessary to maintain a steady-state in the catchment while those matters are finalised.

Clause 12 provides that the Minister may prepare a further draft water resource plan. This may be necessary, for example, where as a result of submissions made and further consideration it is necessary to make significant changes to the original draft plan. This will allow a further draft to be prepared and submissions to be made on that draft prior to the Minister preparing the final draft plan. In preparing the further draft, the Minister must consider all those matters considered in preparing the previous draft plan, as well as any submissions received on the previous draft.

Clause 13 amends section 54 to recognize that a Minister's report on a water resource plan should address the effectiveness of the plan in achieving its outcomes, rather than objectives, as it is the plan's outcomes that are the high-level goal of the plan. The Act already requires the report to include an assessment of the plan's objectives by virtue of section 54(c).

Clause 14 recognizes that a water resource plan may include objectives other than environmental flow objectives and water allocation security objectives. Where any of the plan's objectives are no longer appropriate or are not being met the Minister must amend the plan or prepare a new plan.

Clause 15 amends the exemption for certain persons to require land and water management plans. It exempts from the need for a plan, persons who take over an existing operation comprising of land and water, where the previous operator did not require a plan. The Act currently limits this exemption to persons that acquire an operation. The amendment will extend this to, for example, persons that lease an ongoing enterprise.

The section is also amended so that where a person is obliged to use water in accordance with a land a water management plan, either because of the Act or for some other reason, (for example as a contractual obligations to the State), subsequent purchasers of that water will also be required to have a plan. In a number of instances, where new water entitlements have been granted, they have been granted on the condition that the holder use the water in accordance with a land and water

management plan. This amendment extends that obligation to subsequent purchasers.

The amendment provides that where the holder of an interim water allocation ('IWA') is required to have a land and water management plan to use water under the IWA, that requirement will remain, notwithstanding that the IWA is converted to a water allocation under section 121. Currently under the Act a person who is granted a water allocation under section 121 is exempt from the need for a land and water management plan. This exemption should only apply if the person did not require a plan for the entitlement that the water allocation replaces.

The amendment also ensures that if a change is made to the location from which water under a water allocation may be taken, then the person taking the water must use the water under a land and water management plan. This is so that a person who shifts their water to a new location will be required to have a plan in place prior to using the water.

Clause 16 clarifies the relationship between an old plan and a new plan. It provides that where a new plan is approved, the plan commences on the day the applicant receives the information notice, at which time the old plan expires.

Clause 17 inserts a new section that allows the chief executive to make minor amendments to a land and water management plan, without the need to comply with the usual requirements for altering a plan. This amendment is consistent with other provisions of the Act that allow for minor amendment of plans.

Clause 18 acknowledges that:

- the rules in a resource operations plan will relate to "changes" to water allocations (as per section 128), such as changes to the location from which water may be taken, and do not relate to "transfers", which are simply changes in ownership; and
- a water resource plan and a resource operations plan may be prepared concurrently. In circumstances where a water resource plan and resource operations plan are being prepared concurrently, the Act is not clear on what matters the operating arrangements prepared by a resource operations licence holder should address. This amendment clarifies that the arrangements must show how the operator will comply with the water resource plan under which they will be operating the infrastructure, whether that be the plan as already finalised, or the plan as it will be, in the case where the plan is still in draft or is being amended.

Clause 19 allows a water resource plan to provide for the conversion of a wider range of existing authorisations to take water (including, for example, orders in council and water granted under a regulation) to water entitlements under the Act. At present the Act only allows for the conversion of existing water licences and interim water allocations. These "other authorisations" have been inadvertently omitted from the Act. In respect of the change from "transfer rules" to "change rules", see the explanatory note for above clause.

Clause 20 amends the procedure for persons with existing interests in water allocations to have their interests recorded at the time of the granting of the allocations. The amendment removes the two different types of notice provided under the Act, and replaces them with a single notice to be provided by the interest holder to the chief executive, advising of the interest holder's intent to have their interest recorded on the water allocation register. The notice preserves the interest holder's priority in the water allocation for 40 business days, during which time the interest holder must register documentation in the approved form (such as a mortgage) if they wish to have their interest recorded. During the 40-business day period, only interests notified via section 101(b) notices may be recorded on the water allocations register. Where more than one notice has been received, the competing interests are recorded in accordance with the priorities set out in section 121.

Clause 21 provides that the resource operations plan will state:

- the interim resource operations licences and other licences to operate infrastructure that cease to have effect on implementation of the plan; and
- the resource operations licence for water to which the plan applies that the chief executive must grant.

Section 107 currently provides for certain licences to be cancelled, and only allows resource operations licences to be granted to persons that previously held an interim resource operations licence. The amendment will allow a more flexible planning approach, for example by allowing a resource operations licence to be granted to someone without the need to first grant an interim resource operations licence.

Clause 22 recognizes that a water resource plan may include objectives other than environmental flow objectives and water allocation security objectives.

Clause 23 requires the chief executive to amend a resource operations licence in accordance with a process set out in the resource operations plan.

This may apply, for example, where a water resource plan allows for changes to meet future water requirements, such as the construction of new water infrastructure or the raising of existing water infrastructure. Once those works have been completed, it will be necessary to amend the resource operations licence to include the new infrastructure. It may also be necessary where a resource operations plan allows for the construction of different works (such as a fishway) for the management of the water under the resource operations licence.

Clause 24 provides that the chief executive may cancel a resource operations licence either where a replacement licence has been granted or on agreement with the licence holder where the licence is no longer necessary.

Clause 25 provides that a resource operations plan may convert other authorities (such as orders in council) to water entitlements. This is in addition to water licences and interim water allocations that are currently provided for under the Act.

In addition, section 121 already requires that persons granted a water allocation under that section must enter a supply contract with the resource operations licence holder responsible for the allocation prior to the allocation being registered by the registrar. Under the proposed new section 122A, if the allocation holder does not have a supply contract with the resource operations licence holder in place within 60 business days, the conditions of the supply of the allocation will be in accordance with the standard supply contract approved and gazetted by the chief executive. This amendment is to prevent an allocation holder "squatting" on an allocation and not entering a supply contract or registering the allocation, which would prevent the resource operations licence holder from recovering any of the management fees associated with the allocation. Where a supply arrangement already exists (e.g. for the supply of an interim water allocation that is to be converted to a water allocation) then there should be no need for the parties to enter a new supply contract where the existing contract can apply to the newly granted allocation.

The other amendments in this clause are to correct numbering changes to other sections as a result of the Bill.

Clause 26 provides that allocation holders granted a water allocation under this section must have a supply contract with the resource operations holder supplying the water in place within 60 business days. Under the proposed new section 122A, if there is not a contract in place within 60 business days, then the standard supply contract for the area applies to the allocation.

Clause 27 allows the chief executive to approve standard supply contracts for the supply of water under a water allocation. The chief executive may approve different contracts for different areas and must gazette approval of the contracts. The terms of the relevant contract will apply to the supply of water under an allocation where the allocation holder and the resource operations licence holder do not enter a supply contract within 60 days of the grant of the allocation.

The resource operations holder and the allocation holder must review the terms of the contract within 12 months. This is because the standard supply contracts are only intended to act as an interim measure, until the parties can reach an agreement on the terms of supply. In reviewing the contract, it is envisaged that it may be appropriate for water-user representative groups to negotiate a revised contract with the resource operations holder, rather than each individual allocation holder being required to negotiate new terms.

Clause 28 provides that a water allocation may be amended to allow for a change to the number of the resource operations licence under which the allocation is managed. This type of change was previously allowed for under a different section, section 128, which stated that a person may apply to change the resource operations number for a water allocation. This should not be the case, as a change should only be made to the number on the allocation where there is a change to a resource operations licence that means the allocation is now managed under a different licence. In that event, it should be the chief executive that advises the registrar of the change, not the individual allocation holder.

Clause 29 inserts a new section that will allow for the subdivision and amalgamation of water allocations. A person wishing to amalgamate or subdivide must apply to the chief executive in the approved form. The application may only be approved if it is compatible with the resource operations plan and if it will not result in an increase in the holder's overall entitlement to water.

If the application is approved, the applicant is granted a certificate approving the amalgamation or subdivision and stating the details of the new allocation or allocations that will be created. The certificate must be lodged with registrar if it is to have effect. The certificate remains valid for 40 business days, unless a different period is stated on the certificate. This is because there is no obligation on the applicant to register the change with the registrar. Accordingly, it is necessary to limit the scope for persons to apply for approval to make a change and then sit on the approval. An

equivalent section was not initially included because it was thought this type of dealing was permitted under section 150 of the Act.

Clause 30 amends the way in which applications for changes to water allocations are dealt with. The Act currently provides for applications in respect of both changes (a change to the location from which water may be taken, the priority group for the allocation, the rate at which it may be taken etc) and transfers (changes in beneficial ownership) of water allocations. Currently, prior to lodging an application to change or transfer a water allocation with the registrar, a person must obtain the consent of the chief executive, or for water allocations managed under a resource operations licence, the consent of the licence holder.

The amendment removes the resource operations licence holder from the consent-process. The decision of whether a proposed change is in accordance with the resource operations plan should always be made by the chief executive, as the resource manager. It is not an appropriate function for the resource operations licence holder.

The amendment also removes references to transfers of licences. A transfer of a water allocation is already permitted by way of section 150 and there is no need for transfers to be further provided for in the Act. Further, it should not be necessary to obtain the resource manager's consent to a change of ownership because, from a resource management perspective, what is important is how much water is being taken and from where, not who is taking the water.

The amendment provides that the applicant may lodge the documentation requesting the change direct with registrar, including the chief executive's consent. This means that an allocation holder may apply for consent to change an allocation to see if the change is permitted. Once the chief executive's consent is granted, the person may then decide whether they wish to effect the change by having it registered with the registrar.

Clause 31 provides that if the applicant does not comply with the request made for information, then the application lapses. This amendment is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 32 removes transfers from the matters that require chief executive consent prior to registration.

Clause 33 provides, as for the changes to section 129, that the chief executive's consent must be in the approved form and remains valid for 40 business days, unless a different period is stated.

Clause 34 provides, as for the changes to section 129, that the applicant may elect whether or not to lodge the change with the registrar. The chief executive's consent does not result in the change, it merely permits the change to be made if the applicant decides to register the application. The amendment also recognizes that a water resource plan may have objectives in addition to water allocation security objectives and environmental flow objectives, and that all of the plan's objectives should be considered.

Clause 35 deletes sections 136 and 137, which deal with leasing water allocations. These sections effectively permit a temporary lease of a water allocation, by allowing a person to lease a water allocation to a person allowing them to take water from a different location to that stated on the allocation. This procedure would be administratively difficult to regulate and is unnecessary.

A person wishing to allow another person to use some of their water allocation may either apply for a seasonal water assignment (which apply for up to 12 months) or otherwise may lease the allocation under section 150. If the water allocation will not permit the lessee to take the water from the location required, then the owner would need to apply to change to allocation in accordance with the resource operations change rules prior to the lessee taking water.

Clause 36 amends section 138, which is the section that states how to deal with forfeited allocations. The amendment provides if the purchaser of an allocation under the forfeit provisions fails to enter a supply contract with the resource operations holder within 60 days, then the standard supply contract for the area, as gazetted by the chief executive, applies to the allocation.

Clause 37 provides that if the applicant does not comply with the request made for information, then the application lapses. This amendment is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 38 provides that where the chief executive has been given notice under section 101(b) of an existing interest in a water allocation, the water allocation is effectively frozen for 40 business days from its registration to allow the interest holder to record their interest. During that period, only interests the chief executive has been advised of via section 101(b) notices may be recorded. Where more than one notice has been received, interests are recorded in accordance with the priorities set out in section 121 (6) and (7). After 40 business days the notices cease to have effect.

The amendment also provides that where a water allocation is managed under a resource operations licence, a transfer of the allocation may not be registered unless a supply contract is in place between the resource operations licence holder and the transferee.

Clause 39 provides that the details supplied by an applicant for an interim resource operations licence may include persons that take water stored or released by the applicant, as well as persons with whom the applicant has supply arrangements in place. This is to ensure that a commercial relationship will exist between all persons that take water that has been stored by the applicant.

Clause 40 provides that if the applicant does not comply with the request made for information, then the application lapses. This amendment is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 41 inserts a new section that requires an interim resource operations licence to be amended in accordance with a process included in a resource operations plan or water resource plan.

Clause 42 deletes subsection (4), the contents of which have been relocated in the proposed new section 189A.

Clause 43 amends the provision allowing for the granting of interim water allocations to recognize that where an interim resource licence is amended to meet future water requirements, it will also be necessary to grant additional interim water allocations. This amendment allows that grant to be made.

Clause 44 amends the heading for this division.

Clause 45 replaces the existing section relating to dealings with interim water allocations with two new sections that state the contents and conditions of interim water allocations (IWA). The Act currently provides, generally, that IWA may be dealt with in a like manner to water licences. However, there are a number of differences between IWA and water licences, so these new sections have been included to recognise those differences.

Clause 46 provides that interim water allocations may be dealt with in the same manner as a licensee may deal with a water licence. This clause acts in the same manner as the existing section 190, except that certain dealings with interim water allocations are excluded to acknowledge that:

- There is no need to publicly advertise a dealing with an interim water allocation where the dealing is permitted by the interim resource operations licence; and
- Interim water allocations do not expire and therefore do not require renewal (matters normally dealt with on renewal will be managed through the resource operations plan and conversion process).

Clause 47 renumbers this section reference to allow for changes to the Act.

Clause 48 inserts a new provision that allows for a person to surrender an interim water allocation. The total number of interim water allocations supplied under an interim resource operations licence is fixed, and accordingly interim water allocations do not expire and cannot be cancelled. Therefore, this provision is necessary to provide a mechanism for a person who no longer wants an interim water allocation to rid themselves of it, given that it will not always be possible to transfer the allocation to another person. The clause provides that a person may surrender an allocation to the chief executive. In that event, the allocation will then be dealt with by the State in accordance with the procedure set out in section 138.

The clause also inserts a new provision to deal with the disposal of part of land to which an interim water allocation is attached. This situation is not currently provided for by the Act. The clause is necessary because an interim water allocation should not lapse when part of land to which it is attached is disposed of. The clause provides in such a case, the allocation is surrendered to the State. However, one or more of the owners of the land to which the surrendered allocation was attached may apply for replacement allocations. If no application is made, the allocation is sold by the State in accordance with the procedure set out in section 138.

The section also inserts a new section 197, which deals with situations where part of land to which an interim water allocation is attached is compulsorily acquired. In that circumstance, provided the owner of the remaining land retains riparian access, or is otherwise able to continue to take the water (such as in the case of subartesian water) the interim water allocation does not surrender to the State, but attaches to the remaining land.

Clause 49 renumbers the revised sections of the Act.

Clause 50 provides that in respect of water licences, the definition of "owner", of land, is limited to a registered proprietor, a crown lessee or

licensee, the holder of a mining lease or a registered lessee. Except for certain limited exceptions, only an owner of land may apply for a water licence.

Clause 51 provides that if the application does not comply with the request for further information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 52 provides that if the application does not provide the information required, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 53 amends the Act to allow a water resource plan or a resource operations plan to state a process for the granting of water licences. Under the Act currently, this may only be in respect of future water requirements. It may, however, be necessary for a plan to allow licences to be granted in respect of existing water use in addition to future water requirements.

Clause 54 rewords section 213(e) to clarify that a water licence always attaches to the licensee's land, unless the licence is one of the exceptions provided for in the Act.

Clause 55 includes a new subsection that applies where an applicant for a water licence requires the consent of another landowner or landowners to access a watercourse to take the water. In addition to the current requirement that the applicant obtain the consent of the other landowner(s) to enter a registrable lease or easement prior to making the application, this amendment provides that the applicant must, within 40 days of being granted the application, formally register the lease or easement. Requiring the lease or easement to be registered will remove the threat of a subsequent owner of the licence being denied access to the watercourse and being left with a licence but no accompanying access to water.

Clause 56 amends the Act to allow a licensee of a licence that does not attach to land to apply to transfer the licence to another entity, provided that entity is also permitted under the Act to hold a licence that does not attach to land. This type of dealing was inadvertently omitted from the Act.

Clause 57 provides that for section 228, "owner" includes an occupier, where the person was granted an entitlement under the repealed Act and that entitlement was subsequently converted to a water licence under the Act. This is necessary because under the Act only an "owner" may hold a water licence and when a licensee ceases to be the owner of the land to which the licence attaches, the licence transfers to the registered proprietor.

However, as licences under the repealed Act were granted to occupiers, where those licences are transferred to be water licences under the Act, the licensees should be able to continue to hold the licence so long as they remain an occupier of the land to which the licence relates.

Clause 58 amends section 229 so that it only applies to licences to take water. Licences to interfere with water are dealt with by proposed new section 229A, inserted by the following clause.

Clause 59 provides that where a licence to interfere with water has been granted and part of the land to which it is attached is disposed of, the licence should not expire (which is what happens to licences to take water). Instead, the licence should attach to that part of the land on which the interfering takes place. For example, if the licence is for an off-stream dam, the licence will attach to that part of the land on which the dam is located. Where the licence is for works that are located in a watercourse, the licence should attach to that part of the land that adjoins the part of the watercourse where the works are located. The amendment is necessary to ensure that works remain licensed and that someone remains responsible for the works.

The clause also provides that where part of land to which a licence is attached is compulsorily acquired, rather than the licence automatically expiring and the licensee being required to apply for a new licence, the licence simply attaches to the remaining portion of the land. This will prevent the acquisition of, for example, a strip of a person's land to allow for the widening of a road resulting in all of the licences attached to that person's land from expiring. The section will not apply where the acquisition results in the landowner no longer having access to take the water, nor where the acquisition includes the acquisition of the licence.

Clause 60 provides that if the application does not comply with the request for further information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 61 provides that if the application does not comply with the request for further information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for further information.

Clause 62 amends the section to allow for changes in drafting style. The section also removes the requirement that drillers' licences expire after 5 years. The expiry date on a licence will instead be provided for by regulation.

Clause 63 allows a regulation to state the period for which a driller's licence has effect.

Clause 64 extends the period of time required for a service provider to give notice of its intention to cease operating from 20 business days to 60 business days. Practice has shown that the longer period of time is necessary to allow the regulator to assume responsibility for operating the infrastructure. The clause also provides that where a service provider gives notice of its intention to cease providing a service then the notice must be in the approved form. The amendment also grants the regulator the power to request further information from the service provider. This information may be necessary to allow the regulator to assume responsibility for providing the services, as an administrator under section 955, and to ensure that the service provider's customers are serviced.

The service provider must also notify the date by which it will cease operating. If the service provider continues operating beyond that date then a further notice must be given if the service provider is to cease.

Clause 65 widens the power of a service provider to direct remedial work in respect of things that are impacting on its infrastructure. The Act presently allows a direction only in respect of equipment that is connected to or impacting on the service provider's infrastructure. This amendment will expand that right to allow directions to be given about other things that impact on the service provider's infrastructure, including for example vegetation or, in the case of a water authority supplying drainage services, the water authority may require a person to remove silt that is blocking a drain.

Clause 66 amends the provision dealing with compensation for damage caused by a service provider. Compensation is not payable in respect of actions taken under the power to direct remedial works. The compensation provision has therefore been amended to bring it in line with the proposed amendments to the service provider's power to direct remedial works.

Clause 67 clarifies that the service standards and performance indicators to be included in strategic asset management plans must include service standards in respect of the service that customers can expect from the system, including, for example, expected interruptions to supply and response times in addition to service standards relating to asset management and continuity of supply.

This clause also includes a requirement that the plan must include details of the service provider's budget and proposal for financing the implementation of the plan. A key component of strategic asset

management plans is the operation, maintenance and refurbishment strategies, along with any new capital works' program which is needed to meet the continuity of supply targets set by the service provider. It is important that there is likely to be sufficient money available to fund these strategies as well as any new works' program – hence the requirement for a financial plan. However, the requirement will only be for an estimate of the total projected expenditure, at a fairly broad level, on these activities, on an annual basis for the plan's duration. The anticipated funding source (e.g. user contributions, capital works' subsidy or community service obligation payments) will also be required.

The information will enable the service provider to demonstrate whether its operations, maintenance and renewals' strategies and capital works' program are likely to be affordable. If they are not, the service provider will need to adjust its continuity of supply targets, its operations, maintenance and refurbishment strategies, and new capital works' program, or all three.

Clause 68 clarifies that both costs and benefits may be considered in determining whether an exemption should be granted, including benefits to persons other than the customer and costs to persons other than the service provider. For example, where a third party, such as the State, contributes to the cost of providing the service, any cost savings that would result from the need for the service provider to have plans in place would be savings for the State, not for the individual customers. These savings should be considered in determining whether to grant an exemption under this section.

Clause 69 removes the need for a local government to give a holder of a trade waste approval a show cause notice where the approval is being suspended immediately in the interests of public health or to prevent some harm. The present requirement that a show cause notice be given is anomalous, as there will be no opportunity to respond to the show cause notice. Instead, it is proposed that no show cause notice be given, and that the approval holder be provided with an information notice (as is currently required) at the time or soon after the approval is suspended or cancelled. The approval holder will then have appeal rights on receipt of the information notice.

Clause 70 clarifies that for a dam to be a referable dam, the failure impact assessment required for the dam must have been accepted by the chief executive under section 487.

Clause 71 amends section 482 so that the guidelines produced by the chief executive for failure impact assessment of dams are issued, rather than published in the gazette. This amendment is to make the section

consistent with other sections in the Act dealing with the publication of guidelines prepared by the chief executive.

Clause 72 provides that a person proposing to construct a referable dam must have completed a failure impact assessment and had it accepted by the chief executive prior to commencing construction of the dam. The amendment also provides that a failure impact assessment must be accompanied by the prescribed fee. The amendment clarifies that a further failure impact assessment is not required every 5 years for a dam that is not given a category 1 or category 2 rating, if the dam also does not meet the threshold size and dimensions set by this section.

Clause 73 provides that where a failure impact assessment for an existing dam is rejected, the person must prepare a further assessment in accordance with the requirements of the information notice.

Clause 74 provides that copies of the safety conditions relating to a referable dam must be given not only to the owner (as is currently required) but also to the local government for the area. This is desirable as the local government will often be the assessment manager for the development.

Clause 75 provides that where safety conditions relating to a referable dam are changed, a copy of the revised conditions must be given not only to the owner (as is currently required) but also to the local government for the area. This is desirable as the local government will often be the assessment manager for the development.

Clause 76 amends section 494. That section allows for a notice to be issued by the chief executive in exercise of the emergency powers. Under the Act the notice is taken to be a remedial action notice under the *Land Act 1994*. This places certain requirements on the person receiving the notice. However, it would also normally mean that appeals in respect of the notice are to the Land Court. This is not the intention of the Act, as currently all other appeals in respect of referable dams are to the Planning and Environment Court. This amendment ensures that appeals in respect of a section 494 notice are dealt with in accordance with the appeal provisions of the *Water Act* (and accordingly go to the Planning and Environment Court), not the *Land Act*.

Clause 77 omits this section dealing with the use of commercially sensitive information provided to the chief executive. The section will be replaced with a more generic clause (proposed new section 1010A) dealing with the use of commercial sensitive information under the Act.

Clause 78 limits the matters that must be included in a regulation establishing a water authority. The amendment will ensure that only the

name and area for an authority must be included in a regulation. Other matters concerning the authority, such as the composition of the board, will be gazetted. This amendment is intended to reduce the volume of legislation.

Clause 79 limits the requirement for identification of cross-subsidies to category 1 water authorities and those other water authorities identified by regulation. This is because for smaller water authorities, the cost of preparing a report may outweigh any associated benefits. The amendment also provides that the report on cross-subsidies must be in accordance with the guidelines prepared by the chief executive.

Clause 80 requires the chief executive to publish in the gazette details of the composition of the board of directors of a water authority, and whether directors are to be elected or nominated, as soon as practicable after the authority has been established.

The clause also provides that where the composition of a board of directors of a water authority is to be changed, the chief executive must follow the same procedure as that currently required in respect of a change to the establishment regulation. The notice of the proposed change must be published and the chief executive must consider any comments on the proposed change prior to gazetting the change. The clause also allows for a minor amendment without the need to comply with the usual requirements relating to a change.

Clause 81 amends section 602 to allow the Minister to appoint an interim board to administer a water authority if for any reason there are no directors on the board. This power is presently limited to where the Governor in Council has removed all of the directors of the board.

Clause 82 authorises persons to drill water bores down to 6 metres in depth without the need for a drillers licence.

Clause 83 recognises that information notices may be given by authorised officers appointed by the chief executive or the regulator, and that the person who receives the notice should have the same appeal rights as if they had received the notice from the chief executive or the regulator. The amendment also recognizes that local governments are required to issue information notices in respect of certain decisions, such as trade waste approvals. The amendment ensures that a person who receives an information notice from a local government or an authorized person is taken to be an “interested person” for the purposes of the Act and has the accompanying appeal rights.

Clause 84 provides for the chief executive of a local government to be the reviewer where an application is made for a review of a local government decision.

Clause 85 provides that a person requesting an internal review of a decision must have complied with all of the requirements of the Act for making an application for review before the reviewer is required to consider the application. The clause also amends several incorrect section references in the Act.

Clause 86 amends several incorrect section references in the Act. The clause also provides that appeals from a review decision of a local government decision are made to the Magistrates Court.

Clause 87 provides that an authorised officer may provide a certificate stating the volume of water that has passed through a pump based on a meter reading and that such a certificate is evidence of the amount of water that has been taken by the pump.

Clause 88 provides that a notice appointing an administrator to take over operating infrastructure may allow the administrator to use the former service provider's water entitlement in providing the registered service.

Clause 89 provides that provisions of the Act allowing the appointment of an administrator to take over from a service provider will prevail over any Commonwealth corporations law provisions dealing with administrators. This clause is necessary as a result of the new Commonwealth corporations law. The Commonwealth law allows for this type of displacement provision.

Clause 90 amends the section to make it consistent with proposed changes to the definition of operational work for referable dams (see proposed amendments to schedule 2). The clause also provides that where an application for a development permit is made in a declared catchment area, the chief executive must consider the application having regard to the purposes of the Act relating to preserving water quality in the catchment area.

The clause also allows for the change being made to the Act to allow for the regulation of drainage and embankment works. The amendment requires that assessable drainage and embankment works in a declared area must be assessed having regard to the purposed of the Act that relate to the protection of watercourses and water in watercourses.

Clause 91 provides that where a person applies for a development approval in respect of development involving water, the application must

be accompanied by the consent of the chief executive. The need for the chief executive's consent replaces the current requirement of evidence of an entitlement to take or interfere with water. It is considered more appropriate to consider the proposed works independently and the nature of the entitlement held by the applicant (or where the applicant does not have an entitlement, the likelihood of the applicant being able to obtain an entitlement) in determining whether the resource manager's consent should be granted.

The clause also provides that a development permit to install works to take or interfere with water in a watercourse or lake will grant also grant a right to occupy unoccupied state land within the bed and banks. The *Land Act 1994* requires a person to have an authority to occupy State land. This amendment is to remove the need for a person to obtain a separate authority to install a pump within the bed and banks. This would be an unnecessary administrative burden, given approval must already have been given to the development application and the person will require a water entitlement to take the water.

Clause 92 extends the chief executive's power to direct works to be modified or removed to include works that are (or would be) self-assessable development. The Act presently only grants this power in respect of assessable development.

Clause 93 deletes this subsection, as it is unnecessary. An application for a quarry material allocation will always be dealt with before the accompanying application for development approval is considered.

Clause 94 amends the section to make it consistent with proposed changes to the definition of operational work for referable dams (see proposed amendments to schedule 2). The clause also provides that applications for development approval to construct a referable must be accompanied by the chief executive's consent to the application. This replaces the current requirement for applications to include evidence of an existing entitlement to take or interfere with water.

Clause 95 allows for the Minister to establish a referral panel to consider applications made under new section 42A for a variation of a moratorium notice. The panel is required to consider whether the works are substantially complete or whether the works would have been completed by the completion date, but for a change in circumstance, as mentioned in section 42A. This includes changes in circumstance such as ill-health, extreme bad weather or construction difficulties.

The panel is also required to consider whether the works can be completed to a functional stage within a reasonable period. This means that where a program of works is underway and only part of the works have been completed, the Minister may allow for a variation to the moratorium to allow for part of the works to be completed, so that the works completed to date can at least be made operational and may be utilised.

Clause 96 provides that a regulation may declare an area within which water under or beside a watercourse is taken to be water in the watercourse. This is necessary to allow the regulation of underground water immediately below or adjacent to a watercourse where the taking of that water can impact significantly on the water in the watercourse. This does not alter what is a watercourse, but simply requires that water in a declared aquifer is subject to the same regulation as if it were water in a watercourse. The need for this change has arisen as a result of individuals taking water (that is currently defined as underground water) from the ground immediately beside or below a watercourse. As the water is not presently considered water in a watercourse, there is no regulation on the taking of the water, even though large volumes of water may be taken this way and it may have a significant impact on the watercourse. This amendment will allow those activities to be captured.

Clause 97 requires the registrar of water allocations to record an administrative notice on a water allocation where the water taken under a water allocation may only be used in accordance with a land and water management plan. This is to alert purchasers of a water allocation that they will be required to have a land and water management plan in place when using water under the allocation.

Clause 98 inserts a new clause to govern the use of commercially sensitive information provided under the Act. The clause applies where information is provided under the requirements of section 36 (Obtaining water information), 97 (Notice of proposal to water infrastructure operators) or 517 (Information may be required from service providers). The person providing the information must advise that they consider it to be of a commercially sensitive nature for this section to apply. The section does not apply where the regulator, chief executive or Minister consider it is in the public interest to release the information or where they do not believe that the information is of a commercially sensitive nature. This provision is subject to the requirements of the *Freedom of Information Act*.

Clause 99 provides that the chief executive may recover fees and charges payable under a regulation made under the Act as a debt and may recover interest on outstanding fees and charges. The clause also allows the

Minister to waive fees or charges where the person by whom the fees or charges are payable is suffering hardship as a result of economic recession or a natural disaster, such as a drought.

Clause 100 extends the regulation making powers under the Act to include regulations in respect of the standard of water meters, including their installation and maintenance, and standards for works for taking water from an aquifer. The clause allows a regulation to deal with issues regarding meters, such as when they are required, who is required to install the meter (such as the individual or the State) and arrangements for payment of the meter. This is to allow for monitoring and regulating the taking or interfering with water under the Act for resource management purposes, and is not to regulate standards or requirements in respect of urban water use.

The clause allows for a regulation to declare an area to be a drainage and embankment area. The regulation may also state which drainage and embankment works are assessable and self-assessable development under the *Integrated Planning Act 1997*. This is to allow selective regulation of drainage and embankment works where that regulation is necessary.

The clause also allows for a regulation to establish a self-assessment code for self-assessable works that relate to taking or interfering with water.

Clause 101 provides that for the purposes of transitioning the Fitzroy Water Allocation and Management Plan, the plan is taken to include amendments made to the plan and published in accordance with the plan's requirements. The clause also allows an amendment to the plan to state that the plan will not require all entitlements in resource operations plan area to be converted to water allocations. This change is necessary because when the plan was first prepared, it was anticipated a resource operations plan would only be prepared for specific parts of the plan area. It is now intended to prepare a resource operations plan for the entire plan area.

Clause 102 allows the chief executive to grant a licence in respect of existing works in a declared subartesian area without the need for the owner to apply for a licence under the licensing provisions of the Act. This ensures that when a new area is declared and all works in the area are then required to be licensed, licences can be issued for existing works without the need for the usual application processes.

Clause 103 amends the provisions dealing with the transitioning of existing applications. On commencement of this section, existing applications under the *Water Resources Act 1989* will taken to be

applications under the equivalent sections of the Act. Where an application concerns both the taking of water and the construction of works, the part of the application relating to taking water is taken to be an application for a water licence under the Act and the part relating to construction of works is taken to be a development application. Other sections relating to applications (such as public notice provisions) are also transitioned. Applications in respect of taking quarry material and parts of applications relating to referable water dams lapse.

The clause also repeats the provisions of the Act that transition existing licences and permits, as well as making some changes to those provisions. Where a person holds a section 57 permit under the repealed Act to take water from a dam or other storage managed under an interim resource operations licence ('IROL'), the permit is taken to be an interim water allocation. The chief executive may then amend the IROL to allow for the new allocations. The allocation holder and the IROL holder must enter a supply contract and where no contract is entered, then the standard supply contract approved and gazetted by the chief executive applies to the supply of the allocation.

The clause provides that these sections do not apply to hazardous waste dams, which are dealt with under section 1065 and 1065A. The clause provides for the transitioning of trade waste approvals granted under the *Standard Sewerage Law.*

Clause 104 provides that an application will not lapse where the application is to allow for a person currently taking water to continue to take water, for example where a licence has inadvertently lapsed and not been renewed.

Clause 105 provides that any area declared to be a service area under the *Sewerage and Water Supply Act 1949* is taken to be a service area under the Act. This section will continue to apply until the sections in the Act allowing for the declaration of service areas have commenced. This section has been commenced retrospectively because "service area" is a relevant term in respect of a service provider's obligations, and those obligations exist from the commencement of the Act. Accordingly it is necessary that this section apply from that earlier date.

Clause 106 amends section 1065 so that when a licence for a hazardous waste dam is transitioned, if the dam is located in a watercourse then the parts of the old licence that relate to interfering with water are taken to be a water licence under the Act and the provisions that relate to works are taken to be a development permit.

Clause 107 allows for licensing of hazardous waste dams to continue under the *Water Resource Act 1989* until hazardous waste dams have been brought under the *Environmental Protection Act 1994*. This amendment is to allow for the smooth transitioning of hazardous waste dams by ensuring that there is no period during which the dams are unable to be licensed under one of the two acts.

Clause 108 provides that where a dam has been prescribed as a referable dam, the date it is prescribed is taken to be the relevant date to start the clock running on the requirement for a further failure impact assessment in 5 years time, under the relevant provisions of the Act. The amendment will allow a failure impact rating shown for a prescribed dam to be altered by a later failure impact assessment.

The amendment provides a failure impact assessment prepared under this section for a dam that is not prescribed, is taken to be a failure impact assessment prepared as a result of the owner being given a notice requiring the assessment under section 483.

Clause 109 as for the above clause, this provides that where a dam has been prescribed as a referable dam, the date it is prescribed is taken to be the relevant date to start the clock running on the requirement for a further failure impact assessment in 5 years time, under the relevant provisions of the Act. The amendment will allow a failure impact rating shown for a prescribed dam to be altered by a later failure impact assessment.

Clause 110 provides that a failure impact assessment prepared under this section is taken to be a failure impact assessment prepared as a result of the owner being given a notice requiring the assessment under section 483.

Clause 111 provides that the right to continue to take water under this section extends to customers of a former water board, not only to the water board itself.

Clause 112 provides for a transitional regulation making power for a further 12 months. This is necessary as a result of the extended transition period from the *Water Resources Act* to the *Water Act*, including the delay in the commencement of many of the Act's provisions.

Clause 113 amends the sections in the *Integrated Planning Act 1997* relating to what must accompany a development application for it to be properly made. The amendment is to bring the IPA requirements into line with the requirements under the *Water Act* in respect of developments that relate to water. The amendment means that a development application may require either:

- the chief executive's consent (such as in the case of the installation of a water pump); or
- evidence of the allocation of a resource (such as an entitlement to take quarry materials).

The clause amends the definition of operational work to refer to works that "allow" the taking of water. This replaces the previous term "for the taking…", which implied the works must be intended to take or interfere with water. This amendment is intended to ensure that any works that have the effect of taking or interfering with water will be captured.

The amendment also excludes the taking of water by a water truck from the definition of operational work. This is to ensure that, for example, a water truck being used by the Department of Main Roads is not required to obtain a development permit to allow the truck to pump water. The truck will still require a water permit to take the water.

The clause extends the definition of operational work to include embankments and drainage works, those being works that control the flow of water into or out of a watercourse where the works have been declared to be either assessable or self-assessable development.

Further, the clause amends the current requirement that works in respect of referable dams involving the maintenance or construction of a referable dam are assessable. The amendment is to remove the need for a development approval for minor maintenance works by providing that only construction of a new dam or an increase in capacity of more than 10% will trigger the need for a referable dam to require a further development permit. However, this does not mean that a permit will not be required for other reasons, such as in accordance with a local planning scheme.

Clause 114 makes a number of minor amendments to defined terms. Amongst the more significant changes, the clause includes a definition of water sharing rules, which will be rules, either prescribed in a resource operations plan or as a condition of the licence that relate to the sharing of water.

The clause also amends the definition of publish to correct some minor inconsistencies in the Act, and to clarify when something will be taken to be published for the purposes of the Act.

The Act amends the definition of overland flow water by changing the reference to water "that naturally infiltrates the soil" to "that has naturally infiltrated the soil". This is to clarify that the exclusion of certain water from the definition of overland flow only relates to water that actually

infiltrates the soil. Where water is diverted away from land, the water will not be excluded from the definition of overland flow water simply because the water would have soaked into the soil, if it had been left to its natural course.

Clause 115 provides for the consequential amendments in schedule 1.

Schedule 1 amends the *Water Resources Act* 1989 so that:

- Licences may only be transferred to the registered proprietor of land. This is to make licensing under the *Water Resources Act* consistent with the process under the *Water Act*. This will assist with the smooth transition from the one to the other; and
- To allow delegations under the *Water Resources Act* to be made to employees of Departments other than the Department of Natural Resources and Mines to assist the smooth transitioning of responsibility for hazardous waste dams to the Environment Protection Agency.

Schedule 2 makes a number of minor amendments to the Act, to correct a range of incorrect section references or words.