

WATER AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation (and reasons)

The objective of the *Water and Other Legislation Amendment Bill* (the Bill) is to allow for a range of amendments to the *Water Act 2000* (the Act) and specific amendments to the *Land Act 1994* (Land Act), *Land Title Act 1994* (Land Title Act), the *Integrated Planning Act 1997* (IPA) and the *Valuation of Land Act 1994* (Valuation of Land Act). The need for the changes has been identified as a result of ongoing implementation of the Act and also to facilitate proposed new water infrastructure in the Burnett Basin.

The major implementation issues to date have been those associated with the separation of water from land through the creation of tradable water allocations. This occurs through a two stage process. Firstly, the strategic decisions about the consumptive and non consumptive balance are decided through water resource plans (WRPs). Secondly, the WRPs are implemented through the resource operations plans (ROPs). It is through the implementation of ROPs that tradable water allocations are established.

Water resource plans have been completed in parts of the State including the Fitzroy, Burnett, Barron and Pioneer catchments. Implementation of the WRPs through the public release of draft ROPs is occurring in the Fitzroy and Burnett catchments.

Consultation on the Fitzroy and Burnett draft ROPs including with banks, the Queensland Resource Registry (that operates the water allocations register established under the Water Act that registers all water allocations and dealings with water allocations) and the proponents of the Burnett infrastructure developments, has identified the need for amendments to the Water Act and the other Acts.

In relation to the proposed new water infrastructure in the Burnett Basin, an impact assessment conducted in accordance with the provisions of the

State Development and Public Works Organisation Act 1971 has demonstrated that the proposed water infrastructure development should proceed. A number of amendments are necessary to facilitate the development of the proposed water infrastructure.

Some of the more significant amendments are outlined below:

Water Act

- To the Fitzroy water resource plan, necessary for the finalisation of the draft Fitzroy Resource Operations Plan;
- Provision of a displacement provision to the *Corporations Act* to ensure the water allocations register under the Act is the sole register for water allocations;
- Provide a head of power to set fees for the water allocations register;
- Clarification of the process for registration of interests in a water allocation under the water allocations register;
- Allow the Minister to impose moratoriums on the grant of further licences without having to formally commence a water resource planning process;
- Allow for the suspension of the right to take and use water for non-payment of fees or charges owed to the Chief Executive;
- Provision for a holder of a water entitlement or water permit to be responsible, subject to a defence, for unauthorised taking of water; and
- Require a land and water management plan in circumstances where users obtain water through regular temporary transfers.

IPA

- Interim amendments to remove the need for landowner's consent for certain development applications for community infrastructure on land that is the subject of a community infrastructure designation.

Land Act and Land Title Act

- An amendment to allow for the registration of a public utility easement for water storage associated with a dam, in limited circumstances, where the impact of a dam on land is of a temporary nature during flooding.

Valuation of Land Act

- Provide for a deferral of the impact of the separation of water from land on land valuations and to allow for local governments to review the rating systems.

How the policy objectives will be achieved

The Bill allows a moratorium under the Act, currently imposed at the commencement of the water planning process, to be imposed by the Minister without formally commencing the water planning process. The circumstances where a moratorium would be made are where the Minister is satisfied action should be taken in a part of the State to protect natural ecosystems or to protect existing water entitlements and other authorities to take or interfere with water under the Act.

Amendments to the Act facilitate the implementation of the water allocations register (WAR), established under the Act for registering interests and dealings in water allocations, including providing for a head of power to set fees and to provide for a Corporations Act displacement provision to ensure the WAR is the sole register for water allocations.

Under the Bill, amendments to the Act are provided to allow the Fitzroy water resource plan to be amended. In developing the draft Fitzroy Resource Operations Plan, some necessary modifications have been identified.

Amendments to the Act allow for the suspension of the entitlement to take water for non-payment of fees or charges owed to the chief executive. However the suspension will not apply to the minimum amount of water necessary for stock and domestic purposes.

In addition, the Bill changes the court, from the Land Court to the Magistrates Court under the Act, to which a person given a compliance notice by the chief executive may appeal against the review decision to issue the compliance notice. This will ensure consistency for proceedings as prosecution against any offence under the Act is also in the Magistrates Court.

The changes also:

- ensure the effective administration of Chapter 3 ‘Infrastructure and Service’ of the Act in relation to water service providers including clarification of – service provider’s requirements, the types of contracts between service providers and customers and to whom customer service standards apply.
- ensure the effective administration of Chapter 4 ‘Water Authorities’ of the Act in relation to water authorities, including clarification of the recovery of costs in relation to a dissolution of a water authority and the Chief Executive’s role in administering and exercising powers for water authority areas; and in response to a request by the Queensland Police Service (QPS) to include a specific head of power for the chief executive to allow probity checks of the QPS criminal history data base and the chief executive to receive information on a person’s criminal history.
- amend Chapter 9 ‘Transitional Provisions and Repeals’ of the Act including validating the Burnett water resource plan in relation to the water, the subject of the plan, by confirming water in watercourse or lake includes water collected in a dam across a watercourse or lake as was always. The definition of water in the dictionary is amended to reflect this.

The Bill also provides for amendments to the Land Act and Land Title Act. The amendments extend the application of public utility easements for water storage to a dam in certain limited circumstances. The extended application of the provisions to dams is limited to temporary water storage, that is, during flood events, on land that is outside the storage area when the dam is operating at full supply level. This provides an alternative to the acquisition of land which is temporarily impacted by the dam but which could otherwise continue in its present use.

The Bill amends the IPA by removing the need for landowner’s consent for development applications for two types of development (building work and operational work) to give effect to a community infrastructure designation on land. The amendments are consistent with broader reforms to the owners’ consent provisions for IDAS under the (as yet uncommenced) *Integrated Planning and Other Legislation Act 2001* and reflected also in amendments provided for in the *Natural Resources and Other Legislation Amendment Act 2003* in relation to public sector entities.

The Bill also amends the Valuation of Land Act to facilitate the uncoupling of the water component from the unimproved value for a

period. There will be a deferral of at least 12 months to allow local governments to consider differential or other rating options. The 12 month deferral of the impact of separating water from land (on the conversion of existing water licences – currently attached to land, to new tradable water allocations on commencement of a resource operations plan) will coincide with the effective date of a new annual valuation of properties in a local government area, or if no annual valuation is carried out, particular valuations of properties will be altered.

Alternatives to the Bill

There are no alternatives to the amending legislation.

Estimated cost for Government

The Bill will not alter the cost to the government of implementing the Act. It is anticipated that the simplifying of certain administrative procedures may reduce the cost to the government of administering the Act.

Consistency with fundamental legislative principles

The Bill raises a number of issues regarding consistency with fundamental legislative principles contained in the *Legislative Standards Act 1992*. A commentary on aspects of the Bill's consistency with these principles is set out below.

Adverse effects on rights and liberties (including retrospective legislation)

The Bill provides for the suspension of the entitlement to take and use water in circumstances where the holder has failed to pay any required licence fee or other charge. However, the amendment does not—

- (a) seek to cancel the water entitlement - only suspend the taking and use of water under the water entitlement; and
- (b) affect the right of the holder to retain the water entitlement.

The provision is analogous to that which applies in respect of restricting domestic water supply in certain circumstances under section 457 of the Act.

In relation to the amendment to provide for powers of entry for contractors of the department to undertake site preparation works and installation of meters, the amendment—

- (a) sets out how this power is to be exercised, for example, the giving of appropriate notice to landowners; and
- (b) provides for compensation in the event of damage attributed to the contractors exercising their power.

These provisions are similar to provisions in the *Electricity Act 1994* in respect of powers of entry for electricity officers.

In relation to the amendments to attribute responsibility to a water entitlement or water permit holder for taking water not authorised under the water entitlement or permit, the amendment—

- (a) provides an opportunity for the entitlement or permit holder to prove they were not responsible for taking the water at the time of the offence;
- (b) provides a defence so that the holder can nominate another person who has responsibility for taking and using the water and has knowledge of the obligations under the water entitlement or permit;
- (c) the Crown still bears the onus of proving each element of the offence; and
- (d) is similar to provisions relating to ‘detection device offences’ under the *Transport Operations (Road Use Management) Act 1995*.

The Bill contains no provisions that commence retrospectively.

Immunity from proceeding or prosecution

The Bill contains no provisions conferring immunity from proceeding or prosecution.

Regard for aboriginal and islander custom

The Bill contains no provisions that will affect aboriginal or islander custom.

Ability to amend Act only through another Act

The Bill contains no provisions authorising amendment by another Act.

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 Irrigators Council, Local Government Association of Queensland, Brisbane City Council, World Wide Fund for Nature, Cotton Australia, Environmental Defenders Office, Australian Conservation Foundation, CANEGROWERS, Queensland Fruit and Vegetable Growers, SunWater and Burnett Water Pty Ltd and other service providers have also been consulted.

NOTES ON CLAUSES**PART 1—PRELIMINARY****Short Title**

Clause 1 describes the short title of the Bill as being the *Water and Other Legislation Amendment Act 2003*.

PART 2—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended in pt 2

Clause 2 declares that part 2 of this Bill amends the *Integrated Planning Act 1997* (IPA). The *Natural Resources and Other Legislation Amendment Act 2003* recently amended the land owner's consent provisions in the Integrated Planning Act 1997 in relation to public sector entities. These amendments are consistent with broader reforms to the owner's consent provisions for IDAS under the (as yet uncommenced) *Integrated Planning and Other Legislation Amendment Act 2001*. The amendments to IPA are simply interim arrangements pending the commencement of the owner's consent provisions in the *Integrated Planning and Other Legislation Amendment Act 2001*, amendments already passed by Parliament.

Section 3.2.1 (Apply for development approval)

Clause 3 amends section 3.2.1 by inserting a new subsection (11) that removes the requirement for land owner's consent to specified development applications in specified circumstances. The consent of the owner of land is not required for a development application for building work or operational work that is for the supply of community infrastructure on land that has been designated for that community infrastructure.

This amendment removes the requirement for the entity intending to supply, or having supplied, community infrastructure on land designated for that community infrastructure to obtain the land owner's consent to make the two stated types of development applications. This is in circumstances where the application is necessary to give effect to the designated purpose.

Section 3.5.24 (Request to change development approval other than a change of condition)

Clause 4 amends section 3.5.24 by inserting a new subsection (3A). This amendment limits when an owner of land, the subject of a designation for community infrastructure, can change a development approval. The owner must be the entity who intends, or intended, to supply the community infrastructure. Therefore in circumstances where the entity supplying the community infrastructure is not yet the owner of the land, the current

owner of the land is not able to change a development approval obtained by the entity for the purpose of giving effect to the community infrastructure. In addition, the entity (who sought the development approval) is not required to obtain the consent of the current owner of the designated land for an application to request a change to the development approval. This amendment is consistent with, and consequential to, the amendment to section 3.2.1.

Section 3.5.26 (Request to cancel development approval)

Clause 5 amends section 3.5.26 by inserting a new subsection (3A). This amendment limits when an owner of land, the subject of a designation for community infrastructure, can cancel a development approval. The owner must be the entity who intends, or intended, to supply the community infrastructure. Therefore in circumstances where the entity supplying the community infrastructure is not yet the owner of the land, the current owner of the land is not able to cancel a development approval obtained by the entity for the purpose of giving effect to the designated purpose. This amendment is consistent with, and consequential to, the amendment to section 3.2.1.

Section 3.5.33 (Request to change or cancel conditions)

Clause 6 amends section 3.5.33 by inserting a new subsection (3A). This amendment limits when an owner of land, the subject of a designation for community infrastructure, can change or cancel a condition of a development approval. The owner must be the entity who intends, or intended, to supply the community infrastructure. Therefore in circumstances where the entity supplying the community infrastructure is not the owner of the land, the current owner of the land is not able to change or cancel a condition of a development approval obtained by the entity for the purpose of giving effect to the community infrastructure. In addition, the entity is not required to obtain the consent of the current owner of the designated land. This amendment is consistent with, and consequential to, the amendment to section 3.2.1.

PART 3—AMENDMENT OF LAND ACT 1994

Act amended in pt 3

Clause 7 declares that part 3 of this Bill amends the *Land Act 1994* (Land Act).

The amendments to the Land Act extend the application of public utility easements for water storage to a dam in certain limited circumstances. Currently the provisions provide for an easement for water storage in relation to a weir for inundated land behind the weir. The major impacts of a weir on adjacent land are associated with ‘breakouts’ from the banks.

The extended application of the provisions to dams is limited to temporary water storage, that is, during flood events, on land that is outside the storage area when the dam is operating at full supply level. This provides an alternative to the acquisition of land which is temporarily impacted by the dam but which could otherwise continue in its present use. The Coordinator-General has published guidelines under section 174 of the *State Development and Public Works Organisation Act 1971* outlining processes to be followed by proponents for taking land, including the requirement to negotiate agreements to purchase prior to acquisition. These guidelines will be amended to outline in more detail the circumstances where public utility easements for water storages for dams may be utilised.

Section 361 (Definitions)

Clause 8 includes a definition for full supply level in accordance with the definition in the Water Act.

Section 362 (Easements may be created only by registration)

Clause 9 provides for a public utility easement for water storage to be created in relation to a dam only on land upstream of the barrier of the dam and outside the storage area at full supply level. Full supply level means the level of the water surface in the storage when the water storage is at maximum operating level when not affected by flood. Therefore an easement for water storage is not provided for over any of the land affected by the dam when operating at full supply level. An easement for water storage may only be sought on land that is temporarily impacted by the dam and outside of the storage area at full supply level. See also Clause 7. The clause also clarifies the public utility easement provisions for a weir, that is, the provisions provide for public utility easements for water storage

to be created in relation to a weir on land, upstream of the weir and within or outside the storage area at full supply level.

PART 4—AMENDMENT OF LAND TITLE ACT 1994

Act amended in pt 4

Clause 10 declares that part 4 of this Bill amends the *Land Title Act 1994* (Land Title Act).

The amendments to the Land Title Act extend the application of public utility easements for water storage to a dam in certain limited circumstances. Currently the provisions provide for an easement for water storage in relation to a weir for inundated land behind the weir. The major impacts of a weir on adjacent land are associated with ‘breakouts’ from the banks.

The extended application of the provisions to dams is limited to temporary water storage, that is, during flood events, on land that is outside the storage area when the dam is operating at full supply level. This provides an alternative to the acquisition of land which is temporarily impacted by the dam but which could otherwise continue in its present use.

The Coordinator-General has published guidelines under section 174 of the *State Development and Public Works Organisation Act 1971* outlining processes to be followed by proponents for taking land, including the requirement to negotiate agreements to purchase prior to acquisition. These guidelines will be amended to outline in more detail the circumstances where public utility easements for water storages for dams may be utilised.

Section 81A (Definitions for div 4)

Clause 11 includes a definition for full supply level in accordance with the definition in the Water Act.

Section 82 (Creation of easement by registration)

Clause 12 provides for a public utility easement for water storage to be created in relation to a dam only on land upstream of the barrier of the dam and outside the storage area at full supply level. Full supply level means the

level of the water surface in the storage when the water storage is at maximum operating level when not affected by flood. Therefore an easement for water storage is not provided for over any of the land affected by the dam when operating at full supply level. An easement for water storage may only be sought on land that is temporarily impacted by the dam and outside of the storage area at full supply level. See also clause 10. The clause also clarifies the public utility easement provisions for a weir that is, the provisions provide for public utility easements for water storage to be created in relation to a weir on land, upstream of the weir and within or outside the storage area at full supply level.

PART 5—AMENDMENT OF VALUATION OF LAND ACT 1944

Act amended in pt 5

Clause 13 declares that part 5 of this Bill amends the *Valuation of Land Act 1944* (Valuation of Land Act).

Section 2 (Definitions)

Clause 14 provides for definitions of resource operations plan and water licence in accordance with the Water Act.

Section 28 (Alteration of valuation in force or to come into force)

Clause 15 provides for the a deferral of any impacts resulting from a resource operations plan on the unimproved valuation of land in a local government area until at least 12 months after a resource operations plan (under the Act) has effect. A resource operations plan, when approved, provides for the separation of water from land by the conversion of water licences to water allocations. A water licence currently attaches to the land on which the water is used. However a water allocation, created from a converted water licence, does not attach to any land. This conversion process, creating new water allocations, may therefore affect the unimproved value of the land on which the water licence previously attached.

Section 38 (Period for which annual valuation to have effect)

Clause 16 amends the period for which an annual valuation has effect in circumstances where the unimproved value of land has been altered by the loss of a water licence attached to that land (where the water licence has been converted to a water allocation, separating water from the land). In these circumstances, the effective date of the annual valuation is deferred for a minimum of 12 months.

Section 82 (Use of combined form)

Clause 17 includes a specific reference to the Water Act, as sales information about a water allocation may now be made available.

PART 6—AMENDMENT OF WATER ACT 2000**Act amended in pt 6**

Clause 18 declares that part 6 of this Bill amends the Act.

Insertion of new ch 2, pt 2, div 1 hdg

Clause 19 inserts a new division heading “Division 1—Preliminary”.

Section 20 (Authorised taking of water without water entitlement)

Clause 20 amends sections 20(3) and 20(4) to refer simply to stock purposes. The term ‘stock purposes’ is now defined in the dictionary in schedule 4 to the Act in the same terms as currently stated in paragraph (b) of each subsection. Section 20(6) is amended to include a reference to a regulation made under section 1046 of the Act. An area declared as a subartesian area under section 1046 is currently a further limitation on the statutory authority to take or interfere with subartesian water.

Section 21 (Limiting taking of water under s20 (3))

Clause 21 amends section 21(1) by providing the chief executive may also limit or prohibit the taking of water under section 20(3)(b) for stock

purposes. The ability of the chief executive to impose restrictions on the taking of water for stock purposes previously existed under the now repealed *Water Resources Act 1989*. In addition, section 21 is renumbered as section 24 and relocated to chapter 2, part 2, division 2 as inserted by the Bill.

Renumbering of ss21 and 24

Clause 22 renumbers section 24 and section 21 as section 21 and 24 respectively.

Relocation of s 21 (Beds and banks forming boundaries of land are State property)

Clause 23 relocates renumbered section 21 to chapter 2, part 2, division 1 as inserted by the Bill.

Insertion of new ch 2, pt 2, div 2 hdg

Clause 24 inserts a new division heading ‘Division 2—Restrictions for emergencies and water shortages’.

Relocation of s 24 (Limiting taking of water under s20(3))

Clause 25 relocates renumbered section 24 to chapter 2, part 2, division 2 as inserted by the Bill.

New division heading—‘Division 3—Other restrictions on taking or interfering with water’

Clause 26 inserts a new division heading ‘Division 3—Other restrictions on taking or interfering with water’. This new division allows a moratorium notice, currently made at the commencement of the water resource planning process, to be made outside of the water planning process. The circumstances where such moratoriums would be made are where the Minister is satisfied action should be taken in a part of the State to protect natural ecosystems or to protect existing water entitlements and other authorities under this Act to take or interfere with water. Moratoriums allow time for the accumulation of information to properly support a planning process, while at the same time not putting the environment, nor the security of exiting entitlement at unnecessary risk. It is consistent with

the principles of ecologically sustainable development in section 11 of the Act. The purpose of a moratorium notice remains as a means for the preservation of the status quo in relation to any increased taking of or interfering with water. Where the Minister publishes a moratorium notice, the Minister will be required to review the notice annually.

Section 36 (Obtaining water information)

Clause 27 adds new subsections (c) and (d) to clarify that requests for information may be made about the use of water managed under an authority (for example, under an Interim Resource Operations Licence), including historical information. The chief executive may request this information as it may be necessary for planning in respect of water use.

Section 37 (Notice of works)

Clause 28 includes an additional matter that may be dealt with by regulation requiring certain information from owners of land exercising a statutory authorisation to take overland flow water or subartesian water under section 20(6) of the Act. An owner of land may be required to also notify the chief executive about the water use for works constructed or water use for works to be constructed. This allows the chief executive to obtain necessary and relevant information for water planning purposes.

Section 40 (Public notice of proposal to prepare draft water resource plan)

Clause 29 amends section 40 to add a footnote. The footnote serves to note that the moratorium provisions may still apply in the water resource planning process.

Section 40A (Further public notice of proposal to prepare draft water resource plan)

Clause 30 amends section 40A by deleting firstly, the reference to section 42 in subsection (2) and secondly, the reference to a moratorium notice in subsection (3). A reference to a moratorium notice is no longer necessarily applicable to a further notice of intention to prepare a draft water resource plan.

Section 42 (Moratorium notices)

Clause 31 amends section 42 to provide for a new process for the issue of a moratorium notice. A moratorium notice may be issued if the Minister is satisfied action should be taken in a part of the State to protect natural ecosystems or to protect existing water rights.

As is currently the case, the notice can only be used by the Minister to either halt or delay incremental decision making in relation to water, in a specified part of the State, if the granting or otherwise dealing with an application could have any of the effects set out in subsection 42(2). The notice continues to apply equally to applications made before or after the notice is published.

Subsection 42(4)(b) is amended to refer to ‘changed’ in addition to the other matters not permitted to be carried out in relation to works that has the effect of increasing the taking of, or interfering with the water, the subject of the moratorium notice.

Subsection 42(5) is amended to clarify the taking or interfering with water by works.

Subsection 42(7)(b) is amended to provide for when a moratorium notice continues to have effect. A moratorium notice will continue to have effect until a final draft water resource plan is approved and, in the absence of a water resource plan, until the Minister publishes a notice ending the effect of the moratorium.

Subsection 42(8) is amended to replace the reference to section 42A with its new section number, section 27.

Subsection 42(8)(e) is expanded in relation to when works are not started, to refer to not only when a development permit is needed for the works, but also when a development permit is also required for other development associated with the works.

Section 43 (Reviewing moratorium notices)

Clause 32 amends section 43 by requiring an annual review of all moratorium notices.

Section 44 (Amending moratorium notices)

Clause 33 omits subsection (3) as it is unnecessary for this section to also include a reference to the offence. The effect of subsection (4) is that

the moratorium notice, as amended by the amended notice, is the moratorium notice. It is already an offence under section 42 (to be renumbered as section 24 by this Bill) for a person to contravene a moratorium notice. In addition, references to ‘amended moratorium notice’ in subsection (5) have been replaced with the more appropriate reference to ‘moratorium notice’. This is because after publication of an amended moratorium notice, the amended moratorium notice does not continue as a separate notice. The moratorium notice, as amended, is the moratorium notice.

Section 45 (Exceptions to ss 42 and 44)

Clause 34 replaces references to current sections with the new renumbered sections 26 to 29 as inserted by the Bill.

Section 42 and Section 45

Clause 35 replaces references to current sections with the new renumbered sections 26 to 30 and relocates the sections to chapter 2, part 2, division 3 as inserted by the Bill.

Section 46 (Content of draft water resource plans)

Clause 36 deletes the reference to a moratorium notice being published for the draft plan. It also allows the water resource plan to provide for an amendment to a moratorium notice that continues to have effect under the plan.

Section 57 (Minor amendment of water resource plan)

Clause 37 renames the section heading to ‘Minor or stated amendments’. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section. The Act sets out two processes for the amendment of a water resource plan. The first process (the long form process) generally requires the amendment process is the same process for the preparation of a water resource plan. The second process (the short form process) for the amendment of a water resource plan is where the amendment is not of substance or identified as an amendment of this type in the instrument. The approach to be taken in determining whether a long form or short form process is used is:

- The long form process will be used if the amendment is of substance or adversely affects the performance of water entitlements or has implications for environmental flows.
- The short form process will be used if the amendment is set out in the water resource plan, for example, amending water allocation security objectives only where it does not adversely affect existing water allocations or environmental flow objectives.

Section 67 (Public notice of intention not to proceed with making draft water use plan)

Clause 38 omits the reference to ‘final’ in section 67 to clarify that the Minister may wish to not proceed with the preparation of a water use plan at an earlier stage than the ‘final draft water use plan’ stage.

Section 70 (Minor amendment of water use plan)

Clause 39 renames the section heading to ‘Minor or stated amendments’. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section. The Act sets out two processes for the amendment of a water use plan. The first process (the long form process) generally requires the amendment process is the same process for the preparation of a water use plan. The second process (the short form process) for the amendment of a water use plan is where the amendment is not of substance or identified as an amendment of this type in the instrument.

Section 73 (Requirement for land and water management plans)

Clause 40 specifies two additional persons who must have a land and water management plan before using water on land for irrigation. They are:

- A person who proposes to use, for irrigation, water taken under a water licence if a resource operations plan states that the use of the water requires a land and water management plan. The requirement will not apply generally to all persons who use water taken under a water licence for irrigation—rather only specified water licence holders.

- A person who, with certain frequency as prescribed in a regulation, uses water for irrigation, received under a seasonal water assignment, on the same land.

Currently the requirement for a person to have a land and water management plan is triggered essentially where the person has obtained a water allocation or interim water allocation through permanent trading of allocations. However this current framework does not capture those persons who obtain new water, for irrigation use, by entering into rolling annual agreements for temporary transfers of water through seasonal water assignments. The amendment addresses this issue. In addition, the clause renumbers the paragraphs in subsection (1).

Subsection (5) is amended to include a reference to water licence.

Section 78A (Minor amendment of land and water management plan)

Clause 41 renames the section heading to ‘Minor or stated amendments’. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section.

Section 100 (Public notice about availability of draft resource operations plan)

Clause 42 provides for two separate dates for the making of submissions about a resource operations plan and the giving of a notice under section 101 of the Act. A notice under section 101 may be given at any time before the resource operations plan commences.

Section 104 (Public notice of intention not to proceed with making of draft resource operations plan)

Clause 43 omits the reference to ‘final’ in section 104 to clarify that the Minister may wish to not proceed with the preparation of a resource operations plan at an earlier stage than the ‘final resource operations plan’ stage.

Section 106 (Minor amendment of resource operations plan)

Clause 44 renames the section heading to ‘Minor or stated amendments’. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section. The Act sets

out two processes for the amendment of a resource operations plan. The first process (the long form process) generally requires the amendment process is the same process for the preparation of a resource operations plan. The second process (the short form process) for the amendment of a resource operations plan is where the amendment is not of substance or identified as an amendment of this type in the instrument. The approach to be taken in determining whether a long form or short form process is used is:

- The long form process will be used if the amendment is of substance. For example, an amendment that would result in a change to a water entitlement would necessarily be considered a change of substance.
- The short form process will be used if the amendment is set out in the resource operations plan, for example, amending the monitoring practices or amending the operational arrangements.

Section 107A (Authority to interfere with water)

Clause 45 inserts a new section to clarify that a resource operations licence authorises the holder of the licence to interfere with the flow of the water in the watercourse or lake to the extent necessary to operate the water infrastructure to which the licence applies. It has always been the intention under the Act that a resource operations licence, where granted, constituted the authority to interfere with water in relation to water infrastructure in a watercourse or lake. It is not necessary for a water licence to also be granted to the operator of the water infrastructure. This amendment removes any doubt.

Section 110 (Conditions of resource operations licence)

Clause 46 provides for an additional statutory condition for a resource operations licence in certain circumstances. In the event of there being two resource operations licences within the one water supply scheme (that is, where the infrastructure, the subject of the licences, operate in an integrated arrangement for the supply of water within the one area), it is a condition of each licence that the single set of operating arrangements of the resource operations plan for the scheme relate to all the licence holders.

Section 113 (Minor amendment of resource operations licence)

Clause 47 renames the section heading to ‘Minor or stated amendments’. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section.

Replacement of chapter 2, part 4, division 3 subdivision 4 hdg

Clause 48 renames the subdivision ‘Subdivision 4—Transferring or amalgamating resource operations licences’.

Section 118A (Amalgamating resource operations licences)

Clause 49 provides for an application by a resource operations licence holder to amalgamate, into a single licence, the licence with one or more resource operations licences in the same water supply scheme. The application, amongst other matters, must be accompanied by the written consent of the holder of the other resource operations licence proposed to be amalgamated.

Chapter 2, part 4, division 4 subdivision 1

Clause 50 renumbers subdivision 1 as subdivision 1A.

New chapter 2, part 4, division 4 subdivision 1

Clause 51 inserts a new subdivision 1 ‘Preliminary’ to include a new clause to define the meaning of ‘volumetric limit’ for the purposes of division 4 of this part of the Act. The volumetric limit is entered on the water allocations register for the water allocation. The volumetric limit, unless a resource operations plan includes a water sharing rule about volumetric limits that apply to a water allocation, is the maximum volume of water, in megalitres, that may be taken under the allocation during a period of time or circumstances as stated in the resource operations plan. Where a resource operations plan does contain a water sharing rule about volumetric limits, the volumetric limit is used to calculate (under the rule) the maximum volume of water that may be taken during a particular period or circumstance. For example, this may allow for a transitional mechanism where an individual’s current use is in excess of that which can be sustained under the plan or to account for particular seasonal or other management arrangements that necessitate a variation in this limitation.

Section 121 (Converting water entitlements)

Clause 52 amends when the conversion of existing authorisations occurs under a resource operations plan. The conversion will occur on the day the resource operations plan commences rather than the day the plan takes effect. The resource operations plan takes effect when its approval is notified in the gazette under section 103 of the Act. However the resource operations plan can state the day on which the plan or part of the plan commences. In addition the clause also corrects a reference to section 101 in subsection (4) to section 101(a). The clause also renumbers sections 121(6) and (7) and relocates the subsections into section 150. The current subsections 121(6) and 121(7) provide for the recording on a water allocation of interests that existed in relation to land to which licences for water attached under the Act. These sections are more relevant to section 150 of the Act. Section 150 provides for how interests and dealings may be registered for a water allocation on the water allocations register.

Section 125 (Amending water allocations)

Clause 53 omits the reference to licence number and replaces with name in relation to a resource operations licence. Name and not licence number is the more appropriate reference to a resource operations licence.

Section 127 (Registration details for water allocations)

Clause 54 amends the registration details for a water allocation in section 127 of the Act. The reference to volume of water is amended to refer to 'nominal volume'. Nominal volume is further defined in the dictionary in schedule 4 to the Act. The nominal volume is a key attribute on a water allocation that is used in ensuring that the holder's share of the water available is not diminished or increased as the result of a change or reconfiguration of a water allocation. This is outlined further in the explanatory note for clause 56. The section is also amended to include any conditions required by the chief executive to be entered on the register as part of the registration details. There is a minor amendment to subsection (2) to require the name and not the number of the resource operations licence as part of the registration details. In addition, two new elements are required to be entered on the water allocations register under subsection (3) being the volumetric limit and the water allocation group to which the allocation belongs. Volumetric limit is defined in clause 51 and water allocation group is defined in the dictionary in schedule 4 to the Act. The addition of the water allocation group will make it easier to identify the

water allocation security objective associated with the particular water allocation.

New Section 127A (Conditions of a water allocation)

Clause 55 inserts a new clause to provide that conditions of a water allocation include, amongst others, the volume of water authorised to be taken under the allocation; any conditions required by the chief executive to be entered on the water allocations register and other conditions prescribed under a regulation. It is an offence under section 812 of the Act to contravene a condition of a water allocation.

Section 128 (Meaning of “change to a water allocation”)

Clause 56 amends section 128(1) of the Act for consistency with the new and amended attributes of a water allocation included in section 127 under the Bill.

The clause also amends section 128(2) to clarify the basis on which a reconfiguration of a water allocation will be permitted.

For a water allocation not managed under a resource operations licence a reconfiguration must not change the nominal volume. A reconfiguration may simultaneously change other elements, however, it must not allow the taking of more than the water allocation’s share of the total water available. The nominal volume is the number used in calculating the water allocation’s share of the total water available to be taken by holders of water allocations in all water allocation groups in a water resource plan area. The *total water available* is the total volume of water that may be taken in a period in accordance with water sharing rules by all holders of water allocations (that are not managed under a resource operations licence) within the relevant water resource plan area. As an example, a water allocation may have a nominal volume of 100ML and conditions stating the maximum rate for taking water, the flow conditions under which the water may be taken and a volumetric limit. For the purpose of this example, it may be assumed that the total nominal volume for all relevant water allocations in the Plan area is 10,000ML. The nominal allocation’s share of the total water available would therefore be one hundredth of the total water available. In any reconfiguration, the nominal volume stated on the water allocation must remain at 100ML, however, the conditions may be varied provided that the reconfigured water allocation does not allow the taking of more water, on a long-term basis, than its one hundredth share of the total water available.

For a water allocation managed under a resource operations licence a reconfiguration of any of the elements for the water allocation must not increase that water allocation's share of the water available to the resource operations licence holder to supply all the water allocations managed under that licence. In addition, the reconfiguration must not increase the water available to the resource operations licence holder. The *water available to the resource operations licence* holder means the cumulative of the water available to be taken under all water allocations supplied under the resource operations licence and the water covering the in-system losses incurred in storing and releasing water in accordance with the resource operations licence for the associated water supply scheme. For example, a water allocation with a nominal volume of 100ML in the high priority group for a water supply scheme may be converted into an equivalent volume in the medium priority group for that water supply scheme and *vice versa*. The new nominal volume might be say 95ML - calculated after taking into account that more water needs to be held in storage by the licence holder in order to achieve the higher water allocation security objective associated with the high priority group. As a consequence of holding more water in storage, there will be more losses to evaporation and seepage from the storage. Accordingly, a proportionally smaller nominal volume will be available to be taken by the water allocation holder in order to maintain his or her overall share of the water available to the resource operations licence holder. Such a product change may be sought to better suit the intended use of the water. For instance, some uses (urban, industrial and high value crops) warrant a higher level of reliability, and hence input cost, than others. The requirement that there must not be an increase in the total water available to the resource operations holder ensures that any change in the water product is derived through a reconfiguration of the existing authorities rather than through the unintended consumption of any allocated water reserves.

Section 128A (Amalgamation or subdivision of water allocations)

Clause 57 clarifies the time period for which a certificate under this section remains valid. The certificate remains valid until the date stated in the certificate or if the certificate does not state a date for 40 business days. The clause also clarifies that it is the water allocation holder, and not the applicant, who gives the certificate to the registrar for the registrar to record the details of the amalgamation or subdivision. This amendment provides for the circumstances where the applicant, whilst being the water allocation holder at the time of making the application, may transfer the water

allocation to another entity. In that case, the applicant would no longer be dealing with the water allocation.

Section 129 (Changing water allocations under water allocation change rules)

Clause 58 clarifies the time period for which a certificate under this section remains valid. The certificate remains valid until the date stated in the certificate or if the certificate does not state a date for 40 business days. The clause also clarifies that it is the water allocation holder, and not the applicant, who gives the certificate to the registrar for the registrar to record the details of the amalgamation or subdivision. This amendment provides for the circumstances where the applicant, whilst being the water allocation holder at the time of making the application, may transfer the water allocation to another entity. In that case, the applicant would no longer be dealing with water allocation.

Section 134 (Deciding application to change water allocation)

Clause 59 clarifies the time period for which a certificate under this section remains valid. The certificate remains valid until the date stated in the certificate or if the certificate does not state a date for 40 business days.

Section 135 (Registering approved application to change water allocation)

Clause 60 clarifies that it is the water allocation holder, and not the applicant, who gives the certificate to the registrar for the registrar to record the details of the amalgamation or subdivision. This amendment provides for the circumstances where the applicant, whilst being the water allocation holder at the time of making the application, may transfer the water allocation to another entity. In that case, the applicant would no longer be dealing with water allocation.

Insertion of new ch 2, pt 4, div 5, sdiv 1 hdg

Clause 61 replaces the existing subdivision heading with ‘Subdivision 1—Allocations not managed under a resource operations licence’

Section 141 (Application of div 5)

Clause 62 amends section 141 by replacing the reference to division with subdivision.

Section 146 (Application of s243)

Clause 63 amends section 146 by replacing the reference to division with subdivision.

New subdivision—‘Subdivision 2—Allocations managed under a resource operations licence and Section 146A (Application of subdiv 2) and Section 146B (Arrangements for seasonal water assignments)’

Clause 64 inserts a new subdivision ‘Subdivision 2—Allocations managed under a resource operations licence’ and a new clause. This new subdivision provides for seasonal water assignments for water managed under a resource operations licence. Seasonal water assignment for water managed under a resource operations licence is not currently provided for under the Act. However a resource operations licence holder may approve what is commonly referred to as ‘temporary transfers’ of water under water allocations managed under the resource operations licence. This amendment seeks to acknowledge these ‘temporary transfers’ as seasonal water assignments. The clause provides that these seasonal water assignments are permitted on the basis a water resource plan or resource operations plan allows for seasonal water assignments.

The clause provides that a holder of a water allocation, managed under a resource operations licence, may enter into an arrangement for a seasonal water assignment with another entity. This arrangement does not necessarily need be with another customer of the resource operations licence. The consent of the resource operations licence holder is required for the seasonal water assignment. The resource operations licence holder may only give its consent provided the assignment is not inconsistent with the water assignment rules under the applicable resource operations licence.

Section 148 (Water allocations register)

Clause 65 provides for a head of power to set fees for the water allocations register and other matters dealing with the lodgement of documents in the registry.

Section 150 (Interests and dealings that may be registered)

Clause 66 clarifies how the giving of a section 101(b) notice affects the registration of interests on a water allocation in the water allocations register. Currently under subsection (3), if the chief executive is given notice under section 101(b), the registering of interests or dealings on the water allocation is effectively frozen for 40 business days. It has been recognised that a fixed period of 40 business days is unnecessarily restrictive. For example, in circumstances where only 1 section 101(b) notice has been given, this means the registering of other interests or dealings are still prevented until the expiry of 40 business days, where the interest under the section 101(b) notice was registered earlier within the 40 business days. This amendment provides that the ‘freezing’ of the register for a water allocation, to which 1 or a number of section 101(b) notices have been given, will either be a maximum period of 40 business days or an earlier period if all interests under the section 101(b) notices are recorded on the register. For example, if the chief executive receives two section 101(b) notices and the requisite instruments to register the interests are lodged with the registrar before the end of 40 business days, the registrar may record other dealings for the water allocation after registration of the two interests under the section 101(b) notices.

Section 151 (Application of *Land Title Act 1994* to water allocations register)

Clause 67 amends the extent to which the *Land Title Act 1994* applies to the water allocations register. Currently a lease of a water allocation is an interest or dealing that may be registered similar to land. For land, there can be a lease of part or whole of a lot. Section 64 of the *Land Title Act 1994* applies. However it is not intended that part of a water allocation may be leased. This amendment provides that section 64 of the *Land Title Act 1994* does not apply to matters under this part of the Act to the extent it permits a lease of part of a lot. To lease part of a water allocation, the water allocation holder would need to subdivide the water allocation, for example into 2 new water allocations, and then lease one of the new water allocations.

Section 152 (Application of other Acts to the water allocations register)

Clause 68 omits the reference to the application of the *Stamp Act 1894*, section 66A. The *Duties Act 2000* has repealed the *Stamp Act 1894*. The *Duties Act 2000* specifically provides for mortgage duty on caveats over water allocations. This clause also provides for how the Valuation of Land

Act applies to the water allocations register. The provisions of the Valuation of Land Act regarding the obtaining and dealing with sales information about land will be applicable as if a reference to land is a reference to a water allocation. This will allow sales information to be obtained and provided about water allocations.

Sections 154—166 (Section numbers not used)

Clause 69 inserts a new clause to replace these unused sections and include new unused section numbers. This clause provides the provisions of the Act in relation to the water allocations register and its registration of interests in water allocations will prevail over any Commonwealth corporations law provisions dealing with a charge over water. The Commonwealth law allows for this type of displacement. For the purposes of ensuring the integrity of the water allocations register under the Act as a mechanism for registering interests over water allocations, the amendment provides for the displacement provision.

Renumbering of ch 2, pt 5, div 2, sdiv 1

Clause 70 renumbers this subdivision as subdivision 1A.

Insertion of new ch 2, ptg 5, div 2, sdiv 1

Clause 71 inserts a new subdivision ‘Preliminary’. The clause clarifies that an interim resource operations licence authorises the holder of the licence to interfere with the flow of the water in the watercourse or lake to the extent necessary to operate the water infrastructure to which the licence applies. It has always been the intention under the Act that an interim resource operations licence, where granted, constituted the authority to interfere with water in relation to water infrastructure in a watercourse or lake. It is not necessary for a water licence to also be granted to the owner/operator of the water infrastructure. This amendment removes any doubt.

Replacement of ss 200-202 (Section numbers not used)

Clause 72 inserts a new subdivision ‘Subdivision 5—Seasonal water assignments of interim water allocations’. This new subdivision provides for seasonal water assignments in relation to interim water allocations. Seasonal water assignments for interim water allocations are not currently provided for under the Act. However an interim resource operations licence

holder may approve what is commonly referred to as ‘temporary transfers’ of water under interim water allocations managed under the interim resource operations licence. This amendment seeks to acknowledge these ‘temporary transfers’ as seasonal water assignments.

The clause provides that a holder of an interim water allocation, managed under an interim resource operations licence, may enter into an arrangement for a seasonal water assignment with another entity. This arrangement does not necessarily need be with another customer of the interim resource operations licence. The consent of the interim resource operations licence holder is required for the seasonal water assignment. The interim resource operations licence holder may only give its consent provided the assignment is not inconsistent with the applicable interim resource operations licence.

In addition, the amendment renumbers the section numbers not used under this division.

Section 203 (Definition for pt 6)

Clause 73 includes an applicant for a mineral development lease or mining lease under the *Mineral Resources Act 1989* as an owner of land. This amendment allows the applicant to apply for the necessary water licence concurrently with making the mining tenure application.

Section 206 (Applying for a water licence)

Clause 74 clarifies the circumstances when an owner of land, not adjacent to a watercourse, lake or spring or where an aquifer is not under the owner’s land, may apply for a water licence. An owner of land may apply to take water from a watercourse, lake or spring where either the watercourse, lake or spring does not adjoin any of the applicant’s land or where the watercourse, lake or spring does adjoin the applicant’s land but the proposed taking of water is not on the applicant’s land but on other land adjacent to the watercourse, lake or spring. In addition, an owner of land may apply to take water from an aquifer where the aquifer is not under the applicant’s land. The clause also renumbers the paragraphs in subsection (4).

Subsection (3) is amended to renumber the paragraphs. Subsection (4) is amended to specifically include the State as an entity that can apply for a water licence where it may not be the owner of the land to which the licence would relate.

Section 211 (Deciding application for water licence)

Clause 75 clarifies the types of decisions that the chief executive may make on an application for a water licence. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

Section 211A (Effect of disposal of land to which application for water licence relates)

Clause 76 deals with the effect on an application for a water licence of the disposal of part of the land to which the application relates. The purpose of the new clause is to prevent confusion or dispute about the status of an application where the applicant has disposed of part of the land, to which the application relates, but has not taken steps to withdraw the application.

Section 213 (Contents of water licence)

Clause 77 includes the State as an entity. The earlier amendment contained in clause 74 provided for the State to be able to apply for a water licence where it was not the owner of the land to which the licence would relate. In addition the paragraphs have been reordered.

Section 219 (Minor amendment of water licence)

Clause 78 renames the section heading to 'Minor or stated amendments'. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section.

Section 220 (Renewing water licence)

Clause 79 clarifies the process for renewing a water licence.

Section 224 (Amalgamating water licences)

Clause 80 clarifies that a holder of a water licence listed in section 213(e) may also apply to amalgamate 2 or more water licences. Currently the section only refers to water licences attached to land. The entities listed in section 213 (e) hold water licences that are not attached to land. The

amendment also makes it clear that any original water licences expire when the new licence is given.

Section 225 (Subdividing water licence)

Clause 81 amends the section to make it clear that an original water licence expires when the new licences are given.

Section 229B (Effects of acquisition of land to water licences)

Clause 82 extends the application of the section to water licences attached to land not only adjoining a watercourse, lake or spring but also a water licence to take underground water and a water licence to take water from a source that does not adjoin the applicant's land. In the case of a water licence, attached to land, to take water from an aquifer under the land, if part of the land is acquired, rather than the licence automatically expiring, the licence will attach to the remaining land provided the remaining land is still above the aquifer or the conditions of the licence still allow the water to be taken from the remaining land. Otherwise the licence will expire. It is a similar situation for a water licence, not attached to land, granted to an entity under section 206(3) of the Act. If part of the land, on which the water is used, is acquired, rather than the licence automatically expiring, the licence will continue provided water can still be delivered to the remaining land. Otherwise the licence will expire.

Section 236 (Application of ss 243,244 and 246 to water permit)

Clause 83 inserts a new heading and replaces the reference to section 246 with the new renumbered section 25.

Section 240 (Deciding application for water permit)

Clause 84 clarifies the types of decisions that the chief executive may make on an application for a water permit. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

Section 246 (Limiting water taken under water licence or permit)

Clause 85 amends the section to include a water licence or permit for interfering with water. In addition, the section is renumbered as section 25

and relocated to the new chapter 2, part 2 division 2. As this section deals with limiting the taking of water, it is more appropriate that it is located in the part of the Act dealing with water rights.

Section 269 (Deciding application for permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring)

Clause 86 clarifies the types of decisions that the chief executive may make on an application for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

Section 282 (Criteria for deciding application for allocation of quarry material)

Clause 87 is a minor amendment replacing the word ‘for’ with ‘in relation to’.

Section 283 (Deciding application for allocation of quarry material)

Clause 88 clarifies the types of decisions that the chief executive may make on an application for allocation of quarry material. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

Section 301 (Deciding application for water bore driller’s licence)

Clause 89 clarifies the types of decisions that the chief executive may make on an application for a water bore driller’s licence. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

This clause also amends subsection (4) by providing the chief executive must give the information notice within 30 business days after deciding the application.

Section 303 (Refusing application for water bore driller’s licence)

Clause 90 omits this section. The amendment to section 301, by inserting the time period in which the chief executive must give an information notice in section 301(4), makes this section unnecessary.

Section 307 (Minor amendment of water bore driller's licence)

Clause 91 renames the section heading to 'Minor or stated amendments'. The reference to minor only in the heading does not appropriately reflect the types of amendments that are contemplated by the section.

Section 308 (Renewing water bore driller's licence)

Clause 92 amends subsection (6) by providing when the chief executive is required to give an information notice. The amendment removes the need for an information notice to be given when the chief executive approves an application. Given the application is granted without variation there is no merit in the giving of an information notice.

Section 308A (Reinstating expired water bore driller's licence)

Clause 93 makes provision for a licensee to apply to reinstate an expired water bore driller's licence. This reinstatement provision provides the opportunity for a licensee who has failed to apply for renewal of the licence before its expiry to seek continuity of a licence. The period in which a reinstatement application may be made is 30 business days from the expiry of the licence. If a reinstatement application is made, the expired licence is automatically taken to be in force from the date of application lodgement until a decision is made. The decision options and procedures for dealing with the reinstatement application are specified to be the same as for the renewal of a licence under section 308 of the Act.

Section 331 (Deciding application for operations licence)

Clause 94 clarifies the types of decisions that the chief executive may make on an application for an operations licence. For clarity, the amendment provides that the chief executive may grant an application in whole or in part.

Section 376 (Notice of intention to stop operating as a service provider)

Clause 95 provides for the requirement in section 376 that if a service provider stops the supply of a service, that the service provider gives the regulator a notice, in the approved form, within 5 business days after the supply is stopped.

Section 376A (Cancellation of registration)

Clause 96 in line with *clause 95* requires the regulator on receipt of the approved notice, to cancel the service provider's registration and give the service provider notice of the cancellation.

Section 422 (Purpose of div 2)

Clause 97 clarifies that the purpose of the division is to ensure that customers who do not have a contract for the supply of registered services, with the service provider, are protected by the standards relating to the supply of registered services.

Section 423 (Application of div 2)

Clause 98 in line with *clause 97* clarifies that this section applies to customers who do not have contracts for the supply of registered services with the service provider. This clause also amends the incorrect reference to the '*Parliamentary Commissioner Act 1974*' with the correct name of the Act.

Section 426 (Complying with customer service standard)

Clause 99 amends section 426 in line with *Clause 97* to clarify the application of this section to customers who do not a contract for the supply of registered services with the service provider.

Section 427 (Customer complaints)

Clause 100 in line with *Clause 97* clarifies the application of this section to customers who do not have the contract mentioned in the amended section 423 in *Clause 93*.

Section 428 (Revising customer service standard)

Clause 101 in line with *Clause 97* clarifies the application of this section to service providers who do not have the contract with customers mentioned in the amended section 423 in *Clause 98*.

Section 429 (Reviewing customer service standard)

Clause 102 in line with *Clause 97* clarifies the application of this section to customers of the service provider who do not have the contract mentioned in the amended section 423 in *Clause 98*.

Section 432 (No charge for water for fire fighting purposes)

Clause 103 provides for the application of the exemption to a service provider's hydrant used for fire fighting purposes.

Section 433 (Water from fire fighting system to be used only for fire fighting purposes)

Clause 104 provides for a penalty for taking water from a service provider's hydrant for a purpose other than fire fighting purposes. The section heading has also been renamed.

Section 434 (Small service providers may apply for exemptions from divs 1-3)

Clause 105 allows a small service provider to apply to the regulator for an exemption from all or part of division 3, which allows a small service provider, who is exempted from preparing either a strategic asset management plan or customer service standards, to be exempted from complying with annual reporting requirements.

Section 435 (Deciding application for exemption)

Clause 106 amends section 435 in line with *Clause 105*.

Section 436 (Notice on decision on application for exemption)

Clause 107 amends section 436 in line with *Clauses 105* and *106*.

Section 491 (Safety conditions for existing referable dams)

Clause 108 provides that the chief executive can issue guidelines for the imposition of safety conditions. The chief executive is to have regard to any guidelines, if any, issued by the chief executive for applying safety conditions to a referable dam when deciding safety conditions.

Section 492 (Changing conditions)

Clause 109 provides that, when safety conditions are changed, the chief executive must have regard to the guidelines (if any) issued by the chief executive for applying safety conditions to a referable dam.

Section 583 (Identification and disclosure of cross-subsidies)

Clause 110 amends section 583 to clarify the application of this section to ratepayers as well as customers of water authorities.

Section 598 (Composition of board for water authorities)

Clause 111 clarifies that the requirement to publish a notice in the gazette also applies to a water authority established under section 690. Also, the requirement in section 598(1) does not apply to the authority if the regulation under section 548 merely remakes subordinate legislation under which the authority has been established.

**Section 603A (Investigations about eligibility for appointment) and
Section 603B (Criminal history is confidential document)**

Clause 112 authorises the chief executive to make investigations about a person's eligibility for appointment as director, and to ask for, and obtain, a criminal history report about the person from the commissioner of the police service. The report or information contained in the report, obtained, is confidential. Disclosure of the report may incur a penalty unless authorised by the chief executive or required or permitted by law.

Section 604 (Term of office for directors of water authorities other than Gladstone Area Water Board)

Clause 113 provides for terms for directors of up to three years, enabling directors to be appointed at different times with the completion of their term being in line with other directors.

Section 605 (Term of office for directors of Gladstone Area Water Board)

Clause 114 provides that a director continues in office until the director's substitute is appointed, to ensure that there are sufficient directors appointed at all times.

Section 690 (Amalgamating water authorities and authority areas)

Clause 115 amends section 690 by deleting subsections (2)(b) and (2)(c) to ensure consistency with the provisions relating to initial establishment of water authorities. The clause also renumbers the paragraphs in subsection (2).

Section 697 (Recovering water authority's dissolution costs)

Clause 116 provides that the State may recover costs of recovering amalgamation or dissolution costs.

Section 747 (Power to enter land to collect information)

Clause 117 provides for an additional basis for authorised officers to enter land to collect specified information about statutory authorisations, under section 20(6) of the Act, to take or interfere with water, as part of the resource management obligations of the State.

Section 750 (Entry with consent)

Clause 118 replaces 'division' with 'chapter' to clarify powers available to authorised officers.

Section 752 (Issue of warrant)

Clause 119 replaces 'division' with 'chapter' to clarify powers available to authorised officers.

Section 758 (Power to require name and address)

Clause 120 amends the section by removing the reference to 'just' and replacing with "recently" committed to allow authorised officers to require a person's name and address in circumstances where the authorised officer

reasonably believes an offence has been recently committed and the person was involved in the commission of an offence.

Section 811 (Tampering with devices)

Clause 121 includes additional features of devices referred to in this section. In addition, the meaning of ‘tamper’ with a device is clarified.

Insertion of new ss 812A and 812B

Clause 122 provides for the holder of a water allocation, interim water allocation, water licence or water permit to be responsible, in the absence of evidence to the contrary, for the taking of unauthorised water. For example, taking water in excess of the amount authorised under the applicable authorisation. Where the holder has passed on responsibility for the water use to another person and where the holder sufficiently proves the devolution of that responsibility, the clause provides a defence to the holder. The holder is able to nominate another person as the ‘user’ of the authorisation who in fact has the responsibility and control of the works to take water and has knowledge of the conditions of the authorisation for the taking or interfering with water. This new provision is also linked to the *State Penalties Enforcement Act 1999* (SPER) where an infringement notice may be issued for excess taking of water in breach of a condition of an authorisation.

Section 814 (Destroying vegetation, excavating or placing fill without permit)

Clause 123 clarifies the type of development permit under the IPA that will permit the destruction of vegetation, excavation or placing of fill without the need to also obtain a permit under section 269 of the the Act. The amendment also renumbers the paragraphs.

In addition, a permit under section 269 of the Act will not be required where the destruction of vegetation, excavation or placing of fill is required because of an emergency situation only endangering the life or health of a person or the water quality or physical integrity of a watercourse, lake or spring. In this instance, written notice is required to be given to the chief executive as soon as practicable after starting to carry out the activity.

A further amendment is made to provide for an offence if a person contravenes a condition of a permit unless the person has a reasonable excuse.

Section 864 (Review decision)

Clause 124 provides that a review notice is to be given for all review decisions rather than for only a review decision that is not the decision sought by the applicant. The clause also moves the appeal proceeding for an appeal against the decision to issue a compliance notice to the same jurisdiction, the Magistrates Court, as for prosecution proceedings for offences against the Act. This will ensure consistency for proceedings as prosecution against any offence is also in the Magistrates Court.

Section 865 (Stay of operation of original decision)

Clause 125 clarifies the process for applying for a stay of the original decision. The current section mistakenly referred to the applicant having either applied for arbitration on the review decision or having appealed against the review decision before seeking a stay of the original decision. This amendment clarifies that the jurisdiction for an application for the stay of an original decision is the Court to which an applicant could subsequently appeal, if that becomes necessary. In addition, consistent with the amendment to section 864 inserted by the Bill, an applicant for internal review of an original decision for the giving of a compliance notice, may apply to the Magistrates Court for a stay.

Section 877 (Who may appeal)

Clause 126 changes the court, from the Land Court to the Magistrates Court, to which an interested person, given a compliance notice by the chief executive, may appeal against the review decision. Currently the applicable court is the Land Court. This will ensure consistency for proceedings as prosecution against any offence is also in the Magistrates Court.

Section 931 (Proceedings for offences)

Clause 127 provides for an amendment that, for the purposes of the Criminal Code, distinguishes between when a prescribed offence is a crime or misdemeanour.

Section 955 (Governor in Council may appoint administrator to operate infrastructure)

Clause 128 provides for a date when the appointment of an administrator will become effective, allowing more flexibility in the appointment of an administrator.

Section 967 (IPA approval for development subject to approval under this Act)

Clause 129 clarifies the interrelationship between a development permit under IPA and the resource manager's consent and approval given under the Act. The clause also provides that carrying out self assessable development being operational work mentioned in schedule 8, part 2, item 9A(a) to IPA will grant also a right to occupy unoccupied State land within the bed and banks of the watercourse or lake.

Section 968A (Chief executive may give directions about removal of quarry material)

Clause 130 inserts a provision similar to the current section 968 of the Act in relation to giving of directions about the removal of quarry material. Despite the IPA, the chief executive may give a show cause notice as to why the holder of an allocation notice, issued under the Act, should not be required to change the way in which quarry material is being removed. The relevant development permit for the removal of the quarry material is changed to the extent of the chief executive's requirements.

Sections 973-983 (Section numbers not used)

Clause 131 replaces the unused section numbers with a new part 2A. This new part provides for the chief executive to appoint a person as a metering contractor for the purpose of carrying out certain prescribed activities for metering installation, maintenance and reading of meters installed for taking or interfering with water.

The clause provides for the appointment by the chief executive of a metering contractor. The chief executive cannot appoint a person as a metering contractor unless satisfied that the person has the necessary competencies and experience.

The clause provides that a metering contractor must be issued with an identity card. This is to ensure that the public can be assured that only

properly authorised persons exercise the powers under this Bill. On ceasing to be a metering contractor the person must hand back the identity card.

The clause makes it an offence if a metering contractor fails to return an identity card within 15 business days of ceasing to be a metering contractor.

The clause requires that a metering contractor display their identity card when exercising a power under this Bill.

The clause provides for a metering contractor to enter land for those operational purposes stated in this clause. Notice of at least 10 business days must be given of entry and the purpose of entry unless the occupier consents to the entry. If there is no person at the land at the time of entry, the notice must be left on the land in a reasonably secure and conspicuous place. In addition, the metering contractor may require a person at the land, to provide requested information to assist the metering contractor carry out the activity that is the purpose of entry.

The clause makes it an offence for a person to obstruct a metering contractor in the exercise of a power under the Bill, unless the person has a reasonable excuse.

The clause provides for when a metering contractor, in exercising powers under the Bill, damages anything. The metering contractor must immediately give notice of the damage to the person who appears to be the owner or in control. If for any reason this is not practicable, the metering contractor must leave the notice in a reasonably secure and conspicuous place. This clause does not apply to damage the metering contractor believes on reasonable grounds is trivial.

The clause provides for compensation being claimed from the metering contractor if the person incurs loss or expense because of the exercise or purported exercise of a power by the metering contractor. Payment of compensation may be claimed and ordered in a proceeding in a court of competent jurisdiction.

Replacement of sections 999-1003 (section numbers not used)

Clause 132 inserts new unused section numbers.

Section 1004 (Referral panels established by the chief executive)

Clause 133 amends the basis on which a referral panel may be established by the chief executive to also include advising on matters about amendments to a resource operations plan.

Section 1004A (Referral panels established by the Minister)

Clause 134 amends section 1004A by replacing the reference to section 42A with the new renumbered section 27.

Section 1013B (Non payment of fees for charges)

Clause 135 inserts a new provision about non payment of fees and charges payable under the Act. For example, currently a holder of a water licence is required to pay any applicable fee for the water licence or charge for the water used under the licence. Any amount of fees or charges not paid is taken to be a debt due or payable to the State. The current processes for recovering unpaid fees and charges do not provide a suitable immediate remedy. The amendment provides for the suspension of a water entitlement holder's right to take and use the water, under the water entitlement, in circumstances on non payment of fees and charges. The prohibition cannot extend to the taking of the minimum volume of water necessary for stock and domestic purposes (eg the minimum amount necessary for health and sanitation in respect of the domestic entitlement). The amendment is similar to a provision in the now repealed *Water Resources Act 1989*, and the limitation is similar to that in section 457 of the Act.

Section 1037 (Local government authorities)

Clause 136 amends section 1037 by allowing the chief executive, with the consent of the authority holder, to replace the authority with a water licence. Currently the authority would only be replaced as an outcome of the water planning process, for example, under a resource operations plan.

Section 1041 (Completed water allocation and management plans)

Clause 137 provides for a number of specified amendments to be made to the Fitzroy water resource plan (WRP) without the need to advertise the amendment under chapter 2 part 3. These amendments are necessary due in part to the WRP being developed under the now repealed *Water Resources*

Act 1989 and not the Act. Also in the development of the draft resource operations plan, to implement the WRP, certain matters need to be amended.

Clause 137(2) allows amendments to:

- section 20(1) of the WRP to state how the volume for a water allocation established through the conversion of an existing authorisation will be decided for consistency with the proposed changes under the Bill in relation to nominal volume and volumetric limit (factors in determining the volume of water that may be taken under a water allocation):
- section 20(2) of the WRP to state how the priority group for a water allocation will be determined.
- section 20(4) of the WRP about determining the maximum rate at which water may be taken under a water allocation.
- section 30(c) of the WRP to allow for an amendment of schedule 6 of the WRP.
- section 30(d) of the WRP to necessarily allow the inclusion of additional water allocation security objectives for new water allocation priority groups currently permitted to be added under section 30(d).
- section 30(d) of the WRP to allow changes to a water allocation security objective if the amendment does not adversely affect existing water allocations, environmental flow objectives or outcomes of the plan.
- section 30(e) of the WRP for consistency with the Act and to also allow additional water allocation security objectives to be added.
- schedule 6 of the WRP to exclude the application of the first post-winter flow objective to node 15.
- schedule 8 of the WRP to state the water allocation security objectives for allocations in the Dawson Valley Water Supply Scheme in the medium priority group.
- schedule 10 of the WRP about the application of the stated criteria for amending existing authorisations to comply with the WRP.
- make the WRP consistent with the Act. This is necessary because the WRP was developed under the now repealed *Water Resources Act 1989* and not the Act.

Section 1045A (Burnett Basin Final Draft Resource Operations Plan)

Clause 138 allows the chief executive to include in the final draft resource operations plan for the Burnett Basin a reservation of unallocated water for specified water infrastructure, the proposed Barlil Weir project. The infrastructure is defined in the dictionary in schedule 4 to the Act. The reservation for the proposed Barlil Weir project was identified as part of the Barlil Review of Environmental Factors that forms the basis of the Commonwealth and State environmental approvals (under the *Environment Protection and Biodiversity Conservation Act 1999* and *State Development and Public Works Organisation Act 1971* respectively).

This amendment is provided for in circumstances where the draft resource operations plan, released by the chief executive under section 100 of the Act did not detail this reservation. However it is the case the proposed infrastructure, the Barlil Weir project, itself has previously been the subject of public consultation in relation to the environmental approvals obtained for the project.

Section 1046 (Declared subartesian area)

Clause 139 clarifies the process by which the chief executive grants a water licence in a declared subartesian area. The amendment makes it clear when the chief executive is to issue the licence together with an information notice and when the licence has effect.

Section 1048A (Existing licences, permits and approvals)

Clause 140 clarifies the effect of the transition from waterworks licences (under the now repealed *Water Resources Act 1989*) to a water licence under the Act and a development permit (for the works) under the *Integrated Planning Act 1997* (IPA). The amendment clarifies that aspect of the permit that could be taken to be the 'currency period' (within the meaning of IPA) of these deemed development permits despite IPA. In cases where the previous waterworks licence required the works to be installed by a certain date, the deemed development permit lapses on that stated date if the works are not installed by that date. In cases where the previous waterworks licence did not have this specific condition, the deemed development permit lapses at the expiry of the water licence if the works are not installed by the date of the expiry of the water licence.

Section 1055 (Certain dealings with water licences for 2 years after commencement of ch 2, pt 6)

Clause 141 provides for an extension of the application of this section for a further 3 years from the commencement of the section and also amends the heading accordingly.

Section 1083A (Former water areas without water boards)

Clause 142 clarifies the position, and ensures the ability, of the chief executive to administer authority areas continued in existence by section 1083(2) for which no water board was in existence immediately before the commencement of section 1083.

Section 1089 (Existing authorities to take, or interfere with, water)

Clause 143 amends section 1089 by allowing the chief executive, with the consent of the authority holder, to replace the authority (taken to continue as an authority under the Act under which the authority was granted) with a water licence. Currently the authority would only be replaced as an outcome of the water planning process, for example, under a resource operations plan.

Section 1120 (Minister's and Treasurer's power to give joint directions to corporatised entity)

Clause 144 continues in the Act the reserve powers of the Shareholding Ministers over the corporatised entity. These powers are currently located in the transitional provisions. The clause also renumbers and relocates the section to chapter 8, part 4 of the Act.

Section 1122 (Amending interim resource operations plan for Barker Barambah Water Supply Scheme)

Clause 145 inserts a new section to allow the chief executive to amend a specific interim resource operations plan.

Section 1133-1136 (Section numbers not used)

Clause 146 replaces the unused section numbers with a number of new transitional clauses.

The clause provides for a clarification. Currently the Act defines water to mean, amongst other things, ‘water in a watercourse, lake or spring’ and ‘water collected in a dam’. It was always the case that because the definition included these two types of water a reference to a watercourse or lake would necessarily include the water collected in dam where the dam was located across the watercourse or lake. This clause therefore clarifies the intention of the Act that a reference to a watercourse or lake is taken to have always included a reference to water collected in a dam across the watercourse or lake. The meaning of ‘water in a watercourse or lake’, in the dictionary in the Act, includes water collected in a dam across a watercourse or lake.

The clause removes any doubt that the amendments stated in sections 8.1 and 8.2 of the Burnett Basin Draft Resource Operations Plan are amendments to which section 106(b) of the Act applies. That is, the amendments in section 8.1 of the plan are stated amendments for the purposes of section 106(b) of the Act.

The clause also clarifies the application of section 1113 in relation to the interim water allocations (IWA) granted by the chief executive at the time of the corporatisation of SunWater. By way of background, at the time SunWater was corporatised, it was necessary for decisions to be made on the ownership of interim water allocations pertaining to the supply of water to holders of various forms of agreements to supply water. The range of agreements and arrangements as detailed in the definition of ‘authority’ in section 1109 was considered, at the time of the commencement of the Act, to have sufficiently captured all such agreements. On that basis, the chief executive, on good faith, made a decision under section 1113 and granted interim water allocations to the existing customers of SunWater (that is, customers of the earlier State Water Projects).

However an issue has since arisen about the clarity of these provisions in the Act out of an appeal before the Land Court. A local government, that exercised its right of appeal against the decision of the chief executive under section 1113 about the interim water allocation it was granted, has been refused a hearing on merits before the Land Court for lack of jurisdiction. The lack of jurisdiction was founded on a failure to meet the Act’s definition of ‘authority’ in section 1109 of the Act.

The amendment provides for the validation of all earlier agreements for the supply and taking of water as ‘authorities’ within the meaning of section 1109 upon which the chief executive granted an interim water allocation under section 1113. In addition, the amendment provides to an entity which has been, or may be, the subject of a decision of the Land

Court that the Court does not have jurisdiction to consider an appeal in relation to the granting of an IWA under section 1113, a means by which an appeal can be instituted. This is because subclause (1) means that from the commencement of the clause each customer previously granted an IWA by the chief executive is taken to have had a valid authority within the meaning of section 1109. In the event an entity, prior to the commencement of the clause, has appealed against the chief executive's decision about the IWA, and the Land Court has ruled it does not have jurisdiction because the entity did not in fact have an existing authority in order for the chief executive to grant the IWA—the entity has a new right of appeal.

The clause also provides for a transitional provision in relation to the amendment under the Bill that moves the appeal proceedings for an appeal against the review decision to issue a compliance notice from the Land Court to the Magistrates Court. The appeal proceedings in the Magistrates Court will only apply to compliance notices issued after the commencement of the Bill. Therefore all current proceedings on foot in the Land Court will continue together with any current steps taken in relation to seeking an internal review about the giving of a compliance notice.

Schedule 4 (Dictionary)

Clause 147 makes a number of amendments to defined terms in the dictionary in schedule 4 of the Act. Amongst the more significant changes, the clause amends 'watercourse' to remove any doubt that spring tide is a reference to high spring tide. In addition, for consistency with other legislation that deals with similar terms, the word normally is replaced with ordinarily, signifying that a watercourse, unless otherwise declared, is upstream of the high spring tide level. In addition the amendment to 'small service provider' corrects an anomaly to ensure that all service providers fit within a category. For an explanation note on 'nominal allocation' see clause 54 and for an explanation note on 'volumetric limit' see clause 51.