

# Water Supply (Safety and Reliability) Bill 2008

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the *Water Supply (Safety and Reliability) Bill 2008*.

#### Policy Objectives

The *Water Supply (Safety and Reliability) Bill 2008* (the Bill) has three main objectives:

1. to establish a new Bill, the *Water Supply (Safety and Reliability) Bill 2008* for the safety and reliability of water supply, which
  - (a) incorporates the existing regulatory framework in the *Water Act 2000* (Water Act) for service providers and dam safety
  - (b) introduces new regulatory frameworks for recycled water and drinking water primarily for the protection of public health supported by amendments to the *Public Health Act 2005* (Public Health Act) and *Plumbing and Drainage Act 2002* (Plumbing and Drainage Act).
2. to amend the Water Act and the *South East Queensland Water (Restructuring) Act 2007* (SEQ Water Restructuring Act) to implement further elements of the new institutional arrangements for urban water supply in South East Queensland (SEQ), including the establishment of the regulatory framework governing the SEQ water grid and the SEQ water market, as well as providing for the granting of relevant water entitlements to the water grid manager
3. to amend the Water Act to enable full and effective implementation of resource operations plans due to commence in 2008 and ensure the ongoing operation of the Water Act.

## **Reasons for the Policy Objectives**

### **Water Supply (Safety and Reliability) Bill**

The key drivers for the Bill are to put in place new regulatory arrangements for recycled water and drinking water primarily for the protection of public health to apply throughout Queensland, by:

1. supporting the delivery of high quality purified recycled water by the Western Corridor Recycled Water Project to augment SEQ drinking water supply
2. establishing a regulatory framework for the quality of drinking water.

The new frameworks are necessary for the protection of public health and, in the case of recycled water, to ensure continuity of operation when it is required for essential needs of community or industry. The new regulatory frameworks are supported by amendments to the Public Health Act (for setting of key water quality criteria and managing public health risks) and the Plumbing and Drainage Act (for allowing greywater in a prescribed volume not currently regulated under that Act, to be regulated as recycled water).

Currently, chapter 3 of the Water Act provides for regulation of water and sewerage service providers by the chief executive as the regulator and also regulation of dam safety. The existing regulatory framework includes asset management, customer standards, water conservation measures and dam safety. This framework was introduced under the Water Act in 2000, and has been operational since that time, to safeguard the public by ensuring safe and reliable water and sewerage services, which are generally provided by monopoly service providers.

It is proposed to incorporate, and continue unchanged, the current service provider and dam safety regulatory framework into the Bill. The Bill will also incorporate, unchanged, the existing parts of the Water Act dealing with investigations powers, enforcement and offence provisions, legal proceedings and appeal processes and transitional matters necessary to support the existing regulatory framework relocated from the Water Act to the Bill.

This new Bill will deal exclusively with the safety and reliability of water supply throughout Queensland and contribute to the Government's commitment to ensure the safety and reliability of water supply needs.

## **Amendments to Water Act and SEQ Restructuring Act**

The Water Act established the Queensland Water Commission (the Commission) in May 2006 as an independent statutory authority responsible for advising Government on options to achieve safe, secure and sustainable water supplies in SEQ and other designated regions. In August 2006, the Commission was given a Ministerial direction under section 360E of the Water Act, to provide advice to the Government on various aspects of institutional reform of urban water supply arrangements in SEQ.

In May 2007 the Commission released its report 'Our Water – Urban Water Supply Arrangements in South East Queensland'. The report proposed a range of structural and regulatory reforms for urban water supply in SEQ. Following public release and subsequent consideration of responses to the report, the Government announced its decision to reform the way water services are provided in SEQ.

The reforms encompass a number of institutional and regulatory changes occurring over a period to 2010. The first part of the reforms commenced with the passage of the SEQ Water Restructuring Act in November 2007. The SEQ Water Restructuring Act establishes three new statutory authorities to own all bulk water supply assets in SEQ, and provided a process for the transfer of these assets from their current owners to the new entities. The SEQ Water Restructuring Act also provides for the establishment of the water grid manager to operate as the single purchaser of bulk water services and the single seller of bulk water in SEQ.

The Bill establishes the regulatory framework that will govern the operation of the SEQ water grid and the SEQ water market, and provides for the transfer of bulk water entitlements to the water grid manager.

The final stage of the reforms will be the establishment of a local government owned distribution business and retail businesses. This stage will also require legislative amendment, and is scheduled to occur by 2010.

## **Other Amendments to Water Act**

Amendments to the Water Act are necessary to enable full and effective implementation of water resource plans and resource operations plans due for completion in 2008, to deliver on necessary operational departmental needs before late 2008 and to make minor technical amendments.

## **How the Policy Objectives will be achieved**

### **Water Supply (Safety and Reliability) Bill**

The policy objective is achieved by establishing the Bill to provide for the safety and reliability of water supply and amending the Water Act, Public Health Act and Plumbing and Drainage Act.

- Amendments to the Water Act are required to:
  - relocate chapter 3 (Service and infrastructure) and the associated regulator functions for service providers and the regulation of dam safety into the Bill
  - carry over, with necessary changes, the relevant parts of chapter 1 (Preliminary); chapter 5 (Investigations, enforcement and offences); chapter 6 (Reviews, appeals and arbitration); chapter 7 (Legal proceedings); chapter 8 (Miscellaneous) and chapter 9 (Transitional provisions and appeals) into the Bill.
- The Bill will expand the role of the regulator by introducing two new regulatory frameworks for the:
  - production and supply of certain recycled water for the protection of public health and for continuity of operation ensuring reliability and supply to meet the water supply needs of the community or industry
  - supply of drinking water by water service providers (not private suppliers, for example, water supplied by resorts or mining communities) for the protection of public health.
- The Bill will, amongst other matters:
  - prescribe certain recycled water to be subject to the regulatory requirements
  - require a recycled water provider to have an approved recycled water management plan, or an exemption, to produce and supply recycled water
  - allow the regulator to declare a recycled water scheme to be a critical recycled water scheme if necessary to ensure the continuity of operation to meet essential water supply of the community or industry or ensure appropriate management of risks to public health and exercise necessary powers

- require a drinking water provider to have an approved drinking water quality management plan to carryout a drinking water service
- require a drinking water provider to undertake mandatory water quality monitoring and reporting for a prescribed period prior to the requirement for an approved drinking water quality management plan.
- Amendments to the Public Health Act are required to:
  - make the State responsible for ‘public health risk’ associated with drinking water supplied by a drinking water service provider and recycled water produced or supplied under a recycled water scheme
  - oblige drinking water service providers to supply water for drinking purposes that is not ‘unsafe’
  - oblige recycled water providers to supply recycled water that is ‘fit for use’
  - provide for improvement notices to be issued if there is a breach of these obligations and to require the provider to take prescribed action
  - expand the regulation-making power to enable regulations to be made about drinking water, greywater, recycled water and water used for recreational purposes, including for example water quality criteria for drinking water and specified uses of recycled water.
- Amendments to the Plumbing and Drainage Act are required to allow for a greywater treatment plant with capacity to treat 50kL or more of greywater a day to be regulated under the recycled water regulatory framework under the Bill.

### **Amendments to Water Act and SEQ Restructuring Act to further facilitate SEQ urban water reform**

The policy objectives are achieved by:

- amending the Water Act to
  - provide a process for ‘declaring’ water services that contribute to water supply security in the SEQ region, for the purpose of ensuring those services are supplied

- exclusively to the water grid manager, in order to allow the cost of those services to be shared across the region
- provide the Minister with the power to make market rules governing the operation of the SEQ water market and to impose contracts between the water grid manager and market participants
  - provide a process to allow for the transfer to the water grid manager of authorities to take water associated with declared water services
  - exclude liability of consequential losses in relation to legal actions brought by one grid participant against another grid participant, unless the action relates to damages for personal injury or involves wilful default
  - extinguish contracts that currently exist for the supply of water where those contracts are to be replaced by imposed contracts with the water grid manager
  - enable existing contract terms requiring that water must come from a specified source to be overridden, providing the substituted water is fit for purpose
  - clarify that a system operating plan, made by the Commission, can apply to both water supply works and sewerage
  - expand the Commission's information gathering powers to enable information management and reporting by the Commission
  - provide guidance to the Queensland Bulk Water Supply Authority, in undertaking the functions of a referral agency for development applications in declared catchments areas
  - implement the findings of a review of the effectiveness of chapter 2, part 2, division 2A of the Water Act.
  - amending the SEQ Water Restructuring Act to
    - provide for a process by which the Coordinator-General may continue a land resumption process commenced by a local government under the *Acquisition of Land Act 1967* (Acquisition of Land Act) in relation to a bulk water asset transferred subsequently from a local government to a new

water entity pursuant to a transfer notice issued under section 67 of the SEQ Water Restructuring Act

- provide a process whereby a new water entity may obtain appropriate land tenure in respect of bulk water assets situated on land used for multiple purposes by local governments (for example, bulk water supply and recreational purposes)
- provide for the preservation of infrastructure charges, agreements and conditions made by local governments under the Integrated Planning Act, even though the relevant infrastructure has been transferred to one of the new water entities.

### **Other Amendments to Water Act**

The policy objectives are achieved by making a number of amendments to enable full and effective implementation of resource operations plans due to commence in 2008 and ensure the ongoing operation of the Water Act.

### **Alternatives to the Bill**

There are no alternatives to the amendments made by the Bill.

### **Estimated administrative cost to the Government for Implementation**

Most of the proposals in the Bill will be implemented by the relevant departments or agencies responsible for the legislation from within existing resources.

### **Consistency with Fundamental Legislative Principles**

#### Delegation of regulator's powers

Section 4(2)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act) requires legislation to have sufficient regard to the rights and liberties of individuals. Section 4(3)(c) of the Legislative Standards Act provides that whether a legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Clause 15 of the Bill provides for the making of a regulation that states whether a power of the regulator under the Bill may be delegated or not delegated. The power to delegate in the regulation is limited to a particular power and particular person. As it would not be possible for the regulator to exercise all powers personally, it is appropriate that provision be made for delegation.

#### Power for authorised persons to enter places for restricted purposes

Section 4(3)(e) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clauses 33, 34, 35, 36 and 37 of the Bill allow an authorised person, for example, an appropriately qualified employee or contractor of a service provider, to enter places to: disconnect unauthorised connections to the provider's infrastructure; undertake remedial work; install, read, check, maintain or replace meters and; for other restricted purposes such as maintaining and protecting infrastructure. These carry on provisions that existed under the Water Act for the same purpose. These powers of entry are justified on the basis that:

- they are essential for service providers to carry out their business and ensure lawful use of water. For example, water service providers who provide retail water services own the water meters and are responsible for reading and charging customers accordingly, and maintaining and replacing meters as necessary. As a result, water service providers require adequate powers to read meters, check accuracy of meters and maintain or replace meters
- prior notice is given to the person making the unauthorised connection to show cause why the disconnection should not happen. Similarly, the power to enter for restricted purposes such as maintaining and protecting infrastructure is only exercisable after the giving the occupier 14 days' notice, except where urgent action is needed, or if prior consent is obtained
- none of the sections listed above authorise entry to a dwelling house. The powers to enter are limited, for example, to a right to enter to disconnect the unauthorised connection. The right to

enter relates only to the service provider's infrastructure and does not apply to entry of a dwelling house

- compensation is payable should damage arise from exercising the entry powers and authorised persons must produce and display identity cards.

Many of these powers are modelled on the current powers of electricity providers.

Clause 36 of the Bill also establishes that an authorised person may enter a place to install a device to reduce flow of water to premises under section 169. Clause 169 empowers a water service provider to reduce water flow to premises to the necessary minimum for health and sanitation if, after giving written notice, the owner or occupier continues to contravene a service provider or commission water restriction or not pay a rate or charge for the service. These carry on provisions that existed under the Water Act for the same purpose. Although there is no merits appeal in relation to the service provider's action, review under the *Judicial Review Act 1991* is not excluded. Compliance with water restrictions is paramount to a water service provider's ability to manage their current water supplies; this is particularly critical in the current water supply emergency under the Water Act in the SEQ region. Action to restrict flow is considered a measure of last resort and is considered justified as an owner or occupier has an opportunity to remedy repeated breaches before the action is taken.

#### Notification of water quality criteria inconsistency

Section 4(3)(f) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation provides appropriate protection against self-incrimination.

Clause 102 requires the drinking water service provider to notify the regulator of incidences of water quality inconsistent with the provider's drinking water quality management plan. Clause 270 requires a recycled water service provider to notify the regulator of incidences of water quality inconsistent with the provider's recycled water management plan or conditions of an exemption.

In each clause, the notification must be made to the regulator immediately unless for a reasonable excuse. The clause provides that it is not a reasonable excuse to not notify the regulator on the grounds the notification may incriminate the person's protection against self-incrimination.

In both cases, water quality criteria exceedances in drinking water or recycled water can lead to an adverse or serious impact on public health. The serious nature of the risks warrants removing the rights against self-incrimination. To ensure the rights of the person making the notification are protected, the clauses provide that information provided to the regulator is not admissible in evidence against the individual in any civil or criminal proceeding. These clauses seek to balance the need to protect public health and protect the interests of the individual.

#### Dispute resolution process

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals. Section 4(2)(b) of the Legislative Standards Act provides that whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Clause 317 provides for a dispute resolution process to be made by regulation for parties of multi-entity recycled water schemes declared to be a critical recycled water scheme by the regulator. The dispute resolution process will be limited in application to entities within a declared critical recycled water scheme. Certain prescribed recycled water schemes must be declared critical by the regulator under the Bill, for example, a recycled water scheme that is for the purpose of augmenting a town water supply, or alternatively on the discretion of the regulator, to ensure the continuity of operation of the scheme to meet essential water supply needs of the community or industry or ensure appropriate management of risks to public health. Critical recycled water schemes are declared by the regulator in cases where the supply of recycled water poses a greater public health risk or the continuity of operation is required to ensure the water supply needs of a community or industry are met. A means of resolving disputes between parties is necessary to minimise disruption to such schemes to contribute to ensuring the protection of public health and the meeting of essential water supply needs. It is therefore necessary to have the dispute resolution process prevail over any contractual arrangements between the parties that may otherwise deal with resolution of issues in dispute.

### Trade waste notification

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 330 allows the regulator to give notice to a local government about the discharge of trade waste into the local government's sewerage infrastructure that may be permitted under a trade waste approval. The notice may require the local government to either prohibit or alternatively condition the discharge of particular trade waste. This is a limited power to be exercised by the regulator where the regulator must be of the view that the trade waste is likely to adversely affect the quality of recycled water that will be produced from this source. This is a necessary power of the regulator in circumstances where the contaminant in the trade waste must be removed rather than treated during the recycling process to ensure the protection of public health. This clause seeks to balance the need to protect public health and protect the interests of the individual.

### Owners of flood mitigation dams

Section 4(3)(h) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.

Clause 374 provides that an owner of a flood mitigation dam shall not be civilly liable for actions taken or omissions made by the owner honestly and without negligence in operating a dam in accordance with approved procedures. This carries on a provision that existed under the Water Act (and prior to the Water Act, the *South East Queensland Water Board Act 1979*) for the same purpose. Essentially the provision requires that the operator of the approved flood management storage must have, and comply with, Ministerial approved manuals as to how the storage is operated. Where releases from the storage may result in some damage downstream (for example, damage to a bridge) the operator is not liable.

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

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

#### Investigation matters

Section 4(3)(e) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clause 410 and 411 give authorised officers a power to enter land to monitor compliance with the Bill in relation to service provider regulation, dam safety regulation and also drinking water and recycled water regulation and to collect information relating to dam safety (that is, referable dams). These carry on provisions that existed under the Water Act in relation to current service provider regulation and dam safety regulation. These powers of entry are justified because:

- the power to enter is limited to places that are not dwelling houses
- the power is largely limited to the particular purposes referred to above, which are necessary for determining the safety of referable dams to protect population at risk and compliance with approved recycled and drinking water management to ensure the protection of public health
- the only way to monitor compliance with the authorised activity is to enter land. Failure to act immediately could result in a risk to public health and safety
- if the entering is for a different purpose, the occupier must consent, the place must be a public place, entry must be by warrant, or the place must be open as a place of business
- the powers of entry must be exercised at a reasonable time (other than when acting on a warrant, with consent or with reason to believe that unauthorised taking interference or use is occurring).

The power in these clauses is able to be exercised at any time and without warrant, consent or prior notice, due to the need to ensure the protection of public health. There are similar powers in chapter 9, part 2 of the *Environmental Protection Act 1994* (Environmental Protection Act) and chapter 5 of the Water Act.

### Failure to produce document or information

Section 4(3)(f) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation provides appropriate protection against self-incrimination.

Clause 434 provides that it is not an excuse to fail to comply with a document production requirement or information requirement because it might incriminate the individual. This carries on provisions that existed in the Water Act for the same purpose. It is arguable this provision may constitute a breach of the fundamental legislative principles with regard to protection against self-incrimination. However, this provision is required to avoid the situation where an employee of a company can decline to provide information or produce a document thereby making it extremely difficult to obtain sufficient information against the corporate entity regarding an alleged offence. In effect, a corporation can effectively choose to accept a lesser penalty, for example, failure to produce a document, rather than risk prosecution for an offence.

This clause also contains a safeguard in that the information or document produced may not then be used to prosecute the individual required to provide it. Consequently the individual is protected against the consequences of self-incrimination. A similar provision is provided under the *Vegetation Management Act 1999* (Vegetation Management Act), the *Food Act 2006* (Food Act) and the *Fair Trading Act 1989* (Fair Trading Act). In addition it should be noted that the High Court has determined that a corporate entity is not entitled to protect itself against self-incrimination.

### Enforcement provisions for managing adverse impact on public health

Section 4(3)(e) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clause 438 of the Bill provides for the regulator, or an authorised officer, to enter a place, but not a residence, to take reasonable steps in the event the regulator is satisfied or reasonably satisfied urgent action is necessary to prevent or minimise the adverse impact to public health. This provision is justifiable as the steps needed to be taken only relate to urgent matters that constitute an adverse impact on public health and immediate action is required to be taken to respond to such a risk to public health. The exercise

of this power allows an authorised officer to, without consent or warrant, enter a place, but not including a residential place. A power of entry in these circumstances are consistent with other legislation necessary to ensure the requirements of the legislation are complied with and that the potential health risks associated with recycled water and drinking water are minimised as immediately as possible and be appropriately dealt with for the purposes of protecting public health. This clause seeks to balance the need to protect public health and protect the interests of the individual.

Similar provisions are included in the Food Act and also the Environmental Protection Act.

### Criminal history

Clause 461 enables the chief executive to access, through the commissioner of the police service, information about a person's criminal history in circumstances where an authorised officer reasonably suspects the person may be present at a place the authorised officer enters. This carries on a provision that existed under the Water Act. This may be considered a breach of the right to privacy. However, this right must be balanced against an authorised officer's right to a safe and secure working environment, and the obligation of the State to provide such an environment to its employees. Authorised officers are unarmed, and may work in remote areas with sometimes little assistance should they be confronted with a violent or dangerous situation.

The provision enables the chief executive to obtain advice as to whether a person has a history of offences involving violence or firearms, before an authorised officer enters a place where the person is likely to be present. This provides an opportunity for the authorised officer to request to be accompanied by a police officer if it is considered that unaccompanied entry to a place would create an unacceptable level of risk to the authorised officer's safety.

This clause is further justified as clause 462 provides stringent safeguards regarding the use, communication and confidentiality of criminal history information provided. Similar provisions are also provided under the Vegetation Management Act and the Water Act.

### Transitional regulation

Section 4(2)(b) of the Legislative Standards Act requires that legislation has sufficient regard to the institution of Parliament. Section 4(4)(b) of the Legislative Standards Act provides that whether a Bill has sufficient regard

to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Clause 635 authorises the making of transitional regulations for one year for matters for which the Bill does not sufficiently provide. This is considered to be justified in view of ensuring the effective implementation of the new regulatory frameworks for recycled water and drinking water which are primarily for the protection of public health. The new regulatory frameworks are significant in their application to ensuring the protection of public health. It is necessary to ensure the regulatory framework, in its potential initial application of approving recycled water for the purpose of augmenting drinking supply, achieves the objective of protecting public health. It is in the public interest that there are no gaps in the regulatory framework that may adversely impact on public health. Similar provisions have been used in Queensland legislation when regulatory regimes are being substantially changed.

Coordinator-General is constructing authority for particular land to be acquired under the Acquisition of Land Act.

Section 4(3)(a) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 662 of the Bill inserts a new section 79A into the SEQ Water Restructuring Act. This clause applies if, as a result of a transfer notice issued under section 67 of the SEQ Water Restructuring Act, a local government cannot continue a land resumption process commenced in relation to an asset transferred subsequently to a new water entity. Where this occurs, the Coordinator-General may decide to continue the acquisition of land. However, section 84 of that Act would exclude judicial review in respect of that decision. Without this new clause, a resumption of land process in relation to a transferred bulk water asset would need to be recommenced under a different process by the Coordinator-General pursuant to the State Development and Public Works Organisation Act on behalf of the relevant new water entity. This would cause undesirable inconvenience to an affected land owner. This clause does not affect land owners' rights under the Acquisition of Land Act. The proposed amendment provides expressly that an affected land owner has the same

rights and liabilities under the Acquisition of Land Act as the person had before the Coordinator-General acted under this clause.

Reconfiguring a lot after transfer notice takes effect

Section 4(2)(a) of the Legislative Standards Act provides that legislation has sufficient regard to rights and liberties of individuals.

Clause 664 of the Bill inserts a number of new sections in the SEQ Water Restructuring Act and provides that the Integrated Planning Act does not apply to the reconfiguring of a lot, and a plan of subdivision does not require the agreement, consent or approval of another entity under section 50 of the *Land Title Act 1994* (Land Title Act) in the prescribed circumstances. This clause applies to the subdivision of land between a local government and a new water entity, where bulk water assets are situated on land used for multiple purposes by a local government (for example, situated on the land is a water treatment plant and office buildings unrelated to local government's water business). The purpose of this clause is to facilitate the transfer of bulk water assets from a local government to a new water entity and ensure that each entity has separate land tenure and appropriate control over its assets.

This clause is appropriate because of its restricted application. The preclusion of the Integrated Planning Act:

- is for a specific and narrow purpose - a 'one off event' to facilitate the transfer of bulk water assets from local governments to the new water entities in respect of that relevant parcel of land
- will not authorise any new development or use of the land by a local government or a new water entity
- will expire, along with the Treasurer's power to issue a transfer notice under section 67 of the SEQ Water Restructuring Act on 16 November 2010
- will apply to a small number of sites.

However, this clause may affect third parties who hold registered interests in land proposed to be subdivided between a new water entity and local government because third parties will not have an opportunity to object to the subdivision. However, the proposed subdivision will not affect third parties' rights associated with the use of the land. Further, without subdivision, there are likely to be instances where third parties will be inconvenienced because they will be required to deal with an additional

party (namely, a new water entity) in relation to their existing uses of the relevant land.

### Regulation power to redistribute water entitlement

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 690 of the Bill inserts a provision into the Water Act to provide a regulation making power to set out a process for the redistribution of an existing interim water allocation to give effect to the objectives and outcomes of a water resource plan under the Water Act. The power will be exercised to deliver on the outcomes of the *Water Resource (Gulf) Plan 2007* (Gulf Water Resource Plan) to provide that an existing interim water allocation held by Mount Isa Water Board is able to be redistributed to an identified set of water users (including the Board) who are currently recipients of this water supply from the Board. Currently the Board holds an interim water allocation under the Water Act. This interim water allocation was granted to Board under the Water Act in 2000, replacing the Board's then water authorisation which was created under an Order in Council dated 12 August 1976 which established the Board and authorised it to construct works to provide a supply of water to Mount Isa Mines Limited and Mount Isa City Council.

A key outcome of the Gulf Water Resource Plan is to provide for water entitlements to be held by the end users in the plan area. Whilst the Board holds the interim water allocation, it is held by the Board for the purpose of supplying water to Mount Isa Mines Limited and Mount Isa City Council rather than the sole purpose of the Board. The proposed amendment will give effect to the current supply arrangement by having the interim water allocation redistributed as three interim water allocations, with each entity, including the Board, specifically holding one of the new allocations.

The Water Act does not provide for any statutory compensation for this redistribution of a water entitlement. The nature of an interim water allocation under the Water Act is not of itself a 'saleable' right or entitlement. The Board will continue to be remunerated by its customers for the supply of its water service it undertakes as a function of the Board and will still be able to carry out this function as a board.

### Power to make market rules

Section 4(2)(b) of the Legislative Standards Act requires that legislation has sufficient regard to the institution of Parliament. Section 4(4)(b) of the

Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The new section 360ZDA inserted into the Water Act by clause 713 of the Bill provides the Minister with the power to make market rules governing the operation of the SEQ water market. The rules will be a statutory instrument within the meaning of the *Statutory Instruments Act 1992* (Statutory Instruments Act), but will not be subordinate legislation.

The proposed content of the rules is, in many respects, highly technical and not appropriate for inclusion in subordinate legislation. The matters the rules will cover include principles for deciding prices payable to suppliers of declared water service, principles for deciding prices payable for water sold by the SEQ water grid manager and the regulation of operational aspects of the market specific to the water grid including metering, water quality and asset performance standards.

The rules will only apply to registered grid participants, who will mostly be large organisations such as State-owned statutory authorities, local governments and government owned corporations.

Although they are not subordinate legislation, the rules and any amendments to the rules, are required to be tabled in the Legislative Assembly within 14 days of taking effect.

In addition, the Bill contains a requirement for the Minister to conduct a review into the operation and effectiveness of the rules as soon as practicable after the second anniversary of the rules taking effect. A report about the outcomes of the review is required to be tabled in the Legislative Assembly.

#### Limitation of liability of grid participants

Section 4(3)(h) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.

Under the new arrangements for water supply in the SEQ region, the contractual relationships between the parties will not follow the physical flow of the water.

Taking into account manufactured water sources, water will flow:

- from assets owned by the Queensland Manufactured Water Authority, such as the Wester Corridor Recycled Water Project, to assets owned by the Queensland Bulk Water Supply Authority, such as Wivenhoe Dam
- then from Queensland Bulk Water Supply Authority assets to assets owned by the Queensland Bulk Water Transport Authority, such as the trunk main between Mt Crosby treatment plant and Chapel Hill reservoir and
- from there to assets owned by a local government (for example, the Brisbane reticulation network).

While each of these parties will have a contract with the water grid manager, none of the parties will have a contract with each other. However, there is a real potential for loss or damage between parties as a result of the operational interface between them.

Limitation of liability between parties with an operational interface would usually be dealt with in a party to party contract. Limiting liability to direct losses in these contracts is consistent with the general position adopted by entities operating in a utilities market. In the absence of contracts, liability can be limited in legislation and the Victorian gas industry market and system operations rules provide a precedent for this approach.

The contracts between the parties and the water grid manager are made by the Minister, so there is limited opportunity for the parties to negotiate the terms of the contract, including terms relating to mitigation of the risk of consequential loss or damage.

The limitation in new section 360ZDI of the Water Act, inserted by clause 713 of the Bill applies only to actions brought by one grid participant against another grid participant, and does not apply to any personal injury claims, or where there is knowing and wilful conduct resulting in loss or damage.

#### Transfer notice

Section 4(4)(b) of the Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

New section 360ZDN inserted into the Water Act by clause 713 of the Bill allows the Minister, by way of a notice in the gazette (a transfer notice), to replace existing authorities to take and interfere with water, with one or

more authorities to take water and an authority to interfere with water, and to transfer authorities to take water from the holder of those entitlements to the SEQ water grid manager.

The authorities that will be transferred to the water grid manager will be those authorities that relate to water supplied by declared water services. Under the new part 5A in chapter 2A of the Water Act, water supply by declared water services may only be sold to the water grid manager. The transfer of authorities relating to water supply by declared water services to the water grid manager is necessary to enable the water grid manager to undertake its role of sole purchaser of declared water supply services, and sole seller of water supplied by declared water services.

Centralised ownership of authorisations to take water is necessary to manage drought situations and to implement the chosen water supply model in the SEQ region. A key principle underpinning the establishment of the SEQ water grid and the accompanying regulatory arrangements is that water is a shared resource. As construction of new water sources and pipelines are completed and the grid is connected, water will be able to be moved around the region, and sources supplying particular areas will be able to be substituted. It is critical for the water grid manager to hold the relevant water authorisations to be able to manage all water supplies conjunctively on a regional basis to ensure the maximum public benefit.

The section will have a very limited scope of operation. Following the transfer of assets under the SEQ Water Restructuring Act, the majority of water authorities to which these provisions apply will be held by the bulk water supply authority, the statutory authority established under the SEQ Water Restructuring Act to own all major water storages and water treatment facilities in the SEQ region.

To increase the transparency of the provision, extensive investigations were undertaken to identify the relevant authorisations to which the provision will apply, and to the greatest extent practicable, the authorisations are specifically identified in the section.

The provisions relating to the transfer of relevant authorisations to the water grid manager also relate to the principle in section 4(2)(a) of the Legislative Standards Act that legislation has sufficient regard to the rights and liberties of individuals. Section 4(3)(i) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation

provides for the compulsory acquisition of property only with fair compensation.

Most of the relevant authorities are of an interim or historical nature and are likely to be replaced with contemporary authorities, including tradable water allocations, in the near future. There is currently a process being undertaken, under the water resource planning framework of the Water Act, to convert some of the authorisations to be transferred under the provisions of the Bill to water allocations.

Once water allocations are created they are a clearly defined right with measures of protection associated with their performance, and are able to be traded separately from the land to which some have historically been attached. All of the authorisations of relevance to these provisions of the Bill as they currently exist are unable to be traded. However, the Water Act does provide a process for the transfer of some of these authorisations between various entities.

The provisions of the Water Act as currently written do not contemplate any form of compensation for changing the value of, or transferring an authorisation of the type relevant to these provisions. The current Water Act provisions do however explicitly provide for compensation to be payable in the case of a change of value to a water allocations, none of which exist in SEQ as yet.

Notwithstanding the interim and historical nature of the water authorisations being transferred to the water grid manager, the transferring entities (local governments and the Queensland Bulk Water Supply Authority) will be in a similar position after the transfer of the authorisations, in terms of their commercial operations and the ability to supply water to their end use customers.

As mentioned above, the majority of authorisations will be transferred from the bulk water supply authority. The commercial arrangements envisaged under the new SEQ framework between the water grid manager and the Queensland Bulk Water Supply Authority would not be any different should the Queensland Bulk Water Supply Authority hold the relevant water authorisations. The commercial outcome for the Queensland Bulk Water Supply Authority would be the same whether they held the water authorisations or not. The payments made from the water grid manager to the Queensland Bulk Water Supply Authority will relate to costs of the Queensland Bulk Water Supply Authority operations and the value of the assets providing the services to the water grid manager.

A small number of interim water allocations will be transferred from local governments to the water grid manager. These local governments will in turn enter into contracts with the water grid manager for the supply of water. The water supply that these local governments currently derive from extracting water under the water authorisations to be transferred will effectively be replaced with a treated water product delivered under contractual arrangements. In short, there is the potential for the local governments to be in a similar, if not improved, position in terms of the water supply security due to the centrally planned nature of the water supply model being implemented in SEQ.

Transfer notice has effect despite any other provision

Section 4(4)(c) of the Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act only by another Act.

The new section 360ZDN(5) of the Water Act inserted by clause 713 of the Bill provides that a transfer notice has effect despite any other law or instrument.

The transfer notice process is the simplest and most effective method of transferring water entitlements from current holders to the water grid manager. As noted above, the transfer notice will have a very limited scope of operation, and will apply to specific authorities, the majority of which will be held by a statutory authority.

The transfer notice process is transitional and is required to ‘initialise’ the SEQ water market. It is not expected that the provision will have ongoing application.

Source substitution in existing contracts

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 745 of the Bill inserts a provision into the Water Act to override any existing contractual provision that specifies that water must be supplied from a particular source.

A key principle underpinning the establishment of the SEQ water grid and the SEQ water market is that water is a shared resource. As construction of new water sources and pipelines are completed and the grid is connected, water will be able to be moved around the region, and sources supplying particular areas will be able to be substituted.

If a contract specifies that water must be supplied from a specific source, this conflicts with the core underlying principle that water for urban and industrial use in SEQ is a shared resource and supply from the SEQ grid may come from a variety of sources, as determined by the water grid manager, depending on quality considerations and the optimum conjunctive use of the SEQ water storages.

The rights of individuals are protected under the section via the requirement that any water substituted under the provision must be fit for the purpose for which the water is supplied.

## **Consultation**

Consultation on the development of the Bill has been undertaken with the Recycled Water Interdepartmental Committee which includes senior representatives of Department of Premier and Cabinet; Department of Infrastructure and Planning; Department of Employment and Industrial Relations; Department of Local Government, Sport and Recreation; Environmental Protection Agency; Department of Primary Industries and Fisheries; Queensland Fire and Rescue Service; Safe Food Queensland and Department of Tourism, Regional Development and Industry.

In addition consultation on the development of the Bill in relation to recycled water and drinking water regulatory frameworks under the Bill was undertaken with Local Government Association of Queensland; Queensland Water Directorate; Local Government Managers Association of Queensland; Urban Local Government Association of Queensland Australian Water Association; Water Services Association of Australia; Urban Development Institute of Australia; AgForce; CANEGROWERS; Queensland Dairy Farmers' Organisation and Queensland Farmers Federation.

The Queensland Water Commission consulted on the implementation details for stage 1 SEQ reforms with the Legislation and Entitlements Working Group comprising representatives of SEQ water industry bodies, including local governments and the State owned entities established under the SEQ Restructuring Act and also Department of Premier and Cabinet, Queensland Treasury and Department of Natural Resources and Water.

Consultation was also undertaken on aspects of the changes to the Water Act under the Bill with Department of Premier and Cabinet; Department of Infrastructure and Planning; Queensland Treasury; Department of Mines and Energy; Department of Justice and Attorney-General; AgForce;

Queensland Farmers Federation; Mount Isa Water Board; Mount Isa Mines Limited; Veolia Water Australia Pty Ltd and Western Corridor Recycled Water Pty Ltd.

## **Results of consultation**

### **Community and industry stakeholders**

The majority of the groups consulted provided a positive response to the proposed measures in the Bill.

### **Government**

All departments and agencies consulted support the Bill.

## **Notes on Provisions**

### **Chapter 1 Preliminary**

#### **1 Short title**

*Clause 1* states that this Act is the *Water Supply (Safety and Reliability) Act 2008*.

#### **2 Commencement**

*Clause 2* provides for when the Bill commences. Subclause (1) sets out the provisions of the Bill that are to commence on 1 August 2008 and subclause (2) provides for prescribed clauses to commence on a date to be fixed by proclamation with the remainder to commence on assent.

#### **3 Purpose of Act and its achievement**

*Clause 3* sets out the purpose of the Bill. The purpose of the Bill is to provide for the safety and reliability of water supply to ensure that the water supply needs of Queensland continue to be met into the future.

The purpose is achieved primarily by:

- providing for
  - a regulatory framework for providing water and sewerage services in the State, including functions and powers of service providers
  - a regulatory framework for providing recycled water and drinking water quality, primarily for protecting public health
  - the regulation of referable dams
  - flood mitigation responsibilities.
- protecting the interests of customers of service providers.

#### **4 Definitions**

*Clause 4* provides that words used in the Bill are defined in the dictionary in schedule 3 of the Bill.

#### **5 Act binds all persons**

*Clause 5* provides that all persons are bound by the Bill, including the State, and to the extent of State legislative power, the Commonwealth and other States. However, this provision does not apply to the operation of the State Development and Public Works Organisation Act and the powers of the Coordinator-General under that Act.

## **Chapter 2 Infrastructure and Service**

### **Part 1 Preliminary**

#### **6 Application of ch 2 to local governments**

*Clause 6* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It clarifies that nothing in this

chapter affects the powers of local governments or authorised persons under the *Local Government Act 1993* (Local Government Act). This clause is required because there is some overlap between the powers and functions of service providers under the Bill (which includes local governments) and the powers and functions of local governments under the Local Government Act.

## **7 Sections 7—9 not used**

*Clause 7* provides that clauses 7 to 9 are not used.

Because of the size and complexity of the Bill, some clause numbers have been deliberately left blank, generally at the end of each part. If the Bill is amended in the future, this will assist making the necessary amendments without needing to renumber the whole Bill.

## **Part 2                    The regulator**

### **10 Who is the regulator**

*Clause 10* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that the chief executive of the department is the regulator and continues the current situation existing under the Water Act.

### **11 Regulator's general functions**

*Clause 11* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for the general functions of the regulator. The regulator must consider the purposes of the Bill when performing its functions. In this section, function includes power.

### **12 Register of service providers**

*Clause 12* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for a register of service providers to be kept by the regulator and the details the information the register must contain. The register may be kept in the form the regulator

considers appropriate, including in an electronic form. The regulator must, as soon as practicable after 1 January each year, publish in the government gazette a current list of the registered service providers.

### **13 Requirement for service provider to give information**

*Clause 13* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water and recycled water regulation. It states that the regulator may require a service provider, by way of written notice, to provide information to enable the regulator to perform its functions. The notice must state the reasonable time in which the service provider must provide the information to the regulator. If the service provider is an individual, the service provider, however, is not required to give any information which might tend to incriminate the service provider. In this clause, the term service provider includes any recycled water service provider.

### **14 Annual reports**

*Clause 14* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that the regulator may prepare annual reports under this part (about the regulator's activities). The annual report may include information the regulator obtained under part 4, division 9 about annual reports provided by a service provider or information obtained by the regulator obtained under clause 13 or 271 that relates to annual reports provided by recycled water providers.

### **15 Delegation by regulator**

*Clause 15* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that the regulator may delegate a function of the regulator to an appropriately qualified officer of the Department if the regulator is satisfied the person has the necessary experience and expertise. A regulation may be made stating that a function of the regulator may not be delegated or only delegated to a particular person. In this clause, function includes a power.

### **16 Sections 16—19 not used**

*Clause 16* provides that clauses 16 to 19 are not used.

## **Part 3                      Service providers**

### **Division 1                Registration of service providers**

#### **20 Who must apply for registration as a service provider**

*Clause 20* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the requirements for who must apply for registration as a service provider. The following entities must apply to be registered as a service provider before starting to operate:

- local governments that own infrastructure for supplying water or sewerage services
- water authorities that own infrastructure for supplying water or sewerage services
- any other person who owns, or is an entity nominated as a related entity of the owner of one or more elements of infrastructure for supplying water or sewerage services for which a charge is intended to be made. For example, where a subsidiary company is the owner of the infrastructure, it is possible to nominate, by regulation, to have the parent company listed as registered service provider.

A person who owns infrastructure for the supply or production of recycled water (as a recycled water provider under chapter 3 of the Bill) does not have to apply for registration as a service provider unless the person also fits into one or more of the above categories (that is, the person also owns infrastructure for supplying water or sewerage services).

The regulatory framework under the Bill is based on a process of registration for service providers, with regulatory obligations stated in legislation (rather than, for example, in a licence). It should be noted that the requirement to be registered generally captures the owner of the infrastructure, rather than the operator. In cases where the operator of the infrastructure is not the owner of the infrastructure, the onus will be on the owner (for example, through contractual arrangements) to ensure that the operator complies with the owner's obligations under the Bill. Registration is a prerequisite to a service provider being able to utilise the powers afforded to service providers under part 3, division 2 of the Bill. This

clause should be read with clause 190, which makes it an offence to supply water services or sewerage services unless the person is registered or is operating infrastructure for a service provider who is registered.

## **21 Applying for registration as a service provider**

*Clause 21* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the process by which a service provider may apply to the regulator to become registered. An application for registration must be in the approved form, be supported by sufficient information to enable the regulator to decide the application and be accompanied by the prescribed fee. This clause should be read in conjunction with clause 12, which details the information which the regulator will require in order to register a service provider. Under subclause (2), the regulator may require the applicant to give additional information or verify, by statutory declaration, the information contained in the service provider's application.

## **22 Registration as a service provider**

*Clause 22* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It specifies that the regulator must register an applicant in the service provider register for the service shown in the application if the regulator is satisfied that the applicant has complied with the requirements of clause 21 (Applying for registration as a service provider). The regulator must also give the applicant notice of the registration. Registration takes effect from the day the regulator registers the applicant in the register as a service provider.

## **23 Applying to amend service provider's details of registration**

*Clause 23* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes provision for a service provider to apply to change its registration details by either including or removing information about infrastructure or services relevant to the service provider's registration.

The application must be made to the regulator in the approved form. When the regulator receives the application, the regulator must record the changes in the register and give the service provider a copy of the service provider's details as registered in the register, including the amendments.

## **24 Notice of transfer of infrastructure**

*Clause 24* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides the process for the transfer of ownership of a service provider's infrastructure (for example, through a sale of the infrastructure). Where there is to be such a transfer, the Bill requires the transferor (that is, the currently registered service provider) to give the regulator notice of the proposed transfer, including any relevant information required by the regulator to register the new owner (the transferee). The notice must be in the approved form and accompanied by a fee which has been prescribed by regulation. The regulator may require the transferor or transferee to provide further information and may require that the information provided in the notice be verified by statutory declaration.

## **25 Registering transferee as a service provider**

*Clause 25* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that if the regulator is satisfied that the requirements of clause 24 (Notice of transfer of infrastructure) have been complied with the regulator must:

- cancel the transferor's registration as a service provider for the infrastructure and services shown in the notice of proposed transfer
- register the transferee as a service provider for the infrastructure and services
- give the transferor notice of the cancellation and the transferee notice of the registration.

Registration of the new owner will take effect either on registration of the transferee by the regulator or at a later date nominated in writing by both the transferor and transferee.

Subclause (5) provides that, if the regulator has given a compliance notice under clause 465 to the transferor while the transferor was registered as a service provider, the transferee is taken to have been given the compliance notice. A compliance notice under clause 465 is one of the enforcement mechanisms under the Bill, and subclause (5) seeks to ensure that a service provider cannot avoid their obligations under the Bill by transferring ownership of the infrastructure.

## **26 Notice of intention to stop operating as a service provider**

*Clause 26* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It creates an obligation for a service provider to inform the regulator if the service provider is likely to stop supplying a registered service (for example, if the service provider is about to become insolvent and will not continue supplying a water service to its customers), and there is no other entity willing to take over providing the service. It is an offence for a service provider to fail to give the regulator 60 business days notice without reasonable excuse. The purpose of this clause is to make provision for the regulator to be notified in circumstances where the regulator may need to take action to ensure the continued provision of an essential service. Under section 530 of the Bill, the Governor in Council may authorise the regulator take over the operation of the infrastructure to ensure the continued provision of services.

This clause also provides that where a service provider gives notice of its intention to cease providing a service, then the notice must be in the approved form and state the day by which the service provider intends to stop supplying the service. In addition, this clause grants the regulator the power to request further information about the notice from the service provider. This information may be necessary to allow the regulator to assume responsibility for providing the services, as an administrator under section 530 of the Bill and to ensure that the service provider's customers are serviced. The regulator may also require any additional information provided by the service provider to be verified by statutory declaration.

It is also required that, if a service provider stops the supply of a service, the service provider must give the regulator a notice, in the approved form, stating the day on which the provider stopped supplying the service, within five business days after the supply is stopped.

## **27 Cancellation of registration**

*Clause 27* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. This clause, in line with clause 26 (Notice of intention to stop operating as a service provider), 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.

## **28 Applying for cancellation of registration as service provider**

*Clause 28* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides a process for a registered service provider to apply for the cancellation of their registration as a service provider in certain circumstances. The application must be made in the approved form and be supported by sufficient information to enable the regulator to decide the application. The regulator may require the applicant to give further information, and further may require the information to be verified by statutory declaration.

If the regulator is satisfied the applicant has complied with the relevant requirements, the regulator must cancel the service provider's registration and give the service provider notice of the cancellation.

## **29 Registration as a service provider is not a right to water entitlement or resource operations licence**

*Clause 29* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It clarifies that registration as a service provider does not of itself entitle a person to a water entitlement or a resource operations licence, authorities under the Water Act to take or interfere with water, which may be necessarily required to operate water infrastructure and supply registered services.

## **30 Reviewing and changing service provider registration details**

*Clause 30* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. This clause places an obligation on a service provider to review its registration details annually and to notify the regulator about any changes in information relating to the service provider's registration. The regulator must record the changes in the register and give the service provider a copy of the service provider's details, including any changes. This clause is to be distinguished from clause 23 that allows a service provider to apply to the regulator for an amendment to the service provider's registration details, if the service provider wishes to do so.

## **Division 2                    General powers of service providers and authorised persons**

The provisions of part 3, division 2 are required because service providers, like other utility operators, need to have certain powers to enter land to service and protect their assets. These powers already exist for service providers who are local governments or water authorities under the Local Government Act and the Water Act. Where a service provider is given a power under part 3, division 2, the service provider may appoint an authorised person to exercise those powers on its behalf. Provisions relating to the appointment of authorised persons are in part 3, division 4.

### **31 Definition for div 2**

*Clause 31* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It expressly states where the term 'place' is used in this division, it does not include a part of a place used for residential purposes.

### **32 Application of div 2**

*Clause 32* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It clarifies that the exercise of powers by a service provider or an authorised person under this division must be related to services for which the service provider is registered.

### **33 Power to disconnect unauthorised connections**

*Clause 33* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It gives the service provider the power to take action to protect the service provider's infrastructure, where a person makes an unauthorised connection to the service provider's infrastructure. The service provider may give the person who has made the unauthorised connection a notice asking the person to state why the service provider should not disconnect the connection. The notice must state a time, which is not less than 48 hours, within which the person may respond. If after the reasonable period, the service provider is still not satisfied that the connection should not be disconnected, an authorised person may enter the place where the connection is disconnect the connection. The provision also enables the service provider to recover as a

debt the cost of the disconnection and the value of any service used by the person through the connection. However, if the unauthorised connection is causing damage to the service provider's infrastructure, the service provider may take immediate action to disconnect the unauthorised connection. If a service provider enters a place, without at least 48 hours notice, to disconnect an unauthorised connection, the service provider must give a notice to the owner, or person in control of the place, stating the purpose of entry.

### **34 Power to direct remedial work**

*Clause 34* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables a service provider to issue a notice to an owner of land or defective or improper equipment, requiring the owner to rectify defective or improper equipment that is connected to or adversely affecting the service provider's infrastructure, or remove vegetation or any other thing adversely affecting the service provider's infrastructure. For example, in the case of a water authority supplying drainage services, the water authority may require a person to remove silt that is blocking a drain. If the owner does not rectify the equipment, the service provider may enter the place and do the work required, and recover as a debt the cost of the work from the owner.

### **35 Power to install meters**

*Clause 35* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider may install or approve the installation of a meter on infrastructure supplying water to premises. The position of the meter is decided by the service provider. The meter is the property of the service provider even if installed inside the boundary of the premises.

### **36 Power to enter places for restricted purposes**

*Clause 36* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for an authorised person to enter a place for those operational matters stated in this clause in relation to the service provider's infrastructure, or to install a device to reduce water supply to premises where the owner or occupier of premises has contravened a water restriction in accordance with clause 169. Many devices for reducing water supply to premises are fitted on the water meter

for the premises. In some premises the water meter is inside the premises boundary. The authorised person may enter the place at any reasonable time only if the occupier consents to the entry and the service provider has given at least 14 days notice of the entry and the purpose of the entry. The service provider may enter at any time if the service provider needs to take urgent action to protect its infrastructure.

After entering the place the authorised person may proceed to undertake the activity, the purpose of the entry.

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

### **37 Power to enter place to read, check, maintain or replace meter**

*Clause 37* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It facilitates and implements the mandatory installation of ‘sub-meters’ in multi-unit residential and non-residential complexes. Service providers who provide retail water services own the meters and are responsible for reading and charging customers accordingly, and maintaining and replacing meters as necessary. This clause ensures that such service providers have adequate powers to read meters, check the accuracy of meters and maintain or replace meters. However, the entry power does not allow entry to any part of a place used for residential purposes and entry may only be made at a reasonable time. This provision is modelled on equivalent powers for electricity entities under section 137 of the *Electricity Act 1994*.

### **38 Notice of damage**

*Clause 38* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It provides for when an authorised officer or any other person acting under the direction of an authorised officer, in exercising or purporting to exercise powers under this division, damages property. The authorised officer must immediately give notice of the particulars of the damage to the owner of the thing damaged. If for any reason this is not practicable, the authorised person must leave the notice at the place in a reasonably secure and conspicuous place. This section does not apply to

trivial damage. If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or the other person's control, this may be stated in the notice.

### **39 Compensation**

*Clause 39* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for compensation being claimed from the service provider if a person incurs loss or expense because of the exercise or purported exercise of a power under this division. Compensation may also be claimed for loss or expense incurred in complying with a requirement made of the person under this part. Payment of compensation may be claimed and ordered in a proceeding in a court with jurisdiction for the recovery of the amount of compensation claimed. Note that compensation is not payable in respect of actions taken under the power to disconnect unauthorised connections or the power to direct remedial works.

### **40 Recovery of costs**

*Clause 40* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for a service provider to recover costs from a person who damages its infrastructure or causes the service provider to suffer loss in certain circumstances. The service provider may recover, as a debt due, the amount of the loss or the reasonable cost of repairing the damage.

## **Division 3            Power to restrict water supply**

### **41 Restricting water supply**

*Clause 41* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables a water service provider to restrict the volume of water taken by or supplied to its customers, the hours when water may be used on the premises for certain purposes or the way water may be used on the premises, if the water service provider thinks it necessary, for example, because of climatic conditions or water conservation needs. The water service provider also has the authority to restrict water supply in other instances, for example, if the water service

provider's outdoor water use conservation plan contains a measure to that effect, or if directed by the regulator under clause 42.

An example of a restriction applied under this clause would be where a certain class of customer (such as industrial) could be required to reduce the volume of water that is taken in accordance with the restriction requirements of the water service provider. Note however that a water restriction can provide an exemption from all or part of the restriction. For instance, an exemption from all or part of a water restriction may be able to be obtained by the preparation and compliance with a water efficiency management plan.

This clause seeks to ensure that a water service provider is not made liable for restricting the supply water, where such restriction is necessary because of, for example, a drought. The clause is also aimed at facilitating restrictions on water use where such restrictions are part of a demand management strategy and the restriction is essential to ensure that the aims of the strategy are met.

## **42 Regulator may direct restriction**

*Clause 42* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides the regulator with the authority to direct water service providers in areas outside the SEQ region or a designated region, to apply and enforce water restrictions on urban water users if there is a significant threat to an area's water supply. These powers are equivalent to the current restrictions powers of the Commission under section 360ZD of the Water Act in respect of the SEQ region.

Under the Bill water service providers may voluntarily impose and enforce water restrictions on customers in certain circumstances. However, there may be an instance where a water service provider is facing critical water supply shortages but has not implemented the appropriate level of restrictions. In this situation, this clause enables the regulator to direct water service providers to apply and enforce necessary water restrictions.

The regulator may only direct a water service provider to impose a restriction after consultation with the water service provider. If a direction is given by the regulator, the water service provider must comply with the direction and impose the restrictions and give the regulator a response within the specified timeframe stating how the water service provider will ensure compliance with the restrictions.

The regulator may approve the response if satisfied it is adequate to ensure compliance with the restrictions or change the response to make it adequate and approve the changed response. A service provider must comply with an approved response by taking the steps stated in the response.

### **43 Notice of service provider water restriction must be given**

*Clause 43* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that where a service provider imposes water restrictions, the water service provider must give notice of the water restriction to anyone affected by the restriction. The restriction does not have effect until the day after the notice is given. Once the restriction is in effect, this clause makes it an offence for a person to contravene the restriction. If the water service provider fails to impose a water restriction required to be imposed because of a water supply emergency direction this clause allows the Minister to do so.

Clause 43 also provides that evidence of compliance with a service provider water restriction includes (but is not limited to):

- an authorised person of the water service provider being satisfied that the premises meet the requirements for the restriction. For instance, the customer may invite an authorised person into the house to inspect the devices. However, customers are provided with other mechanisms (below) to demonstrate compliance, should they not wish an authorised officer to enter their house
- provision of a certificate from a licensed plumber certifying that the premises meets the requirements for the restriction
- provision of a statutory declaration declaring that the premises meet the requirements for the restriction.

### **44 Temporary interruptions to water supply**

*Clause 44* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables a water service provider to temporarily shut off water supply to premises in order to perform work on the provider's infrastructure. The water service provider must give at least 48 hours notice of the intention to shut off supply to affected persons. The requirement to give 48 hours notice does not apply if there is a serious risk to public health, a likelihood of serious injury or damage to property or other emergency. However, where the water service provider shuts off

water supply without notice, the water service provider will be required to give subsequent notice of the action to affected persons explaining the reasons for the interruption to water supply and, if the interruption is ongoing, information about how long the interruption will continue.

## **Division 4            Authorised persons**

### **45 Appointing authorised persons**

*Clause 45* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables the service provider to appoint a person to be an authorised person if the service provider is satisfied the person has the necessary expertise, experience or has finished satisfactory training. Authorised persons would generally be employees or agents of the service provider who have the function of running the service provider's business and/or operating the service provider's infrastructure.

### **46 Authorised person's identity cards**

*Clause 46* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the requirement for the service provider to provide authorised persons with an identity card, and the information that must be contained on the card.

### **47 Failure to return identity card**

*Clause 47* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes it an offence for a person to fail to return an identity card within 15 business days (that is, three weeks) of ceasing to be an authorised person, unless the person has a reasonable excuse.

### **48 Producing and displaying identity card**

*Clause 48* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires an authorised person to display their identity card so that it is clearly visible when exercising a power under division 2. If it is not practicable to comply with this requirement before exercising the power, the authorised person must produce the identity card at the first reasonable opportunity.

## **Division 5            Liability of service providers**

### **49 Liability of service providers for negligence**

*Clause 49* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. The clause has also changed to extend the protection from liability in certain circumstances to a specified group of service providers and operators of particular infrastructure of State significance.

This clause provides that a service provider or operator of water infrastructure is not liable for damages arising from an event or circumstance beyond their control, provided that they acted reasonably and without negligence.

An event or circumstance means an event or circumstance arising out of activities of the affected party under this Act, including, for example:

- the escape of water from water infrastructure or works
- flooding upstream or downstream of water infrastructure works
- contamination, or the quality of water, including manufactured water flowing, or released from, water infrastructure works.

Reference to manufactured water is included here to provide for the extension of the protection from liability afforded under this clause to service providers and operators of specified infrastructure.

The term manufactured water is subsequently defined specifically for this provision. Manufactured water is taken to mean water, including desalinated or recycled water or any substance resulting from the production of desalinated or recycled water, from any source.

For the purpose of clause 49(3)(c) water infrastructure includes further specific meaning, additional to the definition in the dictionary in schedule 3 of the Bill. To be included, water infrastructure must fulfil the specified requirements in this further definition. Firstly, the infrastructure must be infrastructure that is mentioned in a water supply emergency declaration or regulation, or be included in an approved program of works under the State Development and Public Works Organisation Act. Secondly, the infrastructure must also be a prescribed project under the State Development and Public Works Organisation Act, and thirdly the infrastructure must also be declared by the Minister in a gazette notice to be water infrastructure for the purposes of this section.

## **Division 6            Water efficiency management plans**

### **50 Purpose of div 6**

*Clause 50* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It provides that the purpose of this new division is to promote the efficient use of water by non-residential customers.

### **51 Application of div 6**

*Clause 51* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It only applies for a non-residential customer outside the SEQ region or a designated region (as those customers fall under the jurisdiction of the Commission in chapter 2A, part 5, division 3 of the Water Act) who does not hold a water entitlement, as defined under the Water Act.

However, if a non-residential customer outside SEQ region or a designated region who holds a water entitlement under the Water Act also obtains water from a water service provider in another way, then the division applies to that customer for that water obtained in another way. For instance, if a non-residential customer obtains 20ML of water per year via an entitlement, as well as another 5ML of water as a general customer of the water service provider (and this water is not part of a water entitlement), that customer may be required to prepare a water efficiency management plan for the 5ML of water (that is, non-entitlement water), but the customer would not be required to prepare a plan for the 20ML of water obtained via an entitlement.

There may also be some non-residential customers who obtain water from more than one water service provider. To provide those customers with a level of certainty as to which water service provider is the relevant provider and which water efficiency management plan provisions apply, this clause also states that:

- if a customer obtains water from both a water service provider who is in the SEQ region (or a designated region), as well as from another water service provider who is outside the SEQ region (or a designated region) then that customer is deemed to fall under the jurisdiction of the Commission and the water

efficiency management plan provisions in chapter 2A, part 5, division 3 of the Water Act apply

- if a customer obtains water from one or more water service providers in the same region, then the water service provider who provides the customer with the most water is the relevant water service provider for the water efficiency management plan provisions. This is to avoid the situation where a customer may have a requirement from two (or more) water service providers to prepare a plan.

## **52 When water efficiency management plan may be required**

*Clause 52* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It details when a water efficiency management plan may be required. A plan may be required when:

- the chief executive gives a written direction requiring a water service provider to give a customer, or type of customer, a written notice to prepare and submit a plan
- a water service provider without direction, gives a customer, or type of customer, a written notice approved by the Commission to prepare and submit a plan.

Regardless of which way a water efficiency management plan is required, the plan must be prepared and approved in accordance with the division. In addition, a plan prepared in order to gain the benefit of an exemption from a service provider water restriction must also comply with the provisions of this division.

A water service provider must comply with the direction from the chief executive to require customer to prepare and submit a water efficiency management plan. Similarly, a customer must comply with a direction given by water service provider to prepare and submit a water efficiency management plan.

## **53 Content of water efficiency management plan**

*Clause 53* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It details the content of a water efficiency management plan. The plan must comply with any relevant guidelines issued by chief executive. Alternatively, if the chief executive

has not issued guidelines, then the plan must comply with guidelines issued by the water service provider.

The guidelines contain information relating to matters which must be addressed and included in the water efficiency management plan as well as processes to be followed in the preparation of a plan, and other issues.

This clause also requires that a water efficiency management plan must state the following:

- the name of the customer and the location where the plan applies
- the water savings and efficiencies that will be achieved by implementing plan (this includes identifying the actions or measures to be implemented)
- the time frames for implementing the plan (for example, a plan can include a variety of actions which may be staged or progressed over a specified period of time).

A specific penalty has not been included under this clause as a customer can face a penalty under clause 54 for not resubmitting a water efficiency management plan which resolves issues identified in a decision to reject the plan.

## **54 Approving water efficiency management plan**

*Clause 54* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out a general process and the timeframes involved in having a water efficiency management plan approved by a water service provider. Water service providers are able to request more information from a customer in order to make a decision about a plan. The water service provider must approve, with or without conditions, or refuse to approve the plan:

- if additional information is not required—within 60 business days after receiving the plan
- if additional information is required—within 60 business days of when the information is received or should have been given, whichever is earlier.

Within 10 business days after making the decision, the water service provider must give the customer an information notice about the decision.

Where a water service provider refuses to approve a plan, there are two obligations on a customer, being:

- a customer must, within 20 business days of receiving a notice of the decision to refuse to approve, submit to the water service provider a revised plan
- the plan that is submitted must address the reasons for the refusal to approve the decision.

An offence will be committed under this clause if the customer fails to meet either of these obligations.

A customer can appeal a decision made by the water service provider in the information notice (for example, a decision to reject the plan or to apply conditions to the approval of a plan). The appeal provisions set down in chapter 7 apply as if any water service provider were a local government.

This means that whether a decision to reject a water efficiency management plan was made by a local government or another type of water service provider (for example, a corporation owned by a local government or a private company), the same provisions will apply and the water service provider is deemed to be a local government for the purposes of chapter 7. Those appeal provisions include a requirement for an internal review of the decision by the water service provider, followed by application to a Magistrates Court for resolution of the matter.

Water service providers may also recover from the customer the costs to the water service provider of approving the customer's water efficiency management plan.

## **55 Complying with water efficiency management plan**

*Clause 55* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a customer must comply with their approved water efficiency management plan. A maximum penalty of 1665 units may apply for non-compliance.

## **56 Reporting under water efficiency management plan**

*Clause 56* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It details the reporting obligations of a customer who has an approved water efficiency management plan. The customer must report annually within 10 businesses days of the anniversary

day of approval of the plan and provide the report to the water service provider.

The report must include:

- the extent to which the plan has been implemented
- the water savings and efficiencies achieved by implementing the plan
- whether there has been any change of circumstance, for example
  - if there has been a significant increase in production output. This may relate directly to the number of items produced or where there is no specific identifiable production output, the scale of intensity. For example, a significant increase in the number of clients
  - if there has been a significant increase in water consumption.

These changes in circumstance may help a water service provider to identify, amongst other things, whether a water efficiency management plan is being complied with and whether a plan may require an amendment or review (for example, a significant increase in production may mean that a plan should be reviewed to determine whether further water savings can be made).

Customers who do not comply with the annual reporting requirement for water efficiency management plans face a maximum penalty of 100 penalty units.

This clause also details the reporting obligations of water service providers to the chief executive. Under the amendments, the chief executive will have the power to ask a water service provider at any time for:

- a copy of the water efficiency management plan which has been approved (for example, if the chief executive wishes to see a plan for a high volume water customer it can do so
- information about a water efficiency management plan that has not been approved
- a report summarising progress by the customers of the water service providers in achieving water savings and efficiencies. For example, in order to determine the overall level of water savings achieved by a particular date by a non-residential customer or

type of non-residential customer, the chief executive may request a report outlining progress from any or all water service providers.

The water service provider will have 20 business days to comply with the chief executive's request, otherwise the water service provider faces a maximum penalty of 100 penalty units.

### **57 Amending or replacing water efficiency management plan by chief executive direction**

*Clause 57* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It empowers the chief executive to require a water service provider to give a notice to a customer requiring the customer to amend an approved water efficiency management plan or prepare a new plan and submit it to the water service provider. The chief executive may exercise this power where it is satisfied that there is or there is likely to be:

- a severe water supply shortage or
- an increase in the severity of a water supply shortage.

A water service provider must comply with the direction of the chief executive and a customer must comply with a notice issued by a water service provider to amend or replace a water efficiency management plan. Maximum penalty for the water service provider and the customer is 500 penalty units.

If a water efficiency management plan is amended or if a new plan is prepared, the plan is subject to this division. Therefore, it must comply with the relevant guidelines and state the content required under clause 53, the approval process and timelines outlined in clause 54 apply, the customer must comply with the plan under clause 55, and reporting obligations and other requirements of the division apply.

### **58 Amending or replacing water efficiency management plan by water service provider direction**

*Clause 58* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It empowers a water service provider to require a customer to amend a water efficiency management plan or replace a plan if the water service provider is satisfied:

- for a customer, or a type of customer, production output or water consumption has increased significantly. For example, if, after a plan has been approved, a customer has doubled its production capacity, and no allowance for that increase in production was incorporated in the plan, a water service provider may require a customer to amend their approved plan
- the cost effectiveness of implementing a plan is likely to have changed significantly. For example, if the cost of purchasing a water efficiency device, appliance or technology has decreased significantly, the water service provider may require the customer to amend their approved plan to require the use or installation of the cost effective measures
- there is or there is likely to be a severe water supply shortage.

The notice given by the water service provider must state a reasonable time for the customer to submit the amended or new water efficiency management plan and a customer must comply with the notice.

The division applies for the amended water efficiency management plan or new plan, as for clause 57.

### **59 Amending or replacing water efficiency management plan by request**

*Clause 59* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables a customer to request an amendment of a water efficiency management plan or the preparation of a new plan. If a water service provider approves the request to amend a plan or prepare a new plan, the customer must amend the plan or prepare the new plan in the reasonable time stated by the water service provider. For instance, if a customer is aware that there may be difficulties associated in meeting the timeframes included in the existing approved water efficiency management plan, they may ask their water service provider if they can amend their plan. If the water service provider agrees, then the customer can amend the water efficiency management plan accordingly.

The division applies for the amended plan or new plan as for clause 57.

### **60 Notice to comply with water efficiency management plan**

*Clause 60* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It empowers a water service

provider to issue a notice to a customer to comply with a water efficiency management plan where the water service provider is satisfied or reasonably believes the customer has not complied with the plan. For example, if a water service provider reasonably believes that the customer has not undertaken an action specified in the plan within the specified timeframe, the water service provider can issue a notice requiring the customer to comply with the plan.

This provision does not prevent a water service provider from taking other action such as issuing a show cause notice requiring the customer to demonstrate compliance with the water efficiency management plan, before issuing a compliance notice to the customer.

### **61 Reviewing water efficiency management plans**

*Clause 61* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It empowers water service providers to ensure a customer with an approved water efficiency management plan reviews the plan when the water service provider considers it appropriate and provides a copy of the review report to the water service provider within a reasonable time. However, the plan must be reviewed by the customer at least every five years.

## **Division 7            Miscellaneous**

### **62 No charge for water in rainwater tank**

*Clause 62* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. This clause explicitly provides that a service provider must not charge for water that has been collected from a roof and is in, or taken from, a rainwater tank.

### **63 Sections 63—69 not used**

*Clause 63* provides that clauses 63 to 69 are not used.

## **Part 4                      Service provider obligations**

### **Division 1                Strategic asset management plans**

#### **70 Requirement for strategic asset management plan**

*Clause 70* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It requires each service provider to have an approved strategic asset management plan for ensuring continuity of supply of each of the service provider's registered services.

#### **71 Preparing strategic asset management plan**

*Clause 71* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It provides for the preparation of a strategic asset management plan by a service provider for approval by the regulator. The strategic asset management plan must identify the services and infrastructure to which it applies and:

- specify standards for key performance matters for the infrastructure and services. This must include service standards in respect of the service that customers can expect from the system, including, for example, expected interruptions to supply and response times in addition to service standards relating to asset management and continuity of supply
- document an operation, maintenance and renewals strategy to ensure the standards are met.

The plan must identify the methodology used by the service provider for developing the standards, have regard to best practice industry standards, include the details of the way in which the provider will comply with any system operating plan that applies to the service provider, and be prepared in accordance with guidelines issued by the regulator.

It is not intended that the regulator will specify minimum standards for a service provider's strategic asset management plan. This is because standards will necessarily vary from provider to provider, according to the class of customer being supplied and the type of service being provided. For

example, standards for urban domestic water supply would include standards requiring high levels of continuity and reliability of supply. Water for irrigation, on the other hand, would include varying levels of reliability depending on the agreed conditions of supply.

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

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

## **72 Certifying strategic asset management plan**

*Clause 72* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires a strategic asset management plan to be certified by a registered professional engineer. This is to ensure that the plan is approved by a qualified person (this may be an employee of the service provider) as being appropriate for the service provider's infrastructure and services. In certifying the strategic asset management plan, the registered professional engineer must include the engineer's name and registration details.

## **73 Submitting strategic asset management plan for approval**

*Clause 73* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the requirement for a service provider to submit its strategic asset management plan to the regulator for approval, within one year of being registered.

## **74 Approving strategic asset management plan**

*Clause 74* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that the regulator must approve a strategic asset management plan within three months unless the plan was certified by a person who did not have the necessary qualifications or experience, or the plan is inadequate in a material particular. In determining whether a plan is inadequate in a material particular, the regulator must take account of cost considerations for the service provider and its customers in addressing the material particular. This is to recognise the reality that a service provider can generally only provide a level of service for which its customers are able to pay.

When the regulator approves a strategic asset management plan, the regulator must also tell the service provider the intervals at which regular reviews of the plan must be conducted. The interval at which reviews are required must not be less than one year. The purpose of the regular reviews is to ensure that the plan is updated on a regular basis. Clauses 106 and 107 set out the process for regular reviews.

The regulator may also, in some instances, require that the service provider arrange for a regular audit, by an independent engineer, of its plan. Clauses 108 and 109 set out the process for regular audits. If the regulator requires the service provider to arrange for a regular audit, the interval at which such audits are required must not be less than two years.

## **75 Refusing to approve strategic asset management plan**

*Clause 75* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the process to be followed by the regulator where the regulator does not approve a strategic asset management plan. If a registered professional engineer did not certify the plan, the regulator must return the plan to the service provider with a notice requiring certification and return of the plan to the regulator within the reasonable time stated in the notice.

If the plan is inadequate in a material particular, the regulator must return the plan to the service provider with an information notice stating how the plan is inadequate and requiring that the plan be revised and returned to the regulator, or that a new plan is prepared, certified and given to the regulator. The service provider must comply with the notice or can face a maximum penalty of 500 penalty units.

## **76 Changing strategic asset management plan**

*Clause 76* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to recycled water regulation. It provides that a service provider may make changes to its strategic asset management plan with the agreement of the regulator. In addition, the regulator may, by giving a notice to a service provider that has an approved recycled water management plan, require the service provider to change their strategic asset management plan to reflect their recycled water management plan within the reasonable time stated in the notice. The service provider must comply with this requirement or can face a maximum penalty of 500 penalty units.

## **77 Complying with approved strategic asset management plan**

*Clause 77* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It places an obligation on a service provider to comply with its strategic asset management plan when supplying services to its customers. The maximum penalty that can be applied to a service provider for not complying with the approved plan is 1665 penalty units. This penalty matches that applying to the obligation to comply with the system operating plan under section 360ZA of the Water Act and is commensurate to that applying in respect of other offences under the Bill.

## **Division 2            System leakage management plans**

### **Subdivision 1    Preliminary**

#### **78 Application of div 2**

*Clause 78* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states this division requires water service providers (except those that only supply drainage services) to develop and implement a system leakage management plan for the purpose of minimising water losses due to leakage from the provider's distribution system, provided that it is cost-effective for the water service provider. Addressing water conservation through reduced system leakage has been

identified as one of the most effective cost-effective measures to contribute to water conservation.

## **Subdivision 2 Preparing and submitting plan**

### **79 Requirement for system leakage management plan**

*Clause 79* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that each water service provider must have a system leakage management plan directed at minimising water losses from leakage in the distribution system.

### **80 Preparing system leakage management plan**

*Clause 80* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a water service provider must prepare a system leakage management plan that is approved by the regulator. The plan must identify the services and infrastructure to which it applies, and report on system leakage and how the leakage rate was worked out. The plan must specify system leakage, identify measures to reduce losses, outline cost benefit analyses of the implementation of these measures, and for those measures where implementation is cost effective, detail a plan to implement such measures. The plan must be prepared in accordance with any guidelines issued by the regulator.

### **81 Certifying system leakage management plan**

*Clause 81* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires that a water service provider's system leakage management plan must be certified by a registered professional engineer. This is to ensure the plan is validated by a qualified person for the water service provider's infrastructure and services.

### **82 Submitting system leakage management plan for approval**

*Clause 82* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the requirement for a water service provider to submit its system leakage management plan within two years after the provider is registered.

## **Subdivision 3 Exemption from preparing plan**

### **83 Application for exemption**

*Clause 83* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides a process and requirements for a water service provider to apply for an exemption from preparing a system leakage management plan.

### **84 Deciding the application**

*Clause 84* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the matters to be considered by the regulator when deciding an application for an exemption from preparing a system leakage management plan.

A water service provider may apply for and be granted an exemption by the regulator on the basis of the regulator being satisfied of those matters detailed in subclause (1)(b).

### **85 Conditions of exemption**

*Clause 85* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that an exemption from preparing a system leakage management plan applies only for the specified period. In addition, some exemptions are granted subject to the specified conditions and only remain valid if the water service provider complies with the specified conditions.

### **86 Cancelling or amending an exemption**

*Clause 86* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires a water service provider to give immediate notice to the regulator of a change of circumstances under which an exemption from preparing a system leakage management plan is given.

The regulator may amend or cancel the exemption in response to the notice or otherwise when the regulator becomes aware of a change in circumstances.

## **Subdivision 4 Approving or refusing to approve plan**

### **87 Approving system leakage management plan**

*Clause 87* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states the regulator must approve the system leakage management plan within three months unless the plan was certified by a person who did not have the necessary qualifications or experience, or the plan does not contain all relevant or critical information. When the regulator approves the plan, the regulator must tell the water service provider the intervals at which regular reviews and audits of the plan must be conducted.

### **88 Refusing to approve system leakage management plan**

*Clause 88* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It sets out the process to be followed by the regulator, including the reasons of refusal where the regulator does not approve a system leakage management plan.

### **89 Regulator may seek further information**

*Clause 89* provides that the regulator may request additional information, and if it is not provided within the timeframe, the system leakage management plan will not be approved.

## **Subdivision 5 Miscellaneous**

### **90 Changing system leakage management plan**

*Clause 90* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for a water service provider to make changes to its system leakage management plan with the agreement of the regulator.

### **91 Complying with approved system leakage management plan**

*Clause 91* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It places an obligation on a water

service provider to comply with its system leakage management plan when supplying services to its customers.

### **Division 3            Drinking water quality management**

This division establishes a regulatory framework for the regulation of drinking water provided by a drinking water service provider that is a water service provider, within the meaning of the Bill, and is providing a drinking water service. It is not intended to capture other providers of water for drinking purposes. The division extends the functions of the regulator under the Bill.

The objective is to ensure the protection of public health. Drinking water service providers will be required to prepare risk management plans - drinking water quality management plans that are assessed and approved by the regulator against a range of matters, in particular water quality criteria prescribed by regulation under the Public Health Act or under a guideline prepared by the regulator. The approved drinking water quality management plan will give effect to the water quality criteria aiming to ensure the quality of the drinking water supplied. A drinking water service provider must comply with the approved drinking water quality and any conditions, failing which the regulator may take a range of compliance actions as provided for under the Bill. In addition a drinking water service provider has a general obligation under the Public Health Act to supply drinking water that is 'safe', failing which the chief executive administering that Act may take necessary compliance action as well as managing any associated public health risk.

The dictionary (schedule 3 of the Bill) provides definitions for key terms under the drinking water quality regulatory framework, including 'drinking water service provider' and 'drinking water service'.

## **Subdivision 1                      Offences**

### **92 Offence to carry out drinking water service without approved drinking water quality management plan**

*Clause 92* makes it an offence for a drinking water service provider to carry out a drinking water service unless the provider has an approved drinking water quality management plan.

### **93 Offence about compliance with drinking water quality management plan**

*Clause 93* makes it an offence for a drinking water service provider to not comply with the provider's approved drinking water quality management plan and any conditions to the plan.

## **Subdivision 2                      Drinking water quality management plans**

### **94 Purpose of drinking water quality management plan**

*Clause 94* provides a purpose statement about a drinking water quality management plan. The purpose of a drinking water quality management plan is to protect public health.

### **95 Preparing drinking water quality management plan**

*Clause 95* provides that each drinking water service provider must prepare a drinking water quality management plan for their drinking water service and apply to the regulator for approval of that plan. The clause details how the plan is to be prepared and the matters that must be included and addressed in the plan.

### **96 Additional information may be required**

*Clause 96* provides that the regulator may require additional information about a drinking water quality management plan from the drinking water service provider, including information about supply arrangements to and from the provider. Information about the supply arrangements that may be

required by the regulator could include, for example, details of the quality of, or source input risks associated with, the water sourced by the provider for carrying out its drinking water service.

## **97 Regulator may obtain advice about application**

*Clause 97* provides that the regulator may obtain advice about an application from an advisory council or other entity that the regulator considers appropriate before making a decision about the application for a drinking water quality management plan. For example, the regulator may seek advice from the chief executive administering the Public Health Act.

## **98 Consideration of application**

*Clause 98* details what the regulator must consider when deciding to either approve, with or without conditions, or refuse a drinking water quality management plan, and the timings in which the regulator must make a decision. Subclause (2) details what the regulator must have regard to when considering an application. The regulator must consider the contents of the plan and any additional information that has been given to the regulator. The regulator must also consider the guidelines if any, made by the regulator about preparing the plan, any advice that the regulator may have received from an advisory council or other entity and the water quality criteria for drinking water. The water quality criteria is prescribed by regulation under the Public Health Act or in a guideline prepared by the regulator. This is a key assessment undertaken by the regulator as part of approving a plan and it is a function of an approved plan to give effect to meeting the water quality necessary for drinking water.

## **99 Notice of decision**

*Clause 99* provides details of how the regulator will give notice of a decision about a drinking water quality management plan. Notice of the decision is required if the regulator approves the plan without conditions whereas an information notice is required if the regulator approves the plan with conditions or refuses to approve the plan. If the regulator approves the plan, the regulator must also tell the provider the intervals at which regular reviews of the plan must be conducted. The purpose of the review is to ensure the plan is updated on a regular basis relevant to the provider's water service. The regulator may also require that the provider arrange for a

regular audit, by an independent auditor, to audit the plan, and must tell the provider the intervals at which an audit of the plan must be conducted.

### **100 Amendment of drinking water quality management plan—application**

*Clause 100* provides that a drinking water service provider may apply to amend its plan. The same procedure that applies to the application for approval of a drinking water quality management plan applies to the application for amendment.

### **101 Amendment of drinking water quality management plan—requirement of regulator**

*Clause 101* provides that the regulator may require an amendment to a drinking water quality management plan if the regulator is satisfied that an amendment is required to protect public health. Subclause (2) ensures that the provider is given an opportunity to show cause prior to the regulator giving notice requiring the provider to amend its plan. The provider must comply with a notice given by the regulator, if the regulator decides, after having considered all properly made submissions, the amendment should be made the regulator. The regulator must also give the drinking water service provider an information notice for the decision. If the regulator is satisfied with the way the plan has been amended, the plan will then taken to be the approved plan and the regulator will give the drinking water service provider a notice stating that the plan as amended is taken to be the approved plan and the amended plan will take effect from the day the notice is given to the drinking water service provider. However if the regulator, after considering all properly made submissions, decides that the amendment should not me made, the regulator must give the drinking water service provider a notice that the plan need not be amended.

## **Subdivision 3                      Miscellaneous**

### **102 Notice of particular matter**

*Clause 102* details the steps a drinking water service provider must take to inform the regulator of non-compliance with the water quality criteria in their drinking water management plan. It provides that if a drinking water service provider discovers a non-compliance with water quality criteria for

drinking water in the plan, the drinking water service provider must immediately tell the regulator about the non-compliance and the circumstances that gave rise to the non-compliance. The responsible entity must comply with obligation to notify the regulator of the non-compliance despite the fact the notification may tend to incriminate the entity. The clause provides that the information given to the regulator or evidence derived from the information is not admissible in a civil or criminal proceeding.

The regulator must be informed immediately so that action can be taken to protect public health. If the information is given to the regulator orally, the provider must as soon as practicable give the regulator written notice of the relevant information.

### **103 Requirement about giving water quality information**

*Clause 103* provides a means by which a drinking water service provider can obtain necessary water quality information about the source of water from which the provider is supplied water for its drinking water service. A service provider that is the owner of a water storage, including associated water infrastructure, is not captured as a drinking water service provider under this division (save for one exception that is detailed further in clause 628). However a drinking water service provider needs to know the quality of the water that it is receiving from that source to assist in the provider carrying out its treatment of the water to meet the water quality requirements under its approved drinking water quality management plan. To seek the relevant information the drinking water service provider must give the service provider for the water storage or other infrastructure, a notice which includes enough details about the information that is required so that the request can be complied with. The notice must also state a reasonable period of time within which the information must be given. The service provider for the water storage or other infrastructure must comply and provide the information. The service provider may recover from the drinking water service provider the reasonable costs of obtaining the information.

### **104 Requirement about operation of drinking water service**

*Clause 104* provides that a drinking water service provider must ensure that the persons engaged to in the operation of the provider's service have the necessary qualifications or experience to operate the service. The qualifications may be prescribed under a regulation.

## **Division 4            Audit reports and reviews**

### **105 Application of div 4**

*Clause 105* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It states this division applies to strategic asset management plans, system leakage management plans drought management plans and drinking water quality management plans.

### **106 Reviewing plans**

*Clause 106* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It requires each service provider to review its strategic asset management plan, system leakage management plan and drinking water quality management plan in accordance with the relevant notice given by the regulator. The purpose of the review is to ensure the plan remains current, having regard to relevant best practice industry standards. The outcomes of the review must be documented in the service provider's annual report and it is an offence for a service provider to not comply with the requirement.

### **107 Changing plans following review**

*Clause 107* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It provides that, if a review of the strategic asset management plan indicates that the plan should be changed, the service provider may modify the plan and submit the modified plan to the regulator for approval. The approval processes under clauses 72, 74 and 75 will then apply. The clause also provides for similar requirements for the review and subsequent change of a system leakage management plan and drinking water quality management plan.

### **108 Providing regular audit reports**

*Clause 108* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It will apply to a service provider if, as part of the approval notice for a strategic asset management plan, system leakage

management plan or drinking water quality management plan, the regulator requires a service provider to arrange for regular audits of the plan.

There are a number of purposes of the regular audit, for example, to verify the accuracy of data provided in the service provider's annual report. The purpose of regular audits of a strategic asset management plans also includes assessing the service provider's technical ability to meet the standards identified in the strategic asset management plan. For drinking water quality management plans the purpose of the audit is also to assess the service provider's compliance with the plan and the relevance of the plan to current circumstances.

The regular audit must be prepared by a registered professional, for example, for a strategic asset management plan or system leakage management plan, an engineer who is independent from the service provider. For a drinking water quality management plan, the audit must be prepared by either a person who is certified under the Drinking Water-Quality Management System Auditor Certification Scheme or has a similar qualification as accepted by the regulator.

### **109 Declarations about regular audit report**

*Clause 109* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. It sets out requirements for declarations to accompany a regular audit report. The service provider must provide a declaration stating that the service provider has given all relevant information to the auditor and has not knowingly given the auditor any false or misleading information. The auditor must provide a declaration stating the auditor's qualifications and experience, that they have not knowingly given any false or misleading information and that they have not knowingly failed to reveal any relevant information.

### **110 Spot audits of plans**

*Clause 110* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It enables the regulator to arrange for a spot audit of a service provider's infrastructure if the regulator believes that a service provider is not complying with its strategic asset management plan, system leakage management plan or drinking water quality management plan or that the plans are no longer current.

The regulator may only arrange for a spot audit if the regulator has given the service provider a show cause notice under clause 463, inviting the service provider to show cause why the spot audit should not be conducted. The regulator must give the service provider a copy of the spot audit report within 30 business days (that is, six weeks) after completion of the spot audit.

If the spot audit reveals significant deficiencies in the service provider's strategic asset management plan, system leakage management plan or drinking water quality management plan, or that the service provider has not complied with the plans, the regulator may recover the cost of the spot audit from the service provider. The regulator must also give the service provider an information notice requiring the service provider to rectify any deficiency identified through the spot audit or implement the plan.

### **111 Declarations about spot audit report**

*Clause 111* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. It specifies that a spot audit report must be accompanied by a statutory declaration by the auditor, addressing certain matters.

### **112 Access for conducting audit reports**

*Clause 112* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. It requires a service provider to allow an auditor, or any person authorised by the auditor, free and uninterrupted access to the service provider's infrastructure and any records relating to the infrastructure. However, the auditor must not enter the premises of a customer of the service provider without the customer's consent.

## **Division 5            Customer service standards**

### **113 Purpose of div 5**

*Clause 113* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that the purpose of the division is to ensure that customers who do not have a contract for the

supply of registered services with a service provider are protected by standards that relate to the supply of registered services.

### **114 Application of div 5**

*Clause 114* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It clarifies that the requirement to prepare customer service standards only applies where a service provider does not have a contract for the supply of registered services with all its customers. This is because customer service standards are intended to be a mechanism for customers to be informed about the terms and conditions of their relationship with their service provider, where those terms and conditions are not already documented in a written contract for the supply of registered services.

This clause also specifies that clauses 118 (Customer complaints) and 119 (Revising customer service standard) do not apply to agencies to which the *Ombudsman Act 2001* applies. This is because that Act provides a complaint mechanism through the Queensland Government Ombudsman. The complaints mechanism in clause 118 is intended to provide a process for customers of service providers who are not subject to the Ombudsman's jurisdiction.

### **115 Preparing customer service standards**

*Clause 115* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires a service provider to prepare customer service standards within one year of registration. The service provider must provide a copy of the standard to the regulator and all of the service provider's customers who do not have a contract for the supply of registered services.

### **116 Content of customer service standard**

*Clause 116* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that the customer service standard must specify the level of service to be provided, processes for dealing customers and any matters specified in guidelines issued by the regulator. For example, customer service standards must include processes for dealing with service connections, billing, metering, accounting, customer consultation, complaints and dispute resolution.

## **117 Complying with customer service standard**

*Clause 117* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider must comply with its customer service standards when supplying services to its customers that do not have a contract for the supply of registered services.

## **118 Customer complaints**

*Clause 118* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for a customer giving a notice of complaint about a service provider's customer service standard to the regulator and the regulator's response where there is a significant deficiency in the standard. Importantly the customer must first attempt to resolve the complaint through negotiation with the service provider.

## **119 Revising customer service standard**

*Clause 119* provides that if the regulator requires a revision of the customer service standard after inquiring into a customer complaint, the service provider must revise the standard accordingly.

## **120 Reviewing customer service standard**

*Clause 120* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider must review its customer service standard each year. If the standard changes as a result of the review, the service provider must give a copy of the revised standard to the regulator and each of its customers that do not have a contract for the supply of registered services.

# **Division 6            Drought management plans**

## **121 Purpose of div 6**

*Clause 121* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires the mandatory submission of drought management plans by water service providers to

ensure they are well prepared for periods of drought, thus minimising the risk of interrupted water supplies and ‘crisis management’.

## **122 Application of div 6**

*Clause 122* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that this division does not apply to water service providers who only supply drainage services or to water service providers where they supply water services to a customer who holds a water entitlement (such as a water allocation holder). For example, if the only service being provided is transferring water through a pipeline, and the water is owned by another entitlement holder, a drought management plan is not required to be submitted by the service provider. Another example is when a service provider providing bulk water services is only supplying water to other water entitlement holders. In this circumstance, the service provider will not be required to prepare a drought management plan, as all water entitlement holders will be bound by the water sharing rules associated with a resource operations plan, or interim plans.

## **123 Preparing drought management plans**

*Clause 123* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires a water service provider to have a drought management plan for each area it services. For example, if it services a number of communities, the plan must address each community within the service area.

To prepare the plan, a water service provider is obliged to consult with its customers and, if the water is managed under an interim resource operations licence or resource operations licence, the holder of the interim resource operations licence or resource operations licence. During plan preparation consideration must be given to a number of matters: the needs of classes of customers; likely future requirements of customers for water; the contractual rights of customers and classes of customers; and availability and proposed use of water from various sources.

The water service provider must also ensure the plan is consistent with any requirements about drought or critical water supply arrangements under a resource operations plan, or interim resource operations plan, for the area or in a plan developed for an interim resource operations licence in the area. These other arrangements set out water sharing rules for allocation

holders when supplies are critical and water service providers will have to operate within these rules.

The drought management plan must identify the services and infrastructure to which it applies and:

- state details of situations in which the provider intends to exercise powers to restrict water supply or take other measures to minimise impact of water shortages
- state details of the actions intended to be taken to restrict water supply or other measures intended to be taken.

The plan must also be prepared in accordance with any guidelines issued by the regulator.

## **124 Certifying drought management plan**

*Clause 124* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires the drought management plan to be certified by the water service provider's chief executive officer (or equivalent) as being the plan for the provider.

## **125 Submitting drought management plan for registration**

*Clause 125* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires the water service provider to prepare a drought management plan within one year after the day the service provider is registered and to give a copy to the regulator for registration.

## **126 Exemption from preparing drought management plan**

*Clause 126* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides a process and requirements for a water service provider to seek an exemption from the regulator for preparing a drought management plan. A water service provider may apply for and be granted an exemption by the regulator if they can demonstrate that their supply cannot be affected by drought. For example, water obtained from the Great Artesian Basin or water obtained through the desalination of seawater.

### **127 Cancelling or amending exemption from preparing drought management plan**

*Clause 127* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires a water service provider to give immediate notice to the regulator of a change of circumstances under which an exemption is given. The regulator may amend or cancel the exemption in response to the notice or otherwise when the regulator becomes aware of a change in circumstances.

### **128 Registering a drought management plan**

*Clause 128* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires the regulator to register a drought management plan when the regulator is satisfied that it complies with the registration criteria specified in any relevant guidelines issued by the regulator. The regulator must tell the water service provider of the intervals at which regular reviews of the plan must be conducted. Drought management plans require registration only. There is no approval process for these plans.

### **129 Changing a drought management plan**

*Clause 129* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a water service provider may make changes to its drought management plan after it is registered. Following such changes, the water service provider must have the plan re-certified and then resubmit it for registration with the regulator.

### **130 Complying with drought management plan**

*Clause 130* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires that a water service provider must comply with its drought management plan.

### **131 Tabling in Legislative Assembly**

*Clause 131* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires the Minister to provide to the Legislative Assembly a list of water services providers who do not have registered drought management plans (except those granted an exemption). This must be done after 1 January each year.

## **Division 7            Outdoor water use conservation plan**

### **132 Application of div 7**

*Clause 132* is relocated as an uncommenced provision from the *Water and other Legislation Amendment Act 2007* (Water and Other Legislation Amendment Act) to the Bill as the Bill now provides for service provider regulation. It provides that this division applies to a service provider who provides a retail water service outside the SEQ region or a designated region. A retail water service is defined in the dictionary (schedule 3 of the Bill). In general terms, a retail water service equates to the supply of reticulated water to urban customers.

### **133 Water service provider to have outdoor water use conservation plan**

*Clause 133* is relocated as an uncommenced provision from the Water and Other Legislation Amendment Act to the Bill as the Bill now provides for service provider regulation. It provides that a relevant water service provider must have an outdoor water use conservation plan for reducing outdoor water use and promoting efficient water use by customers. The impacts of the ongoing drought and climate change have highlighted the importance of conserving water as a precious resource. Australia will become hotter and drier in coming decades, with areas in Queensland particularly affected. The requirement for an outdoor water conservation plan aims to ensure urban water users are applying water efficient practices at all times, not simply during periods of water shortage at the local or regional level. The plan prepared by a water service provider must be consistent with guidelines issued by the regulator and include:

- any water restrictions imposed, or to be imposed, by the water service provider
- details of measures to reduce outdoor water use and promote efficient water use by customers
- the way the service provider intends to implement and ensure compliance with the measures.

Examples of the types of practices which may be included in an outdoor water use conservation plan include restricting the use of garden sprinklers during the middle of the day (except where required for safety reasons), and alternate outdoor watering days. Measures may also include education

programs, rebate schemes for water efficient devices, water wise plants and garden equipment. There are other water supply planning requirements imposed on water service providers under the Water Act. A plan under clause 133 may be part of another document if it fulfils the requirements under the guidelines issued by the regulator, for example, a drought management plan may already include measures or water restrictions that will satisfy the requirements of the guidelines.

### **134 Approving outdoor water use conservation plan**

*Clause 134* is relocated as an uncommenced provision from the Water and Other Legislation Amendment Act to the Bill as the Bill now provides for service provider regulation. It sets out the procedure for the regulator to approve or refuse an outdoor water use conservation plan submitted by a water service provider. The decision to approve or refuse a plan is dependent on whether the plan satisfies the requirements of the guidelines issued by the regulator.

If an outdoor water use conservation plan is approved, the regulator must give a notice advising the water service provider of the decision. If a plan is refused, in the first instance, the regulator must give a notice to the water service provider stating how the plan must be changed to comply with the guidelines and include a timeframe within which the revised plan must be returned to the regulator for consideration.

If after considering a revised plan, the regulator decides to refuse the plan, the regulator must give an information notice to the water service provider. A decision by the regulator to refuse the revised plan can be appealed.

### **135 Changing outdoor water use conservation plan**

*Clause 135* is relocated as an uncommenced provision from the Water and Other Legislation Amendment Act to the Bill as the Bill now provides for service provider regulation. It allows a water service provider to amend their water use conservation plan after it has been submitted and approved by the regulator. Any changes need to be made in consultation with the regulator and approved by the regulator.

### **136 Complying with outdoor water use conservation plan**

*Clause 136* is relocated as an uncommenced provision from the Water and Other Legislation Amendment Act to the Bill as the Bill now provides for

service provider regulation. It provides that a water service provider must comply with an outdoor water use conservation plan once it is approved by the regulator. This includes enforcing measures outlined under the plan.

## **Division 8            Other service provider obligations**

### **Subdivision 1    Residential premises**

Subdivision 1 applies two separate requirements on retail water service providers (or related local governments): the provision of water consumption information to residential premises; and the billing of residential premises for water consumption.

Currently, the majority of retail water service providers are local governments. Such water service providers utilise rating powers under the Local Government Act to levy a utility charge for the supply of water on property owners. However, in some instances, a local government will issue a rate notice for the supply of water on behalf of a water service provider (a separate legal entity) that is not the local government, hence a 'related local government'. Other non-local government water service providers issue an account for the supply of water to their customers.

#### **137 Application of sdiv 1**

*Clause 137* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It states that subdivision 1 applies to water service providers (or related local governments) who provide retail water services to residential premises. However, the subdivision only applies in respect of residential premises where the supply of water is measured and charged by the water service provider or related local government. Also, the subdivision does not apply to premises that are common property under the *Body Corporate and Community Management Act 1997* (Body Corporate and Community Management Act) or the *Building Units and Group Title Act 1980*.

### **138 Guidelines for rate notice or account for supply of water to residential premises**

*Clause 138* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a rate notice or account issued by a water service provider or related local government for the supply of water to residential premises, must comply with guidelines issued by:

- in respect of the SEQ region or a designated region—the Commission
- in respect of an area outside the SEQ region or a designated region—the regulator.

For a rate notice or account issued for the supply of water to residential premises, the guidelines may specify:

- the frequency at which the rate notice or account must be issued and
- the type of information to be included about the volume of water supplied to the premises during each billing period.

Currently, about one-third of households (rental properties) receive no information about the amount of water consumed on the premises as owners are usually liable for the cost of the supply of water and they receive the water bill (rate notice or account) with the consumption information. As such, residents (tenants) are often unaware of their water use and how their water consumption compares with other households. As a result, there is no incentive to reduce water consumption.

The guidelines will provide for standardised information to be included on rate notices or accounts. For example, detailed graphical information on water consumption, comparisons of average daily water consumption against previous billing periods and the local area average, messages about water consumption targets and ways to help save water. Subclause (3) provides that the section applies despite sections 973(4) and 1008(3) of the Local Government Act which deal with utility charges.

### **139 Service provider to give occupier water advice**

*Clause 139* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires water service providers to provide a water advice to occupiers of residential rental properties that

states the amount of water supplied to the premises during each billing period. Clause 139 states that the water advice must not include any information about any other rates or charges mentioned in section 963 of the Local Government Act; but may include information about ways to reduce the amount of water used on the premises or water restrictions applying to the premises. Subclause (5) provides a definition of ‘occupier’ for the section.

## **Subdivision 2 Premises with more than 1 sole-occupancy unit**

### **140 Service provider to give information about water usage**

*Clause 140* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It relates to the mandatory installation of sub-meters in multi-unit complexes and applies to premises with more than one sole-occupancy unit. A definition of what constitutes a sole occupancy unit is provided for the section.

The intent of the provision is to provide owners of multi-unit buildings with an itemised rate notice or account showing all sub-meter readings within the building or complex. This will enable owners to elect to pass on the cost of the water supply to individual tenancies according to actual volumes of water supplied.

The itemised rate notice or account issued by a water service provider or related local government for the provision of a retail water service to premises with more than one sole-occupancy unit must state:

- the volume of water supplied through each meter during each billing period
- the amount of the total charge for the retail water service that relates to the volume of water supplied through each meter.

This clause does not to apply to community titles schemes under the Body Corporate and Community Management Act. This is because lot owners and bodies corporate are either charged directly by the relevant service provider for the supply of water to individual lots and the common property, or the total charge for the supply of water to the scheme is apportioned among lot owners. For community titles schemes that have sub-meters installed and were established after 1 January 2008, the water

service provider is obliged to charge lot owners and bodies corporate directly for the supply to individual lots and the common property.

## **Division 9            Annual reports**

### **141 Service provider to report annually**

*Clause 141* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It provides that a service provider is required to prepare an annual report for each financial year in the following instances:

- after a strategic asset management plan, system leakage management plan or drinking water quality management plan has been approved
- after a system operating plan applying to the service provider has been made
- after a customer service standard has been given to the regulator
- when a water advice is given to an occupier of residential premises.

These annual reports may be prepared in combination with other reports required to be provided by service providers to the regulator under this clause. A copy of the report must be given to the regulator within 120 business days (that is, 24 weeks) of the end of the financial year. Where a service provider is a local government, the local government can include the reports within a report required under the Local Government Act. A copy of the report must be available for inspection and purchase.

### **142 Contents of annual report**

*Clause 142* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to drinking water regulation. It states the matters which must be addressed in an annual report for each of the instances listed above in clause 141. While there are some specific reporting requirements relating to particular plan types, for example, an annual report for drinking water quality management must contain a summary of water quality and compliance

with the water quality criteria for drinking water and an annual report on water advices given to tenants must state the number of advices given and any complaints, the annual reporting requirements are generally the same. For example, most types of annual report must:

- be prepared in accordance with the relevant guidelines
- document the ways in which the service provider has implemented the relevant plan, for example, how funds have been applied
- state the outcome of any reviews of the plan and how the service provider has addressed those outcomes
- contain a summary of the findings and recommendations of any relevant regular audit reports.

## **Division 10      Water for fire fighting**

### **143 Application of div 10**

*Clause 143* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It clarifies that division 10 only applies to service providers who provide retail water services (this would primarily be in urban areas).

### **144 No charge for water for fire fighting purposes**

*Clause 144* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a water service provider cannot charge for water taken from a fire fighting system for fire fighting purposes. ‘Fire fighting system’ and ‘fire fighting purposes’ are defined in the dictionary (schedule 3 of the Bill). However, the water service provider may fix a meter or a seal or both to any private fire fighting system. The purpose of fixing a meter would be to monitor water use from the system, for the purpose of identifying any water which might be taken from the fire system for reasons other than fire fighting purposes (this is an offence under clause 145). If a seal is broken, this clause requires the occupier of the premises to notify the service provider of the breaking, within 24 hours.

## **145 Water to be used only for fire fighting purposes**

*Clause 145* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes it an offence to take water from a fire fighting system or service provider's hydrant for purposes other than to fight a fire. Where a person is convicted of an offence under this clause, the service provider may recover from the person the cost of the water taken. This clause also provides a penalty for taking water from a service provider's hydrant for a purpose other than fire fighting purposes.

## **Division 11 Exemptions for small service providers**

### **146 Small service providers may apply for exemption**

*Clause 146* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It enables a small service provider to apply to the regulator for an exemption from complying with requirements for strategic asset management plans, customer service standards and some requirements relating to audit reports and reviews and annual reports. Small service provider is further defined in the dictionary (schedule 3 of the Bill) to mean a service provider for:

- a retail water or sewerage service with 1000 or less connections to a registered service
- an irrigation service with 100 or less users and less than 20000ML throughput
- for any other type of water service that mainly provides drainage services or water for stock and domestic purposes and has 500 customers or less.

System leakage management plans and drought management plans are excluded from such applications.

### **147 Deciding application for exemption**

*Clause 147* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for how the regulator grants an exemption to a small service provider. If the regulator is satisfied

it is not reasonably practicable for the small service provider to comply with the relevant requirement (for example, the requirement to prepare a strategic asset management plan) because the cost of complying would outweigh the benefits, the regulator may exempt the small service provider.

In determining whether an exemption should be granted, both costs and benefits may be considered, including benefits to persons other than the customer and costs to persons other than the service provider. For example, where a third party, such as the State, contributes to the cost of providing the service, any cost savings that would result from the need for the service provider to have plans in place would be savings for the State, not for the individual customers. These savings should be considered in determining whether to grant an exemption under this section. The regulator may grant the exemption subject to conditions and if so, the exemption operates only if the conditions are complied with.

System leakage management plans and drought management plans are not included in such decisions by the regulator.

### **148 Notice of decision on application for exemption**

*Clause 148* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for the regulator to give the small service provider notice of the decision to either grant or refuse an exemption. In addition, if an exemption is granted, the regulator must give notice of the exemption in the gazette. The clause states the details that the notice must contain. Sections 24 to 26 of the Statutory Instruments Act apply to an exemption as if it were a statutory instrument.

### **149 Cancelling or amending an exemption**

*Clause 149* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that if the regulator has given an exemption under clause 147 based on certain circumstances, then the small service provider must advise the regulator of any change in those circumstances. The clause also provides that the regulator may amend or cancel an exemption after being advised of the change in circumstances, or if the regulator becomes aware of the change in circumstances through some other means. Where the regulator amends or cancels an exemption, the regulator must give the service provider an information notice about the amendment or cancellation (this makes it a reviewable decision) and, as

soon as is practicable, give notice of the amendment or cancellation in the gazette.

## **150 Sections 150—159 not used**

*Clause 150* provides that clauses 150 to 159 are not used.

# **Part 5                    Service areas**

## **Division 1                Preliminary**

### **160 Application of pt 5**

*Clause 160* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that this part applies to a service provider who supplies a retail water service or sewerage service in a service area. A retail water service and sewerage service is further defined in the dictionary (schedule 3 of the Bill). This division applies in relation to urban and town water supply and sewerage services. In addition, it applies not only to a local government providing water supply and sewerage services as a service provider but also to a private sector service provider.

## **Division 2                Service areas**

### **161 Declaration of service area**

*Clause 161* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides for the establishment of a service area in which a service provider may supply a retail water service or sewerage service. A service area is further defined in the dictionary (schedule 3 of the Bill) to mean an area declared for the provision of a retail water service and a sewerage service. A local government may, by resolution, declare all or part of its local government area to be a service area for a retail water service or sewerage service and declare the service provider for the service area. If the local government is

not intending to be the service provider for the service area, the local government can only declare another entity to be the service provider if the entity has agreed, in writing, to the declaration before the declaration is made. It is the intention of this clause to allow a local government to declare a service area for a private sector service provider which intends to supply the services.

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

### **162 Notice of declaration of service area**

*Clause 162* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that if a local government declares or amends a declaration of a service area, the local government must publish a notice of the declaration/amendment in a newspaper circulating generally throughout the local government area and make the notice available for inspection and purchase under the Local Government Act.

### **163 Map of service area**

*Clause 163* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider for a registered service in a service area must keep a map that details the limits of the service area and the location of the service provider's infrastructure for the registered service. A non-local government service provider must provide a copy of the map to the local government in whose area the service area is declared. In addition, the service provider, whether or not it is a local government, must update the map at least annually and make the map available for inspection and purchase.

## **Division 3            Access to services in service areas**

### **164 Access to service in service area**

*Clause 164* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It requires that, within a service area, a service provider must ensure that all premises can be connected to its water supply and/or sewerage services and that its infrastructure can deal with the service requirements of the premises. The design of the service provider's infrastructure must allow for a connection point which must be located within the boundary of premises.

This clause also clarifies that a property service (the part of the service between the property boundary and the water main and the sewer), whether it relates to a water service or a sewerage service of a service provider, is part of the service provider's infrastructure. This ensures a service provider can, if necessary, exercise powers under the Bill in relation to a property service, for example, the power to enter a place to inspect, maintain, repair or replace infrastructure. Any on-premises plumbing and drainage work that a property service connects to is not part of a service provider's infrastructure. Responsibility for any on-premises works rests with the owner of the premises, not the service provider.

### **165 Recovering costs of giving access to registered service**

*Clause 165* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider may recover from a customer the reasonable cost of providing access to its services in a service area.

### **166 When service provider not required to supply water in service area**

*Clause 166* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider is not obliged to supply water, from its infrastructure to premises, which is above a satisfactory pressure. However, the service provider may agree to supply water to such premises subject to the condition that the owner installs enough tanks and pumps to ensure that water can be supplied to the premises at a satisfactory pressure and flow.

## **Division 4            Connecting to registered services**

### **167 Owner may ask for connection to service provider's infrastructure**

*Clause 167* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that an owner of a property in a service area may ask the service provider to supply it with services. The service provider may require the owner of premises to carry out necessary work on the premises and pay a reasonable connection fee to enable the services to be supplied. When the owner has satisfactorily completed the work and paid any reasonable connection fee, the service provider must connect the premises to its services.

### **168 Notice requiring connection to registered service**

*Clause 168* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It provides that a service provider may issue a notice to an owner of premises in the service area requiring works to be undertaken so that the premises can be connected to its service. The service provider may require the owner of premises to carry out necessary work on the premises to enable its services to be supplied. When the owner has satisfactorily completed the work, the service provider must connect the premises to its services.

## **Division 5            Restricting domestic water supply**

### **169 Restricting domestic water supply in particular circumstances**

*Clause 169* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It allows a service provider to reduce the water supply to premises used for domestic purposes in certain circumstances. Service providers can do this if:

- the owner or occupier of premises contravenes a service provider water restriction or a commission water restriction, or does not pay the water rates or charges for the service and

- the owner or occupier of the premises has been given notice not to continue to contravene the restriction or to pay the rate or charge and
- the owner or occupier continues to contravene the restriction or refuses to pay for the service.

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

### **170 Sections 170—179 not used**

*Clause 170* provides that clauses 170 to 179 are not used.

## **Part 6 Trade waste**

The admission of substances other than sewage into a sewerage system involves a risk of damage or failure to both the infrastructure and the treatment processes used to render the sewage fit for disposal to the environment. This part provides for a local government which is a sewerage service provider (local government sewerage service provider) to approve the acceptance of trade waste into its sewerage infrastructure. The trade waste generator may be another service provider or an individual trade waste generator. For example, the local government sewerage service provider may own the sewerage treatment plant into which another sewerage service provider discharges trade waste. The other sewerage service provider is taken to be the person who must obtain approval from the local government sewerage service provider. The other sewerage service provider itself deals directly with individual trade waste generators by way of contract or other arrangement. Alternatively, the local government sewerage service provider may be the only sewerage service provider and in those circumstances, accept trade waste directly from individual trade waste generators.

### **180 Trade waste approvals**

*Clause 180* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference

to recycled water regulation. It provides for a person, being a trade waste generator, to apply to a local government sewerage service provider for approval for admissions of trade waste into the local government's infrastructure. The clause also provides the criteria under which a local government sewerage service provider may approve the admission of trade waste into their infrastructure.

Clause 180 also states the circumstances in which a local government sewerage service provider must not give an approval for trade waste. This is, where the regulator has given the local government a trade waste compliance notice prohibiting the local government from giving a trade waste approval for the discharge of trade waste into its sewerage infrastructure. The regulator may give a trade waste compliance notice under chapter 3 of the Bill if he/she considers the discharge of waste water is likely to adversely affect the quality of recycled water that may be supplied under a recycled water scheme.

### **181 Approval may be conditional**

*Clause 181* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to recycled water regulation. It states that approval for trade waste may be subject to conditions under which a local government sewerage service provider may approve discharge of trade wastes to sewerage infrastructure. Similarly, if the regulator requires a local government to impose conditions on the discharge of trade waste to sewerage infrastructure, the local government must give the trade waste approval subject to the regulator's conditions.

### **182 Criteria for suspending or cancelling trade waste approval**

*Clause 182* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. It provides the criteria for the suspension or cancellation of a trade waste approval.

### **183 Suspending or cancelling trade waste approval**

*Clause 183* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation. It provides the procedure for the suspension or cancellation of a trade waste approval. This clause also provides the means to appeal against a decision to suspend or cancel the approval.

## **184 Immediate suspension or cancellation**

*Clause 184* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and changed to include reference to recycled water regulation. It provides that local governments may suspend or cancel a trade waste approval immediately and without a show cause notice if the local government considers urgent action is necessary. Urgent action may be required for example, in the interest of public safety; to prevent environmental harm; or to prevent damage to the local government's sewerage system. Local governments acting under this clause must give the approval holder an information notice about the action. In addition, a local government must cancel an existing trade waste approval if the local government receives a trade waste compliance notice from the regulator prohibiting the giving of trade waste approval and the existing approval is inconsistent with the notice for discharge of trade waste into its sewerage infrastructure.

## **185 Amending trade waste approval**

*Clause 185* provides that where a local government has issued a trade waste approval that is not consistent with the conditions the local government must impose under a trade waste compliance notice, the local government must notify the approval holder and amend the trade waste approval (that is, to ensure consistency with the trade waste compliance notice). The notice given to the approval holder must state, for example, how the conditions of the approval are amended, and is effective from the day the notice is given.

## **186 Sections 186—189 not used**

*Clause 186* provides that clauses 186 to 189 are not used.

# **Part 7                      Offences**

## **190 Supplying unauthorised services**

*Clause 190* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes it an offence to supply

services unless the owner of the infrastructure is registered as a service provider for the service.

### **191 Connecting to or disconnecting from service provider's infrastructure without approval**

*Clause 191* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes it an offence to connect or disconnect to a service provider's infrastructure without the service provider's written consent. Service providers need to be made aware of disconnections from their infrastructure, to ensure appropriate action is taken to effectively seal the relevant connection point.

### **192 Interfering with service provider's infrastructure**

*Clause 192* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. It makes it an offence to interfere with a service provider's infrastructure without the service provider's written consent. In addition this clause makes it an offence to build over a service provider's infrastructure, interfere with access to their infrastructure, change the amount of cover over their infrastructure, or change the surface of land in a way which causes ponding of water over an access chamber for their infrastructure without the service provider's written consent. Construction of, for example, a driveway over a water main or sewerage system may adversely impact on a service provider's ability to later access and service that infrastructure. Service providers made aware of activities covered by this clause can take action to ensure those activities do not later have a detrimental effect on service provision.

### **193 Discharging particular materials**

*Clause 193* is relocated from the Water Act to the Bill, as the Bill now provides for service provider regulation, and recast to align with current drafting practices. It creates offences relating to discharging trade waste or prohibited substances into a service provider's infrastructure.

Subclause (4) specifically creates offences preventing a person from discharging surface water, soil, sand or rock into a service provider's infrastructure. The subclause provides greater protection for service providers who supply water services, as the definition of prohibited substances in schedule 1 of the Bill only relates to sewerage.

Subclause (5) also makes it an offence for a person to discharge water from a swimming pool or ornamental pond, or water used to clean a swimming pool's filtration system, into a service provider's infrastructure without the provider's consent. Uncontrolled discharge of this water into a service provider's infrastructure can have severe impacts, including hydraulic overload and high salt levels which would make effluent unsuitable for reuse and recycling.

### **194 Polluting water**

*Clause 194* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. This clause makes it an offence for a person to do anything likely to pollute water in a service provider's water service. This is important for public health reasons.

### **195 Taking water without approval**

*Clause 195* is relocated from the Water Act to the Bill as the Bill now provides for service provider regulation. This clause makes it an offence for a person to take water from a service provider's infrastructure without the service provider's consent, unless the taking is for fire fighting purposes or the water has been supplied for general public use.

## **Chapter 3 Recycled water management**

This chapter establishes a regulatory framework to cover the production and supply of 'recycled water' in circumstances where the recycled water is derived from particular sources. The chapter extends the functions of the regulator under the Bill.

Recycled water is defined as any of the following that are intended to be reused:

- sewage or effluent sourced from a service provider's sewerage
- greywater that is sourced from a treatment plant capable of treating 50kL or more greywater a day

- wastewater that is generated on premises from industrial, commercial or manufacturing activities, or animal husbandry activities prescribed under a regulation, other than wastewater generated from mining, petroleum or agricultural activities.

Supply in relation to sewage or effluent and greywater includes the use of the treated recycled water by the provider or on-supplied to another entity; however, wastewater is only caught as recycled water if it is on-supplied by the entity that produced it to another entity for reuse.

The objectives of the framework are to protect public health and for certain recycled schemes, to ensure continuity of operation of the scheme to meet the essential water supply needs of the community or industry.

Recycled water providers will be required to prepare risk-management plans—recycled water management plans, or be exempt, that are assessed and approved by the regulator against a range of matters, including in particular, water quality criteria prescribed by regulation under the Public Health Act or under a guideline prepared by the regulator. The approved recycled water management plan will give effect to the water quality criteria relevant to the particular source of the recycled water and its intended use.

A recycled water provider must comply with the approved recycled water management plan for the scheme and any conditions of the plan, or if exempt, comply with the exemption conditions, failing which the regulator may take a range of compliance actions as provided for under the Bill. In addition, a recycled water provider has a general obligation under the Public Health Act to produce and supply recycled water that is ‘fit for use’, failing which the chief executive administering that Act may take necessary compliance action as well as managing any associated public health risk.

The dictionary (schedule 3 of the Bill) provides definitions for key terms under the recycled water regulatory framework, including ‘recycled water provider’, ‘recycled water scheme’, ‘recycled water management plan’, ‘validate’ and ‘validation program’.

## **Part 1                      Particular Offences**

### **196 Offence about supplying recycled water**

*Clause 196* states that it is an offence to supply recycled water without an approved recycled water management plan, unless the supply of the recycled water by a provider is under an exemption.

This clause is subject to transitional provisions under chapter 9, part 5 of the Bill, under which certain schemes are not required to have an approved plan to be authorised to produce and supply recycled water for a transitional period.

### **197 Offences about compliance with exemption or recycled water management plan**

*Clause 197* provides for offences relating to non-compliance with the conditions of an exemption or an approved recycled water management plan or conditions of the plan.

### **198 Sections 198 —199 not used**

*Clause 198* provides that clauses 198 to 199 are not used. See footnote at the start of chapter 2.

## **Part 2                      Recycled water management planning**

### **200 Purpose of recycled water management plan**

*Clause 200* provides a purpose statement about recycled water management plans. The purposes of a recycled water management plan are:

- to protect public health
- if the plan is for a critical recycled water scheme—to ensure the continuity of operation of the scheme.

## **201 Preparing particular plans**

*Clause 201* states the obligations of recycled water providers, scheme managers and other declared entities to prepare recycled water management plans.

A recycled water provider for a single-entity recycled water scheme must prepare a recycled water management plan for the provider's scheme.

For a multiple-entity recycled water scheme, the scheme manager must prepare a scheme manager plan and each recycled water provider and other declared entity must prepare a scheme provider plan for the scheme. The recycled water management plan for a multiple-entity scheme comprises the scheme manager plan and the scheme provider plans.

All plans must be prepared in accordance with guidelines, if any, issued by the regulator about the preparation of recycled water management plans and validating recycled water schemes, and must state or include the things specified in subclause (5).

## **202 Application for approval of recycled water management plan**

*Clause 202* provides that the relevant entity for a recycled water management scheme must apply to the regulator for approval of the recycled water management plan for the scheme. A 'relevant entity' is generally defined to mean the recycled water provider for a single-entity scheme and the scheme manager for a multiple-entity scheme.

The recycled water management plan for a multiple-entity scheme comprises the scheme manager plan and a scheme provider plan for each declared entity for the scheme. While the scheme manager and declared entities must prepare their individual plans, at the point of submitting the whole recycled water management plan to the regulator for approval, it is only the scheme manager that may do this.

The application must be in the approved form and be accompanied by a copy of the recycled water management plan and the fee prescribed under regulation.

For any scheme that proposes to supply recycled water to augment a supply of drinking water, the relevant entity may not apply to the regulator for approval of the plan for the scheme unless there is an approved validation program for the scheme. A validation program is a documented program about how the plant and equipment used for the treatment of recycled water

under the scheme are to be tested to show the quality of the recycled water consistently meets the water quality criteria for recycled water relevant to the scheme.

### **203 Additional information may be required**

*Clause 203* provides that the regulator may seek additional information about a recycled water management plan, including information about arrangements relating to the supply of recycled water under the scheme, such as evidence that supply of recycled water under the scheme is only for the purpose or purposes stated in the plan.

Additional information required by the regulator in considering whether to approve a plan, may include details of the supporting programs for the scheme, for example, what arrangements the provider has for ensuring employees are appropriately trained to operate plant and equipment for treating recycled water.

### **204 Regulator may obtain advice about application**

*Clause 204* provides that the regulator may seek advice from an advisory council or any other entity the regulator considers appropriate before deciding the application. This provision would enable the regulator to seek advice from, for example, Queensland Health or the Expert Advisory Panel advising the Queensland Government on the Western Corridor Recycled Water Scheme.

### **205 Consideration of application**

*Clause 205* provides the timeframes for deciding an application for approval of a recycled water management plan and states the matters the regulator must have regard to in considering an application.

### **206 Notice of decision**

*Clause 206* states the requirements for giving notice to applicants following a decision on an application for approval of a recycled water management plan. If the decision is to approve the plan without regulator conditions, the regulator must give the applicant written notice of the decision. If the decision is to approve the plan with regulator conditions or to refuse to approve the plan, the regulator must give the applicant an

information notice. An information notice gives the applicant the right to appeal the decision.

All approved recycled water management plans will include certain statutory conditions as standard; these are stated under clause 208. In addition, the regulator may apply other conditions, called ‘regulator conditions’, in approving a recycled water management plan.

If a plan is approved, the notice or information notice must also state the intervals at which regular reviews, internal audits and regular audits of the recycled water management plan for the scheme must be conducted.

### **207 When regulator must not approve recycled water management plan**

*Clause 207* provides that before a recycled water management plan for a scheme that proposes to supply recycled water to augment a supply of drinking water is approved, there must be a drinking water quality management plan covering the storage that will receive the recycled water.

Both the recycled water provider and the drinking water service provider will be required to comply with the relevant water quality criteria prescribed under a regulation under the Public Health Act. It is expected that both drinking water quality and recycled water management plans will be considered at the same time, to ensure that the management actions under the plans are complimentary to each other.

### **208 Statutory condition of approved recycled water management plans**

*Clause 208* provides for statutory conditions that apply to all approved recycled water management plans. Two statutory conditions are stated requiring that:

- notice be given to the regulator if production or supply of recycled water under the recycled water scheme stops or may stop temporarily, and other than as provided for under the approved plan for the scheme or on a permanent basis
- supply must stop to a particular entity under a scheme, if a recycled water provider, scheme manager or a declared entity becomes aware that the entity is using recycled water other than in a way or for a purpose provided for under the plan.

## **209 Amending recycled water management plan by agreement**

*Clause 209* provides that the relevant entity (the recycled water provider for a single-entity scheme and the scheme manager for a multiple-entity scheme) may, with the regulator's agreement amend the approved recycled water management plan for the relevant scheme under the provision, if the amendment is only to correct a minor error in the plan or make another change that is not a change of substance or to record a change in name or change of ownership in an entity part of a scheme. Amendment of a plan under this provision does not require an application.

## **210 Amendment of recycled water management plan for single-entity recycled water scheme—requirement of regulator**

*Clause 210* provides an ability for the regulator to instigate an amendment to an approved recycled water management plan for a single-entity recycled water scheme if satisfied an amendment is required:

- to protect public health
- if the scheme is a critical recycled water management scheme, to ensure the continuity of operation of the scheme.

However, before the regulator requires a plan to be amended, the regulator must give a show cause notice to the recycled water provider and consider any properly made submissions made in relation to the notice.

If after considering submissions the regulator decides that the proposed amendment should be made, the regulator must give a notice to the recycled water provider to amend the plan in a stated way and give the amended plan to the regulator for approval. The recycled water provider may appeal the regulator's decision to require a plan amendment. If the regulator is satisfied the plan is amended in the way required, the amended plan is taken to be the approved plan for the scheme.

If after considering any properly made submissions the regulator decides the proposed amendment should not be made, the regulator must give a notice to the recycled water provider that the amendment need not be made.

## **211 Amendment of recycled water management plan for multiple-entity recycled water scheme—requirement of regulator**

*Clause 211* provides an ability for the regulator to instigate an amendment to an approved recycled water management plan for a multiple-entity recycled water scheme comprising the scheme manager plan and scheme provider plans if satisfied an amendment is required:

- to protect public health
- if the scheme is a critical recycled water management scheme, to ensure the continuity of operation of the scheme.

However, before the regulator requires a scheme manager or declared entity to amend the scheme manager plan or scheme provider plan, the regulator must give the scheme manager or declared entity a show cause notice about the proposed amendment, and a copy of the show cause notice to each entity that is not directly required to amend their plan.

If after considering all properly made submissions the regulator decides that the proposed amendment should be made, the regulator must give a notice requiring a stated amendment to—the scheme manager for an amendment to the scheme manager plan; and a declared entity for amendment of a scheme provider plan.

The scheme manager and any declared entity that made a properly made submission may appeal the regulator's decision to require a plan amendment. If the regulator is satisfied the plan is amended in the way required, the amended plan is taken to be the approved recycled water management plan for the scheme.

If after considering any properly made submissions the regulator decides the proposed amendment should not be made, the regulator must give the scheme manager and each declared entity notice the amendment need not be made.

## **212 Amendment of recycled water management plan—application**

*Clause 212* provides that if a recycled water management plan for a recycled water scheme is proposed to be amended, other than under clauses 209, 210 or 211, the relevant entity may apply to the regulator for approval of the proposed amended recycled water management plan under this

clause and by following the same process applicable to applying for approval of a recycled water management plan in the first instance.

### **213 Suspending or cancelling recycled water management plan if regulator is satisfied about particular matters**

*Clause 213* provides the regulator may suspend or cancel a recycled water management plan if the regulator is satisfied or reasonably believes the scheme manager, recycled water provider or a declared entity for a recycled water scheme (each a 'responsible entity') to which the plan relates has not complied with the plan or the conditions of the plan or a compliance notice.

However, the regulator must give a show cause notice about the proposed action and copies of the show cause notice to the entities stated in the provision and consider all properly made submissions before making a decision to suspend or cancel a plan. An entity that receives a copy of a show cause notice may make a submission in relation to the notice.

If after giving a show cause notice and considering all properly made submissions the regulator decides to suspend or cancel a plan, the regulator must give an information notice to, for a single-entity scheme, the recycled water provider and for a multiple-entity scheme, the scheme manager.

If after considering any properly made submissions the regulator decides not to suspend or cancel a plan, the regulator must give a notice to, for a single-entity scheme, the recycled water provider and for a multiple-entity scheme, the scheme manager that the amendment need not be made.

If a plan is suspended, the suspension ends only when the resumption of supply of recycled water under the recycled water scheme to which the plan relates is taken to the approved under clause 215.

### **214 Suspending recycled water management plan if production or supply of recycled water stops**

*Clause 214* provides that the regulator may suspend the recycled water management plan for a scheme if the regulator has received a notice that the production or supply of recycled water under the scheme has temporarily stopped.

This clause relates to the statutory condition that applies to all approved recycled water management plans, requiring that notice be given to the regulator when unplanned or unscheduled stoppages not contemplated under the approved plan occur. Notice of the unplanned stoppage gives the

regulator the option of suspending the plan if appropriate in the circumstances. It is likely that a plan would be suspended if, for example, both production and supply of recycled water was stopped for an extended period. Suspending a plan enables the regulator to require that the scheme be ‘validated’ again before resumption of supply of recycled water under the scheme is approved. To validate a scheme means to carry out testing of the plant and equipment used for the treatment of recycled water to show the quality of the water consistently meets the water quality criteria relevant to the scheme. Alternatively, if only supply was stopped because of the loss of a major customer but the treatment plant continued to operate, it is unlikely that the plan for the scheme would be suspended.

If a plan is suspended, the suspension ends only when the resumption of supply of recycled water under the recycled water scheme to which the plan relates is taken to the approved under clause 215.

## **215 Application to resume supply**

*Clause 215* provides that if a recycled water management plan has been suspended, the regulator may give approval for the resumption of supply of recycled water under the scheme following an application to the regulator.

The regulator must as soon as practicable after considering an application, decide:

- to approve the application without conditions
- to approve the application on the condition that the scheme be ‘validated’ by undertaking the validation program for the scheme
- refuse to approve the application and direct that the recycled water management plan for the scheme be amended and submitted for the regulator’s approval
- refuse to approve the application.

If an application is approved without conditions, the regulator must give a notice about the decision. If an application is approved with conditions or refused, the regulator must give an information notice. An information notice gives the applicant the right to appeal the decision.

The resumption of supply of recycled water under a recycled water scheme is taken to be approved under the section at the following stated times:

- if an application is approved without conditions—when the notice of the decision is given

- if the application is approved on condition that the scheme be validated—when the regulator gives notice stating the regulator is satisfied the testing of plant and equipment under the validation program for the scheme shows the quality of the scheme’s recycled water consistently meets the water quality criteria relevant to the scheme
- if the application is refused and a direction given to amend the plan for the scheme—when the amended plan is approved.

### **216 Sections 216—229 not used**

*Clause 216* provides that clauses 216 to 229 are not used.

## **Part 3                      Notice about permanently stopping supply of recycled water**

### **230 Notice about permanently stopping supply of recycled water**

*Clause 230* creates an obligation on the scheme manager, recycled water provider and other declared entities to give the regulator notice if it is likely supply of recycled water under the scheme will permanently stop and in relation to a critical recycled water scheme there is no other entity willing to take over the operation of all or part of the scheme.

If the recycled water scheme is a critical recycled water scheme, the notice to the regulator must be given at least 60 days before supply of the recycled water is stopped. If the recycled water scheme is not a critical recycled water scheme, the notice to the regulator must be given at least 30 days before supply of the recycled water is stopped. The purpose of this clause is to make provision for the regulator to be notified in circumstances where the regulator may need to take action to ensure the continuity of operation of a critical recycled water scheme. Under clause 530 and clause 535, the regulator or another person may be authorised to take over the operation of certain infrastructure to ensure the continued operation of the scheme.

### **231 Cancelling recycled water management plan on receipt of notice under s 230**

*Clause 231* provides that the regulator may cancel a recycled water management plan if the regulator has received a notice under clause 230 that the supply of recycled water under a scheme has permanently stopped.

### **232 Sections 232—234 not used**

*Clause 232* provides that clauses 232 to 234 are not used.

## **Part 4                      Validation programs**

### **235 Application of pt 4**

*Clause 235* provides that part 4 applies to a recycled water scheme if recycled water is proposed to be supplied under the scheme to augment a supply of drinking water.

### **236 Preparing validation program**

*Clause 236* creates an obligation on the recycled water provider for a single-entity recycled water scheme and the scheme manager and declared entities for a multiple-entity scheme to prepare a validation program for approval of the regulator. The validation program means a documented program about how the plant and equipment used for the treatment of recycled water under the scheme are to be tested to show the quality of the recycled water consistently meets the water quality criteria for recycled water relevant to the scheme. The program must be prepared in accordance with guidelines, if any, made by the regulator about validating recycled water schemes.

### **237 Application for approval of validation program**

*Clause 237* provides that the relevant entity for a recycled water management scheme must apply to the regulator for approval of the validation program for the scheme. A relevant entity in this instance means the recycled water provider for a single-entity scheme and the scheme manager for a multiple-entity scheme.

The application must be in the approved form and be accompanied by a copy of the validation program and the fee prescribed under regulation.

### **238 Additional information may be required**

*Clause 238* provides that the regulator may seek additional information about a validation program.

### **239 Regulator may obtain advice about application**

*Clause 239* provides that the regulator may seek advice from an advisory council or any other entity the regulator considers appropriate before deciding the application. This provision would enable the regulator to seek advice from, for example, Queensland Health or the Expert Advisory Panel advising the Queensland Government on the Western Corridor Recycled Water Scheme.

### **240 Consideration of application**

*Clause 240* provides the timeframes for deciding an application for approval of a validation program and states the matters the regulator must have regard to in considering an application.

### **241 Notice of decision**

*Clause 241* states the requirements for giving notice to applicants following a decision on an application for approval of a validation program. If the decision is to approve the program without conditions, the regulator must give the applicant written notice of the decision. If the decision is to approve the program with conditions or to refuse to approve the program, the regulator must give the applicant an information notice. An information notice gives the applicant the right to appeal the decision.

### **242 Amendment of validation program**

*Clause 242* provides that the relevant entity for a scheme may amend a validation program for a recycled water scheme by applying to the regulator for approval of an amended validation program by following the same process applicable to applying for approval of a validation program for the scheme in the first instance.

## **243 Sections 243—249 not used**

*Clause 243* provides that clauses 243 to 249 are not used.

## **Part 5 Exemptions**

### **250 Application for exemption**

*Clause 250* provides that a recycled water provider for a recycled water scheme that is not a critical recycled water scheme may apply to the regulator for an exemption from having an approved recycled water management plan.

The application must be in the approved form and be accompanied by information and documents required to be given under the guidelines, if any, made by the regulator about applying for an exemption and the fee prescribed under regulation, and be supported by enough information to enable the regulator to decide the application.

### **251 Additional information may be required**

*Clause 251* provides that the regulator may seek additional information about the application, including information about arrangements relating to the supply of recycled water under the scheme, such as evidence that supply of recycled water under the scheme is only for the purpose or purposes stated in the application.

### **252 Regulator may obtain advice about application**

*Clause 252* provides that the regulator may seek advice from an advisory council or any other entity the regulator considers appropriate before deciding the application. This provision would enable the regulator to seek advice from, for example, Queensland Health or the Expert Advisory Panel advising the Queensland Government on the Western Corridor Recycled Water Scheme.

### **253 Consideration of application**

*Clause 253* provides the timeframes for deciding an application and states the matters the regulator must have regard to in considering an application.

## **254 Notice of decision**

*Clause 254* states the requirements for giving notice to applicants following a decision on an application for an exemption. If the decision is to approve the exemption without regulator conditions, the regulator must give the applicant written notice of the decision. If the decision is to approve the exemption with regulator conditions or to refuse to approve the exemption, the regulator must give the applicant an information notice. An information notice gives the applicant the right to appeal the decision.

## **255 Duration of exemption**

*Clause 255* provides that an exemption from having a recycled water management plan for a scheme may only be granted for a period of not more than five years.

## **256 Provision about conditions of exemption**

*Clause 256* provides conditions that may be applied to an exemption. A statutory condition that applies to all exemptions granted by the regulator provides that if the recycled water provider becomes aware that an entity to whom the provider supplies recycled water is using the water other than in a way or for a purpose provided for under the exemption the provider must stop supply to that entity. The regulator may also apply ‘regulator conditions’ to an exemption granted under the part. An exemption applies only if all conditions of the exemption are complied with.

## **257 Cancelling or amending exemption**

*Clause 257* creates an obligation on the recycled water provider granted an exemption to immediately notify the regulator if the circumstances under which an exemption were given change.

The regulator may, after receiving such notice, or after becoming otherwise aware of a change of circumstances, under which an exemption was granted, cancel or amend an exemption.

If the regulator decides to amend or cancel an exemption under in the circumstances, the regulator must give an information notice. An information notice gives the recipient the right to appeal the decision.

## **Part 6                      Reviews and audits of recycled water management plans**

### **258 Reviewing recycled water management plans**

*Clause 258* creates an obligation on the recycled water provider for a single-entity recycled water scheme or the scheme manager for a multiple-entity scheme to review or arrange for a review of the approved recycled water management plan for the scheme at the intervals for conducting such reviews stated in the notice of approval of the plan.

The purpose of the review is to ensure the plan remains relevant having regard to:

- the operation of the recycled water scheme to which it relates
- the applicable water quality criteria for recycled water relevant to the scheme
- best practice industry standards for the production and supply of recycled water.

### **259 Changing plan after review**

*Clause 259* applies if the regular review conducted under clause 258 indicates changes to the recycled water management plan for a scheme should be made. If changes are needed, the recycled water provider for a single-entity scheme must amend the plan and apply to the regulator for approval of the amended plan within 60 days after the review ends.

For a plan for a multiple-entity scheme, the scheme manager and declared entities, must to the extent necessary, amend the scheme manager plan and scheme provider plans within 60 days after the review ends and the scheme manager must apply to the regulator for approval of the amended plan.

### **260 Providing internal audit reports**

*Clause 260* requires the recycled water provider for a single-entity recycled water scheme or the scheme manager for a multiple-entity scheme to arrange for internal audits of the approved recycled water management plan for the scheme at the intervals for conducting such audits stated in the notice of approval of the plan.

The purpose of the internal audit is to assess compliance with the approved recycled water management plan and the conditions of the plan.

## **261 Providing regular audit reports**

*Clause 261* requires the recycled water provider for a single-entity recycled water scheme and the scheme manager for a multiple-entity scheme to arrange for internal audits of the approved recycled water management plan for the scheme at the intervals for conducting such audits stated in the notice of approval of the plan.

The purpose of the regular audit is to assess compliance with the approved recycled water management plan and the conditions of the plan

## **262 Spot audits**

*Clause 262* provides for the regulator to arrange for a spot audit of a recycled water management plan to be conducted in circumstances where the regulator is satisfied or reasonably believes:

- there is, or has been non-compliance with a recycled water management plan or
- the approved recycled water management plan is no longer adequate.

However, if the purpose of the audit is because the plan is considered to be no longer adequate, the regulator must give a show cause notice to the recycled water provider for a single-entity scheme and the scheme manager and each declared entity for a multiple-entity scheme and consider any properly made submissions made in relation to the notice.

The spot audit may be prepared by the regulator or by a suitably qualified person appointed by the regulator.

The regulator must give a copy of the audit report to the recycled water provider for a single-entity scheme and the scheme manager for a multiple-entity scheme within 30 days of the audit report being completed. Depending on the findings of the audit report, the regulator may require an inadequacy in the recycled water management plan to be rectified or that the plan is properly carried out.

### **263 Auditor's responsibility to inform regulator**

*Clause 263* provides that if, in conducting an audit about recycled water management plan, an auditor forms a reasonable belief that a recycled water provider for a single-entity recycled water scheme or scheme manager or other declared entity for a multiple-entity scheme has not, or is not complying with the plan for the scheme and the non-compliance poses an imminent and serious adverse affect on public health, the auditor must immediately give details of the facts and circumstances giving rise to the belief to the regulator.

If the auditor gives notice to the regulator orally, the auditor must as soon as practicable afterwards, give written notice of the details to the regulator.

### **264 Declarations about audit reports**

*Clause 264* provides that an audit report under the part must be accompanied by a statutory declaration by the auditor. The provision also sets out the matters the declaration must address.

### **265 Access for conduction audits**

*Clause 265* requires the relevant entity and any declared entities for a recycled water scheme to give an auditor and any person employed or authorised by the auditor free and uninterrupted access to infrastructure forming part of the scheme and any records relating to the infrastructure.

### **266 Sections 266—269 not used**

*Clause 266* provides that clauses 266 to 269 are not used.

## **Part 7                      Reporting requirements and annual reports**

### **270 Notice of particular matter**

*Clause 270* applies if a recycled water provider, scheme manager or other declared entity for a recycled water scheme (each a 'responsible entity') becomes aware of incidences where the recycled water produced under the scheme does not meet the required water quality criteria relevant to the scheme.

In the circumstances above, the responsible entity must, unless the entity has a reasonable excuse, immediately give the regulator details of the non-compliance with the water quality criteria and the circumstances giving rise to it.

If the details of the non-compliance are given orally to the regulator, as soon as practicable, the responsible entity must give written notice of the details of the non-compliance to the regulator in the approved form.

The responsible entity must comply with obligation to notify the regulator of the non-compliance despite the fact the notification may tend to incriminate the entity. The clause provides that the information given to the regulator or evidence derived from the information is not admissible in a civil or criminal proceeding.

### **271 Annual reporting requirement**

*Clause 271* provides that the relevant entity for a recycled water scheme must an annual report about the recycled water scheme for each financial year after a recycled water management plan for the scheme has been approved or an exemption granted.

The provision also states the particulars the annual report must state or contain and states the time in which the annual report must be provided. The report must also be prepared in accordance with guidelines, if any, made by the regulator about preparing annual reports.

### **272 Sections 272—299 not used**

*Clause 272* provides that clauses 272 to 299 are not used.

## **Part 8**                      **Declaration of critical recycled water schemes**

### **300 Meaning of *scheme manager* for a recycled water scheme**

*Clause 300* provides for the meaning of scheme manager for a recycled water scheme. There must be a scheme manager for all multiple-entity schemes which are established through the declaration process under this part. There is no requirement for a scheme manager for single-entity schemes. For multiple-entity schemes, a scheme manager performs an important role in the overall coordination and management of the scheme and has particular responsibilities under the legislation. The role of the scheme manager is to be a conduit between the multiple providers and other declared entities and the regulator ensuring effective communication among all parties and streamlining administration of a scheme.

The scheme manager is responsible for collating the scheme manager and scheme provider plans comprising the recycled water management plan for the scheme ready for submission to the regulator for approval. The scheme manager must also arrange for periodic reviews and audits of the scheme and submit any proposed amendments to recycled water management plan for the scheme for approval. The scheme manager is also responsible for preparing the annual report about the scheme.

The scheme manager is the entity that all recycled water providers and declared entities of a critical scheme agree is the scheme manager and if known at the time the scheme is declared, can be stated in the declaration or, alternatively, if not known when the scheme is declared, the declared entities must give the regulator a notice about who is the scheme manager as soon as practicable after the scheme is declared under this part.

### **301 Making declaration**

*Clause 301* provides that the regulator may declare a recycled water scheme to be a critical recycled water scheme if the regulator reasonably believes the declaration is necessary:

- to maintain continuity of operation of the scheme to meet the essential water supply needs of the community or industry
- to ensure the appropriate management of risks to public health posed by the supply of recycled water under the scheme.

A scheme may be declared under this part if either of the above criteria is satisfied; however the main objective of declaring a scheme to be a critical scheme is to ensure the continuity of operation of the scheme where the community or major industry is heavily reliant on the supply of recycled water. If necessary, the regulator has powers under clauses 530 and 535 to 'step-in' and operate infrastructure of a declared critical scheme to continue the operation of the scheme.

The provisions also state the regulator must declare certain schemes that meet prescribed criteria including, any scheme that proposes or supplies recycled water to augment a supply of drinking water; any scheme that proposes or supplies recycled water of least 500kL per day to premises by way of a reticulation system used only for outdoor use, flushing toilets or use in laundries (otherwise known as dual reticulation purposes); or any scheme that proposes or supplies recycled water of at least 5ML per day for use in electricity generation.

### **302 Regulator may seek advice about scheme manager**

*Clause 302* provides that the regulator before declaring a scheme to be a critical scheme may ask the recycled water providers and other entities proposed to be declared to be part of the scheme to give the regulator a notice about who the providers and entities agree is the scheme manager for the scheme.

### **303 Notice of regulator's intention to make declaration**

*Clause 303* provides that before declaring a recycled water scheme to be a critical recycled water scheme, the regulator must give a notice of the proposed declaration to all recycled water providers and other entities proposed to be declared part of a scheme and consider all properly made submissions.

However, the regulator is not required to give a notice if the recycled water scheme is of a type that the regulator must declare to be a critical scheme under the part.

The provisions also state the matters the notice of intention must contain, including that submissions may be made to the regulator about the proposed declaration within 30 days after receiving the notice.

If the notice is about a multiple-entity critical scheme and the scheme manager for the scheme is not known when the notice is given, the notice

may also state a recycled water provider or other entity may give the regulator advice about who the provider or entity considers should be the scheme manager for the scheme.

### **304 Notice of declaration**

*Clause 304* provides that if the regulator decides to declare the recycled water scheme to be a critical recycled water scheme, the regulator must give notice of the declaration to:

- if the scheme is a single-entity recycled water scheme—the recycled water provider for the scheme
- if the scheme is a multiple-entity recycled water scheme—each recycled water provider and other entity declared to be part of the scheme.

The provisions also set out what the notice must state. If the scheme manager is known at the time of declaration, the notice of declaration may also state who the scheme manager is.

### **305 When declaration has effect**

*Clause 305* provides that the declaration has effect on the day the regulator gives the notice of the declaration under the part.

### **306 Review of declaration on request**

*Clause 306* provides that a relevant entity may, at any time after one year after the declaration of the scheme to be a critical recycled water scheme takes effect, request the regulator to review the making of the declaration if the relevant entity considers the scheme should not be a critical scheme.

The provisions state the request must be in writing and must state the reasons that the relevant entity considers the scheme should not be a critical recycled water scheme.

If after reviewing the declaration, the regulator decides the recycled water scheme should continue to be a critical scheme, the regulator must give an information notice for the decision.

If after reviewing the declaration, the regulator decides the recycled water scheme should not continue to be a critical scheme, the regulator must give

notice for the decision. In this case, the scheme stops being a critical scheme on the day the notice is given.

If a declaration is reviewed under these provisions and the scheme remains a critical recycled water scheme, the relevant entity for the scheme may not request another review of the declaration for one year after the end of the previous review.

### **307 Requirement to advise regulator about scheme manager**

*Clause 307* provides that if the scheme manager is not known at the time a recycled water scheme is declared, the recycled water providers and other entities declared to be part of the scheme, must as soon as practicable after the declaration is made, give the regulator notice of who is the scheme manager.

### **308 Sections 308—314 not used**

*Clause 308* provides that clauses 308 to 314 are not used.

## **Part 9                      Dispute resolution process for particular critical recycled water schemes**

Part 9 provides for establishing a dispute resolution process for the resolution of certain types of disputes that may arise between scheme managers, recycled water providers and other declared entities within multiple-entity critical schemes. The dispute resolution process is limited in application to critical schemes to ensure such schemes can continue to operate to meet both water quality requirements and the supply of recycled water that is essential for the community or industry.

### **315 Definitions for pt 9**

*Clause 315* provides definitions for part 9. Types of disputes that may access the dispute resolution process and which are defined include an 'economic dispute' and a 'non-economic dispute'.

### **316 Application of pt 9**

*Clause 316* sets out the circumstances in which the dispute resolution process under the part apply. The dispute resolution process applies for disputes between parties (the scheme manager, recycled water provider or other declared entity) of a multiple-entity critical recycled water scheme, after a recycled water manager plan has been approved for the scheme.

Any party may instigate the dispute resolution process, if there is a dispute between any or all of the parties to the scheme and a party to the dispute reasonably believes:

- the dispute is unresolved and
- the dispute is likely to adversely affect public health or the continuity of operation of the scheme unless it is resolved.

### **317 Dispute resolution process**

*Clause 317* provides that to resolve a dispute, the parties to the dispute must follow the dispute resolution process prescribed under a regulation. Subclause (2) sets out the matters a regulation may provide for.

### **318 Sections 318—329 not used**

*Clause 318* provides that clauses 318 to 329 are not used.

## **Part 10            Miscellaneous**

### **330 Notice to local government**

Local governments who are sewerage service providers have the power to give a person a trade waste approval under the Act authorising the discharge of trade waste into the local government's sewerage infrastructure. Trade waste includes water-borne waste from business, trade or manufacturing premises.

With the expansion of recycled water schemes and increased reliance on sewage and effluent as a source of influent water, it may be necessary to control or prohibit certain contaminants entering into the sewerage collection system.

*Clause 330* provides that if the regulator considers the discharge of trade waste into the sewerage infrastructure of a local government is likely to adversely affect the quality of recycled water supplied, or proposed to be supplied, under a recycled water scheme, the regulator may give a notice (a ‘trade waste compliance notice’) to a local government to prohibit the local government giving a trade waste approval or state the conditions the local government must impose on a trade waste approval for discharge of trade waste into its sewerage infrastructure.

A local government who is given a notice must comply with the notice.

### **331 Report about compliance with notice**

*Clause 331* provides that the regulator may, by notice given to a local government that is a sewerage service provider, require the local government to give the regulator a report about the actions taken by the local government to comply with a trade waste compliance notice.

### **332 Particular requirement about production or supply of recycled water**

*Clause 332* provides that a recycled water provider must ensure that there are persons engaged in the production and supply of recycled water by the provider who have the qualifications or experience prescribed under a regulation.

### **333 Sections 333—339 not used**

*Clause 333* provides that clauses 333 to 339 are not used.

## **Chapter 4      Referable dams and flood mitigation**

### **Part 1              Referable dams**

The Bill provides for what dams are referable and the process for making that determination through a failure impact assessment. Referable dams will be approved as development within the meaning of the Integrated Planning Act.

#### **Division 1          Preliminary**

##### **340 Definition for pt 1**

*Clause 340* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides for a specific definition for water for this part. For the purposes of this part, water includes any other liquid or a mixture that includes water or any other liquid or suspended solid.

##### **341 What is a *referable dam***

*Clause 341* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It defines a referable dam in relation to a failure impact assessment rating. A dam is, or a proposed dam after its construction will be, a referable dam if:

- a failure impact assessment is required to be carried out under this part
- the assessment states that the dam has, or will have, a category 1 or category 2 failure impact rating
- the chief executive has, under clause 349, accepted the assessment.

The meaning of a failure impact rating is further defined in clause 342.

For the purposes of the Bill, a referable dam specifically excludes a dam or proposed dam containing hazardous waste. Hazardous waste is defined in this clause as waste resulting from the processing of minerals.

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

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

### **342 What is *failure impact assessment***

*Clause 342* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It defines what is meant by a failure impact assessment and how it is to be carried out. A failure impact assessment is an assessment about the safety of a dam, or proposed dam. It is an assessment that has been certified by an independent registered professional engineer in accordance with the prescribed failure impact assessment guidelines prepared and issued by the chief executive. A registered professional engineer is further defined in the dictionary (schedule 3 of the Bill) by reference to the *Professional Engineers Act 2002*. The certification must include the engineer's name and registration. The purpose of a failure impact assessment is to assess the risk to the population in the event of the dam failing and determine an appropriate failure impact rating.

## **Division 2            Failure impact assessing dams**

### **343 When dam must be failure impact assessed**

*Clause 343* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It details when an owner of a proposed dam must have the dam failure impact assessed. A failure impact assessment must be carried out if the proposed dam, after its construction, will be:

- more than 8m high and have a storage capacity of more than 500ML
- more than 8m high and have a storage capacity of more than 250ML and a catchment area that is more than three times the surface area of the dam at full supply level. At ‘full supply level’ means the level of the water surface when the reservoir is at maximum operating level when not affected by flood.

In addition, the owner of an existing dam or a proposed dam may be given a notice by the chief executive, requiring the owner to have the dam failure impact assessed. The notice will state the reasonable time in which the failure impact assessment must be completed and given to the chief executive. The chief executive may give a notice requiring a failure impact assessment only if the chief executive reasonably considers that the dam, or the proposed dam after its construction, would be assessed with a category 1 or a category 2 failure impact rating. A change of circumstances, for example, the encroachment of residences near an existing dam, may result in the dam potentially posing a risk to life. In this case the chief executive may require the dam owner to carry out a failure impact assessment. It is noted that the owner of a dam in these circumstances is not given a right of appeal against the chief executive’s decision; however the owner of the dam is subsequently not required to meet the cost of the failure impact assessment in the event the assessment determines the dam is not referable (refer to clause 348).

The provisions under the Bill are intended to capture only those dams that pose a risk to population in the event of dam failure by requiring dams over specified dimensions to be failure impact assessed. Therefore, the threshold size and capacity dimensions stated are intended to avoid the owner of a smaller structure being required to meet the cost of a failure impact assessment when the dam is unlikely to pose any risk to population should the dam fail.

### **344 Process for failure impact assessment**

*Clause 344* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that a person proposing to construct a referable dam must have completed a failure impact assessment and had it accepted by the chief executive prior to commencing construction of the dam. Similarly, if the chief executive gives an owner of an existing dam or a proposed dam

notice requiring the owner to have the dam failure impact assessed, the owner must have the assessment completed and given to the chief executive within a reasonable time (that is, the time stated in the notice). Also, a failure impact assessment must be accompanied by the prescribed fee.

### **345 Requirement for other failure impact assessments**

*Clause 345* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides for the requirement for other failure impact assessments. Subject to the exceptions discussed below, a dam, or a proposed dam, which is required to failure impact assessed must be reassessed every five years and the failure impact assessment submitted to the chief executive. Exceptions to this general rule include:

- where a dam is failure impact assessed and given a category 2 failure impact rating under its initial or last assessment. As it is considered unlikely that such a referable dam would be reassessed and be given a lower failure impact rating, the referable dam does not need to be reassessed every five years. Note however that this exception only applies to those referable dams given a category 2 failure impact rating. This means that a dam which is failure impact assessed as a category 1, or assessed as not a category 1 or category 2, will still need to be failure impact assessed every five years
- where a dam is required to be failure impact assessed by way of notice given by the chief executive, and the dam is not failure impact assessed as either a category 2 failure impact rating or not given a failure impact rating.

### **346 Failure impact ratings for dams**

*Clause 346* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It defines the meaning of a failure impact rating. A failure impact rating relates to the population at risk in the event of failure of the dam. The meaning of ‘population at risk’ is defined in the clause and is determined in accordance with the principles outlined in the failure impact assessment guidelines. The population at risk is calculated by undertaking a dam break analysis using data collected about the dam and its environs and default equivalent populations set out in the guidelines. For example, while only one person may live in a dwelling

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

A category 1 failure impact rating means that the population at risk is two or more persons, and not more than 100 persons. A category 2 failure impact rating means that the population at risk is more than 100 persons.

### **347 Offences about failure impact assessments**

*Clause 347* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides for offences in relation to the carrying out of a failure impact assessment. For example, it is an offence for a person to certify a failure impact assessment if the person knows the assessment contains false or misleading information.

### **348 Cost of failure impact assessment**

*Clause 348* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It states who is required to pay the cost of a dam's failure impact assessment. This may be the owner of the dam or the chief executive. The chief executive must pay the reasonable cost of preparing and certifying the failure impact assessment only where the chief executive requires an owner of a dam to carry out a failure impact assessment and the dam is subsequently assessed as not being referable. In all other cases, the owner of the dam must pay the cost of the assessment. It is noted that the cost of preparing the assessment includes the cost of any review of the assessment required under clause 351.

### **349 Decision about failure impact assessment**

*Clause 349* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides for how the chief executive deals with a submitted failure impact assessment. The chief executive may accept, reject or require a review of the assessment. However, the chief executive may request information about the assessment from the owner in order to help clarify whether the assessment requires review or rejection. The chief executive may also require the owner of the dam to have certain

information or reports prepared by a registered professional engineer as part of the information request by the chief executive.

### **350 Notice accepting failure impact assessment**

*Clause 350* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides that if the chief executive accepts the failure impact assessment, the chief executive must give notice of the acceptance to the owner of the dam within 30 business days.

### **351 Reviewing failure impact assessment**

*Clause 351* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides for when the chief executive may ask for a review of a failure impact assessment. It is not intended that the role of the chief executive is to formally approve an assessment nor is it intended that the chief executive must simply accept the assessment. The chief executive may ask for a review where the chief executive considers an assessment is incorrect or incomplete in a material particular or not completed in accordance with the failure impact assessment guidelines prepared by the chief executive.

A request for a review must be made within 30 business days of the chief executive being satisfied that the assessment is incorrect, incomplete or not in accordance with the failure impact assessment guidelines. If the chief executive asks for a review, the chief executive must return the assessment to the owner and give the owner of the dam an information notice requiring a review of the assessment. In addition to the standard details in the information notice, the chief executive must also ask that the owner has the assessment reviewed, corrected or completed and recertified. The owner must then return the corrected or completed assessment to the chief executive within the time stated in the notice. While the owner must comply with the notice, they may appeal against the chief executive's decision to request a review of the assessment.

### **352 Rejecting failure impact assessment**

*Clause 352* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It allows the chief executive to reject a failure impact assessment. The chief executive may reject the assessment in the first instance if the chief executive reasonably considers that the assessment is incorrect or incomplete in a material particular or not

completed in accordance with the failure impact assessment guidelines. If the chief executive has requested a review of an assessment because it required correction or completion, the chief executive may reject the resubmitted assessment if it has not been corrected or completed or if the chief executive is not satisfied that the resubmitted amended assessment corrects or completes the matters of concern. The chief executive may also reject a resubmitted assessment if it has not been completed in the failure impact assessment guidelines.

If the chief executive rejects the assessment, the chief executive must give an information notice to the owner of the dam within 30 business days. The owner of the dam may appeal against the chief executive's decision to reject the assessment. Where a failure impact assessment for an existing dam is rejected, the person must prepare a further assessment in accordance with the requirements of the information notice.

## **Division 3            Safety conditions for existing referable dams**

### **353 Applying safety conditions for existing referable dams**

*Clause 353* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides for how the chief executive assesses a constructed referable dam to determine the conditions to be imposed about the safety of the dam. This clause does not apply to the construction of a new dam as this will be assessed under the Integrated Planning Act as development being operational work. The framework under the Bill separates the process for determining what is a referable dam, through failure impact assessment; and the process for the approval of the construction and operation of a dam, being development within the meaning of the Integrated Planning Act.

While the Integrated Planning Act will provide the system for the approval of a new referable dam, an existing referable dam is assessed under the Bill. For these existing referable dams, the assessed conditions about the safety of the referable dam are deemed to be a development permit, including conditions, within the meaning of the Integrated Planning Act. This allows the chief executive to utilise the offence and enforcement provisions under the Integrated Planning Act in respect to conditions about the safety of a referable dam assessed under the Bill.

The chief executive has the power to apply safety conditions to an existing referable dam. In doing so, the chief executive may request information from the owner of a referable dam. The information may include, for example, emergency action plans, dam operating procedures, dam maintenance procedures, inspection and evaluation reports, dam data books and dam safety review and design reports.

### **354 Deciding safety conditions**

*Clause 354* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that after assessing the information, the chief executive will determine the conditions which are to apply to the referable dam. The chief executive must decide the safety conditions within 40 business days after receiving the requested information or any extended time as agreed to by the owner of the referable dam. The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or reasonably required for the dam. Similarly, the chief executive is to have regard to any guidelines issued by the chief executive for applying safety conditions to a referable dam when deciding safety conditions.

### **355 Process after deciding safety conditions**

*Clause 355* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that the chief executive must give the owner of a referable dam an information notice about the dam safety conditions. The owner of the referable dam may appeal against the chief executive's decision about safety conditions. The chief executive is also required to give the relevant local government a copy of the safety conditions.

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

### **356 Changing conditions**

*Clause 356* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It enables the chief executive to change the safety conditions or development conditions of a referable dam. The chief executive may change a safety/development condition where the chief executive thinks it is necessary or desirable to make the change in the interests of dam safety. This clause also makes provision for the chief executive to request information from the dam owner, including requiring the dam owner to have certain information or reports prepared by a registered professional engineer.

If the chief executive decides to change the conditions, the chief executive must give the owner of the referable dam an information notice about the decision. The change of conditions has effect from the day stated in the notice. When safety conditions relating to a referable dam 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 and provide a copy of the revised conditions not only to the owner but also to the local government for the area. This is desirable as the local government will often be the assessment manager for the development.

In addition, it is noted that the chief executive's power to change conditions includes the power to add conditions. The changed conditions are taken to be conditions attaching to the development permit and the owner of the dam may appeal against the chief executive's decision to change or add a safety condition.

### **357 Reassessing dams**

*Clause 357* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It states that if a referable dam is subsequently assessed as no longer being a referable dam within the meaning of the Bill, any existing dam safety conditions no longer apply to the dam. This may apply, for example, where a dam is required to be failure impact assessed every five years and there has been a change of circumstances leading to a change in the failure impact rating.

## **Division 4            Emergency powers**

### **358 Application of div 4**

*Clause 358* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It provides the chief executive with certain powers and rights in specific circumstances. For example:

- where there is danger of the failure of a referable dam
- where there is danger of the failure of a dam for which no failure impact assessment has been carried out and the chief executive reasonably believes that the dam would have a category 1 or 2 failure impact rating if an assessment were carried out. This may occur, for example, where an owner of a dam has failed to carry out a failure impact assessment. If the assessment was in fact carried out, the dam may have had a category 1 or 2 rating and therefore be referable

This clause only applies where the chief executive is satisfied there is danger of failure of a dam and action is necessary to prevent or minimise the impact of the failure.

### **359 Direction to owner of emergency part of land**

*Clause 359* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides the chief executive with the power to direct the owner or operator of a referable dam, by way of written notice, to take stated reasonable action within a stated reasonable time. It is an offence to fail to comply with the notice.

In recognition that the land on which the dam is situated may be owned by different owners and the emergency action required to be taken may only affect part of the dam, the chief executive may give the emergency action notice to the owner of the land where the action is to be carried out. The chief executive may also give the notice to the operator.

For the purposes of this clause, the notice is taken to be a compliance notice under the Bill but not a compliance notice which requires a show cause notice being given to the person in the first instance. A show cause notice would delay the effect of the notice and the carrying out of the urgent remedial work. In addition, the notice has the effect that it runs with

the land and binds the owner of the land, the owner's successors in title and any occupier of the land. The notice is also taken to be a remedial action notice under the Land Act. This has the effect that the stated action required by the chief executive becomes a condition of the licence or lease under the Land Act. In these circumstances, if the licensee or lessee fails to comply with such a condition, the licence may be cancelled or the lease may be forfeited under the Land Act. These measures go to ensuring that the urgent remedial action is actually carried out.

### **360 Failure to comply with notice**

*Clause 360* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that if a person fails to fully comply with a notice given under clause 359 and the chief executive incurs an expense as a result, then the chief executive may take action to recover costs. The chief executive may give the owner a debt notice stating the action taken and the amount of expenses incurred (that is, the relevant debt).

### **361 Notice in relation to land other than leased State land**

*Clause 361* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that where emergency action is carried out by the chief executive on land other than lease State land because the owner failed to do so, the costs of carrying out the action is a debt and a charge on the owner's land. This clause provides that the charge is to be registered as an encumbrance on the land title.

### **362 Notice in relation to leased State land**

*Clause 362* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides that where emergency action is carried out by the chief executive on State leased land, the costs of carrying out the action is a debt which becomes a condition of the lease from the day the notice is given. This clause provides that the debt is to be registered as an encumbrance on the lease.

### **363 Emergency powers if imminent danger of dam failure**

*Clause 363* is relocated from the Water Act to the Bill, as the Bill now provides for dam safety regulation, and recast to align with current drafting practices. It provides for the circumstance where there is imminent danger and immediate action is required. Under these circumstances the chief executive may give the emergency action notice verbally, for example, by telephoning the owner or operator or by leaving the notice on the land. In these circumstances only, it is also sufficient for the chief executive to give the emergency action notice to an employee or agent of the owner or operator. This is in recognition of the urgency in which the action must be taken.

## **Division 5            General matters**

### **364 Liability for loss or damage caused by failure of dam**

*Clause 364* is relocated from the Water Act to the Bill as the Bill now provides for dam safety regulation. It states that nothing in the Bill affects a referable dam owner's or operator's liability for any loss or damage caused by the failure of, or escape of water from, a referable dam. This clause essentially states the position at common law.

### **365 Sections 365—369 not used**

*Clause 365* provides that clauses 365 to 369 are not used.

## **Part 2                Flood mitigation**

### **370 Owners of particular dams must prepare flood mitigation manual**

*Clause 370* is relocated from the Water Act to the Bill as the Bill now provides for flood mitigation regulation. It provides that the owner of each dam nominated in a regulation under the Bill must prepare a flood mitigation manual of operational procedures for flood mitigation for the dam in accordance with the time nominated in the regulation. A dam nominated in the regulation will be a dam which was constructed for the

purpose of flood mitigation. A flood mitigation manual ensures that such dams make controlled releases of water for flood mitigation purposes in accordance with pre-agreed conditions.

### **371 Approving flood mitigation manual**

*Clause 371* is relocated from the Water Act to the Bill as the Bill now provides for flood mitigation regulation. It states that the owner of a dam nominated in a regulation must give the chief executive a copy of the flood mitigation manual for the dam for the chief executive's approval. The chief executive's approval may be notified in the gazette. The approval of a flood mitigation manual is for a period of not more than five years and the chief executive may obtain advice from an advisory council before approving the manual.

### **372 Amending flood mitigation manual**

*Clause 372* is relocated from the Water Act to the Bill as the Bill now provides for flood mitigation regulation. It provides that the chief executive may ask the owner of a dam, by notice at any time, to amend the flood mitigation manual of the dam. Where an owner complies with the chief executive's request, the chief executive must approve the amended manual by notice in the gazette. The owner of a dam must comply with the chief executive's request to amend the manual. The chief executive's approval of the amended manual may be either for the balance of the approval period before the amendment or for a period of not more than five years from the date the manual was approved. The chief executive may obtain advice from an advisory council before approving the amended manual.

### **373 Regular reviews of flood mitigation manual**

*Clause 373* is relocated from the Water Act to the Bill as the Bill now provides for flood mitigation regulation. It provides that before a flood mitigation manual for a dam expires, the owner must review, and if necessary update, the manual and give a copy to the chief executive for approval.

### **374 Protection from liability for complying with flood mitigation manual**

*Clause 374* is relocated from the Water Act to the Bill as the Bill now provides for flood mitigation regulation. It provides that the chief executive or a member of the council will not be civilly liable for an act done or omission made honestly and without negligence under this division. It also provides that an owner of a dam (which includes the operator of the dam, or a director, employee or agent of the owner) who observes the operational procedures contained in a flood mitigation manual approved by the chief executive, will not be civilly liable for an act done or omission made honestly and without negligence in observing the operational procedures. In both cases, the liability attaches to the State instead.

### **375 Sections 375—399 not used**

*Clause 375* provides that clauses 375 to 399 are not used.

## **Chapter 5 Investigations and enforcement matters**

### **Part 1 Authorised officers**

#### **Division 1 Authorised officers' functions and powers generally**

##### **400 Functions**

*Clause 400* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It sets out the functions and powers of authorised officers. An authorised officer may collect information, conduct investigations and inspections to monitor and enforce compliance with the Bill or the Integrated Planning Act as far as that Act relates to a

development condition. The reference to development conditions allows an authorised officer to conduct investigations and monitor and enforce compliance with respect to those development conditions imposed by the chief executive as an assessment manager or referral agency.

### **401 Powers generally**

*Clause 401* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It sets out the powers of authorised officers as those given under the Bill or another Act and are subject to the direction of the appointer.

## **Division 2            Appointment of authorised officers**

This division sets out provisions for the appointment and qualifications of authorised officers.

### **402 Appointment and qualifications**

*Clause 402* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It empowers the chief executive, and the regulator where applicable, to appoint a person as an authorised officer if the person has the necessary expertise and experience.

### **403 Appointment conditions and limit on powers**

*Clause 403* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It states that an authorised officer only holds the position on the conditions and limitations stated in the instrument of appointment. This provision is modelled on section 446 of the Environmental Protection Act. A signed notice is defined in this clause as a notice signed by the appointer.

#### **404 Issue of identity card**

*Clause 404* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It states that an authorised officer must be issued an identity card and provides details about the identity card.

#### **405 Production or display of identity card**

*Clause 405* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that an authorised officer may only exercise powers if the officer first produces an identity card to a person or has it displayed so that it is clearly visible to the person.

If the authorised officer cannot produce or display their identity card prior to, or while exercising, their power they must produce it at the first reasonable opportunity.

#### **406 When authorised officer ceases to hold office**

*Clause 406* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. The clause sets out the circumstances when an authorised officer ceases to hold office.

#### **407 Resignation**

*Clause 407* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides that an authorised officer may resign from the appointment by submitting a signed notice of resignation.

#### **408 Return of identity card**

*Clause 408* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It details the requirements for when an authorised officer's identity card must be returned.

## **Part 2 Powers of authorised officers**

This division provides for where an authorised officer may enter land without consent.

### **Division 1 Entry of places**

#### **409 Definition for pt 2**

*Clause 409* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It defines land for this division to mean a parcel of land other than the part on which there is erected a building or structure that is a dwelling place or being used, at the relevant time, as a dwelling place. Authorised officers cannot enter a dwelling place (for example, a house) without consent.

#### **410 Power to enter land to monitor compliance**

*Clause 410* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It permits an authorised officer to enter land, at any reasonable time to ascertain if the Integrated Planning Act is being complied with so far as that Act relates to a development condition for example, development conditions in relation to operational works for a referable dam. It also permits an authorised officer to enter land to monitor compliance with an approved drinking water quality or recycled water management plan, including its conditions or approved exemption.

#### **411 Power to enter land in relation to information collection**

*Clause 411* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It permits an authorised officer to enter land for a range of matters in relation to referable dam and failure impact assessments.

## **412 Power to enter places for other purposes**

*Clause 412* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It permits an authorised officer to enter a place for a purpose other than those detailed in clauses 410 or 411, but only in the prescribed circumstances.

Under this clause, consent or a warrant is not required to enter a public place or place of business during business hours. For the purpose of asking for consent to enter, an authorised officer may enter the place without the occupier's consent or a warrant.

## **Division 2 Procedure for entry**

This division sets out the procedure for entry into a place and matters pertaining to the issuing of warrants.

### **413 Entry with consent**

*Clause 413* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the procedure the authorised officer must follow when intending to enter a place with consent. For example, the authorised officer must tell the occupier the purpose of the entry.

### **414 Application for warrant**

*Clause 414* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the obligations of an authorised officer when making an application to a magistrate for a warrant.

### **415 Issue of warrant**

*Clause 415* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It details the circumstances and the requirements for the issue of a warrant. This is consistent with provisions in the Vegetation Management Act and provides reasonable flexibility in the scope of whom a warrant may be issued to.

### **416 Application by electronic communication and duplicate warrant**

*Clause 416* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides for circumstances where an authorised officer may apply for a warrant by electronic communication, for example, in urgent situations.

### **417 Defect in relation to a warrant**

*Clause 417* provides that a warrant, including a duplicate warrant, is not invalidated by a defect in the warrant unless the defect affects the substance of the warrant in a material particular.

### **418 Warrants—procedure before entry**

*Clause 418* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the obligations of an authorised officer who is named in a warrant and who intends to enter a place under a warrant. This aims to safeguard a person's privacy and ensures the person is given a clear explanation of the authorised officer's powers under the warrant.

## **Division 3 Powers after entry**

Division 3 sets out the powers of authorised officers after entering a place.

### **419 General powers after entering places**

*Clause 419* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the general powers of an authorised officer for monitoring or enforcing compliance with the Bill after entering a place. This clause only applies if consent is given to enter a place or entry is otherwise authorised.

### **420 Failure to help authorised officer**

*Clause 420* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It creates

an offence where a person fails to give reasonable help to an authorised officer.

### **421 Failure to give information**

*Clause 421* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It creates an offence where a person fails to give requested information to an authorised officer.

## **Part 3                      Power to seize evidence**

The accompanying clauses provide the Bill with a set of contemporary seizure powers for authorised officers associated with investigation and enforcement.

The provisions are modelled on sections 39 to 48 of the Vegetation Management Act and are consistent with the approach adopted in the *Police Powers and Responsibilities Act 2000* - representing accepted practice in seizing evidence and dealing with seized evidence.

### **422 Seizing evidence**

*Clause 422* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It specifies when and on what grounds evidence may be seized.

### **423 Securing seized things**

*Clause 423* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It defines what an authorised officer may do as part of seizing a thing. This includes moving, leaving and restricting access to, or, if the thing is equipment, making inoperable, the seized thing.

### **424 Tampering with seized things**

*Clause 424* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It makes it

an offence for a person to tamper, or attempt to tamper with a seized thing or something restricting access to the thing; or equipment which the authorised officer has made inoperable; without an authorised officer's approval.

#### **425 Powers to support seizure**

*Clause 425* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It specifies the requirements an authorised officer may make of a person who is in control of a thing that is to be seized or a thing that has been seized; how the authorised officer may make a requirement; and the effect of a failure of a person to comply with such a requirement.

#### **426 Receipts for seized things**

*Clause 426* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It requires an authorised officer to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, if for some reason this proves impractical, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

#### **427 Forfeiture by authorised officer**

*Clause 427* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It establishes when a thing that has been seized is forfeited to the State.

#### **428 Forfeiture on conviction**

*Clause 428* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It allows the court to order that a thing seized under this part is forfeited to the State.

#### **429 Dealing with forfeited things**

*Clause 429* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It establishes that when a thing is forfeited, the thing becomes the property of

the State and that the chief executive may destroy or dispose of the forfeited thing.

### **430 Return of seized things**

*Clause 430* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It establishes when seized things must be returned to their owners.

### **431 Access to seized things**

*Clause 431* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It requires that, where it is not impractical, an authorised officer must allow the owner of a seized thing to inspect it and, if the seized thing is a document, copy it.

## **Part 4                      Power to require information**

Part 4 sets out the powers of authorised officers in relation to obtaining information.

### **432 Power to require name and address**

*Clause 432* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It allows an authorised officer 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.

### **433 Failure to give name or address**

*Clause 433* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It creates an offence where a person fails to provide a name and address to an authorised officer without a reasonable excuse. However, if it is proved that the person did not commit an offence against the Bill, they have not committed an offence against this clause.

### **434 Power to require information or documents**

*Clause 434* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It allows an authorised officer to require a person to provide information or documents about stated matters. An authorised officer may also copy the document and require the person responsible for keeping the document to certify the copy. It is an offence if a person fails to certify a copy of a document unless the person has a reasonable excuse. It is also an offence to fail to produce the document or required information without a reasonable excuse. A reasonable excuse may be that the document production might tend to incriminate the person. This clause is equivalent to provisions in the Vegetation Management Act and similar to those in the Fair Trading Act.

## **Part 5                      Particular enforcement provisions relating to drinking water and recycled water**

### **435 Application of pt 5**

*Clause 435* sets out prescribed circumstances in relation to drinking water and recycled water management under the Bill where the regulator may exercise powers where urgent action is necessary to prevent or minimise any adverse affect on public health.

### **436 Power about preventing or minimising adverse affects—general**

*Clause 436* further provides for the instance where the regulator is satisfied or reasonably believes that urgent action is necessary to prevent or minimise any adverse affect on public health. In these circumstances, the regulator may direct any person to take reasonable steps within a period, take the reasonable steps or authorise an authorised officer to take the reasonable steps to prevent or minimise the adverse affect on public health. This direction may be given either orally or by a written notice. If the direction is given orally, the regulator must, as soon as practicable, confirm the direction by written notice. When the regulator gives the direction, the

person must be warned that it is an offence not to comply with the direction unless the person has a reasonable excuse.

### **437 Offence to fail to comply with direction**

*Clause 437* provides that it is an offence for a person not to comply with the direction given under clause 436 unless the person has a reasonable excuse. The maximum penalty for the offence is 1665 penalty units.

### **438 Particular powers of regulator or authorised officer**

*Clause 438* provides for particular powers of the regulator or authorised officer acting under section 436. The regulator or authorised officer may, without a warrant, enter any place, other than premises or part of premises where a person resides, to take reasonable steps to prevent or minimise the adverse affect on public health. When exercising these powers the regulator or officer can exercise any powers of an authorised officer under part 2, 3 or 4. Clause 438 also provides that, before entering a place, an authorised officer must make a reasonable attempt to show their identity card. The regulator or authorised officer must also tell the occupier of the place that they are permitted under the Act to enter and give the occupier an opportunity to allow them to enter the place without using force.

### **439 How powers may be exercised**

*Clause 439* provides that the regulator or authorised officer may exercise these emergency powers at the time, with help and using the force that is necessary and reasonable in the circumstances. However, the regulator or authorised officer must take all reasonable steps to ensure the exercise of their powers causes as little inconvenience to any person at the place and does as little damage as is practicable in the circumstances.

### **440 Regulator's powers not affected**

*Clause 440* provides that this division does not limit the power of the regulator in other parts of the Bill.

### **441 Sections 441—449 not used**

*Clause 441* provides that clauses 441 to 449 are not used.

## **Part 6                      Other matters**

### **450 Notice of damage**

*Clause 450* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the procedure an authorised officer must follow when damage is caused by exercising a power under the Bill.

### **451 Compensation**

*Clause 451* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It states that a person may claim compensation from the State if they incur loss or expense as a result of an authorised officer's actions under part 2, divisions 1 or 3 and part 5.

### **452 Sections 452—459 not used**

*Clause 452* provides that clauses 452 to 459 are not used.

## **Part 7                      Obtaining criminal history reports**

### **460 Purpose of pt 7**

*Clause 460* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It states that the purpose of this part is to assist authorised officers in deciding whether or not the unaccompanied entry of land or premises would create an unacceptable risk to their safety.

### **461 Chief executive's power to obtain criminal history report**

*Clause 461* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It authorises the chief executive to obtain advice from the commissioner of the police service as to the criminal history of a person that the authorised

person suspects may be at a place. The chief executive may pass on information concerning violence or firearms offences to the authorised officer. This information will assist the authorised officer in determining if unaccompanied entry to a place is an unacceptable risk.

#### **462 Criminal history is confidential document**

*Clause 462* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the criminal history report or any information in the criminal history report is confidential, subject to certain qualification. The report and any information it contains must be destroyed as soon as practicable after the authorised officer considers the risk to their safety. Disclosure of the report or any information in the report may incur a penalty.

## **Part 8                      Show cause and compliance notices**

### **Division 1                Show cause notices**

#### **463 General requirements for show cause notices**

*Clause 463* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It outlines the requirements for a show cause notice, for example, the notice must state the proposed action, the grounds for taking the action and that submissions may be made about the show cause notice.

#### **464 Show cause notice must be given**

*Clause 464* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It makes it clear that a show cause notice must be given before the regulator can give a service provider a compliance notice except where a compliance notice is given to a drinking water service provider or recycled water provider about drinking water or recycled water matters.

This is in recognition of the need to protect public health when dealing with drinking and recycled water matters.

## **Division 2            Compliance notices**

### **465 Who may give compliance notice**

*Clause 465* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides for when the chief executive, regulator or authorised officer proposes to give a compliance notice in relation to contravention of provisions of the Bill. A compliance notice is a notice requiring the person to remedy the contravention of the Bill. However, if the regulator has issued a show cause notice, the regulator may only issue a compliance notice if, after considering all representations made by the service provider about the show cause notice within the time stated in the notice, the regulator still believes it is appropriate to give the compliance notice.

### **466 Compliance notice**

*Clause 466* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the general requirements of a compliance notice and requires that the person must comply with a compliance notice unless they have a reasonable excuse.

### **467 Chief executive or regulator may take action and recover costs**

*Clause 467* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the chief executive or the regulator may take the action required under a compliance notice if the person to whom it was issued fails to do so. Where the chief executive has issued a notice under clause 359 requiring stated action in respect of a referable dam and there has been non-compliance with the notice, the chief executive may, as an alternative to carrying out the stated action, take any action necessary to prevent or minimise the impact of the failure of the dam. For example, a delay in complying with the required remedial action may lead to such a risk of

failure of the dam that decommissioning or removal of the dam is necessarily now required.

Any reasonable costs or expenses incurred by the chief executive or regulator in taking action may be recovered by the chief executive or regulator as a debt owing to it by the person who contravened the compliance notice. This clause also provides for interest, at a rate stated in the regulation, to be payable on a debt created under this clause and for the chief executive or regulator to notify the person about the expenses incurred.

### **468 Sections 468—474 not used**

*Clause 468* provides that clauses 468 to 474 are not used. See footnote at the start of chapter 2.

## **Part 9                      Enforcement proceedings**

### **475 Starting proceeding for enforcement order**

*Clause 475* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides for a person bringing a proceeding in the District Court for one or more of the orders listed. If the proceeding is for an order to remedy or restrain the commission of an offence against the Bill, a person may bring the proceeding whether or not any of their rights have been, or may be, infringed by, or because of, the commission of the offence. If the order is sought for an offence against the clauses listed in subclause (2) the proceeding may only be brought by the person stated in the relevant clause, for example, the regulator in relation to drinking water and recycled water. Although only the regulator may start a proceeding for an offence involving drinking water and recycled water offences, other legal action that may be available to third parties is not excluded. The broader public health related aspects of drinking water and recycled water regulation are addressed under the Public Health Act. If a person other than the chief executive brings an enforcement order proceeding, this clause requires a notice of the proceeding to be given to the chief executive.

#### **476 Proceeding started in a representative capacity**

*Clause 476* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that a person may bring a proceeding for an enforcement order on their own behalf or in a representative capacity. Consent must be obtained in order to act in a representative capacity.

#### **477 Starting proceeding for enforcement order without notice**

*Clause 477* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It allows a person to bring a proceeding for an enforcement order without notice to the other party. The District Court may, without limiting the court's equitable jurisdiction, grant the order with conditions or for a limited period.

#### **478 Making interim enforcement order**

*Clause 478* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that a District Court may make an interim enforcement order pending a decision of the proceeding if the court considers it to be an appropriate measure. The order may be subject to conditions including requiring the applicant to give an undertaking to pay costs if the proceeding is unsuccessful.

#### **479 Making enforcement order**

*Clause 479* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the District Court may make enforcement orders if the court is satisfied the offence has been committed or will be committed unless restrained. If the court is satisfied there has been an offence, the court may make an enforcement order even where there has been no prosecution for the offence under this part. The court may also make an order for exemplary damages with the exemplary amount to be paid to the consolidated fund.

#### **480 Effect of enforcement order**

*Clause 480* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides for the matters an enforcement order may direct a person to do.

### **481 Powers about enforcement orders**

*Clause 481* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides details for when the District Court may exercise its power to make an enforcement order to stop or not to start an activity.

### **482 Parties to pay own costs for proceedings**

*Clause 482* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that each party to a proceeding under this part must pay their own costs, subject to special circumstances where the court may order costs as it considers appropriate. Subclause (2) confirms that in addition to any order in respect of costs, the court may also make any order it decides appropriate to compensate a party for loss or damage suffered as a result of commencement of a proceeding that the court determines to have been frivolous or vexatious or because the party has incurred costs as a result of the other party defaulting in procedural requirements.

## **Chapter 6      Offences, evidentiary                          matters and legal                          proceedings**

### **Part 1              General offences**

#### **483 False or misleading statements**

*Clause 483* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It creates an offence for a person to make statements to the chief executive, regulator or an authorised officer that the person knows to be false or misleading in a material way.

### **484 False or misleading documents**

*Clause 484* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It creates an offence for a person to give the chief executive, regulator or an authorised officer a document that the person knows is false or misleading in a material way.

### **485 Obstructing an authorised officer**

*Clause 485* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It creates an offence for a person to obstruct an authorised officer in the exercise of a power. In this clause, obstruction includes to assault, hinder, threaten and attempt to obstruct.

### **486 Impersonation of an authorised officer**

*Clause 486* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It creates an offence for a person to pretend to be an authorised officer.

### **487 Executive officers must ensure corporation complies with Act**

*Clause 487* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that executive officers of a corporation must ensure the corporation complies with the Bill. If a corporation commits an offence under the Bill, then each of its executive officers also commits an offence for failing to ensure the corporation complies with the provision. Evidence that a corporation has been convicted of an offence is taken to be evidence that each of the executive officers have committed this offence. An executive officer is only considered not to have committed an offence if they can prove that they exercised reasonable diligence to ensure the corporation complied with the provision, or that they were not in a position to influence the conduct of the corporation.

## **Part 2                      Evidentiary matters**

### **488 Application of pt 2**

*Clause 488* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It states that this part applies to a proceeding under the Bill.

### **489 Appearance**

*Clause 489* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that a party to a proceeding under the Bill (including an appeal, application for an enforcement order or any other proceeding) may represent themselves or be represented by a lawyer or an agent. This is modelled on clause 4.1.13 of the Integrated Planning Act.

### **490 Appointments and authority**

*Clause 490* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that it is not necessary to prove the appointment or the authority of the chief executive, the regulator or an authorised officer.

### **491 Evidentiary aids**

*Clause 491* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It specifies that if a certificate that claims to be signed by (or on behalf of) the chief executive or regulator contains any of the specified matters, such as whether or not an authority was in force on a stated day, it is considered to be evidence of the matter. This clause also specifies that a statement saying when a complaint came to the knowledge of the complainant is evidence of when the complainant became aware of the issue.

## **Part 3                      Proceedings for offences**

### **492 Indictable and summary offences**

*Clause 492* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides that an offence against the Bill is an indictable offence where the maximum penalty of imprisonment is two or more years. This clause also distinguishes between when an indictable offence is a crime or a misdemeanour and states the maximum penalty that may be imposed on a summary conviction of an indictable offence. These clauses have been modelled on the *Government Owned Corporations Act 1993*.

### **493 Proceedings for indictable offences**

*Clause 493* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It sets out the proceedings for indictable offences. The clause provides that a proceeding for an offence against the Bill may be instituted in a summary way under the *Justices Act 1886* or on indictment.

### **494 Limitation on who may summarily hear indictable offence proceedings**

*Clause 494* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides limitations on who may summarily hear indictable offence proceedings, for example, a magistrate must hear proceedings for indictable offences that are summary convictions. This clause also provides the maximum penalties that may be imposed on the summary conviction of an indictable offence.

### **495 Limitation on time for starting proceeding for summary offence**

*Clause 495* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides that the proceeding for a summary offence against the Bill must be commenced within one year after

the commission of the offence or within one year after the offence comes to the complainant's knowledge. However, the proceeding must be commenced within two years after the offence is committed.

#### **496 Notice of proceedings for offences**

*Clause 496* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It ensures that the chief executive is aware of proceedings being brought under this part by providing that a person bringing a proceeding must notify the chief executive within five business days of starting the proceeding.

#### **497 Limitation on who may bring particular proceedings**

*Clause 497* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides for a range of proceedings that may be brought by the Attorney-General, a service provider or the regulator for offences against various section of the Bill.

#### **498 Proceeding brought in a representative capacity**

*Clause 498* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It provides that, with the consent of the entity, a proceeding under clause 497 may be started by a person on the behalf of an entity in a representative capacity. However, if a person is representing an entity that is an unincorporated body, the person must obtain the consent of the body's committee or other controlling or governing body. This clause also provides that if the proceeding is brought in a representative capacity, the entity on whose behalf the proceeding is brought may contribute to/pay the costs incurred by the person bringing the proceeding.

#### **499 Orders Magistrates Court may make in offence proceeding**

*Clause 499* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It outlines the orders that the

Magistrates Court may make in an offence proceeding. Under this clause, the Magistrates Court may make an order against the defendant after hearing a complaint for an offence against the Bill. This clause also outlines what an order may require of the defendant.

### **500 Offence to contravene Magistrates Court order**

*Clause 500* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It creates an offence for a contravention of an order made by the Magistrates Court under clause 499.

## **Part 4                      Miscellaneous provisions**

### **501 Chief executive's and regulator's power to remedy stated public nuisance**

*Clause 501* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It gives the chief executive and the regulator power to undertake any work necessary to remove a stated public nuisance which is a result of non-compliance with an order under clause 499. The chief executive may then recover the reasonable cost of the work from the person against whom the order was made.

### **502 Responsibility for acts or omissions of representatives**

*Clause 502* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It states that a person who nominated a representative to act on their behalf is responsible for the actions/omissions of the representative. This responsibility is limited to actions or omissions taken by the representative that were made within the scope of their authority. In addition, a person is not responsible for the actions or omissions of a representative if they can prove that they could not have prevented the representative's actions/omissions. This clause also defines the terms representative and state of mind.

## **503 Sections 503—509 not used**

*Clause 503* provides that clauses 503 to 509 are not used.

# **Chapter 7      Reviews, appeals and arbitration**

## **Part 1              Preliminary**

### **510 Who is an interested person**

*Clause 510* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It defines who is an interested person for the purposes of lodging an application for review, appeal or arbitration of a decision under the Bill. An interested person is any person who receives an information notice or a compliance notice from the chief executive, the regulator, or an authorised officer or a local government under the Bill. This clause also provides that the decision or action for which the notice was given to the interested person is considered to be an original decision.

## **Part 2              Review of decisions**

### **511 Appeal process starts with review**

*Clause 511* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that every appeal against an original decision must first be made by way of an application for a review. The purpose for this process is to enable interested parties a cost-effective option for having a matter reconsidered before referring it to the court or arbitration.

## **512 Who may apply for review**

*Clause 512* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that an interested person may apply for a review of an original decision. The review application can only be made to the person who made the original decision. For example, where the notice was given by the chief executive or an officer appointed by the chief executive, the application for review must be made to the chief executive.

## **513 Requirements for making review application**

*Clause 513* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It sets out the requirements for making a review application. A review application must be in the approved form, accompanied by a statement of the grounds on which the applicant seeks the review and contain enough information to enable the reviewer to decide the application. A review application must be made within 30 business days of the notice about the decision being given to the applicant; however, the reviewer has the power to extend this period at any time.

## **514 Review decision**

*Clause 514* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It sets out the procedure for the reviewer to make a review decision. The reviewer must within 20 business days after receiving a review application, review the original decision, consider any properly made submissions and make a decision.

In following this procedure the reviewer has the option to extend the time in which they must make their decision. However, the period cannot be extended for more than 30 days and the reviewer must give notice to the applicant about the extension within the original 20 day period. The clause also states that the application must not be dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision

Clause 514 also provides that if the review decision confirms the original decision then the original decision is taken to be the review decision. If the review decision amends the original decision, for the purpose of arbitration

or appeal the original decision as amended is taken to be the review decision.

### **515 Notice of review decision**

*Clause 515* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices and include reference to drinking water and recycled water regulation. It provides that the reviewer must within 10 business days after making the review decision, give the applicant and any person who was given notice of the original decision, notice of the review decision. The clause also sets out that the review notice must state certain particulars such the process the applicant may follow if the review decision is not the decision sought. For example, the clause specifies the court the applicant may appeal to and time period in which an appeal must be commenced. If the reviewer does not give the review notice within 10 business days the reviewer is taken to have made a decision confirming the original decision.

### **516 Stay of operation of original decision**

*Clause 516* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that an applicant for a review of an original decision may apply to the relevant court for a stay to delay the commencement or operation of the original decision. This clause also outlines the relevant court to which an applicant may apply to for stay of the original decision depending on the type of original decision.

## **Part 3                      Appeals**

### **517 Who may appeal**

*Clause 517* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides that if an interested person has applied for a review of an original decision, any interested person for that original decision may appeal against the review decision to the relevant court.

## **518 Starting an appeal**

*Clause 518* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the procedure for starting an appeal.

## **519 Stay of operation of review decision**

*Clause 519* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the court to which the appellant could have applied for a stay of an original decision may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal. The review decision remains in place until the appeal is determined or the arbitration determined or a stay granted.

## **520 Hearing procedures**

*Clause 520* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides for the appeal to be heard in accordance with the rules of the relevant court to the appeal, or if the rules make no provision or insufficient provision, in accordance with the directions of the judge. An appeal is by way of rehearing, unaffected by the reviewer's decision.

## **521 Assessors**

*Clause 521* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that, if the judge or member is satisfied the appeal involves a question of special knowledge and skill, the judge or member may appoint one or more assessors to help the judge or member in deciding the appeal.

## **522 Powers of court on appeal**

*Clause 522* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the powers of the court on appeal.

### **523 Appeal costs**

*Clause 523* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out the procedure for costs of an appeal.

## **Part 4                      Arbitration**

### **524 Who may apply for arbitration**

*Clause 524* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides that an interested person who applied for a review decision and was dissatisfied with the decision may apply to the Queensland Competition Authority for arbitration on the decision. The application will be made by way of a dispute notice given to both the authority and the regulator. The dispute notice must be given within 30 business days after the day the interested person receives notice of the decision. Note that this clause does not apply to a review decision relating to a matter involving drinking water or recycled water.

### **525 Acknowledging dispute notice**

*Clause 525* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that, on receiving the dispute notice, the Queensland Competition Authority (the Authority) must give an acknowledgement notice to both the interested person and the regulator.

### **526 Withdrawing dispute notice**

*Clause 526* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the interested person may withdraw the dispute notice at any time before the Authority makes a determination on the dispute.

### **527 Parties to arbitration**

*Clause 527* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It clarifies that the parties to the arbitration are the interested person and the regulator.

### **528 Decision by authority**

*Clause 528* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It sets out matters relating to the decision of the arbitration dispute by the Authority. The Authority must make a written decision in arbitrating on a dispute, and set out its reasons for making the decision. This clause also provides that the Authority is not required to make a decision if it considers that the giving of the dispute notice was vexatious, trivial, misconceived or lacking in substance.

### **529 Conduct of arbitration**

*Clause 529* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that part 7 of the *Queensland Competition Authority Act 1997* (Queensland Competition Authority Act) applies to arbitration under the Bill which sets out the process for the conduct of arbitration proceedings.

## **Chapter 8      Miscellaneous**

### **Part 1                      Appointment of administrator and emergency powers for particular infrastructure**

#### **Division 1                  Appointment of administrator**

##### **530 Governor in Council may appoint administrator to operate infrastructure**

*Clause 530* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides the power for the Governor in Council to appoint an administrator to operate infrastructure. The Governor in Council may appoint an administrator (for example, the regulator or another person with the necessary experience) if the Minister is satisfied that a service provider has not complied with a compliance notice or is likely to stop supplying a registered service and there is no other entity willing to take over the operation of all or part of the service provider's infrastructure for the service.

Clause 530 also provides the power for the Governor in Council to appoint an administrator for a recycled water scheme. The Governor in Council may appoint an administrator if the Minister is satisfied that a scheme manager, recycled water provider or other declared entity for a critical recycled water scheme (each a 'responsibility entity') has not complied with a compliance notice or has stopped, or is likely to stop supplying recycled water.

The exercise of this power will be a measure of last resort to ensure continuity of supply of services to customers. It is intended that the appointment of the administrator will only be for an interim period until another entity is able to take over the operations of the infrastructure.

### **531 Effect of administrator operating infrastructure**

*Clause 531* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It outlines the effect of an administrator operating infrastructure, for example, the administrator may do all things necessary to ensure the infrastructure continues to operate. Under this clause, the service provider or responsible entity is liable for the costs of operating, repairing, replacing or improving the infrastructure; however the administrator must pay the service provider or responsible entity any income received from operation of the infrastructure.

### **532 Effect of appointment of administrator**

*Clause 532* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It outlines the effect of the appointment of an administrator on the registration of a service provider. The registration of the service provider is suspended from the day the notice appointing the administrator is published in the gazette. The suspension continues until the appointment of the administrator ends. For a recycled water scheme, the administrator is taken to be the responsible entity for the administration period.

### **533 Withdrawing appointment of administrator**

*Clause 533* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the Governor in Council may withdraw an administrator's authorisation by publishing a notice in the gazette.

## **Division 2            Emergency powers for operating particular infrastructure**

### **534 Regulator or other person may operate infrastructure for drinking water—regulator's notice**

*Clause 534* applies if the regulator is satisfied or reasonably believes a drinking water service provider has not complied with a compliance notice

or has stopped or is likely to stop the drinking water service and exceptional circumstances make it necessary for the regulator or a person appointed by the regulator to operate the provider's infrastructure for the service to protect public health.

In the circumstances, the regulator or another person appointed by the regulator may 'step-in' and operate the infrastructure of a drinking water service provider by giving notice to the provider. The step-in period may not be more than 30 business days; and may end sooner if an administrator is appointed by the Governor in Council under clause 530.

### **535 Regulator or other person may operate infrastructure for recycled water—regulator's notice**

*Clause 535* applies if the regulator is satisfied or reasonably believes a scheme manager, recycled water provider or other declared entity for a critical recycled water scheme (each a 'responsible entity') has not complied with a compliance notice or has stopped or is likely to stop supplying recycled water under the scheme and exceptional circumstances make it necessary for the regulator or a person appointed by the regulator to operate the responsible entity's infrastructure for supplying recycled water under the scheme to protect public health or to ensure the continuity of operation of the scheme.

In the circumstances, the regulator or another person appointed by the regulator may 'step-in' and operate the infrastructure of a responsible entity by giving notice to the entity. The step-in period may not be more than 30 business days; and may end sooner if an administrator is appointed by the Governor in Council under clause 530.

### **536 Effect of operating infrastructure**

*Clause 536* states the effect of clauses 534 and 535. If the regulator or another person operates a drinking water service provider's or responsible entity's infrastructure under clauses 534 and 535 respectively, the regulator or other person is taken to be the service provider or responsible entity and may do all things necessary or convenient to ensure the effective operation of the infrastructure. In addition, the drinking water service provider or responsible entity is liable for the costs of operating, repairing, replacing or improving the infrastructure. The regulator or other person must pay the service provider or responsible entity any income received from operating the infrastructure, less all costs as stated above.

## **Division 3            Other matter**

### **537 Corporations legislation displacement provision**

*Clause 537* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that provisions of the Bill allowing the appointment of an administrator to take over from a service provider or recycled water provider prevail over any Commonwealth Corporations law provisions that deal with administrators. The Commonwealth Corporations law allows for this type of displacement provision.

### **538 Sections 538—559 not used**

*Clause 538* provides that clauses 538 to 559 are not used.

## **Part 2                    Relationship with Planning Act**

This part deals with the relationship between the Bill and the Integrated Planning Act. In particular, this part directs the considerations of the chief executive, in the role of either the assessment manager or a referral agency, for a development application under the Integrated Planning Act, for the assessment and approval processes for dam safety aspects of the construction and operation of a referable dam.

### **560 Codes for Planning Act**

*Clause 560* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It enables a regulation to state a code that may be used to assess applications made under the Integrated Planning Act.

### **561 Development applications for referable dams**

*Clause 561* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It applies if a person makes a development application for the construction and maintenance of a

referable dam or for increasing the storage capacity of a referable dam. An accepted failure impact assessment by the chief executive and the chief executive's consent to the application are necessary pre-requisites for a valid application for the construction and operation of a referable dam.

The chief executive must assess a relevant development application against the purposes of the Bill to the extent the purposes relate to a referable dam. Subclause (4) makes it clear that the consideration specified in the Integrated Planning Act for consideration of an application by an assessment manager or concurrence agency are not limited by the criteria in the Bill.

### **562 When applicant may appeal to Land Court**

*Clause 562* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides for when an appeal may be made to the Land Court rather than the Planning Environment Court in relation to certain development applications. This is to facilitate a more streamlined appeal process for those mining activities that also require a development approval in relation to assessable development that involves the chief executive as a referral agency or assessment manager. In these circumstances, an appeal in relation to both the mining authority under the *Mineral Resources Act 1989* and any assessable development referred to in item 4 of schedule 8, part 1, table 4 of the Integrated Planning Act, relating to a referable dam where the chief executive is the assessment manager or referral agency will be heard in the Land Court.

### **563 Sections 563—569 not used**

*Clause 563* provides that clauses 563 to 569 are not used.

## **Part 3                      Other miscellaneous provisions**

### **570 Advisory councils**

*Clause 570* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the Minister may appoint advisory councils, as appropriate, to facilitate

the administration of the Bill. A member of an advisory council may be paid as decided by the Governor in Council and the chief executive may make technical, clerical, secretarial or other help available to an advisory council where it is considered necessary for the performance of its functions.

### **571 Regulator may make guidelines**

*Clause 571* lists the matters that the regulator may make guidelines about. For example, the regulator may make guidelines about the preparation of drinking water quality management and recycled water management plans to assist persons preparing those plans. If the regulator makes guidelines about the quality of drinking water or recycled water, it cannot be inconsistent with any standards prescribed in a regulation made under the Public Health Act. The regulator will apply relevant water quality criteria, from either a regulator guidelines or Public Health Regulation, when assessing a drinking water quality or recycled water management plan. This clause makes it clear the regulator guidelines cannot be inconsistent with any Public Health Regulation.

### **572 Chief executive may make guidelines**

*Clause 572* lists the matters that the chief executive may make guidelines about. For example, the chief executive may make guidelines to about the application of safety conditions to a referable dam.

### **573 Water service provide may make guidelines**

*Clause 573* enables a water service provider to make guidelines to assist persons when preparing a water efficiency management plan.

### **574 Documents regulator and chief executive must keep available for inspection and purchase**

*Clause 574* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It outlines particular documents that the regulator and chief executive the must keep a copy of and make available for inspection and purchase by the public.

### **575 Documents service provider must keep available for inspection and purchase**

*Clause 575* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and recast to align with current drafting practices. It outlines documents that the service provider must keep available for inspection and purchase by the public.

### **576 Documents recycled water provider must keep available for inspection and purchase**

*Clause 576* outlines the documents that a recycled water provider must keep available for inspections and purchase by the public.

### **577 Records to be kept in registries**

*Clause 577* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that if the chief executive gives a notice to the owner or operator of a dam, a notice must also be given to the registrar of titles, who must record the notice. The notice is to be kept in the registry until the chief executive advises the registrar of titles that the notice has been complied with or is no longer required.

### **578 Protecting officials from liability**

*Clause 578* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It outlines the protection of officials from liability. Under this clause, an official is not civilly liable for an act or omission made honestly and without negligence. However, if this clause prevents civil liability attaching to an official, the liability attaches to the State. An official for this section is the Minister, the chief executive, the regulator, an authorised officer, a member of the advisory council, or a person acting under direction of an official, other than a member of an advisory council.

### **579 Regulator may share particular information**

*Clause 579* allows the regulator to give information about drinking water service providers, recycled water providers and the services they provide to the chief executive of the department that administers the Public Health

Act. This will provide the department administering the Public Health Act with the information necessary to ensure the protection of public health under the Public Health Act. The State is responsible for public health risks associated with drinking water and recycled water, as regulated under the Bill.

### **580 Non-disclosure of commercially sensitive information**

*Clause 580* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It governs the use of commercially sensitive information provided under relevant clauses of the Bill.

The person providing the information must advise that they consider it to be of a commercially sensitive nature for this clause to apply. This clause does not apply where the regulator, chief executive or Minister consider it is in the public interest to release the information, or where they do not believe that the information is of a commercially sensitive nature. This provision is subject to the requirements of the *Freedom of Information Act 1992* and requires the regulator, chief executive or Minister to take all reasonable steps to ensure the information provided is not disclosed to another person.

### **581 Delegation by Minister**

*Clause 581* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the Minister may delegate his or her powers conferred by the Bill to an appropriately qualified public service officer or employee.

### **582 Delegation by chief executive**

*Clause 582* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the chief executive may delegate his or her powers conferred by the Bill to an appropriately qualified public service officer or employee.

### **583 Fees and charges payable to the chief executive and regulator**

*Clause 583* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the chief executive may recover fees and charges payable under a regulation made under the Bill. Outstanding fees and charges are a debt payable to the State and may incur late fees prescribed in the regulation. This clause also allows the Minister to waive fees or charges where a person is suffering hardship as a result of economic recession or a natural disaster, such as a drought.

### **584 Non-payment of fees or charges**

*Clause 584* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides for the non payment of fees and charges. Under this clause, the chief executive may provide a written notice to a person who is liable to pay a fee or charge overdue by 20 business days, outlining arrangements for the payment to be made.

### **585 Approved forms**

*Clause 585* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill. It provides that the chief executive and the regulator may approve forms for use under the Bill.

### **586 Regulation-making power**

*Clause 586* is equivalent to the existing provision of the Water Act and is carried over to support the regulatory framework under the Bill and changed to include reference to drinking water and recycled water regulation. It provides that the Governor in Council may make regulations under the Bill. Without limiting the scope of the subject material for regulations, the clause details matters a regulation may be made about. For example, a regulation may state minimum standards for the design and construction of water and sewerage infrastructure.

## **Chapter 9 Transitional and savings Provisions**

### **Part 1 Purposes, definitions and general approach**

#### **587 main purposes of ch 9**

*Clause 587* states that the main purposes of chapter 9 are to:

- provide for provisions of the Bill that are substantially the same as provisions of the Water Act to be dealt with as replacements of the provisions of that Act. For example, the relocation of chapter 3 of the Water Act to the Bill
- provide that matters relating to chapter 3 of the Water Act that were dealt with under the Water Act can be dealt with under the Bill. For example, continuation of decisions made under chapter 3 of the Water Act continue under the Bill.
- provide for matters that were not dealt with in the Water Act that are dealt with under the Bill. For example, transitional arrangements in relation to the new drinking water and recycled water regulatory frameworks under the Bill.

#### **588 Definitions for ch 9**

*Clause 588* provides a number of definitions for chapter 9.

#### **589 Authorised actions and documents etc. under previous provision**

*Clause 589* provides for authorised actions or documents, obligations and protections under the Water Act to continue or to have effect according to their terms and to be taken to have been done, made, kept or applied under the corresponding provision of the Bill.

### **590 Things continued in force under Water Act**

*Clause 590* provides for things in force under the Water Act to continue under the Bill.

### **591 Terminology in things mentioned in s 589(1)**

*Clause 591* provides that a reference in a document to a thing under the Water Act is to be read with any necessary changes as if the reference were to a thing done, made or kept under the Bill.

### **592 Period stated in previous provision**

*Clause 592* provides, if there is a stated period for doing things under the Water Act and the time for doing things started before commencement, the period continues to have started from when the period started under the previous provision and, if the corresponding provision under the Bill states a different period, for the period stated in the previous provision to prevail.

### **593 Period or date stated in document given under previous provision**

*Clause 593* provides, as for clause 592 (Period stated in previous provision), in relation to times stated in documents made under previous provisions that state a period for doing things.

### **594 Act or omission happening before commencement may be relevant to proceeding for particular acts or omissions**

*Clause 594* provides for acts and omissions before commencement to be able to be taken into account.

### **595 Acts Interpretation Act 1954, s 20 not limited**

*Clause 595* provides that the chapter does not limit section 20 of the *Acts Interpretation Act 1952*.

## **Part 2                      Transitional provisions relating to particular provisions of the Water Act**

### **Division 1                Transitional provisions relating to the Water Act, chapter 3**

#### **Subdivision 1        Examples for chapter 2**

##### **596 Examples for ch 2 of things under s 589**

*Clause 596* provides, in relation to chapter 2, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

##### **597 Examples for ch 2 of obligations under s 589**

*Clause 597* provides, in relation to chapter 2, for examples of obligations for clause 589 in relation to matters dealt with under the Water Act.

##### **598 examples for ch 2 of protections under s 589**

*Clause 598* provides, in relation to chapter 2, for examples of protections for clause 589 in relation to matters dealt with under the Water Act.

#### **Subdivision 2        Service providers and service provider obligations**

##### **599 Existing service providers**

*Clause 599* provides for a service provider registered under the Water Act to be taken to be a service provider under the Bill.

## **600 Water efficiency management plans**

*Clause 600* provides that a water efficiency management plan approved under the Water Act is taken to be a water efficiency management plan approved under the Bill. This includes plans that may be taken to be water efficiency management plans under section 1155 of the Water Act.

## **601 Approved strategic asset management plans**

*Clause 601* provides that a strategic asset management plan approved under the Water Act is taken to be a strategic management plan approved under the Bill.

## **602 Approved system leakage management plans**

*Clause 602* provides that a system leakage management plan approved under the Water Act is taken to be an approved system leakage management plan under the Bill. Similarly, an exemption from preparing a system leakage management plan granted under the Water Act is taken to be an exemption under the Bill and continues for the balance of the period for which it was granted.

Clause 602 also provides for the continuing operation of section 1136F of the Water Act in relation to the obligation to submit a system leakage management plan to the regulator for approval within the relevant timeframe.

## **603 Audit reports**

*Clause 603* provides that an audit report given under the Water Act is taken to be an audit report given under the Bill.

## **604 Customer service standard**

*Clause 604* provides that a customer service standard prepared under the Water Act is taken to be a customer service standard prepared under the Bill.

## **605 Drought management plan**

*Clause 605* provides that a drought management plan registered under the Water Act is taken to be a registered drought management plan under the

Bill. Similarly, an exemption from preparing a drought management plan granted under the Water Act is taken to be an exemption under the Bill.

### **606 Application of provision about guidelines for rate notice or account for water supply**

*Clause 606* provides for the transitional arrangements for the application of provisions regarding guidelines for rate notices or accounts for water supply. Under this clause section 1153 of the Water Act (which sets out the timeframes for compliance with the guidelines for rate notice of account for water supply) continues to apply under the Bill.

### **607 Application of provision about water advices**

*Clause 607* provides for the transitional arrangements for the application of provisions about water advices. Under this clause section 1154 of the Water Act continues to apply under the Bill.

### **608 Service areas**

*Clause 608* provides that local government areas or parts of local government areas that were service areas under the Water Act are taken to be service areas under the Bill. Similarly, the service provider for the service area under the Water Act remains the service provider for the service area under the Bill. Clause 608 also provides that section 1064 of the Water Act continues to apply under the Bill.

### **609 Existing trade waste approvals**

*Clause 609* provides that a trade waste approval given under the Water Act is taken to be a trade waste approval given under the Bill.

## **Subdivision 3 Referable dams and flood mitigation**

### **610 Examples for ch 4 of things under s 589**

*Clause 610* provides, in relation to chapter 4, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

### **611 Referable dams and failure impact assessment**

*Clause 611* provides that a dam was a referable dam under the Water Act, is taken to be a referable dam under the Bill. Similarly, a failure impact assessment completed under the Water Act is taken to be a failure impact assessment completed under the Bill.

### **612 Hazardous dams**

*Clause 612* provides that sections 1065(3)(c) and 1065AA of the Water Act continue to apply to hazardous dams under the Bill.

### **613 Approved flood mitigation manuals**

*Clause 613* provides that flood mitigation manuals approved under the Water Act are taken to be flood mitigation manuals approved under the Bill and continue for the balance of the period for which they were approved.

## **Division 2            Transitional provisions relating to the Water Act, chapter 5**

### **614 Examples for ch 5 of things under s 589**

*Clause 614* provides, in relation to chapter 5, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

## **Division 3            Transitional provisions relating to the Water Act, chapter 6**

### **615 Examples for ch 7 of things under s 589**

*Clause 615* provides, in relation to chapter 7, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

## **Division 4            Transitional provisions relating to the Water Act, chapter 7**

### **616 Examples for ch 6 of things under s 589**

*Clause 616* provides, in relation to chapter 6, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

## **Division 5            Transitional provisions relating to the Water Act, chapter 8**

### **617 Examples for ch 8 of things under s 589**

*Clause 617* provides, in relation to chapter 8, for examples of actions or documents for clause 589 in relation to matters dealt with under the Water Act.

## **Division 6            Transitional provisions relating to the Water Act—general matters**

### **618 Existing applications**

*Clause 618* provides, in relation to an application made under the Water Act but not decided on commencement, that the application be decided under the Bill.

### **619 Existing exemptions**

*Clause 619* provides that an exemption under the Water Act is taken to be an exemption under the Bill.

### **620 Existing authorised officers**

*Clause 620* provides that an authorised officer appointed under the Water Act is taken to be an authorised officer appointed under the Bill.

## **621 Guidelines**

*Clause 621* provides for a guidelines issued under the Water Act to be taken to be a guideline made under the Bill.

## **622 Internal review**

*Clause 622* provides that an application for internal review made under the Water Act and before commencement continues under the Water Act. Similarly, a person's right to internal review under the Water Act continues under the Water Act.

## **623 Appeals**

*Clause 623* provides that an appeal made under the Water Act and not decided before commencement continues under the Water Act. Similarly, a person's right to an appeal continues under the Water Act.

## **624 Arbitration**

*Clause 624* provides that arbitration applied for under the Water Act and not finished before commencement continues under the Water Act. Similarly, a person's right to apply for arbitration continues under the Water Act.

## **625 Legal proceedings**

*Clause 625* provides that legal proceedings that could have been started or continued under the Water Act may still be started or continued under the Water Act.

## **626 References in Acts and documents**

*Clause 626* enables a reference to the Water Act, *Water Resources Act 1989*, *Water Act 1926* or the *Rights in Water and Water Conservation and Utilization Act 1910* to be taken to be a reference to the Bill.

## **Part 3                      Transitional provisions about outdoor water use conservation plans**

### **627 Application of provision about outdoor water use conservation plan**

*Clause 627* is a transitional provision for the application of section 133 (Water service provider to have outdoor water use conservation plan).

## **Part 4                      Transitional provisions about drinking water**

The provisions provide a staged approach to apply the requirements of chapter 2, part 4, division 3 of the Bill to existing drinking water service providers by:

- prescribing when drinking water quality management plans must be approved
- prior to having an approved plan, providing for a period of mandatory monitoring and reporting of water quality to be undertaken.

### **628 Application of particular provision**

*Clause 628* provides that existing drinking water service providers must have an approved drinking water quality management plan as follows:

- by 1 July 2011, for a large drinking water service provider
- by 1 July 2012, for a medium drinking water service provider
- by 1 July 2013, for a small drinking water service provider.

In this clause a large drinking water service provider is a drinking water service provider carrying out a drinking water service that is the treatment or transmission of water for supply as drinking water or a drinking water service that is the reticulation of water for supply as a drinking water

service (which could also be a retail water service) being a service provider with more than 25000 connections to a registered service.

In this clause a medium drinking water service provider is a drinking water service provider carrying out a drinking water service that is the reticulation of water for supply as a drinking water service (which could also be a retail water service) being a service provider with more than 1000 but not more than 25000 connections to a registered service.

In this clause a small drinking water service provider is a drinking water service provider carrying out a drinking water service that is the reticulation of water for supply as a drinking water service (which could also be a retail water service) being a service provider with 1000 or less connections to a registered service.

Subclauses (4) and (5) provide some exceptions to these provisions. A new drinking water service provider, that is, a water service provider that commences supply of a drinking water service after 1 July 2008, has one year to have an approved plan. A drinking water service provider that is a water storage owner into which is supplied recycled water for the purpose of augmenting drinking water supply, must have an approved plan in place before the supply of recycled water. In addition, a drinking water service provider who sources water from the about water storage or is supplied water from the water storage for a drinking water service, must also have an approved plan in place before the supply of recycled water.

### **629 Notice requiring entity to have approved drinking water quality management plan**

*Clause 629* provides that if the regulator is satisfied or reasonably believes that the continued operation of the drinking water provider's drinking water service may have an adverse affect on public health, the regulator may give a notice to the provider to prepare a drinking water quality management plan and submit it for approval at a time earlier than that stated in clause 628.

### **630 Provision about water quality monitoring and reporting**

*Clause 630* provides for a period of mandatory monitoring and reporting to be undertaken by drinking water service providers prior to the requirement to have an approved drinking water quality management plan. This commences after 1 January 2009. The regulator, by notice, may require the drinking water service provider to carry out monitoring of the quality of

water, provide reports to the regulator about the results of monitoring and give the regulator other reports also about the operation of the drinking water service, including reports about the quality of water supplied to the provider's drinking water service. This separate monitoring will only apply until the provider has a drinking water quality management plan.

## **Part 5                      Transitional provisions about recycled water**

### **631 Application of particular provisions—existing schemes**

*Clause 631* applies to a recycled water scheme supplying recycled water before 1 July 2008 (an existing scheme) if recycled water is supplied:

- to premises by way of a reticulation system used only to provide recycled water for use in flushing toilets, laundries or outdoor use (dual reticulation purposes)
- for use in irrigating minimally processed food crops.

A recycled water scheme stated above is not required to have an approved recycled water management plan or an exemption (from having a plan) or comply with clause 270 (Notice of particular matter) until 1 July 2009, unless the regulator states an earlier date under a notice under clause 634 (Notice requiring entity to have approved drinking water quality management plan).

### **632 Application of particular provisions—schemes supplying recycled water for particular purposes**

*Clause 632* applies to a recycled water scheme supplying recycled water for the first time on or after 1 July 2008, if recycled water is supplied:

- to premises by way of a reticulation system used only to provide recycled water for use in flushing toilets, laundries or outdoor use (dual reticulation purposes)
- for use in irrigating minimally processed food crops.

If under the recycled water scheme, recycled water is supplied for the first time, on or after 1 July 2008 and before 31 December 2008, the scheme is

not required to have an approved recycled water management plan or an exemption or comply with clause 270 (Notice of particular matter) until 6 months after the day recycled water is first supplied under the scheme, unless the regulator states an earlier date under a notice under clause 634 (Notice requiring entity to have approved drinking water quality management plan).

If under the recycled water scheme, recycled water is supplied for the first time, on or after 31 December 2008 and before 1 July 2009, the scheme is not required to comply with clause 270 (Notice of particular matter) until 1 July 2009 and must have an approved recycled water management plan or an exemption by 1 July 2009, unless the regulator states an earlier date under a notice under clause 634 (Notice requiring entity to have approved drinking water quality management plan).

### **633 Application of particular provisions—other schemes**

*Clause 633* applies to any recycled water scheme other than:

- a scheme mentioned in clauses 631 or 632 (that is, existing or new schemes supplying for dual reticulation purposes or to irrigate minimally processed food crops)
- a scheme under which recycled water is supplied to augment a supply of drinking water
- a scheme under which greywater is supplied.

A recycled water scheme that supplies recycled water to augment a supply of drinking water, or a scheme that supplies greywater, must have an approved recycled water management plan before the scheme commences to supply the recycled water.

If, under a recycled water scheme to which this provision applies, recycled water is supplied before 1 July 2008, the scheme is not required to have an approved recycled water management plan or an exemption or comply with clause 270 (Notice of particular matter) until 1 July 2013, unless the regulator states an earlier date under a notice under clause 634 (Notice requiring entity to have approved drinking water quality management plan).

If, under a recycled water scheme to which this provision applies, recycled water is supplied for the first time, on or after 1 July 2008, the scheme is not required to have an approved recycled water management plan or an exemption or comply with clause 270 (Notice of particular matter) until

one year after the day recycled water is first supplied under the scheme, unless the regulator states and earlier date under a notice under clause 634 (Notice requiring entity to have approved drinking water quality management plan).

### **634 Notice requiring entity to have approved plan**

*Clause 634* provides a power for the regulator to give a notice about a recycled water scheme that under the transitional provisions (clauses 631 to 633) is not required to have a recycled water management plan or an exemption for a specified period. The notice may state a reasonable earlier date for having an approved recycled water management plan for the scheme.

The regulator may only exercise the power to give a notice if:

- the scheme becomes a critical recycled water scheme or
- the regulator is satisfied, or reasonable believes the continued operation of the scheme is likely to pose a risk to public health.

## **Part 6                      Regulation-making power for transitional purposes**

### **635 Transitional regulation-making power**

*Clause 635* provides for a transitional regulation-making power to make provisions of a saving or transitional nature for any matters for which the Bill does not make sufficient provision to achieve a change from the operation of a previous law. A transitional regulation may have retrospective operation to a day not earlier than the commencement of the section. This section expires after one year.

## **Chapter 10 Amendment of Other Acts**

### **Part 1 Amendment of Plumbing and Drainage Act 2002**

This part makes amendments to various provisions of the Plumbing and Drainage Act to allow for changes to the regulation of greywater treatment facilities. The amendments are consequential to the Bill and:

- reflect the moving of provisions from chapter 3 of the Water Act to the Bill
- permit use of greywater (other than kitchen greywater) for greywater treatment plants with capacity to treat 50kL or more per day. Currently the Plumbing and Drainage Act allows for installation of greywater treatment plants where the premises generate less than 50kL per day. Powers are also devolved to local governments for these plants including concurrence powers to approve installation and to apply conditions. The Plumbing and Drainage Act does not currently allow for compliance permits (for installation and testing in situ) to be given for premises which generate 50kL or more of greywater per day (that is, premises generating greywater of 50kL or more per day are not allowed to install a greywater treatment plant). Under the amendments
  - regulation of greywater will now be based on the capacity of the greywater treatment plant rather than what is generated from premises
  - a greywater treatment plant with capacity to treat less than 50kL per day, will continue to be regulated under the Plumbing and Drainage Act, whether or not one or more treatment plants are interconnected in any way.
  - a greywater treatment plant with capacity to treat 50kL per day and above, currently not regulated under the Plumbing and Drainage Act, will be regulated under the Bill. The Bill will only regulate a single greywater treatment plant of that size or greater. For the purposes of the amendments such

treatment plants are defined as large greywater treatment plants.

- regardless of the volume of greywater generated, the local government will have concurrence powers.

### **636 Act amended in pt 1**

*Clause 636* states that this part amends the Plumbing and Drainage Act.

### **637 Amendment of s 85 (Process for assessing plans)**

*Clause 637* amends section 85(8) of the Plumbing and Drainage Act which deals with the process for assessing a plan for regulated work or on site sewerage work. This clause inserts a requirement that the local government give a copy of a compliance permit to the regulator under the Bill where the compliance permit was given for a greywater use facility that is or includes a large greywater treatment plant. This is because greywater use facilities of this size will require a recycled water management plan under the Bill and it will be necessary for the regulator to monitor and keep records of such facilities.

### **638 Amendment of s 85B (Restrictions on giving compliance permit for greywater use facility in a sewered area)**

*Clause 638* amends section 85B of the Plumbing and Drainage Act to remove the restriction on the granting of a compliance permit for work at premises which generate greywater less than 50kL a day. This is because the regulation of greywater will now be based on the capacity of the greywater treatment plant rather than what is generated from premises. Subject to the further requirements of the Plumbing and Drainage Act, a compliance permit may now be issued for a greywater use facility that is or includes a large greywater treatment plant. Requirements for installation of facilities that generate less than 50kL per day will remain as they currently are.

For a facility that is or includes a large greywater treatment plant, a local government cannot issue a compliance permit:

- to install the facility unless the local government has received advice about the facility from the regulator (at this point the facility will be discharging to the sewer until testing and validation of the unit is complete)

- to connect the facility unless there is an approved recycled water management plan under the Bill for the greywater use facility (at this point the unit is connected to the plumbing to enable the greywater to be used for its intended purpose).

### **639 Amendment of s 86 (General process for assessing regulated work and on-site sewerage work)**

*Clause 639* amends section 86 of the Plumbing and Drainage Act which deals with the process for assessing regulated work and on site sewerage work. This provision inserts a requirement that where a local government gives a compliance certificate and the certificate relates to the installation or connection of a greywater use facility, that is or includes a large greywater treatment plant, then the local government must also give a copy of the compliance certificate to the regulator under the Bill. This is because greywater use facilities of this size will require a recycled water management plan under the Bill and it will be necessary for the regulator to monitor and keep records of such facilities.

### **640 Amendment of s 86C (Conditions of compliance certificate)**

*Clause 640* amends section 86C of the Plumbing and Drainage Act to allow for the local government to impose conditions on a compliance certificate in accordance with requirements advised by the regulator under the Bill where the compliance certificate is for regulated work for a greywater use facility that is or includes a large greywater treatment plant.

### **641 Amendment of s 126 (Restriction on building or installing greywater use facility)**

*Clause 641* amends section 126 of the Plumbing and Drainage Act so that it is not an offence under the Act to build or install a greywater treatment plant capable of treating 50kL or more greywater a day without the approval of the chief executive. Instead, a recycled water management plan will be required under the Bill.

### **642 Amendment of s 128A (Offence to pollute service provider's services)**

*Clause 642* omits the reference in section 128A(1) of the Plumbing and Drainage Act to the Water Act and replaces it with a reference to the Bill,

consequential to the moving of provisions from chapter 3 of the Water Act to the Bill.

### **643 Amendment of s 128G (Owner's obligation to maintain plumbing and drainage and on-site sewerage facility)**

*Clause 643* amends section 128G of the Plumbing and Drainage Act so certain obligations on owners to maintain plumbing and drainage and on-site sewerage facilities are limited to greywater treatment facilities and plans which treat less than 50kL a day. For a large greywater treatment plant regulated under the Bill, a standard for water quality will apply under the Bill.

### **644 Amendment of s 128PA (Offence about using greywater)**

*Clause 644* amends section 128PA of the Plumbing and Drainage Act so certain offences about using greywater that are contrary to the Queensland Plumbing and Wastewater Code are limited to greywater treatment facilities or plants which treat less than 50kL a day. For a large greywater treatment plant regulated under the Bill, a standard for water quality will apply under the Bill.

### **645 Amendment of s 143B (Local government's monitoring obligations for greywater use facilities in sewered areas)**

*Clause 645* amends section 143B of the Plumbing and Drainage Act to exclude a requirement that local governments monitor a greywater use facility that is or includes a large greywater treatment plant to ensure their operation is not affecting public health. Monitoring of such greywater use plants and facilities to ensure their operation is not affecting public health will fall under the Bill.

Local governments will be responsible for monitoring such greywater use facilities to ensure they are not adversely affecting amenity or the environment.

In relation to greywater use facilities which are not capable of treating 50kL of greywater, local governments will remain responsible for monitoring these facilities to ensure they are not affecting public health, amenity or environment.

## **646 Insertion of new s 143D**

*Clause 646* inserts a new section 143D (Local government advice to regulator about greywater treatment plant) into the Plumbing and Drainage Act.

### **New section 143D Local government advice to regulator about greywater treatment plant**

New section 143D requires the local government to give the regulator under the Bill notice where the local government authorises the dismantling or taking away of all or part of a greywater treatment plant that is capable of treating 50kL or more greywater a day in a sewerage area.

This new provision also requires a local government to give the regulator under the Bill a copy of a condition report provided to the local government by a person who services a large greywater plant in a sewerage area.

## **647 Amendment of schedule (Dictionary)**

*Clause 647* amends the dictionary in the schedule to the Plumbing and Drainage Act by omitting, amending or including definitions.

Most of the amendments are to facilitate the relocation of a number of provisions from the Water Act to the Bill.

The remaining amendments to the dictionary facilitate the new scheme to permit and regulate the use of greywater (other than kitchen greywater) for a greywater use facility that is or includes a greywater treatment plant capable of treating 50kL or more greywater a day

## **Part 2                      Amendment of Public Health Act 2005**

### **648 Act amended in pt 2**

*Clause 648* states that this part amends the Public Health Act.

## **649 Amendment of s 10 (Definitions for ch 2)**

*Clause 649* amends the definitions for the terms ‘local government public health risk’ and ‘State public health risk’ in section 10 of the Public Health Act. The Act makes a distinction between public health risks being either a ‘local government public health risk’ or a ‘State public health risk’. This distinction was made to enable responsibility for the administration and enforcement of specified public health risks to be allocated to either the State or local governments.

Currently, public health risks associated with water are the responsibility of local government. However, in light of Queensland Health’s proposed role in the new regulatory scheme for drinking water and recycled water, the definition of public health risk in section 11 (as discussed below) and the allocation of responsibility for those public health risks associated with water must be redefined.

The State is to be responsible for public health risks associated with drinking water supplied by a drinking water service provider or recycled water produced or supplied under a recycled water scheme within the meaning of the Bill. Local government will continue to be responsible for public health risks associated with water, other than drinking water supplied by a drinking water service provider or recycled water produced or supplied under a recycled water scheme.

## **650 Amendment of s 11 (Meaning of *public health risk*)**

*Clause 650* amends section 11 of the Public Health Act which sets out the meaning for the term ‘public health risk’. Water is considered to be a public health risk if it is, or is likely to be, hazardous to human health, or contribute to, or likely to contribute to, disease in humans or the transmission of an infections condition to humans. As discussed above, this aspect of the definition has been amended to specify, if these conditions apply, drinking water supplied by a drinking water service provider or recycled water produced or supplied under a recycled water scheme may also be a public health risk.

## **651 Amendment of s 18 (Regulation to prescribe who is to administer this Act for particular public health risks)**

*Clause 651* amends the reference to subsection 11(1)(b) in section 18 of the Public Health Act as a consequence of the amendments made to section 11 discussed above. Section 18 specifies that, if a regulation is made under

section 11 about a public health risk, the regulation must also allocate responsibility for administration and enforcement of the public health risk to either the State or local governments.

## **652 Insertion of new ch 2, pt 5A**

*Clause 652* inserts a new chapter 5A, provisions about drinking water and recycled water, into the Public Health Act.

# **New Part 5A Provisions about drinking water and recycled water**

## **New Division 1 Improvement notices**

### **New section 57A Improvement notice**

New section 57A of the Public Health Act enables an authorised person to issue an improvement notice to a water service provider to remedy a contravention of the new offences under part 5A about the provision of unsafe drinking water or recycled water that is not fit for its intended use.

Water service provider is defined to mean either a drinking water service provider within the meaning of the Bill, a recycled water provider within the meaning of the Bill or an entity (other than a recycled water provider) declared to be a part of a multiple-entity recycled water scheme under the Bill.

An improvement notice may be issued if the authorised person reasonably believes that:

- a water service provider has contravened one of the new offences or has contravened these offences in circumstances that make it likely that the contravention would continue or be repeated and
- the matter is capable of being rectified and is appropriate to give the provider an opportunity to rectify the matter.

New section 57A also sets out the matters that must be stated in an improvement notice and imposes an obligation on the authorised person to keep a copy of the improvement notice.

An improvement notice may only be issued by an authorised person appointed by the chief executive of Queensland Health. This is in accordance with the proposed role of Queensland Health in relation to the regulation of drinking water and recycled water.

### **New section 57B Record of compliance with improvement notice**

New section 57B of the Public Health Act sets out the procedure that must be followed by an authorised person if a water service provider informs the authorised person that they have complied with the requirements of an improvement notice. That is, if satisfied that the notice has been complied with, the authorised person must record the date of compliance on the copy of the notice held by the authorised person and, if asked, give a copy of the notice to the provider.

## **New Division 2 Offences about supply of drinking water or recycled water**

### **New subdivision 1 Preliminary**

#### **New section 57C When drinking water is *unsafe***

New section 57C of the Public Health Act sets out the meaning of the term ‘unsafe drinking water’ which is used in the new offence under new section 57E.

#### **New section 57D When recycled water is *fit for use***

New section 57D of the Public Health Act sets out the meaning of the term ‘fit for use’ in relation to recycled water, which is used in the new offence under new section 57F.

## **New subdivision 2 Offences**

### **New section 57E Supply of unsafe drinking water**

New section 57E of the Public Health Act makes it an offence for a drinking water service provider to supply drinking water that the provider knows, or reasonably ought to know, is unsafe.

### **New section 57F Supply of recycled water that is not fit for use**

New section 57F of the Public Health Act makes it an offence for a recycled water provider to supply recycled water that is not fit for its intended use.

## **New Division 3 Information requests**

### **New section 57G Power to require information**

New section 57G of the Public Health Act enables an authorised person to obtain information if the authorised person believes there is a risk to public health or safety because of the production or supply of drinking water or recycled water.

This power may only be exercised by an authorised person appointed by the chief executive of Queensland Health. This is in accordance with the proposed role of Queensland Health in relation to the regulation of drinking water and recycled water.

### **New section 57H Failure to give information**

New section 57H of the Public Health Act makes it an offence for a person to fail to comply with a request for information under new section 57G, unless the person has a reasonable excuse including that the giving of the information might tend to incriminate the individual.

### **653 Amendment of s 59 (Lead must not be used in water collection)**

*Clause 653* amends section 59 of the Public Health Act to clarify the meaning of potable water for the purposes of this section. Section 59

prohibits the use of lead in things used to collect potable water, which is to be defined as meaning water that is intended to be, or is likely to be, used for human consumption.

## **654 Insertion of new s 388A**

*Clause 654* inserts a new section in chapter 9 (Monitoring and enforcement) into the Public Health Act.

### **New section 388A Power to enter places to check compliance with improvement notice**

New section 388A empowers an authorised person to enter a place at reasonable times to check compliance with an improvement notice issued under new section 57A.

This power of entry complements the new provisions under chapter 5A and, as such, may only be exercised by an authorised person appointed by the chief executive of Queensland Health. This is in accordance with the proposed role of Queensland Health in relation to the regulation of drinking water and recycled water.

The power of entry under section 388A of the Public Health Act is limited as:

- the authorised person may enter a place only to check whether the improvement notice has been complied with
- the authorised person may not enter a building or other structure without the occupier's consent or a warrant.

Furthermore, the exercise of this power is subject to the procedural requirements detailed in section 392 of the Public Health Act. Before entering a place, the authorised person must first make a reasonable attempt to locate an occupier and obtain the occupier's consent to entry in accordance with the procedure in section 391 of the Public Health Act. If the authorised person locates the occupier and the occupier refuses consent, the authorised person must not enter the place - a warrant will be required. If the authorised person is unable to locate the occupier after making a reasonable attempt to do so, the authorised person may enter the place. Following entry the authorised person must leave a notice stating the date, time and purpose of entry. In addition, an authorised person entering a place under these circumstances must cause as little inconvenience and do as little damage as is practicable in the circumstances.

### **655 Amendment of s 392 (Entry of place under s 386, 387 or 389)**

*Clause 655* makes a consequential amendment to section 392 (including the section heading) of the Public Health Act to include a reference to new section 388A. As discussed above, section 392 sets out the procedural requirements for entry under new section 388A.

### **656 Amendment of s 399 (General powers after entering places)**

*Clause 656* amends section 399(3)(g) of the Public Health Act to enable an authorised person to require an occupier of the place, or a person at the place, to give the authorised person information to help the authorised person find out whether the Public Health Act is being complied with.

### **657 Amendment of s 401 (Failure to answer questions)**

*Clause 657* amends the heading for section 401 of the Public Health Act as a consequence of the amendment to section 399 discussed above. That is, it is an offence for a person to fail to comply with a requirement under section 399(3)(g), unless the person has a reasonable excuse.

### **658 Amendment of s 461 (Regulation-making power)**

*Clause 658* amends section 461 of the Public Health Act which sets out the general regulation making power for the Act. The amendment clarifies that a regulation may be made about:

- standards for the storage, transport and quality of drinking water, greywater, recycled water and water used for recreational purposes, including for example, standards for the quality of recycled water for use on particular crops
- the management of drinking water, greywater, recycled water and water used for recreational purposes, including, for example, monitoring, analysis and reporting requirements for a drinking water service provider, recycled water provider or other person producing or supplying the water.

### **659 Amendment of sch 2 (Dictionary)**

*Clause 659* inserts new definitions into the dictionary of the Public Health Act as a consequence of the amendments made to the Act. New definitions

include: grey water; drinking water; drinking water service provider; improvement notice; recycled water; recycled water provider; and water service provider. The meaning of the terms drinking water, drinking water service provider, recycled water and recycled water provider are drawn from the Bill.

## **Part 3                      Amendment of South East Queensland Water (Restructuring) Act 2007**

### **660 Act amended in pt 3**

*Clause 660* states that part 3 amends the SEQ Water Restructuring Act.

### **661 Amendment of s 67 (Transfer notice)**

*Clause 661* amends section 67 of the SEQ Water Restructuring Act to relocate the definitions for Coordinator-General and trust land to schedule 3 (Dictionary).

### **662 Insertion of new s 79A**

*Clause 662* inserts a new section 79A into the SEQ Water Restructuring Act which provides for a process by which the Coordinator-General may ‘step into the shoes’ of a local government to continue a land resumption process commenced by local government in relation to a bulk water asset transferred subsequently to a new water entity.

### **New section 79A Coordinator-General is constructing authority for particular land to be taken under the Acquisition of Land Act**

New section 79A of the SEQ Water Restructuring Act provides that if, as a result of a transfer notice issued under section 67 of the SEQ Water Restructuring Act, a local government cannot continue the acquisition of land, the Coordinator-General may decide to continue the acquisition of land. Where this occurs, the Acquisition of Land Act applies to the Coordinator-General in the same way that the Acquisition of Land Act

applies to a local government. This clause does not affect land owners' rights and provides expressly that affected land owners have the same rights and liabilities under the Acquisition of Land Act.

### **663 Amendment of s 80 (Matters relating to the Integrated Planning Act 1997)**

Section 80 of the SEQ Water Restructuring Act validates actions of SEQ local governments under the Integrated Planning Act, in cases where the relevant assets are transferred to one of the new State-owned entities established under the SEQ Water Restructuring Act.

*Clause 663* amends section 80 of the SEQ Water Restructuring Act to remove any doubt that:

- the validity of any other decision, condition or agreement imposed or made by a local government under the Integrated Planning Act is not be affected by a transfer of development infrastructure from a local government to a new water entity
- any decision, charge, condition, contribution or agreement remains enforceable by the local government, or the water entity as if the water entity is the local government
- a monetary amount payable to a local government under a decision, charge, condition, contribution or agreement remains payable to the local government
- a local government remains the respondent for any legal action or appeal against the decision, charge, condition, contribution or agreement.

### **664 Insertion of new ss 80A—80C**

*Clause 664* inserts three new sections into the SEQ Water Restructuring Act.

#### **New section 80A Reconfiguring a lot after transfer notice takes effect**

New section 80A of the SEQ Water Restructuring Act provides that the Integrated Planning Act does not apply to the reconfiguring of a lot and a plan of subdivision does not require the agreement, approval or consent of any person under section 50 of the Land Title Act in the prescribed

circumstances. This exemption is for a specific and limited purpose to facilitate the transfer of bulk water assets from local governments to the new water entities by way of subdivision of land which is used for multiple purposes by local governments.

### **New section 80B Terminating trust land and granting freehold interest under the Land Act**

New section 80B of the SEQ Water Restructuring Act provides a process by which the Minister administering the Land Act may grant, where appropriate, a freehold interest to a new water entity in relation to trust land. This clause applies if a transferred asset is attached to trust land under the Land Act. A transferred asset means an asset transferred to a new water entity under a transfer notice issued under section 67 of the SEQ Water Restructuring Act without the transfer of land to which the asset is attached. The purpose of this clause is to ensure that a new water entity has separate land tenure and appropriate control over its assets in respect of assets situated on land which is used for multiple purposes by local governments.

### **New section 80C Granting lease under the Land Act**

New section 80C of the SEQ Water Restructuring Act provides a process by which the Minister administering the Land Act may grant, where appropriate, a State lease to a new water entity in relation to reserved land or unallocated State land. This clause applies if a transferred asset is attached to reserved land or unallocated State land under the Land Act. A transferred asset means an asset transferred to a new water entity under a transfer notice issued under section 67 of the SEQ Water Restructuring Act without the transfer of land to which the asset is attached. The purpose of this clause is to ensure that a new water entity has separate land tenure and appropriate control over its assets in respect of assets situated on land which is used for multiple purposes by local governments.

### **665 Amendment of s 89 (Entry to, and use of, water entity's land after transfer of asset attached to the land)**

*Clause 665* amends section 89 of the SEQ Water Restructuring Act. For the avoidance of doubt, this clause amends section 89 to clarify that it applies in the circumstances where a local government is a trustee of trust land under the Land Act.

## **Part 4                      Amendment of Water Act 2000**

### **666 Act amended in pt 4 and sch 2**

*Clause 666* states that this part and schedule 2 amend the Water Act.

### **667 Amendment of long title**

*Clause 667* amends the title of the Water Act as a result of the regulatory framework for providing water and sewerage services being relocated from the Water Act into the Bill.

### **668 Amendment of s 25C (Contents of water supply emergency declaration)**

*Clause 668* amends section 25C(2) of the Water Act to provide that the declaration must, to the greatest practicable extent, state the matters listed in subparagraphs (a)-(e).

This clause reflects the fact that in an emergency situation it may not always be practicable to immediately determine the optimal cost recovery arrangements for a measure or an outcome up front.

### **669 Insertion of new s 25CA**

*Clause 669* inserts a new section 25CA (Amendment of water supply emergency declaration) into the Water Act.

### **New section 25CA Amendment of water supply emergency declaration**

New section 25CA provides that that where it is not practicable to state all of the matters listed in section 25C(2) of the Water Act when a water supply emergency declaration is made, the Minister must, as soon as practicable after the original declaration is published in the gazette, and after consultation with the Treasurer, amend the water supply emergency declaration to state the matters.

## **670 Amendment of s 25F (Regulation about water supply emergency)**

*Clause 670* inserts a new subparagraph (2A) in section 25F of the Water Act to clarify that the Minister, before making a water supply emergency regulation, must have regard to other measures that could be taken to deal with a water supply emergency. This includes alternative measures under the Water Act, and also other measures under other Acts.

The purpose of this amendment is to ensure consistency with section 25B(2) which requires that the Minister have regard to other measures before making a water supply emergency declaration.

This amendment acknowledges that the powers under section 25F of the Water Act are significant in scope, and should only be used where consideration has been given to alternatives and the Minister is satisfied that a water supply emergency regulation is the most appropriate response.

Clause 670(2) amends section 25F(3) of the Water Act to provide that a water supply emergency regulation must, to the greatest practicable extent, state the matters listed in subparagraphs (a)-(e). This amendment reflects the fact that in an emergency situation it may not always be practicable to immediately determine the optimal cost recovery arrangements for a measure or an outcome up front.

## **671 Insertion of new s 25FA**

*Clause 671* inserts a new section 25FA (Amendment of water supply emergency regulation) into the Water Act.

### **New section 25FA Amendment of water supply emergency regulation**

New section 25FA provides that where it is not practicable to state all of the matters set out in section 25FC(2) of the Water Act when a water supply emergency regulation is made, the Minister must consult with the Treasurer on those matters and, to ensure transparency, as soon as practicable the Governor in Council must amend the water supply emergency regulation to state the matters.

### **672 Amendment of s 25J (When water supply emergency ends)**

*Clause 672* amends section 25J(2)(b) of the Water Act. The amendment allows a service provider to be directed to complete an action in circumstances where it may not be necessary, but where the Minister is satisfied that it would be detrimental to the interests of the State or another entity not to complete the action. In determining whether this criterion is satisfied, the Minister must have regard to the matters set out in subparagraphs (a) to (e).

For example, a project proponent may have invested a large amount of money into a project which, at the time the water supply emergency ends, is near completion but which is not necessary to secure short to medium term water supplies, however, based on the sunk costs and the progress of the project, it would be detrimental to the interest of the proponent if the project was not completed.

### **673 Amendment of s 25O (Recovery of costs incurred)**

*Clause 673* amends section 25O(1) of the Water Act to insert a new subparagraph (b) that allows service providers to recover costs incurred as a result of actions taken to comply with a regulation made under section 25J(2)(b). The amendment clarifies that the cost recovery power under section 25O extends to recover costs incurred by a service provider, to the extent stated in the regulation, as a result of completing or discontinuing actions taken under a water supply emergency regulation in compliance with a regulation made under section 25J(2)(b) of the Water Act.

### **674 Amendment of s 25ZA (Application for approval to restrict use of subartesian water)**

*Clause 674* amends section 25ZA of the Water Act to clarify the scope of this limited power to restrict the use of subartesian water, in particular, the authority under which the water is being taken. Currently, the Commission or a water service provider can apply to the chief executive to restrict the use of subartesian water taken under section 20(6) of the Water Act.

Section 20(6) of the Water Act enables a person to take subartesian water without a water entitlement for any purpose. This right can be altered by statutory instruments such as water resource plans, wild river declarations or a regulation declaring an area to be a subartesian area under section 1046 of the Water Act. In managing subartesian water in their respective areas, these instruments may continue to authorise the taking of subartesian water

without a water entitlement. Clause 674 amends section 25ZA of the Water Act to clarify the original intent of the provision that restrictions under section 25ZA may be applied to all subartesian water taken without an entitlement, except that taken for stock purposes.

### **675 Amendment of s 46 (Content of draft water resource plans)**

*Clause 675* amends section 46(2) of the Water Act to provide that a draft water resource plan may include the types of works for interfering with subartesian water that are intended to be assessable or self-assessable development under the Integrated Planning Act. This establishes the framework for how works to interfere with subartesian water are to be regulated under the Integrated Planning Act. To align with current drafting principles sections 46(2)(ca)(cb) were incorporated in this section.

### **676 Amendment of s 113 (Minor or stated amendments of licence)**

*Clause 676* amends the heading for section 113 of the Water Act by inserting the word 'agreed'. This will ensure that the content of the section, which covers minor, stated and agreed amendments to resource operations licences and distributions operations licences, is appropriately reflected in the heading.

### **677 Amendment of s 128A (Amalgamation or subdivision of water allocations)**

*Clause 677* amends section 128A of the Water Act to ensure that the registrar of water allocations does not record an amalgamation or subdivision of a water allocation, managed under a resource operations licence, without receiving, from the resource operations licence holder, notice of an existing supply contract with the water allocation holder. This will bring the process for registering the amalgamation or subdivision of water allocations in line with similar processes, for example, registering a transfer or change of a water allocation.

### **678 Amendment of s 128B (Transfer of water allocations)**

*Clause 678* amends section 128B of the Water Act to ensure that the chief executive is notified when a water allocation, not managed under a resource operations licence, is leased. This will ensure that the requirements for

leasing this type of water allocation are consistent with the current requirements for a transfer of a water allocation. This notification will also provide the necessary information to the chief executive to accurately undertake functions such as metering.

### **679 Amendment of s 150 (Interests and dealings that may be registered)**

*Clause 679* amends section 150(3) of the Water Act to ensure that the registrar of water allocations does not record a lease of a water allocation that is managed under a resource operations licence without receiving, from the resource operations licence holder, notice of an existing supply contract with the lessee of the water allocation. This will ensure that only lessees with contractual arrangements for water supply may register a lease and bring the process for registering a lease in line with the current processes for registering transfers and changes to this type of water allocation.

*Clause 679* also amends section 150(4) to ensure that the registrar of water allocations does not record a lease of a water allocation that is not managed under a resource operations licence without receiving, from the chief executive, a certificate about the proposed lease. This ensures that the chief executive has been notified of the lease of a water allocation before it is registered on the water allocations register.

### **680 Amendment of s 184 (Amending interim resource operations licences on notice)**

*Clause 680* amends section 184(5)(a) of the Water Act to correct a minor error by replacing ‘notice’ with ‘licence’.

### **681 Amendment of s 185A (Amending interim resource operations licences)**

*Clause 681* amends a number of elements of section 185A of the Water Act for the following purposes:

- sections 185A(2)(a) and 185A(4)(c) are amended to include a reference to a water year. This corrects an omission and ensures that sections 185A(2)(a) and 185A(4)(c) are consistent with section 185A(1) which provides that the chief executive may amend the details of the water sharing rules in an interim

resource operations licence for a water year or part of a water year in certain circumstances

- new section 185A(2)(b) is inserted to ensure that the chief executive notifies an interim resource operations licence holder of any changes made to the water sharing rules of their licence
- new section 185A(2)(c) is inserted to state that any changes take effect from the day stated in the notice given by the chief executive (that is, the notice mentioned in section 185A(2)(b)). This, in effect, amends existing section 185A(2)(b) of the Water Act which states that amendments take effect from the day notice is given. Changing this requirement will remove any confusion associated with when the notice takes effect
- new section 185A(4)(d) is inserted to ensure that the notice given by the chief executive always states the day it takes effect.

### **682 Amendment of s 189 (Granting interim water allocations)**

*Clause 682* amends section 189 of the Water Act to correct a minor omission. Section 189 currently requires the chief executive to grant interim water allocations in accordance with the process stated in a water resource plan. However, the other provisions of the Water Act referred to in section 189 (for example, division 2, subdivision 2) refer to processes stated in water resource plans or resource operations plans. Clause 682 amends section 189 to ensure consistency and that the relevant water resource plan or resource operations plan process is followed when granting an interim water allocation.

### **683 Amendment of s 190 (Contents of interim water allocation)**

*Clause 683* amends section 190 of the Water Act to provide that where the holder of an interim water allocation is the water grid manager, the interim water allocation does not attach to the water grid manager's land. This amendment is necessary because the water grid manager will not own any land.

### **684 Amendment of s 192 (Dealing with an interim water allocation)**

*Clause 684* amends section 192 of the Water Act to correct a minor omission. Currently section 192 allows an interim water allocation to be

dealt with as if it were a water licence except in certain circumstances. For example, section 208 (Public notice of an application for a water licence) does not apply to a dealing with an interim water allocation that is consistent with the conditions of an interim resource operations licence. Clause 684 ensures that section 208 of the Water Act does not apply to dealings that are in accordance with the conditions of both an interim resource operations licences or a resource operations licence. This amendment ensures consistency with the definition of an interim water allocation which states that an interim water allocation is an authority to take water managed under an interim resource operations licence or a resource operations licence.

### **685 Amendment of s 193 (Who certain interim water allocations may be transferred to)**

*Clause 685* amends section 193 of the Water Act to correct a minor omission. Currently section 193 allows an interim resource operations licence holder to apply to transfer an interim water allocation that is not attached to land to certain entities. Clause 685 ensures that a resource operations licence holder can also undertake this type of transfer. This is in accordance with the definition of an interim water allocation which states that an interim water allocation is an authority to take water managed under an interim resource operations licence or a resource operations licence. Clause 685 also amends the heading of section 193 of the Water Act to reflect the contents of the provision.

### **686 Amendment of s 194 (Deciding application to transfer by interim resource operations licence holder)**

*Clause 686* amends the heading for section 194 of the Water Act to ensure consistency with section 193 and to clarify that applications decided under this section may have been made by either resource operation licence holders or interim resource operations holders.

### **687 Amendment of s 196 (Forfeiting an interim water allocation)**

*Clause 687* amends section 196 of the Water Act to correct a minor omission. Section 196 enables an interim water allocation to be forfeited. Once forfeited, an interim water allocation can be dealt with under section 138 as if it were a water allocation. In doing so, a reference to an interim resource operations licence is taken to be a reference to a resource

operations licence. However, it may be the case that an interim water allocation was already managed under a resource operations licence. Clause 687 amends section 196 to provide for this instance.

### **688 Amendment of s 197 (Surrendering an interim water allocation)**

*Clause 688* amends section 197 of the Water Act to correct minor omissions. Section 197 enables an interim water allocation to be surrendered. Section 197(2A) requires the chief executive to inform an interim resource operations licence holder if an interim water allocation it manages is surrendered. Clause 688 ensures that this notification is also provided to a resource operations licence holder (that is, where an interim water allocation is managed under a resource operations licence).

Section 197(3) of the Water Act allows a surrendered interim water allocation to be dealt with as if it were a water allocation. In doing so, a reference to an interim resource operations licence is taken to be a reference to a resource operations licence. However, it may be the case that an interim water allocation was already managed under a resource operations licence. Clause 688 amends section 197 of the Water Act to provide for this instance.

### **689 Amendment of s 200 (Arrangements for seasonal water assignments)**

*Clause 689* amends section 200 of the Water Act to correct minor omissions. Section 200 enables an interim water allocation holder to seasonally assign their allocation of water in certain circumstances. For example, where the interim water allocation is managed under an interim resource operations licence, the interim water allocation holder can only seasonally assign their allocation with the consent of the interim resource operations licence holder. Clause 689 ensures that the same requirements are necessary where the interim water allocation is managed under a resource operations licence.

### **690 Insertion of new ch 2, pt 5, div 3, sdiv 6**

*Clause 690* inserts a new subdivision 6 (Interim water allocations for Julius Dam water supply scheme) in chapter 2, part 5, division 3 of the Water Act that provides for a particular interim water allocation to be dealt with prior to the resource operations plan for the Julius Dam water supply scheme

commencing. This amendment will give effect to the objectives of the Gulf Water Resource Plan.

## **New subdivision 6 Interim water allocations for Julius Dam water supply scheme**

### **New section 201 Granting interim water allocations**

New section 201 of the Water Act provides for a regulation to state a process for the expiry of a particular interim water allocation, held by Mount Isa Water Board and managed under the interim resource operations licence for Julius Dam water supply scheme; and the granting of interim water allocations to particular entities to replace the expired interim water allocation.

New section 201 of the Water Act also provides that the chief executive must grant the new allocations to give effect to the regulation, and the regulation must be consistent with the objectives of the Gulf Water Resource Plan.

### **691 Amendment of s 209 (Applications that may be decided without public notice)**

*Clause 691* amends section 209 of the Water Act to include a reference to a notice under section 205(2) instead of referring to an ‘information notice’. Currently section 209 only provides for an information notice to be given to the applicant, however this is inconsistent with section 205(2) of the Water Act which states that in some circumstances the chief executive would be required to provide a information notice, and in others a decision notice. This amendment removes any confusion by clarifying that the notice the chief executive is required to provide to the applicant, in the event that granting the application would be inconsistent with a water resource plan, resource operations plan or wild river declaration, is a notice under section 205(2) of the Water Act.

## **692 Amendment of s 212 (Granting a water licence under a plan or declaration process)**

*Clause 692* amends section 212 of the Water Act to clarify that the documentation the chief executive is required to provide under this section, is a notice under section 205(2).

## **693 Insertion of new s 212A**

*Clause 693* inserts a new section 212A (Applying for transmission water licence) in chapter 2, division 2, subdivision 1 of the Water Act.

### **New section 212A Applying for transmission water licence**

New section 212A of the Water Act provides a process for the grant of a particular water licence, called a transmission water licence, in circumstances where the water licence will authorise the taking of water from a watercourse or lake conditional on ‘recycled water’ having first been supplied (the ‘receiving source’) into the same watercourse or lake. Recycled water for the purposes of this new section means only that recycled water supplied under an approved recycled water management plan to augment a supply of drinking water under the Bill.

The water grid manager, a relevant entity for a recycled water scheme and an entity nominated by a relevant entity for a recycled water scheme, may only apply for a water licence for taking water from a receiving water source. In the case of the water grid manager, the clause specifically provides that if recycled water in a receiving water source is supplied from water supply works that supply a declared water service, it is only the water grid manager that may make a licence application under this new section.

The new section also provides that the chief executive may decide the licence application without notice of the licence application being published. If the chief executive grants a licence application the transmission water licence does not attach to the licensee's land and 213(e) of the Water Act does not apply to the transmission water licence.

The new section defines ‘receiving water source’ to mean a lake or watercourse into which recycled water is supplied under an approved recycled water management plan to augment a supply of drinking water.

### **694 Amendment of s 213 (Contents of water licence)**

*Clause 694* amends section 213 of the Water Act to provide that where the holder of a water licence is the water grid manager, the water licence does not attach to the water grid manager's land. This amendment is necessary because the water grid manager will not own any land.

### **695 Amendment of s 217 (Amending water licence to implement water resource plan)**

*Clause 695* amends section 217 of the Water Act to clarify that the documentation the chief executive is required to provide under this section, is a notice under section 205(2) of the Water Act.

### **696 Amendment of s 221 (Reinstating expired water licence)**

*Clause 696* amends section 221 of the Water Act to extend the period of time that a licensee, or a new owner of land to which a licence attaches, may make an application for reinstatement of a water licence from 30 business days to 60 business days. This will provide the licensee, or the new owner of land, a reasonable time to make the application. This clause also amends section 221 of the Water Act to enable chief executive, in particular cases, to extend the period for making an application to reinstate a water licence in an event that an application is not received within the application period. The period may only be extended if the chief executive is satisfied the works to take or interfere with water under the licence were operational from the date the licence expired and to the date the chief executive approves the extension.

### **697 Amendment of s 340 (Main purpose of ch 2A and its achievement)**

*Clause 697* inserts a new subparagraph (c) in section 340(2) of the Water Act. Section 340(2) sets out how the main purpose of chapter 2A of the Water Act is achieved. The new subparagraph reflects the fact that clause 713 of the Bill inserts a new part 5A in chapter 2A of the Water Act that establishes the regulatory framework for the new SEQ water market.

### **698 Amendment of s 360J (Content of options)**

The Commission has a statutory function of providing advice to the Minister on options for achieving water supply security within a designated region.

*Clause 698* amends section 360J of the Water Act which sets out the matters that must be addressed in the options developed by the Commission. The amendments made by clause 698 are also relevant for section 360M(2) of the Water Act which provides that a regional water security program must make provision about the matters mentioned in section 360J(1).

Clause 698 of the Bill omits the existing section 360J(1)(a) and the existing section 360J(1)(b) of the Water Act which provide that the options prepared by the Commission must address the water service providers for water supply works in the region who should have desired levels of service objectives, as well as what the desired levels of service objectives for each of those water service providers should be. The new subparagraph (a) which is inserted by clause 698 provides that the options prepared by the Commission must address the desired levels of service objectives for the region or part of the region. This amendment reflects the fact that levels of service objectives apply to a region, or part of a region, rather than to a water service provider.

Clause 698 also amends sections 360J(1)(c) and (e) to provide that water security options prepared by the Commission must address both water supply works and sewerage for achieving desired levels of service objectives. This amendment reflects the increasing importance of recycled water in achieving water supply security in Queensland.

### **699 Amendment of s 360N (Effect of program for Integrated Planning Act 1997)**

*Clause 699* amends section 360N of the Water Act to reflect the amendments made to section 360J by clause 698 of the Bill, which have the effect (because of section 360M of the Water Act) that a regional water security program must make provision about both water supply works and also sewerage for achieving regional water supply security.

### **700 Amendment of s 360O (Application of pt 4)**

*Clause 700* amends section 360O of the Water Act to reflect the amendments made to section 360J by clause 698 of the Bill, which have the effect (because of section 360M of the Water Act) that a regional water security program must make provision about both water supply works and also sewerage for achieving regional water supply security.

### **701 Amendment of s 360P (Status of works for State Development and Public Works Organisation Act 1971)**

*Clause 701* amends section 360P of the Water Act to reflect the amendments made to section 360J by clause 698 of the Bill, which have the effect (because of section 360M of the Water Act) that a regional water security program must make provision about both water supply works and also sewerage for achieving regional water supply security.

### **702 Amendment of s 360Q (Designation of preferred entity for works)**

*Clause 702* amends section 360Q of the Water Act to reflect the amendments made to section 360J by clause 698 of the Bill, which have the effect (because of section 360M of the Water Act) that a regional water security program must make provision about both water supply works and also sewerage for achieving regional water supply security.

### **703 Amendment of s 360T (Information may be required from water service providers)**

*Clause 703* amends section 360T of the Water Act to clarify that the Commission may give a water service provider a notice requiring information the Commission reasonably requires to enable the Commission to carry out its function of collecting, collating, analysing and reporting on water information for the SEQ region or a designated region.

The establishment of the SEQ water grid and the SEQ water market has highlighted the need for regional water information management. The amendment will allow notices to be issued by the Commission to require the supply of information by water service providers, either as an individual request for information or a request for recurrent provision of particular categories of information, to allow for regional water information management and reporting by the Commission. This will

enable the Commission to act as the conduit for the supply of certain regional water information to the Commonwealth and other relevant entities, and will ensure that the Commission's capacity to coordinate, plan and report on regional water supply security is not compromised.

The term 'water information' will include information about water supply, water usage, water transport and water quality.

### **704 Amendment of s 360V (Commission to make system operating plan for region)**

*Clause 704* amends section 360V of the Water Act to clarify that the system operating plan is not 'for' water supply works and other measures provided for in a regional water security program. Rather, the role of the system operating plan is to facilitate the achievement of the desired levels of service objectives for the region.

### **705 Amendment of s 360W (Content of plan)**

*Clause 705* amends section 360W of the Water Act which sets out the required content of a system operating plan. With the introduction of the SEQ water market rules in the new part 5A of chapter 2A, the required content of the system operating plan needs to be amended to reflect the different role and function of the two regulatory instruments.

Following the amendments, rather than stating the water service providers for water supply works, the plan will be required to state the entities to which the plan applies. This amendment reflects a shift from a position where the system operating plan applied directly to water supply works and water service providers for those water supply works, to a position where the plan can apply to any entity, irrespective of whether the entity owns any infrastructure. For example, the system operating plan for the SEQ region may apply to the water grid manager, despite the water grid manager not owning any assets and not being registered as a water service provider. While the amendments do not prevent a system operating plan from containing obligations directed at water service providers in respect of their water supply works, it clarifies that the plan may also apply to other entities in respect of activities or operations unrelated to water supply works.

In addition to stating the water supply works to which the system operating plan applies, the plan will also be required to state any sewerage to which the plan applies. The effect of this is that a system operating plan will be able to impose obligations on entities in respect of sewerage. This reflects

the increasing importance of recycled water in achieving water supply security within a region.

Because of the existence in the SEQ region of the SEQ water grid and the water grid manager, the system operating plan will not allocate a share of available water to each individual service provider. This is because in the SEQ region all water service providers will be required to purchase water from the water grid manager under an approved contract. For this reason, clause 705 also amends section 360W of the Water Act to provide that in the SEQ region, rather than specifying the share of water available to each water service provider, the system operating plan must specify the maximum volume of water the water grid manager may enter into contracts to sell. For other regions that may be designated in the future where there is no water grid manager, the system operating plan is required to state the share of water available to each water service provider.

Clause 705 also omits the requirement for the system operating plan to state desired water savings and efficiency targets. This is because it is considered that these issues are more appropriately addressed through other instruments such as the regional water security program.

### **706 Amendment of s 360X (Consultation for plan)**

*Clause 706* amends section 360X of the Water Act to reflect the amendment made by clause 705 of the Bill that provides for a system operating plan to apply to all entities, not just water service providers.

### **707 Amendment of s 360Y (Publication and taking effect of plan)**

*Clause 707* amends section 360Y of the Water Act to reflect the amendment made by clause 705 of the Bill that provides for a system operating plan to apply to all entities, not just water service providers.

### **708 Amendment of s 360Z (Amendment of plan)**

*Clause 708* amends section 360Z of the Water Act to clarify that a system operating plan only needs to be amended following the making or amendment of a water resource plan, where there is an inconsistency between the system operating plan and the water resource plan as made or amended. If a water resource plan is made or amended and there is no

resulting inconsistency between the water resource plan and the system operating plan, then there is no need to amend the system operating plan.

Clause 708 also removes the current requirement under section 360Z(b) of the Water Act for the system operating plan to be amended where a preferred entity is designated for proposed water supply works under section 360Q of the Water Act. Where a designation is made under section 360Q, the entity is taken to be a water service provider for the works and the works are taken to be works under the State Development and Public Works Organisation Act – meaning that relevant provisions of the State Development and Public Works Organisation Act will apply to the works. At the time an entity is designated under section 360Q of the Water Act, the system operating plan may not need to be amended, because given that the works will not be constructed at the time of the designation, the system operating plan may have no application to the works. The amendment does not prevent a system operating plan being amended following designation of an entity under section 360Q of the Water Act, however it removes the requirement for an amendment to be made.

### **709 Amendment of s 360ZA (Water service providers must comply with system operating plan)**

*Clause 709* amends section 360ZA of the Water Act to reflect the amendment made by clause 705 of the Bill that provides for a system operating plan to apply to an entity other than a water service provider.

### **710 Amendment of s 360ZB (Publication requirements)**

*Clause 710* amends section 360ZB of the Water Act to reflect the amendment made by clause 705 of the Bill that provides for a system operating plan to apply to an entity other than a water service provider.

### **711 Amendment of s 360ZC (Derivative use immunity for compliance with publication requirement)**

*Clause 711* amends section 360ZC of the Water Act to reflect the amendment made by clause 705 of the Bill that provides for a system operating plan to apply to an entity other than a water service provider.

Clause 711 also amends section 360ZC of the Water Act by inserting a comma after each instance of the word individual.

## **712 Insertion of new ch 2A, pt 5, div 2, sdiv 4**

*Clause 712* inserts new subdivision 4 (Spot audit reports) into the division of chapter 2A of the Water Act that deals with system operating plans.

## **New subdivision 4 Spot audit reports**

### **New section 360ZCAA Spot audit by commission**

Section 360ZCAA has been relocated within this part of the Water Act as a consequence of the relocation of chapter 3 into the Bill, as it more relevantly applies to the Water Act. No changes have otherwise been made to the provision.

### **New section 360ZCAB Requirement to comply with plan and provision for cost of report**

New section 360ZCAB has been relocated within this part of the Water Act as a consequence of the relocation of chapter 3 into the Bill, as it more relevantly applies to the Water Act. No changes have otherwise been made to the provision.

### **New section 360ZCAC Access for conducting audit reports**

Section 360ZCAC has been relocated within this part of the Water Act as a consequence of the relocation of chapter 3 into the Bill, as it more relevantly applies to the Water Act. No changes have otherwise been made to the provision.

## **713 Insertion of new ch 2A, pt 5A**

*Clause 713* inserts a new part 5A in chapter 2A of the Water Act. The new part 5A establishes the SEQ water market and provides for the making of rules governing the operation of the market.

## **New Part 5A The market**

### **New Division 1 Preliminary**

#### **New section 360ZCL What is the *market***

New section 360ZCL of the Water Act defines ‘the market’ for the purposes of the new part 5A.

#### **New section 360ZCM Operation of market**

New section 360ZCM of the Water Act sets out how the operation of the market is facilitated under the new part 5A.

### **New Division 2 Declaration of water services**

#### **New Subdivision 1 Recommendation by commission for water service declaration**

##### **New section 360ZCN Requests about water service declarations**

New section 360ZCN of the Water Act sets out the process whereby an entity may make a request for declaration of a water service, or part of a water service, supplied by or proposed to be supplied by water supply works. The relevant water supply works do not have to be in the SEQ region which reflects the fact that water supply works that contribute to the water supply security of a region may not necessarily be physically located within the region.

The entity making the request must be either the water service provider supplying the water service, or an entity proposing to construct, or in the process of constructing, relevant water supply works.

The request is made to the Commission and must be in the form approved by the commission. The request must state:

- the water service, or the part of a water service, proposed for declaration – a request may be made to declare part of a water

service where the service will also serve ‘non-grid’ purposes. For example, where a dam provides water storage services for water entitlements held by the water grid manager, as well as for entitlements held by other individuals such as irrigators, the request for declaration may be made only in respect of the part of the service that relates to the entitlement held by the water grid manager

- the water supply works for supplying the water service or part of the water service, for example, the name of the dam providing the water storage service
- the reasons the water service, or part of the water service, should be declared – the reasons would need to address the criteria for declaration as provided for in the new section 360ZCS.

The party making the request may withdraw the request or, with the written agreement of the Commission, amend the request, at any time before the Commission makes a recommendation to the Minister about the request.

The Commission may require the applicant to give the Commission additional information about the proposed declaration.

### **New section 360ZCO Making recommendation**

New section 360ZCO of the Water Act provides that after receiving a request for declaration of a water service, the Commission must recommend to the Minister that the water service, or part of the service, be declared, or that the water service not be declared.

If an applicant proposed that all of a service be declared, the Commission may nevertheless recommend to the Minister that only part of the water service be declared.

Before making the recommendation to the Minister, the Commission may engage in any consultation the Commission considers appropriate.

The Commission must make its recommendation within a reasonable time after receiving a request, and must give a copy of the request to the Minister with the recommendation.

### **New section 360ZCP Recommendation without request**

New section 360ZCP of the Water Act provides for the Commission, on its own initiative without receiving a request under section 360ZCN, to

recommend to the Minister that a water service, or part of a water service, be declared. This is consistent with the Commission's regional planning functions.

### **New section 360ZCQ Factors affecting making of recommendation**

New section 360ZCQ of the Water Act sets out the factors the Commission must consider before recommending to the Minister that a service or part of a service be declared. Those factors are:

- the water service, or part of the service, is necessary to ensure regional water security for the SEQ region. This may be water supply security in the short, medium or long term, and will include where the water service, or part of the service, is necessary to achieve the desired levels of service objectives specified in a regional water security program
- the water service, or part of the service, is necessary for the efficient provision of an existing declared water service
- the water supply works for supplying the water service, or the part of the water service, are necessary for the efficient and effective operation of water supply works for supplying an existing declared water service.

The Commission must be satisfied that at least one of these three factors is satisfied before a declaration can be recommended.

This clause also clarifies that the Commission may recommend declaration of a water service or part of a water service, even if the water supply works supplying the service are outside the SEQ region. This reflects the fact that services that contribute to water supply security in the SEQ region may not be geographically located within the boundaries of the SEQ region as defined in the Water Act.

## **New Subdivision 2 Declaration by Minister**

### **New section 360ZCR Making water service declaration**

New section 360ZCR of the Water Act provides that the Minister must, on receiving a recommendation from the Commission in respect of a water

service declaration, declare all or part of the water service, or decide not to declare the water service or part of the service.

Before making a declaration, the Minister may, under subsection (3) of new section 360ZCR, require the Commission to give the Minister additional information about the proposed declaration.

### **New section 360ZCS Factors affecting making of water service declaration**

New section 360ZCS of the Water Act sets out the factors the Minister must consider before declaring all or part of a water service. Those factors are:

- the water service, or the part of the water service, is necessary to ensure water supply security for the SEQ region. This may be water supply security in the short, medium or long term, and will include where the water service, or part of the service, is necessary to achieve the desired levels of service objectives specified in a regional water security program
- the water service, or the part of the water service, is necessary for the efficient provision of an existing declared water service
- the water supply works providing the water service or part of the water service, are necessary for the efficient and effective operation of water supply works for an existing declared water service.

The Minister must be satisfied that at least one of these three factors is satisfied before a declaration can be made.

This new section also clarifies that a water service may be declared by the Minister, even if the water supply works supplying the service are outside the SEQ region. This reflects the fact that services that contribute to water supply security in the SEQ region may not be geographically located within the boundaries of the SEQ region as defined in the Water Act.

### **New section 360ZCT Content of water service declaration**

New section 360ZCT of the Water Act provides that a water service declaration must contain:

- the water service, or part of the service that is being declared (for example, the treatment of water)

- the water supply works for supplying the water service or part of the water service (for example, the water treatment plant at Mt Crosby) and
- the water service provider for the water service (for example, the bulk water supply authority).

### **New section 360ZCU When water service declaration takes effect**

New section 360ZCU of the Water Act provides that a water service declaration has effect on either the day it is published in the gazette, or on the later day stated in the declaration.

### **New Subdivision 3 Register**

#### **New section 360ZCV Register of water service declarations**

New section 360ZCV of the Water Act provides that the Commission must keep a register of water service declarations that, for each of the declared water services, includes the service or part of the service that is declared, the water supply works for supplying the service and the water service provider supplying the service. The declarations register may also include any other details the Commission considers appropriate, and may be kept in any form the Commission considers appropriate.

#### **New section 360ZCW Declarations register to be available for public inspection**

New section 360ZCW of the Water Act provides that the register of water service declarations, or a copy of the register, must be available for inspection, free of charge at the commission's head office, as well as other places the Commission considers appropriate. The Commission may also publish a copy of the register on its website.

## **New Division 3 South East Queensland Water Market Rules**

### **New Subdivision 1 Making market rules**

#### **New section 360ZCX Market rules**

New section 360ZCX of the Water Act gives the Minister the power to make rules about the operation of the market. The market rules are a statutory instrument within the meaning of the Statutory Instruments Act, but are not subordinate legislation.

#### **New section 360ZCY Content of market rules**

New section 360ZCY(a) of the Water Act sets out things the market rules must contain. New section 360ZCY(b) provides that the rules may also contain any other matter the Minister considers appropriate to facilitate the operation of the market.

#### **New section 360ZCZ When market rules take effect**

New section 360ZCZ of the Water Act requires the Minister to notify the making of the market rules. The notice is subordinate legislation. The market rules take effect either on the day the Minister's notice is published in the gazette, or on any later day stated in the Minister's notice or the market rules.

#### **New section 360ZDA Tabling of market rules**

New section 360ZDA of the Water Act provides that a copy of the market rules, and any amendment to the market rules, must be tabled in the Legislative Assembly for information within 14 days after the rules or the amendment to the rules takes effect. A failure to table a copy in accordance with this section does not affect the ongoing effect of the market rules.

#### **New section 360ZDB Public notification of market rules**

New section 360ZDB of the Water Act provides that the market rules, as in force from time to time, must be published on the Commission's website.

### **New section 360ZDC Review of market rules**

New section 360ZDC of the Water Act requires the Minister to conduct a review into the operation and effectiveness of the market rules, as soon as practicable after the second anniversary of the rules taking effect. A report about the outcome of the review must be tabled in the Legislative Assembly.

This section will enable a review of the market rules to be undertaken and to enable any difficulties with implementation of the rules to be addressed.

### **New Subdivision 2 Grid contract documents and registered grid participants**

#### **New section 360ZDD Grid contract document**

New section 360ZDD of the Water Act provides that the Minister may make a document, in the form of a contract (a 'grid contract document'), providing for either the supply of a declared water service by a grid service provider to the water grid manager or, the supply of water by the water grid manager to a grid customer.

The grid contract document will have effect as if it was a contract, meaning that the law of contract will apply in relation to the document.

The section also clarifies that the grid service provider or the grid customer named as a party in the document and the water grid manager do not have to execute the document.

The terms of the grid contract document may be changed by the Minister, and the document will continue to have effect as a contract in accordance with the change.

The section also provides that to the extent that there are any inconsistencies with any other agreements entered into between the grid service provider or grid customer and the water grid manager, the grid contract document will prevail.

#### **New section 360ZDE Effect of grid contract document**

New section 360ZDE of the Water Act provides that a grid service provider must supply its declared water service only to the water grid manager and in accordance with the grid contract document applying to the grid service

provider. Similarly, a grid customer may purchase water supplied by a declared water service only from the water grid manager and in accordance with the grid contract document applying to the grid customer.

## **New Subdivision 3 Registered grid participants**

### **New section 360ZDF Registration process provided in market rules**

New section 360ZDF of the Water Act provides that if an entity wants to participate in the market (as defined in new section 360ZCL of the Water Act), the entity must register as a grid participant, in the appropriate grid participant category, in accordance with the market rules. The effect of this section is that any entity supplying a declared water service, or purchasing water supplied by a declared water service will be required to register as a grid participant in the category under the market rules that is appropriate to the entity's participation in the market.

### **New section 360ZDG Relationship between water grid manager and registered grid participants**

New section 360ZDG of the Water Act provides that the only entities that may supply water to the water grid manager are grid service providers and, unless the market rules provide otherwise, the only entities that may purchase from the water grid manager water supplied by a declared water service are grid customers.

### **New section 360ZDH Transfer of registration**

New section 360ZDH of the Water Act provides that if the owner of water supply works that provide a declared water service transfers the ownership of the works to another entity, the entity transferring the ownership ceases to be a grid service provider in relation to the relevant declared water service, and the entity to which the water supply works are being transferred becomes the grid service provider in relation to the relevant declared service. The entity transferring ownership must give the rules administrator notice of the transfer. This will enable the rules administrator to update relevant documents containing references to the transferor.

The purpose of this new section is to ensure that where there is a change of ownership of water supply works that supply a declared service, the transferee automatically becomes a grid service provider and is bound to continue to supply the service to the water grid manager.

## **New Subdivision 4 Liability of registered grid participants and water grid manager**

### **New section 360ZDI Limited liability of grid participants**

New section 360ZDI of the Water Act provides that a grid participant (the first grid participant) is not civilly liable to another grid participant (the second grid participant) for any consequential loss suffered by the second grid participant in relation to an act or omission by the first grid participant in performing its functions or its obligations under:

- the market rules
- an approved contract
- operating protocols made under the market rules
- an instrument made or instruction given under the market rules or the operating protocols.

The term ‘consequential loss’ is defined in new section 360ZDI(5) of the Water Act and is defined using an inclusive definition, rather than an exclusive definition. This means that other losses could potentially fall within the meaning of the term, depending upon the circumstances.

Under new section 360ZDI(1) of the Water Act, the exclusion of liability for consequential loss under the new section 3360ZDI will not apply:

- other than to the extent any consequential loss was caused or contributed to by the wilful default of the grid participant, where wilful default is defined to include fraudulent conduct (including concealment), criminal conduct and any intentional or reckless breach of, or failure to remedy a breach of, the grid participant’s obligations
- if the first grid participant recovers compensation from an entity in relation to the consequential loss suffered by the second grid

participant – other than to the extent of the compensation less an amount that represents any loss suffered by the grid participant in relation to the consequential loss and any costs incurred in recovering the compensation.

Under new section 360ZDI(2) of the Water Act, the exclusion of liability does not apply at all in relation to claims against a grid participant for personal injury suffered by the entity, or in relation to contracts that were in force immediately before the commencement of the new section 360ZDI to the extent that the contract is not inconsistent with this section or the market rules.

New sections 360ZDI(3) and 360ZDI(4) of the Water Act clarify that a grid participant may vary or exclude the operation of the limitation in section 360ZDI(1) in a contract in relation to the liability of the participant to another party to the contract, and the limitation will not apply to the grid participant to the extent the contract expressly varies or excludes its operation in relation to the other party to the contract.

Under the new arrangements for water supply in the SEQ region, the contractual relationships between the parties will not follow the physical flow of the water. For example, in the case of purified recycled water for supply to the Brisbane City Council area, water will flow from assets owned by the Queensland Manufactured Water Authority into assets owned by the Queensland Bulk Water Supply Authority, then through assets owned by the Queensland Bulk Water Transport Authority and finally through assets owned by Brisbane City Council.

While each of these parties will have a contract with the water grid manager, none of the parties will have a contract with each other. However, they clearly have a significant operational interface.

Limitation of liability between parties with an operational interface would usually be dealt with in a party to party contract. Limiting liability to direct losses in these contracts is consistent with the general position adopted by entities operating in a utilities market. In the absence of contracts, liability can be limited in legislation and the Victorian gas industry market and system operations rules provide a precedent for this approach.

The contracts between the parties and the water grid manager are required to be approved by the Minister, meaning there is very little opportunity for the parties to negotiate the terms of the contract, including terms relating to their ability to mitigate the risk around potential consequential loss or

damage. It is therefore appropriate to limit liability between grid participants as provided in this clause.

## **New Subdivision 5 Offences relating to market rules**

### **New section 360ZDJ Compliance with market rules**

New section 360ZDJ of the Water Act provides that the water grid manager and registered grid participants must not contravene the market rules. A contravention may attract a maximum penalty of up to 1665 penalty units.

## **New Division 4 Transfer of particular authorities**

### **New section 360ZDK Definitions for div 4**

New section 360ZDK of the Water Act defines a number of terms for the purpose of new division 4 (Transfer of particular authorities).

### **New section 360ZDL Application of div 4**

New section 360ZDL of the Water Act defines the terms relevant authority and limited authority for the purpose of division 4, and sets out the specific authorities and categories of authorities to which division 4 applies. These are the authorities that can potentially be transferred to the water grid manager under the transfer scheme provided for under the division.

### **New section 360ZDM The transfer scheme**

New section 360ZDM describes the transfer scheme provided for under division 4. The purpose of the transfer scheme is to allow for the transfer of particular authorities to take water, from the current holder of the authority to the water grid manager, in order to facilitate the operation of the market.

Under the transfer scheme, where an entity holds an authority to take and interfere with water, that authority may be replaced by an authority to interfere with water and one or more authorities to take water. Where this happens, the authority to take water can then be transferred from the entity to the water grid manager. The transfer will be given effect through a transfer notice, provided for under the new section 360ZDN of the Water

Act. The authority to interfere will continue to be held by the transferring entity.

Where an entity holds an authority to take water (but not to interfere), the authority can be replaced with two or more authorities and transferred to the water grid manager under a transfer notice, or alternatively just transferred to the water grid manager.

### **New section 360ZDN Transfer notice**

New section 360ZDN of the Water Act sets out what the Minister may do through the transfer notice scheme.

Under new subsections (a), (b) and (c), where an entity holds an authority to take and interfere with water, the transfer notice may replace the authority with an authority to interfere with water and one or more authorities to take water, and also transfer the authority (or authorities) to take water from the existing holder to either the water grid manager or the Queensland Bulk Water Supply Authority. A potential scenario where an authority to take may be transferred to the Queensland Bulk Water Supply Authority is where the authority relates to water for use on-site at a water storage facility owned by the Queensland Bulk Water Supply Authority, for example where the water supplies the recreation facilities at a dam site or is used for operational purposes associated with the dam and associated facilities.

Under new subparagraph (d), where an entity holds an authority to take water (but not to interfere), the transfer notice can transfer the authority to the water grid manager.

Under new subparagraph (e), where an entity holds an authority to take water (but not to interfere), the transfer notice may replace the authority with two authorities to take water, and transfer one or both of the authorities to the water grid manager and/or the Queensland Bulk Water Supply Authority.

New subparagraph (f) provides that the transfer notice may impose requirements on any of the authorities replaced or transferred, including requirements about the volume of water that may be taken under an authority by the water grid manager or the Queensland Bulk Water Supply Authority and the purpose for which water taken by the Queensland Bulk Water Supply Authority may be used.

Under new subparagraph (g), where an authority held by an entity is replaced by one or more authorities to take water and an authority to interfere with water, the transfer notice may make provision for the entity to continue to hold the authority to interfere with water.

New subparagraph (h) provides that the transfer notice may make provision about the application of instruments, for example a water supply agreement associated with transferring authorities, to a transferring entity or a receiving entity including:

- whether the transferring entity or receiving entity is a party to an instrument
- whether an instrument is taken to have been made by the transferring entity or receiving entity, or given to, or in favour of the transferring entity or receiving entity
- whether a reference to another entity in an instrument is a reference to the transferring entity or receiving entity
- whether under an instrument, an amount is or may become payable to or by the transferring entity or receiving entity, or other property is, or may be, transferred to or by the transferring entity or receiving entity.

New subparagraph (i) provides the Minister with the power to make provision about an incidental, consequential or supplemental matter which the Minister considers necessary or convenient for effectively carrying out the scheme.

The effect of new subsections (2), (3) and (4) is that where an authority is replaced with one or more authorities to take or interfere with water, the conditions under which the water may be taken or interfered with under the new authority or authorities must be at least as restrictive as the conditions under the original authority. For example, the conditions on the new authority or authorities must not increase the total amount of water to be taken, increase the rate at which water may be taken, change the flow conditions under which water may be taken, or increase the interference with the flow of water.

New subsection (5) provides that a transfer notice has effect despite any other law or instrument. For example, if there is a contract in place that commits the transferring entity to take and supply water under that agreement to another entity, the transfer notice will have effect despite the

fact it may impact upon the transferring entity's ability to meet its obligation under the relevant contract.

New subsection (6) provides that a transfer notice has effect on the day it is published in the gazette, or on the later day stated in the notice.

New subsection (7) defines 'instrument' under this section to include an agreement for an entity to supply water to another entity.

### **New section 360ZDO Process after transfer notice**

New section 360ZDO of the Water Act gives the chief executive of the department in which chapter 2, part 6, is administered, power, following the transfer of an authority under a transfer notice, to take any action that is necessary or convenient in relation to the transfer. For example, it may be necessary or convenient to update a register or other record relating to the authority or authorities, or to amend, cancel or issue another authority. The chief executive may take action under this section, despite the Act not providing for the taking of the action, or the Act providing for the taking of the action in another way.

### **New section 360ZDP Continuing authorities**

New section 360ZDP of the Water Act provides that where an authority is replaced with one or more authorities to take or interfere with water, the newly created authority or authorities will continue to have effect until either:

- the chief executive of the department in which chapter 2, part 6 of the Water Act is administered, grants a water licence to replace the authority
- the authority is replaced with a water entitlement, interim resource operations licence or distribution operations licence. Where the chief executive grants a replacement water licence, the licence may be issued by the chief executive, without the need for an application to be made under section 206 of the Water Act. Within 30 business days of granting the replacement water licence, the chief executive must give the entity to whom the licence is granted, the licence and an information notice about the granting of the licence. The licence has effect from the day it is given to the entity.

### **New section 360ZDQ References in supply agreements to particular transferring entities**

New section 360ZDQ of the Water Act applies where an authority is being transferred under a transfer notice and, on the day of the transfer, there is an agreement for the supply of water in force between the transferring entity and another entity. In these circumstances, a reference in the agreement to the transferring entity is, where the context permits, taken to be a reference to the receiving entity. The effect of this section is that any supply agreement relating to the relevant authority will continue to have effect following the transfer.

### **714 Omission of ch 3 (Infrastructure and service)**

*Clause 714* removes chapter 3 from the Water Act to reflect that the matters covered in chapter 3 (that is, infrastructure and service) have been incorporated into the Bill.

### **715 Amendment of s 696 (Procedure before authority is dissolved to convert to an alternative institutional structure)**

*Clause 715* amends section 696 of the Water Act and provides that before a regulation is made dissolving a water authority to allow it to convert to an alternative institutional structure, if more than one entity is created the water authority must submit a notice, known as an ‘allocation notice’ to the Minister detailing the proposed allocation of employees, assets, liabilities and property of any kind between the alternative institutional structures.

### **716 Amendment of s 701 (Definitions for div 3)**

*Clause 716* amends the definition of ‘former water authority’ and ‘new entity’ in section 701 of the Water Act to provide that a water authority may be converted to one or more alternative institutional structures.

### **717 Insertion of new 701A**

*Clause 717* inserts a new section 701A into the Water Act.

### **New section 701A Notification for conversion to 2 or more alternative institutional structures**

New section 701A of the Water Act provides that the Minister must on the changeover day for the former water authority publish in the gazette the ‘allocation notice’ for the former water authority if the former water authority is converted to two or more alternative institutional structures.

### **718 Amendment of s 702 (Vesting of assets, rights and liabilities)**

*Clause 718* amends section 702 of the Water act to provide that the assets, rights and liabilities of the former water authority, if converted to two or more alternative institutional structures, vest on the changeover day in each new entity for the water authority in accordance with the authority’s allocation notice.

### **719 Amendment of s 703 (Continuing legal proceedings)**

*Clause 719* amends section 703 of the Water Act to provide that if a water authority is converted to two or more alternative institutional structures and a legal proceeding by or against the authority has not been finished before the changeover day, the legal proceeding, may from the changeover day, be continued and finished by or against the most appropriate new entity for the authority.

### **720 Amendment of s 704 (Existing employees)**

*Clause 720* amends section 704 of the Water Act to provide that a person who was employed by the former water authority becomes an employee of a new entity for the authority in accordance with the authority’s allocation notice.

### **721 Amendment of s 705 (State undertakes non-transferable civil liability)**

*Clause 721* amends section 705 of the Water Act to provide that the State will take over any civil liability that, at law, can not be transferred from the water authority to the new institutional structure comprising one or more alternative institutional structures.

**722 Amendment of s 758 (Power to require name and address)**

*Clause 722* replaces subsection 1 of section 758 of the Water Act to bring the provision in line with current drafting practice. The substance of the provision has not changed.

**723 Omission of ch 5, pt 3, div 2 (Offences for ch 3)**

*Clause 723* removes the division of the Water Act that deals with offences relating to infrastructure and service to reflect that these matters have been incorporated into the Bill.

**724 Amendment of ch 6, hdg (Reviews, appeals and arbitration)**

*Clause 724* amends the heading of chapter 6 of the Water Act to reflect the changes made by the Bill. Chapter 6 will now deal with reviews and appeals only.

**725 Amendment of s 851 (Who is an interested person)**

*Clause 725* amends section 851 of the Water Act to remove the provisions that relate to the regulator and local governments, reflecting that these provisions have been incorporated in the Bill.

**726 Amendment of s 862 (Who may apply for internal review)**

*Clause 726* amends section 862 of the Water Act to remove the provisions that relate to the regulator and local governments and failure impact assessment decisions and actions, reflecting that these provisions have been incorporated in the Bill.

**727 Amendment of s 864 (Review decision)**

*Clause 727* amends section 864 of the Water Act to remove the provisions that relate to the regulator, local governments and failure impact assessment decisions and actions, reflecting that these provisions have been incorporated in the Bill.

**728 Amendment of s 865 (Stay of operation of original decision)**

*Clause 728* amends section 865 of the Water Act to remove the provisions that relate to the regulator, local governments and failure impact

assessment decisions and actions, reflecting that these provisions have been incorporated in the Bill.

### **729 Amendment of s 877 (Who may appeal)**

*Clause 729* amends section 877 of the Water Act to remove the provisions that relate to the regulator, local governments and failure impact assessment decisions and actions, reflecting that these provisions have been incorporated in the Bill.

### **730 Omission of ch 6, pt 4 (Arbitration)**

*Clause 730* omits chapter 6, part 4 of the Water Act to reflect its relocation with the infrastructure and service regulator functions into the Bill.

### **731 Amendment of s 920 (Appointments and authority)**

*Clause 731* amends section 920 of the Water Act to omit the provision stating that it is not necessary to prove the regulator's appointment. This reflects its relocation with the infrastructure and service regulator functions into the Bill.

### **732 Amendment of s 932 (Proceedings for offences)**

*Clause 732* amends section 932 of the Water Act to omit reference to who may bring proceedings for offences in relation to regulator functions. This reflects its relocation with the infrastructure and service regulator functions into the Bill. *Clause 732* also amends the heading of section 932 of the Water Act to reflect current drafting practice.

### **733 Amendment of s 955 (Governor in Council may appoint administrator to operate infrastructure)**

*Clause 733* amends section 955 of the Water Act to remove the provisions that relate to service providers, reflecting the relocation of chapter 3 into the Bill.

### **734 Omission of ss 957 and 958**

*Clause 734* removes sections 957 and 958 of the Water Act. These sections relate to the appointment of an administrator to operate a service provider's infrastructure and have been relocated into the Bill.

**735 Amendment of s 966 (Additional criteria for assessing development applications)**

*Clause 735* amends section 966 to omit the provisions of the Water Act that relate to referable dams to reflect relocation of referable dam regulation into the Bill. Clause 735 also provides that where the Queensland Bulk Water Supply Authority has referral agency status over certain development applications, the Authority is to undertake this responsibility in accordance with the purposes of the Water Act, to the extent they relate to preserving water quality in the declared catchment area.

**736 Amendment of s 967 (IPA approval for development is subject to approval under this Act)**

*Clause 736* amends section 967 of the Water Act to enable operational work, mentioned in schedule 8, part 2, table 4, item 1(b)(i) of the Integrated Planning Act to have a right to use and occupy the part of the bed or bank of the watercourse or lake on which the works to interfere with water are authorised to be located.

**737 Omission of s 971 (Development applications for referable dams)**

*Clause 737* removes section 971 from the Water Act to reflect that development applications for referable dams have been incorporated into the Bill.

**738 Insertion of new ch 8, pts 3A and 3B**

*Clause 738* inserts a new section into the Water Act to deal with an authority held by Mount Isa Mines Limited and relocate existing provisions of the Water Act about SEQ Water into a different part of the Water Act.

## **New Part 3A Authority held by Mount Isa Mines Limited**

### **New section 992A Authority held by Mount Isa Mines Limited under special agreement Act**

New section 992A of the Water Act provides for specified water rights in the Gulf Water Resource Plan area to be relocated from the *Mount Isa Mines Limited Agreement Act 1985* (Mount Isa Mines Limited Agreement Act) into the water allocation and management framework under the Water Act.

This section only applies to Mount Isa Mines Limited to the extent a special agreement Act (for example, the Mount Isa Mines Limited Agreement Act) authorises the entity to take or interfere with water in relation to Rifle Creek Dam and Lake Moondarra.

In accordance with this provision, the authority to take or interfere with water, in relation to Rifle Creek Dam and Lake Moondarra, under the Mount Isa Mines Limited Agreement Act will continue until the chief executive grants Mount Isa Mines Limited the water allocation in relation to Lake Moondarra stated under the resource operations plan.

The operation of this section does not in any way affect the water licence held by Mount Isa Mines Limited in relation to Rifle Creek Dam.

This section applies despite section 1037A(3) and (4) of the Water Act and anything to the contrary in the special agreement Act that applies to Mount Isa Mines Limited.

## **New Part 3B SEQ Water**

This part contained within chapter 3 of the Water Act has been relocated into this new part of the Water Act as a consequence of the relocation of chapter 3 into the Bill, as it more relevantly applies to the Water Act. No changes have otherwise been made to this provision.

### **739 Amendment of s 1006 (Declarations about watercourses)**

*Clause 739* amends section 1006 of the Water Act to enable a regulation or a water resource plan to state the way in which water, declared to be water in a watercourse under this section, taken for stock or domestic purposes, is to be regulated. This will provide flexibility such that, where appropriate, water declared to be water in a watercourse, taken for stock or domestic purposes, can be appropriately regulated.

### **740 Amendment of s 1007 (Records to be kept in registries)**

*Clause 740* amends section 1007 of the Water Act to remove reference to records kept in registries relating to infrastructure and service matters. This reflects the relocation of chapter 3 into the Bill.

### **741 Amendment of s 1009 (Public inspection and purchase of documents)**

*Clause 741* amends section 1009 of the Water Act to remove reference to public inspection and purchase of documents relevant to service provider and dam safety regulation to reflect the relocation of chapter 3 into the Bill.

### **742 Amendment of s 1010A (Non-disclosure of commercially sensitive information)**

*Clause 742* amends section 1010A of the Water Act to remove reference to infrastructure and service matters to reflect the relocation of chapter 3 into the Bill.

### **743 Amendment of s 1014 (Regulation-making power)**

*Clause 743* amends section 1014(2)(gb) of the Water Act to provide that a regulation may state a process for granting or otherwise dealing with unallocated water in a water resource plan area, resource operations plan area or wild river area. The Water Act currently provides for dealing with unallocated water in water resource plans, resource operations plans or, for a wild river area, in a regulation. The result has been the prescription of detailed processes for dealing with unallocated water in individual plans. These processes vary in detail which has resulted in inconsistencies between plan areas. Amending section 1014(2)(gb) of the Water Act to enable a regulation to deal with unallocated water in water resource plan and resource operations plan areas as well as wild river areas will ensure

the consistent application of principles across Queensland, certainty and transparency for prospective water purchasers and that the process is readily accessible.

*Clause 743* also amends sections 1014(2)(i) and 1014(2)(j) of the Water Act to provide that a regulation may ‘state’ rather than ‘approve’ codes for assessable or self-assessable development under the Integrated Planning Act.

Under the current Water Act framework, codes are essentially approved twice: once through the Department of Natural Resources and Water’s internal approval process (which involves stating the day the code was approved on the code itself and subsequently listing the code in the *Water Regulation 2002*); and once by the Governor in Council. This has the potential to result in two different approval dates. This may raise questions about the validity of codes at various points in time, in particular, as codes are updated and amended as the need arises. This amendment is intended to remove any confusion relating to the approval of these codes while maintaining Governor in Council consideration through the regulation amendment process.

#### **744 Amendment of s 1046 (Declared subartesian areas)**

*Clause 744* inserts a regulation making power into section 1046 of the Water Act so that a regulation can be made with respect to the types of works that interfere with subartesian water that are assessable or self-assessable development under the Integrated Planning Act. This establishes the framework for how works to interfere with subartesian water are to be regulated under the Integrated Planning Act.

The clause also ensures that section 1046 of the Water Act is appropriately interpreted providing for the chief executive to only grant a water licence if:

- the person has authorisation under section 20(6) of the Water Act to take subartesian water
- has existing works capable of being used at the time the area is declared to be a subartesian area and
- used those works to take water for which a water licence was granted.
- The discretion is not to be used for a person who has failed to renew a licence or had a licence revoked under the Water Act.

## **745 Insertion of new ch 9, pt 5, div 11**

*Clause 745* inserts a new chapter 9, part 5, division 11 into the Water Act.

## **New Division 11 Transitional provisions for Water Supply (Safety and Reliability) Act 2008**

### **New section 1161 Declared water services**

New section 1161 of the Water Act provides that the Minister may, by gazette notice, prescribe a water service, or part of a water service, that is taken to be a declared water service under the new chapter 2A, part 5A, division 2. This section will facilitate the initial establishment of the market by prescribing the initial list of declared water services. A declaration made under this section has effect on the day it is published in the gazette or the later day stated in it. This section applies despite chapter 2A, part 5A, division 2 (Declaration of water services).

### **New section 1162 Grid Customers**

New section 1162 of the Water Act provides that where the Minister declares a water service, or part of a water service, under the process set out in the new section 1161, the water service provider supplying the declared service is taken to be a grid service provider in relation to the service.

In addition, the new section 1162 provides that CS Energy Limited, Tarong Energy Limited and each local government whose local government area forms part of the SEQ region (as defined in section 341 of the Water Act) is, from the commencement of the section, a grid customer.

### **New section 1163 Changing source of water supplied under supply contract**

New section 1163 of the Water Act has the effect of invalidating any provision in a contract between a grid customer and a third party that specifies that water supplied by the grid customer to the third party must be supplied from a particular source. The new section also provides that the customer may not end the supply contract only because the water is supplied from another source.

A key principle underpinning the establishment of the SEQ water grid and the SEQ water market is that water is a shared resource. As construction of new water sources and pipelines are completed and the grid is connected, water will be able to be moved around the region, and sources supplying particular areas will be able to be substituted.

If a contract specifies that water must be supplied from a specific source, this conflicts with the core underlying principle that water for urban and industrial use in the SEQ region is a shared resource and supply from the SEQ water grid may come from a variety of sources, as determined by the water grid manager, depending on the quality considerations and the optimum conjunctive use of water storages across the region.

The rights of customers are protected under this section via the requirement that any water substituted under the provision must be fit for the purpose for which the water under the supply contract is supplied.

### **New section 1164 Existing water supply agreements end**

New section 1164 of the Water Act applies to contract or agreements that are:

- in force immediately before the commencement of the section
- for the supply of water or water services which, from commencement, will be supplied from a declared water services and
- between
  - two or more potential grid participants;
  - a potential grid participant and SEQ Water; or
  - a potential grid participant and SunWater.

The term ‘potential grid participant’ is defined in new subsection (3) to mean:

- an entity supplying a water service or part of a water service, declared under the new section 1162
- an entity that becomes a grid service provider or grid customer under the new section 1163.

The effect of the section is that contracts or agreements that satisfy all of the above criteria end at the end of 30 June 2008.

The purpose of this section is to ensure that agreements or contracts that will be replaced by a grid contract document between grid participants and the water grid manager will no longer exist as the provisions of the existing contracts or agreements will be dealt with in the grid contract document. Examples of the types of agreements to which this section would apply include an agreement between two local governments in SEQ region for the bulk supply of potable water; and a contract between Sun Water and a local government in the SEQ region for the supply of bulk untreated water from one of Sun Water's water supply schemes.

### **New section 1165 References to particular entities in relevant water resource plans**

New section 1165 of the Water Act applies in relation to an entity ('a water entity') that held an authority to take or interfere with water ('the authority'), where the authority was:

- transferred to the bulk water supply authority under the SEQ Water Restructuring Act
- then replaced with two or more authorities to take water under a transfer notice made by the Minister under section 360ZDN.

The section provides that if a relevant water resource plan refers to a water entity, in relation to having the authority, the provision should be read with any necessary changes to give effect to the transfer notice.

### **New section 1166 Codes for assessment under the Integrated Planning Act 1997**

New section 1166 of the Water Act states that the codes previously approved as codes for assessable development under section 1014(2)(i) and 1014(2)(j) of the Water Act are taken to be codes stated under the amended sections 1014(2)(i) and 1014(2)(j), amended by the Bill. This will ensure the continued operation of these codes.

### **New section 1167 Amendment of water resource plans**

New section 1167 of the Water Act provides that the amendment of a number of water resource plans by the Bill does not affect the power of the Governor in Council (that is, the power provided under the Water Act) to further amend or repeal the plans.

### **746 Omission of sch 1 (Prohibited substances)**

*Clause 746* removes schedule 1 from the Water Act to reflect that prohibited substances have been incorporated into the Bill.

### **747 Amendment of sch 4 (Dictionary)**

*Clause 747* removes and inserts the listed definitions from schedule 4 of the Water Act to reflect the changes made by the Bill, in particular, the omission of chapter 3 of the Water Act.

## **Part 5                      Amendment of Water and Other Legislation Amendment Act 2007**

### **748 Act amended in pt 5**

*Clause 748* states that part 5 amends the Water and Other Legislation Amendment Act.

### **749 Omission of s 92 (Insertion of new ch 3, pt 3, div 2B)**

*Clause 749* amends section 92 of the Water and Other Legislation Amendment Act to relocate these provisions into the Bill.

### **750 Amendment of s 103 (Insertion of new ch 9, pt 5, div 9)**

*Clause 750* amends section 103 of the Water and Other Amendment Act to relocate these provisions into the Bill.

## **Chapter 11      Consequential and minor amendments**

### **751 Laws amended in sch 2**

*Clause 751* states that schedule 2 amends the Acts listed.

## **Schedule 1      Prohibited substances**

Schedule 1 provides a definition of prohibited substances for the Bill.

## **Schedule 2      Consequential and minor amendments**

Schedule 2 makes consequential and minor amendments to the following Acts:

- *Body Corporate and Community Management Act 1997*
- *Building Act 1975*
- *Geothermal Exploration Act 2004*
- *Integrated Planning Act 1997*
- *Land Act 1994*
- *Land Court Act 2000*
- *Land Title Act 1994*
- *Local Government Act 1993*
- *Queensland Competition Authority Act 1997*
- *South East Queensland Water (Restructuring) Act 2007*
- *Water Act 2000*
- *Water Resource (Fitzroy Basin) Plan 1999*
- *Water Resource (Gold Coast) Plan 2006*
- *Water Resource (Logan Basin) Plan 2007*
- *Water Resource (Mary Basin) Plan 2006*
- *Water Resource (Moreton) Plan 2007*

## Schedule 3      Dictionary

Schedule 3 is the dictionary for the Bill. Many of the definitions provided are self-explanatory; however, below is a note of definitions that require further explanation.

***Declared entity*** for a multiple-entity scheme, means each recycled water provider and other entity, other than the scheme manager for the scheme, declared to be part of the scheme under chapter 3, part 8.

A multiple-entity recycled water schemes can only be established by being declared a critical recycled water scheme. All schemes, unless declared, are single-entity schemes comprised of a single recycled water provider and the provider's infrastructure for the production and supply of recycled water. A multiple-entity scheme is likely to include a number of entities that by definition are 'recycled water providers' but may include other entities that are involved in a scheme but do not carry out both production and supply of recycled water under the scheme, an example would be a distribution entity such as a pipeline which transports recycled water.

***Drinking water*** means water, for human consumption, intended primarily as water for drinking, whether or not the water is used for other purposes. Drinking water, for the purpose of the Bill, expressly excludes water that is defined as food under the Food Act (section 12). Under that Act food also includes water sold for human consumption by a food business or used by a food business in preparing food for sale to consumers. Accordingly, 'water' is food if:

- (a) a person bottles or packages water for retail sale
- (b) a person takes water in a tanker from a water source (for example, a reticulated water supply outlet) and sells that water to a consumer for the purposes of filling the consumer's rainwater tank
- (c) a person sells water from his or her rainwater tank to another person
- (d) a food business uses reticulated water on their premises to cook food for consumers.

In addition, drinking water, for the purposes of the Bill, does not include water that is supplied generally for domestic purposes, whether or not such water is consumed for drinking purposes.

***Drinking water service only*** applies to a water service that is the treatment, transmission or reticulation of water for supply as drinking water. For example, the treatment of water by a water treatment plant intended for supply as drinking water, whether at that point of supply or later supply by reticulation, is a drinking water service. If later by reticulation, the reticulation of the water intended for drinking water supply is also a drinking water service. A water service that is the water collection, including water storages, is not captured as a drinking water service save for one exception. This is where a water storage receives a supply of recycled water that is for the purpose of augmenting a drinking water supply. In that case, the water collection in a storage is a drinking water service.

***Drinking water service provider*** is a water service provider, within the meaning of the Bill, that is carrying out a drinking water service. For example, some entities supplying water are not captured as a water service provider within the meaning of the Bill, such as a resort providing its own water supply or a mining company providing its own water supply to a mining community. These entities are not drinking water service providers for the purposes of the Bill.

***Multiple-entity recycled water scheme*** means a scheme involving the production and supply of recycled water by more than one recycled water provider, or at least one recycled water provider and another entity, and includes:

- (a) each recycled water provider and other entity declared to be part of the scheme under a declaration for the scheme made under chapter 3, part 8 and
- (b) the infrastructure for the production and supply of the water stated to be part of the scheme under the declaration.

A multiple-entity scheme is also a critical recycled water scheme—the declaration process provides a mechanism to establish a number of recycled water providers and other entities (such as a sewage treatment plant and an advanced water treatment plant) to operate as one scheme. If a multiple-entity scheme is declared, there must also be scheme manager for the scheme, who is someone the declared entities must agree on.

***Recycled water provider*** means an entity that:

- (a) owns infrastructure for the production and supply of recycled water

- (b) another entity, prescribed under a regulation, that owns infrastructure for the supply of recycled water.

A recycled water provider is, in the first instance, an entity that owns infrastructure for the production and supply of recycled water. A provider must have a recycled water management plan, or an exemption, to be authorised to supply recycled water for reuse. Under the second limb of the definition, another entity that only supplies recycled water, such as a distribution entity, may be prescribed to be a recycled water provider. Prescription might occur if there was a need for a management plan covering the distribution entity's infrastructure to ensure the quality of the recycled water does not deteriorate during distribution.

***Recycled water scheme*** means a single-entity or a multiple-entity recycled water scheme.

All recycled water schemes are single-entity schemes, unless they are declared to be critical recycled water schemes under chapter 3, part 8.

***Reused***, in relation to recycled water, includes being treated to improve the water's quality, but does not include merely being discharged into, or disposed of in, the environment.

The definition of 'reused' is needed because of the nature of recycled water—without it an entity treating sewage and discharging treated effluent to the environment would be caught as a recycled water provider. This is not intended. The definition is also needed to catch entities that supply recycled water for further treatment, such as a sewage treatment plant supplying effluent to an advanced water treatment plant, as recycled water providers.

***Single-entity recycled water scheme*** means a scheme involving the production and supply of recycled water by only 1 recycled water provider, and includes:

- (a) if the provider owns infrastructure for the production and supply of the water—that infrastructure
- (b) if the provider owns infrastructure only for the supply of the water—that infrastructure.

***Water quality criteria***—

- (a) for drinking water, means all of the following:
  - (i) the standards for the quality of drinking water prescribed in a regulation under the Public Health Act

- (ii) the criteria stated in a guideline, if any, made by the regulator about the quality of drinking water and
- (b) for recycled water, means all of the following:
- (i) the standards for the quality of recycled water, relating to the sources and uses of the water, prescribed in a regulation under the Public Health Act
  - (ii) the criteria for the quality of recycled water, relating to the sources and uses of the water
    - (A) stated in a guideline, if any, made by the regulator about the quality of recycled water
    - (B) in relation to the quality of recycled water to which a recycled water management plan or an exemption relates—stated in a regulator condition for the plan or exemption.

With regard to the water quality criteria for recycled water, due to the diversity of contaminants in recycled water, particularly wastewater, and the wide range of potential uses of recycled water, it is not intended that a standard will be prescribed or criteria set for all sources and uses of recycled water. However, where no standard or criteria has been specified in a regulation under the Public Health Act or in a guideline made by the regulator, the quality of recycled water required to be met under a recycled water scheme will be determined by the regulator having regard to the source of the water and proposed uses of the water and stated as a regulator condition of a recycled water management plan or exemption.