

South East Queensland Water (Distribution and Retail Restructuring) and Natural Resources Provisions Bill 2009

Explanatory Notes

General Outline

Policy Objectives

The objectives of the Bill are to:

- facilitate the restructure of the downstream water and wastewater (distribution and retail) functions in South East Queensland (SEQ) to deliver significant benefits to the community including:
 - improved SEQ regional focus in water security planning and service delivery;
 - enhanced customer interface;
 - clearer accountability in customer service delivery.
- amend the *Land Act 1994* to:
 - introduce a provision that will allow for an additional purpose for renewable energy projects to occur on leasehold land and so contribute to Queensland's renewable energy targets.
- amend the *Local Government (Aboriginal Lands) Act 1978* to:
 - extend the terms of the Aurukun and Mornington Shire leases from their current expiry in 2029 to 2059. This is proposed to ensure that the development of these communities is not hampered by the length of sub-leases that may be issued for housing, economic development and other purposes such as public infrastructure. It also provides an opportunity for both communities to take advantage of current Australian Government funding under the Remote Indigenous Housing National Partnership Agreement, as

they will gain the ability to offer forty year sub-leases to secure housing assets as required under that agreement.

- amend the *Valuation of Land Act 1944* (VLA) to:
- extend the date that authorises the Act to apply to pre-amalgamation local government boundaries from 31 August 2009 until 31 August 2010.
- amend the *Water Supply (Safety and Reliability) Act 2008* to:
 - make improvements to the recycled water and drinking water regulatory frameworks, in part, identified by the April 2009 fluoride dosing incident at the North Pine Water Treatment facility. Amendments will enhance the regulator's powers to manage water supply incidents in the future.

Reasons for the Policy Objectives

Restructuring of South East Queensland Water Distribution and Retail Entities

In September 2007, the Queensland Government approved a range of institutional reforms to be implemented across the SEQ urban water sector. These reforms addressed a number of critical shortfalls in the urban water supply arrangements. SEQ was totally dependent on dams and rainfall to supply businesses and households with water. Water was generally considered as an unlimited resource and was therefore used and consumed with little thought to conservation, efficient use or re-use. There were 25 different entities servicing 17 retail businesses based on local government boundaries. Planning to meet urban growth and increasing demand was ad-hoc and solely within local government boundaries. Customer service standards differed across the region with customers having no access to independent dispute resolution.

The SEQ Water Reform Program (Reform Program) was to be delivered in a two stage process.

Stage One focussed on bulk water reform, in particular, the establishment of the three statutory authorities to own the bulk supply, bulk transport and manufactured water infrastructure respectively, and the construction of the SEQ Water Grid which connected the SEQ Region's major water sources, water treatment plants and bulk water transport networks. The SEQ Water Grid Manager was also established to operate the SEQ Water Grid and to

be the single purchaser of bulk water services and the single seller of bulk water in SEQ.

Stage One, which became operational on 1 July 2008, was given effect through the *South East Queensland Water (Restructuring) Act 2007*.

Stage Two, to be operational from 1 July 2010, focuses on downstream water reform. The core of the Stage Two Reform Program is the separation of the retail and distribution functions from SEQ local governments and the establishment of three separate vertically integrated distribution-retail businesses (distributor-retailer entities).

This Bill is the first of two steps to implement the Reform Program. This Bill includes provisions to establish the three distributor-retailer entities and enable the transfer of property, water and wastewater assets, liabilities, instruments and employees from the SEQ local governments to the new entities. The Bill also enables the Minister to recognise an employee framework (negotiated between the Council of Mayors (South East Queensland) (CoMSEQ) and relevant unions) to protect workers affected by the reform.

A further Bill will enable the new entities to become operational. Specifically, this Bill will provide for key powers of the entities, including powers of entry and acquisition, and address the role of the new entities in supporting the planning and development assessment processes and trade waste approval processes, which are currently undertaken by local government.

Land Act 1994

Opportunities for the establishment of renewable energy projects on State land.

In the present global climate, Governments are increasingly looking at alternative methods of generating power. Approximately 70% of Queensland is classified as State land, which will provide the Government the opportunity to allow preferential access arrangements for renewable energy projects on this land. Under the current Land Act provisions a lease must be used for the purpose for which was issued. Large wind farms can consist of several hundred individual wind turbines and can cover large areas of land. Many land uses such as agriculture and grazing could quite easily co-exist with wind farms however as the Land Act currently exists , if the purpose of the lease states that the lease must be used for agriculture

or grazing only then a further usage such as wind farms could not be allowed on the lease.

Local Government (Aboriginal Lands) Act 1978

This amendment has become increasingly important as the current expiry date of the Aurukun and Mornington Shire leases approaches. If the lease terms are not amended, the Aurukun and Mornington Shire Councils will lose the ability to offer anything but short-term sub-leases over Shire lands, and opportunities for residential, economic and public infrastructure investment and development at both locations will be stifled.

Valuation of Land Act 1944

On 12 February 2009, the Premier announced that there would be no annual valuations issued for 2009. Accordingly the Department of Environment and Resource Management (DERM) was unable to provide consistent levels of value within the recently merged local government areas by 31 August 2009, as required under section 75M of the the VLA. The amendment to section 75M of the Act will extend this date to 31 August 2010.

Water Supply (Safety and Reliability) Act 2008

New regulatory frameworks for recycled water and drinking water were established in 2008 under the Water Supply Act. The Act also regulates water and sewerage service providers. The amendments to the Water Supply Act have a number of drivers.

The April 2009 fluoride dosing incident identified restrictions in the recycled water and drinking water regulatory frameworks, particularly in relation to the regulator's powers to obtain information from all entities involved in the supply of recycled water and drinking water and sharing information with others such as regulatory agencies or an expert engaged to investigate a water supply incident.

In addition, it highlighted the need for enhancement of the regulator's existing powers to direct persons to take reasonable steps to prevent or minimise an adverse effect on public health and provide an ability to recover costs if the regulator instead takes steps to deal with the adverse effect.

Current restrictions on the disclosure of information obtained by the regulator under the Act are removed to enable the regulator to prepare and publish more comprehensive reports and other communications on the regulator's activities as well as an annual report.

Amendments will also enable the retrospective recovery of the reasonable costs of the expert investigation into the April 2009 fluoride dosing incident as the Water Supply Act does not expressly provide for such costs to be recovered from an entity whose non-compliance with the Act necessitates an investigation. Amendments also provide for reasonable costs to be recovered in the future should a water supply incident necessitate an expert investigation and a provider is found to be non-compliant with the Act.

How the Policy Objectives will be achieved

Restructuring of South East Queensland Water Distribution and Retail Entities

The Bill achieves the policy objectives set out above by:

- Establishing three vertically integrated distributor-retailer entities based on the following clusters of local governments:
 - (i) Brisbane, Ipswich, Somerset, Scenic Rim and Lockyer Councils;
 - (ii) Sunshine Coast and Moreton Bay Councils; and
 - (iii) Gold Coast, Logan and Redland Councils.
- Providing a governance structure for the distributor-retailer entities:
 - retaining local government ownership; and
 - ensuring independent commercial focus of the entities with each entity having a Board of Directors (Board).
- Enabling SEQ local governments to make transfer schemes to transfer their existing assets, liabilities and employees to enable them to perform their primary functions under the Act.
- Conferring on the Minister authority to:

- make transfer notices to address an error or shortcoming in the transfer schemes;
- issue directions, requiring SEQ local government or a distributor-retailer to take action that may be necessary (for example, to disclose information) to assist in the establishment of the distributor-retailer entities and facilitate the necessary transfers.

Land Act 1994

The policy is to be achieved by amending the Land Act to allow for an additional purpose to be included in the lease if that additional purpose is for a renewable energy project and the existing purposes of the lease can still be achieved.

Local Government (Aboriginal Lands) Act 1978

The policy is to be achieved by extending the terms of the Aurukun and Mornington Shire leases, on exactly the same terms, conditions and reservations as currently apply, for a period that effectively “tops up” the leases to the original term of fifty years.

Valuation of Land Act 1944

The policy is to be achieved by amending section 75M of the VLA to extend the date that the Act can apply to pre-amalgamation local government boundaries from 31 August 2009 until 31 August 2010.

Water Supply (Safety and Reliability) Act 2008

The Bill will achieve the policy objectives by amending the Water Supply Act to:

- Enhance the regulator’s powers to obtain and share information by:
 - prescribing additional entities from which the regulator may request information, including relevant SEQ water grid entities and the SEQ Water Grid Manager;
 - allowing the regulator to share information about particular entities involved in the supply of drinking water or recycled

water with other regulatory agencies or an expert investigator; and

- enabling the regulator to prepare and publish reports and other communications that may include information obtained under the Water Supply Act, other than commercially sensitive information.
- Enhance the regulator's powers to deal with water supply incidents by:
 - broadening the circumstances in which the regulator can direct persons to take reasonable steps or take reasonable steps where there is or there is likely to be a water supply incident and recover reasonable costs if the regulator or authorised officer takes the steps;
 - enabling the regulator to appoint an expert to investigate incidents where there is suspected non-compliance with the Act that may have an adverse effect on public health and recover reasonable costs where a person is found to be non-compliant; and
 - allowing for retrospective recovery of the reasonable costs of the expert investigation into the April 2009 fluoride dosing incident.
- Make other refinements to the regulatory frameworks.

Alternatives to the Bill

Restructuring of South East Queensland Water Distribution and Retail Entities

The policy objectives can only be implemented through primary legislation.

Land Act 1994

There are no other viable alternatives that would achieve the policy objectives if the wind farms are to be established on pastoral leases.

Local Government (Aboriginal Lands) Act 1978

The primary alternative to the amendment proposed in this Bill is to transfer these lands under the *Aboriginal Land Act 1991* and thereby provide perpetual tenure over the lands currently subject to fifty year leases. This option enables the issuing of long-term subsidiary interests in land at any time and obviates the requirement for any future extension of the head leases.

However, transfer of the lands is a complex and lengthy process, and cannot be guaranteed to be completed within the timeframes required for participation in the National Partnership Agreement. As this option provides a long-term solution to the situation addressed by this legislative amendment, it is being pursued in tandem with this proposal.

Water Supply (Safety and Reliability) Act 2008

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated administrative Cost to the Government for implementation

Restructuring of South East Queensland Water Distribution and Retail Entities

There will be no new or additional cost implications for Government.

Land Act 1994

There will be no additional cost implications for Government.

Local Government (Aboriginal Lands) Act 1978

The administrative cost of issuing and registering the extension of these interests is negligible.

Valuation of Land Act 1944

There will be no administrative costs to government caused by extending the date that the VLA can continue to apply to pre-amalgamation local government boundaries—the department will continue its program to

supply local governments with consistent levels of value and consequential valuation roll amalgamations.

Water Supply (Safety and Reliability) Act 2008

The amendments to the Water Supply Act are not expected to impose appreciable costs on the government in implementing the provisions.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Restructuring of South East Queensland Water Distribution and Retail Entities

The Bill establishes the distributor-retailer entities and facilitates a structured and responsible approach for the transfer of assets from SEQ local governments to these entities.

The Bill raises the following fundamental legislative principles:

Whether a Bill has sufficient regard to rights and liberties of individuals – compulsory acquisition of property only with fair compensation

The key functions of the new distributor-retailer entities will be to

- purchase water from the SEQ Water Grid Manager;
- distribute water;
- provide water services
- provide wastewater services;
- charge customers for relevant services; and
- manage customer enquiries, service requests and complaints.

The distributor-retailer entity will also be able to undertake complementary functions or other activities that will enhance their functions. The distributor-retailer entity will also be able to perform other related business activities. For example, the entity could provide water or wastewater consulting services to another party. These activities would be undertaken through commercial arrangements and contracts.

Each of the SEQ local governments will transfer its existing distribution assets (retail assets if applicable), and its distribution and retail functions (including employees to perform those functions) to enable the new entities to perform water and wastewater services.

In return for the assets, the Bill recognises that the contributing SEQ local governments will be allocated participation rights entitling them to share in a proportion of the profits of the entities. Consequently, there is no issue or concern about fair compensation as the distributor-retailer entities remain within local government ownership.

Whether a Bill has sufficient regard to the institution of Parliament – power to make a transfer scheme and notice overriding other laws and instruments

SEQ local governments will negotiate arrangements (‘transfer schemes’) between themselves governing the terms of the transfer of assets, liabilities, instruments and employees and the new distributor-retailer entities. The SEQ local governments will be required to certify that they have met the transfer scheme requirements which are set out in this Bill.

These transfer schemes will be approved by the Minister and given effect by way of notification in the Gazette.

The Bill provides ‘step in powers’ enabling the Minister to make transfer notices to address an error or shortcoming in the transfer schemes. A transfer notice has effect despite any law or instrument. These powers will have a 12 month limit commencing on 1 July 2010 and expiring on 30 June 2011. The Bill also protects the State and SEQ local governments from liability arising from things done as part of a transfer scheme or transfer notice.

A transfer scheme or notice is the quickest and simplest method to transfer assets to the new distributor-retailer entities. A transfer scheme or notice has effect despite any other law or instrument. Requiring a transfer scheme or notice to firstly obtain third party consent to the transfer, where contractually necessary, could lead to delays in the establishment of the operations of a distributor-retailer by 1 July 2010. Any liabilities associated with third parties will continue to be met after the transfer process. SEQ local governments have undertaken a due diligence risk management process to ensure assets are appropriately identified and transferred and that third party rights will not be materially affected.

Whether legislation has sufficient regard to rights and liberties of individuals – disclosure of confidential information

The Bill empowers the Minister to issue a direction (‘transfer direction’) to an SEQ local government or a distributor-retailer requiring it to execute an instrument or disclose information. A disclosure could have an adverse effect on a third party which has had dealings with a local government or entity, by disclosing information relevant to their commercial affairs. However, the Bill limits transfer directions and the use of any received information only to the period of transition from SEQ local government to a distributor-retailer. The Bill also provides that a transfer direction must be in writing and signed by the Minister. The purpose of such a direction and the receipt of relevant information are to assist in the establishment of the distributor-retailer entities and facilitate the necessary transfers.

Whether legislation makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review.

The Bill provides that decisions associated with the transfer process are not reviewable. It is essential that there is a smooth business transition to the new distributor-retailer entities. Any review of a decision made or action taken may have financial implications for the State and local governments and delay the Reform Program. The Minister’s powers are limited solely to the transfer process, may only be used within a prescribed timeframe and directed solely at facilitating the transfer process.

Whether legislation has sufficient regard to rights and liberties of individuals – power to enter premises without a warrant

The Bill enables entry on land where the land owner (the SEQ local government) will be different to the asset owner (the distributor-retailer entity). The distributor-retailer entity is owned by the SEQ local government. While a notice of entry is not required, it is expected that entry would occur at reasonable times except in the case of an emergency. The entry is permitted to enable the asset owner to perform necessary tasks to enable it to perform functions, for example, inspect, maintain and repair assets. This authority to enter does not extend to structures used for residential purposes.

The making of subordinate legislation which affects rights and obligations should comply with the *Statutory Instruments Act 1992* - requirement to prepare a regulatory impact statement

The Bill empowers the Minister to make and amend a customer water and wastewater code to provide for the rights and obligations of the distributor-retailers and their customers. This code will be subordinate legislation.

The Bill also provides a regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for the making or amending by the Minister of the customer water and wastewater code. In recognition of this exclusion, the Bill requires the Minister to prepare a draft of the proposed code and to notify the community in a newspaper circulating in the SEQ region on:

- the availability of the draft for written submissions; and
- the day by which submissions must be made (final submission day).

The Minister is also required to consider all submissions when preparing the final code to be made.

As the code will be subordinate legislation, it will be required to be tabled in the Legislative Assembly under the *Statutory Instruments Act 1992* and therefore subject to parliamentary review, and if inappropriate, disallowed.

Local Government (Aboriginal Lands) Act 1978

Legislation should have sufficient regard to Aboriginal tradition and Island custom—*Legislative Standards Act 1992*, section 4(3)(j).

Clause 117 of the Bill extends each lease granted under section 3 of the *Local Government (Aboriginal Lands) Act 1978* for a period of 31 years from the day that the lease would have expired. The proposed amendment addresses this principle, as the extension of the lease terms maintains the same balance between Council and community interests that has been in place since the commencement of the leases. Both leases were granted *inter alia* to secure and preserve the traditional rights, use and occupancy of the Aboriginal residents of those lands. Extension of the term of the leases to provide access to enhanced housing stock is consistent with these purposes.

The proposed amendment has no effect on the transferability of the Aurukun and Mornington Shire Lands under the *Aboriginal Land Act 1991*. The Department has held preliminary discussions with both

Councils and with representatives of the native title prescribed bodies corporate at both localities and is proceeding with the transfers as a matter of priority. This will involve extensive consultation with all stakeholders, including the Councils, the native title holders, and with other Aboriginal people particularly concerned with the land (e.g. people with long-term historical connections to these communities).

The proposal has no impact on native title.

Valuation of Land Act 1944

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively—*Legislative Standards Act 1992, section 4(3)(g)*.

The amendment to the VLA to extend the date for providing consistent levels of value and an amalgamated valuation roll within the recently merged local government areas will have retrospective effect. The amendment is considered justified because the need for it is a direct and necessary consequence of a decision made for the benefit of all Queensland rate payers. That decision, made by the chief executive of the former Department of Natural Resources and Water and announced by the Premier on 12 February 2009, was not to revalue the 17 local government areas previously nominated because of the global financial crisis and extreme weather conditions impacting on Queensland landowners. The timing of that decision meant that this amendment was unable to be made in time to avoid some retrospective operation. The retrospective operation is simply to ensure that the VLA continues to operate on pre-amalgamation local government boundaries until consistent levels of value are provided and valuation rolls amalgamated.

Water Supply (Safety and Reliability) Act 2008

Whether a Bill has sufficient regard to the rights and liberties of individuals – disclosure of personal information

The Bill amends section 14 of the Water Supply Act to enable the regulator to prepare and publish reports and other communications about the regulator's activities on a more frequent basis than currently allowed for and for such reports to include information obtained by the regulator under the Act. The rights of individuals are protected by the restriction in the provision that prevents disclosure of information that is commercially sensitive and disclosure of information that identifies an individual is only

permitted to the extent that it names an individual who is a registered service provider. Currently, there are two individuals who are registered service providers.

Whether a Bill has sufficient regard to the rights and liberties of individuals – imposition of presumed responsibility

Under current section 436 of the Act, the regulator may give directions to any person to take reasonable steps or alternatively take reasonable steps or authorise an authorised officer to take reasonable steps for the purpose of preventing or minimising an adverse effect on public health in circumstances set out in section 435 of the Act.

Such circumstances relate to either a reasonable belief of non-compliance on the part of a drinking water service provider or a recycled water entity or an ‘event’ that has happened or is likely to happen in relation to the operation of a drinking water service or recycled water scheme that may have an adverse effect on public health. Where the regulator gives a direction to take reasonable steps, the person or entity is liable to meet the costs of taking the steps. However, in circumstances where the regulator or authorised officer instead takes the steps there is currently no ability to recover reasonable costs that may be incurred in taking the steps. The cost recovery provisions (new sections 441 to 444) are necessary to ensure that a person or entity reasonably believed to be responsible for the water supply incident bears the costs associated with preventing or minimising the adverse effect, rather than the State.

The regulator’s power to intervene directly to prevent or minimise an adverse effect on public health will be used in exceptional circumstances, for example where it is impracticable or inappropriate to give a direction to another person or the person or entity fails to comply with a direction issued by the regulator.

Costs may be recovered from a prescribed person. A prescribed person in the first circumstance above (a belief of non-compliance) is the relevant provider (i.e. drinking water service provider, recycled water provider, scheme manager or other declared entity). In the second circumstance (an ‘event’), a prescribed person in relation to an event that has happened is any of the following:

- a person who caused or permitted the event to happen;
- a person who at the time of the event was—
 - the occupier of a place at which the event happened; or

- the owner, or person in control, of a contaminant involved in the event.

There is no issue in placing liability on a person who has a clear nexus to the incident, for example, where an owner of a contaminant is involved in a water supply incident. However, placing liability on an occupier of a place or owner of a contaminant who is not in control of the contaminant may be inconsistent with fundamental legislative principles in that it impacts on the rights and liberties of individuals. However, a number of defences are provided. A recipient who receives a cost recovery notice may appeal the decision to give the notice and a cost recovery notice cannot be issued if the water supply incident was caused by a natural disaster. Costs are not payable where the person is not a prescribed person or where the incident is caused by a terrorist act or other deliberate act of sabotage and the recipient of the notice took all reasonable steps to prevent the water supply incident.

Additionally, a recipient of a cost recovery notice who pays an amount in compliance with a notice but did not cause or permit the incident may recover the amount as a debt from a person who did cause or permit the incident. Therefore, a recipient that has no direct responsibility for the incident is not prevented from taking legal action to recover the amount as a debt from another person who caused or permitted the water supply incident.

These provisions are similar to provisions in the *Environmental Protection Act 1994* relating to clean-up notices for contamination incidents.

Whether a Bill has sufficient regard to the rights and liberties of individuals – imposition of presumed responsibility

The Bill inserts new chapter 5, part 8, division 3, to enable the regulator to engage an expert where the regulator reasonably believes a person is contravening or has contravened a provision of the Water Supply Act and the suspected contravention has had, may have had or may have an adverse effect on public health, or is a matter about which the regulator requires expert advice. The regulator may recover the reasonable costs of an expert investigation if after receiving the expert advice the regulator still believes a person is contravening or has contravened the Act.

These new cost recovery provisions are an extension of the current regulatory approach under the Water Supply Act, which enables the regulator to recover certain costs associated with monitoring compliance with the Act where entities are found to be in breach of the Act. For example, a service provider is required to meet the costs of a spot audit of

the provider's strategic asset management plan if the provider is found to be non-compliant with the plan or the plan is found to be inadequate. The provisions are considered justified as there is a clear nexus between responsibility and liability for costs. Costs may not be recovered where a person is found to have complied with the Act.

Whether a Bill has sufficient regard to the rights and liberties of individuals depends on whether the Bill does not adversely affect rights and liberties, or impose obligations, retrospectively

The amendments to the Water Supply Act to recover the reasonable costs of expert investigations will have general and prospective application, however they will also apply retrospectively to enable recovery of reasonable costs relating to the expert investigation into the April 2009 fluoride dosing incident from two State-owned entities, Seqwater and LinkWater. The State commissioned an independent investigation into the cause of the incident as well as for advice on any remedial actions required to ensure safe fluoridation operation in the future but at the time did not have powers to recover costs.

In terms of the incident, the regulator determined Seqwater and LinkWater did not comply with the provider's relevant monitoring and reporting requirement notice issued by the regulator under section 630 of the Act. Seqwater and LinkWater did not inform the regulator of the incident within prescribed timeframes and further Seqwater did not report the details of fluoride levels above the prescribed requirements.

Due to the potentially serious nature of the fluoride incident, retrospective application of the cost recovery provisions is considered justified – Seqwater and LinkWater were found to have not complied with the Water Supply Act in circumstances that necessitated an expert investigation.

Consultation

Community and industry stakeholders

With regard to the *Local Government (Aboriginal Lands) Act 1978*, the Aurukun Shire Council and Mornington Shire Council, as the respective lessees, were consulted regarding the proposed lease extensions.

The Department has also written to the respective native title bodies corporate (Ngan Aak Kunch Aboriginal Corporation – Aurukun) and Gulf Region Aboriginal Corporation – Mornington) and the relevant native title representative bodies (Cape York Land Council and Carpentaria Land

Council respectively) about the proposal to extend the leases and to accelerate the transfer process at both localities.

Representatives from the following industry bodies and water entities were consulted in relation to the amendments to the Water Supply Act contained in the Bill: Local Government Association of Queensland, Brisbane City Council, Ipswich City Council, Queensland Water Directorate, Queensland Farmers Federation, Chamber of Commerce and Industry Queensland, AgForce, Australian Industry Group, Urban Development Institute of Australia, SunWater, Water Secure, SEQ Water Grid Manager, Seqwater, LinkWater and Veolia Water.

Government

Representatives from the following Departments were consulted in relation to the Bill:

With regard to the *Local Government (Aboriginal Lands) Act 1978*, the Department of Infrastructure and Planning, as the Department responsible for the *Local Government (Aboriginal Lands) Act 1978*, and the Remote Indigenous Land and Infrastructure Program Office in the Department of Communities, which has a coordination role for developments in remote Indigenous communities were consulted. Both parties support the suggested approach.

With regard to the *Land Act 1994*, the Office of Clean Energy was consulted.

Representatives from the following Departments were consulted in relation to the amendments to the Water Supply Act contained in the Bill: Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General, Department of Infrastructure and Planning, Queensland Health, Department of Employment, Economic Development and Innovation and Department of Community Safety.

With regards to the restructuring of South East Queensland water distribution and retail entities sections of the Bill, the SEQ water sector reforms were first enunciated in *Our Water: Urban Water Supply Arrangement in South East Queensland* published by the Queensland Water Commission in May 2007 (QWC May Report).

The Queensland Government endorsed the recommendations in the QWC May Report and, in September 2007, announced the new model for the SEQ urban water supply industry.

The Queensland Government has continued to consult with SEQ Councils, largely through the COMSEQ on the Reform Program.

In May 2009, COMSEQ was offered the opportunity to submit an alternative reform model which could achieve the policy objectives endorsed by the Government in late 2007 including:

- improved region-wide service delivery to customers;
- economic regulation ensuring least cost services;
- asset regulation ensuring high quality service;
- efficiency gains through economies of scale; and
- commercially focussed entities accountable to Council owners, ratepayers and customers.

COMSEQ proposed an alternative model which provided for the establishment of three separate vertically integrated distributor-retailer entities.

In July 2009, the Government endorsed its principle support for the model and its willingness to work with Councils to deliver the establishment of the three distributor-retailer entities.

On key issues arising from the reforms, the QWC has also consulted with –

- Queensland Treasury about transfer schemes and transfer process;
- Department of Justice and Attorney General – Industrial Relations about the Employee Framework to provide for the transition of staff to the new entities; and
- Crown Law about the statutory formation of the Distributor-retailer entities.

Results of consultation

Community

With regard to the *Local Government (Aboriginal Lands) Act 1978*, all parties expressed support for the proposed approach, provided that transfer processes under the *Aboriginal Land Act 1991* continue as a matter of priority.

Representatives of industry bodies and water entities were generally supportive of the amendments to the Water Supply Act contained in the Bill.

Government

All Departments consulted supported the Bill.

Notes on Provisions

Chapter 1

Part 1 Introduction

Clause 1 provides that the short title of the Act is the *South East Queensland Water (Distribution and Retail Restructuring) and Natural Resources Provisions Bill 2009*.

Clause 2 sets out the commencement dates for various provisions: The intent is that the Act and the amendment of other Acts commence on assent.

Part 2 Purposes and application of Act

Clause 3 and 4 together explain the purpose of the Act and how these are achieved through the legislation:

- improved regional coordination and management of water supply – through restructuring of the water industry by establishing regionally focussed distributor-retailer entities to undertake water and wastewater functions;

- delivering improved services to customers – by providing for the development of a Customer Water and Wastewater Code, which is to be subordinate legislation;
- improving management of water and waste water services – through the establishment of the distributor-retailer entities as separate legal and commercially focused entities subject to the governance of a Board.

Part 3 Interpretation

Division 1 Key Definitions

Clause 5 sets out which local governments apply (ie. participating local governments) to each distributor-retailer entity:

- for the Northern SEQ distributor-retailer Authority – Sunshine Coast Regional Council and Moreton Bay Regional Council;
- for the Central SEQ distributor-retailer Authority – Brisbane City Council, Ipswich City Council, Lockyer Valley Regional Council, Scenic Rim Regional Council and Somerset Regional Council; and
- for Southern SEQ distributor-retailer Authority – Gold Coast City Council, Redland City Council and Logan City Council.

Clause 6 provides that the geographic service area for each distributor-retailer consists of the local government areas of all of its participating local governments.

Division 2 Dictionary

Clause 7 provides that the dictionary in the Schedule of the Bill defines particular words used in the Bill.

Chapter 2

Part 1 **Establishment, functions and powers**

Clause 8 provides that the three distributor-retailer entities are established.

Clause 9 states that the entities are not bodies corporate, and do not represent the State. It also provides that the entities are not constituted by the participants. This means that despite the participation rights of local governments and their ability to deal with these in accordance with their participation agreement, they are not to be treated as members of the entities.

Clause 10 provides that the distributor-retailer entities expire at the end of 99 years after establishment. The assets and liabilities become the assets and liabilities of the participating local governments. A regulation may be made about, amongst other things, the process for distribution of assets and liabilities and also the transfer of employees and their rights to address the expiry of the entities.

Clause 10 provides that a regulation may be established to provide additional detail (including administrative processes) to manage the expiry of the entities. This regulation is not likely to be developed in the immediate future, but would necessarily involve extensive consultation with affected parties.

Clause 11 sets out the primary functions of the entities:

- purchasing water from the SEQ Water Grid Manager;
- distributing water;
- providing water services;
- providing wastewater services;
- charging customers;
- dealing with customers, service requests and addressing any complaints; and
- anything that supports these functions.

Clause 12 sets out the powers of the distributor-retailer entities enabling them to carry out their functions. These include employing staff, acquiring land and fixing charges.

Clause 12 also provides that the distributor-retailer entity may sue and may be sued.

Clause 13 provides that a distributor-retailer can exercise its powers and functions inside or outside Queensland.

Part 2 Application of particular other Acts to distributor-retailers

Clause 14 provides that a distributor-retailer is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. This enables a distributor-retailer to enter into financial arrangements such as borrowing and investing funds.

Clause 14 allows a distributor-retailer entity to operate a deposit and withdrawal account with an overdraft facility without the Treasurer's approval.

Clause 15 provides that a distributor-retailer is a statutory body under the *Financial Accountabilities Act 2009* (FAA).

Clause 15 applies the relevant section of the FAA to a distributor-retailer entity. A participation agreement must provide for the reporting requirements of a distributor-retailer. Where the FAA refers to requirements to report to the Minister this is to be read as a reference to the distributor-retailer reporting to its participants, pursuant to the requirements set out in a participation agreement.

Clause 16 applies the *Crime and Misconduct Act 2001* (C and M Act) to each of the entities. This will provide for action against misconduct. The C and M Act currently applies to local governments. The distributor-retailer entities which are wholly owned by local governments should also be subject to the C and M Act. The Queensland Bulk Water Supply, Bulk Water Transport and Manufactured Water Authorities and the SEQ Water Grid Manager, being statutory authorities, are all subject to the C and M Act.

Clause 17 provides that the *Right to Information Act 2009* (RTI Act) will apply to a distributor-retailer entity. *Clause 15* is consistent with the Queensland Government's decision to provide access to information held by the Government, unless, on balance, it is contrary to the public interest to provide that information. The RTI Act provides for proactive disclosure of information ensuring open and transparent governance. The entity would still be able to restrict commercial-in-confidence information.

Clause 18 recognises that a distributor-retailer is providing a public utility service and, therefore, may, like an electricity entity, have a public utility easement under the *Land Act 1994* and *Land Title Act 1994* to enable it to effectively carry out its functions.

Clause 19 enables the deletion of commercially sensitive matters from the entity's Annual Report before being tabled in the Legislative Assembly.

Part 3 Participation agreements for distributor-retailers

Clause 20 requires the distributor-retailer entities to, as soon as practicable after assent of this Act (but no later than 30 April 2010 – see clause 23), enter into a participation agreement with their participating local governments. A participation agreement must include such matters as:

- who is to have the right to participate in its profits;
- the way distribution of profits is to be approved;
- its internal management – including the appointment of the chairperson;
- corporate planning requirements;
- reporting to its participants;
- the proportions in which local governments are to receive tax equivalents.

A person who has a right to share in the profits has participation rights and is a participant of the entity.

Clause 21 requires that a participation agreement must set out the planning and reporting requirements for the distributor-retailer. The reporting

requirements are to ensure that the entities' owners are sufficiently informed about their operations. A participation agreement must require a distributor-retailer to prepare a 5 year plan. The participation agreement should set out what is required to be addressed in the 5 year plan. These reports and plans are to be in substitution for the operational and strategic plans that would otherwise have been required under the *Financial Accountability Act 2009*.

Clause 22 sets out matters that may be included in a participation agreement. These include process for the transfer of rights, defining the classes of participants, voting rights and Board powers and procedures.

Clause 23 provides a default power for the Minister to make a participation agreement if a distributor-retailer has not made a final participation agreement by 30 April 2010.

Clause 24 provides that a participation agreement takes effect either once the Minister has given notice that that it has been approved, or a date stated in the agreement, whichever date is later.

Clause 25 requires the Minister to table a copy of an approved participation agreement in the Legislative Assembly.

Clause 26 provides that a participation agreement will take effect as a contract between the parties to the agreement, each participant in the distributor-retailer and each member of the board.

Clause 27 provides that this Act prevails in the event of an inconsistency with the participation agreement and this Act.

Clause 28 provides general powers for a distributor-retailer and its participants to amend a participation agreement. The participation agreement itself may include a process for amending the agreement. However, if the agreement does not provide for amendment, the participants may reach agreement on the proposed amendment. Such agreement must be by all participants.

Clause 29 provides that some matters in the participation agreement are restricted matters and so cannot be amended without notice to, and the approval of, the Minister. The Minister must approve changes to the participation agreement that concern:

- changes in participants;
- changes in participation rights;

- changes to the provisions that provide for how the participation agreement can be amended other than by agreement by all the participants; and
- planning and reporting requirements.

Clause 30 requires the Minister to table a copy of an amended participation agreement in the Legislative Assembly within 21 sitting days of having received an amended participation agreement or his having approved the amendment of a participation agreement.

Part 4 Boards of distributor-retailers

Division 1 Establishment, membership and related matters

Clauses 31 to 36 deal with the establishment and roles of boards and board member appointments, including the appointment of the chairperson.

Division 2 Business

Clauses 37 to 42 deal with the conduct of business meeting procedures and disclosure of interests.

Division 3 Financial Management

Clauses 43 deals with the distribution of profits. The participation agreement is to set out how profits are to be distributed.

Part 5 Chief Executive Officer

Clauses 44 to 48 deal with appointment and responsibilities of the Chief Executive Officer (CEO). The CEO is appointed by the distributor-retailer's board and is an employee of the distributor-retailer. However, recognising that in the first instance a board may not be established immediately, Clause 103 enables participating local governments (by a resolution made by all of them) to appoint its first CEO.

Part 6 Reserve powers of participating local governments

Clauses 49 to 51 provide for reserve powers enabling participating local governments to provide written direction to their distributor-retailer. Such a direction must be agreed by the majority of the local governments (as set out in the participation agreement – this must be reasonable and consider the type of majority that is fair and appropriate for the distributor-retailer) and must be in the 'public interest' of the distributor retailer's geographic area and the SEQ region. Before issuing a direction, the participating local governments must seek the views of the distributor-retailer. A distributor-retailer must comply with a direction.

Clause 50 provides that the participating local governments must:

- give a copy of the issued direction to the Minister;
- publish the direction in a relevant newspaper (ie. circulating throughout the distributor-retailer's geographic area); and
- make available the direction for public inspection at the participating local government's public offices.

Part 7 Miscellaneous Provisions

Clause 52 provides for the authentication of documents. A document is sufficiently made if it is signed by the chief executive officer, the chairperson of its board or another person authorised by its board.

Clause 53 provides for the distributor-retailer to delegate its functions and powers to a member of its board, its chief executive officer or an appropriately qualified employee. The board in turn may delegate any of its functions to a committee of members of the board or the distributor-retailer's chief executive officer.

Chapter 3

Part 1 Transfer schemes

Division 1 Making of transfer schemes

Clause 54 provides that a distributor-retailer entity and its participating local governments may enter into an agreement (a transfer scheme) to enable the transfer of assets, liabilities, instruments and employees from SEQ local governments to the new distributor-retailer entities. A transfer scheme has no effect until approved by the Minister.

Clause 55 provides that a transfer scheme cannot have effect after 30 September 2010. It is expected that most of the transfer process will be complete by 1 July 2010 as this is the date that the distributor-retailers will become operational. However, the 3 months after July 2010 allows the local governments or entities to rectify any identified gaps in the transfer process. Sub section (2) makes it clear that this provision does not affect the validity of anything done as a consequence of a transfer or arising from a transfer scheme.

Clause 56 sets out the matters that may be included in a transfer scheme.

Division 2 Approval of transfer scheme

Clause 57 requires the transfer scheme to be approved by the Minister. A distributor-retailer must seek approval in writing and provide a copy of the transfer scheme together with a certification made by local governments confirming that the Scheme meets the requirements of the Act.

Clause 58 sets out the certification requirements with which the local governments must comply. In particular, the local governments must confirm that:

- they have undertaken a due diligence process to identify all essential assets, liabilities and instruments (eg. contracts) and that they have transferred all of the assets, liabilities and instruments that are necessary to enable the distributor-retailers to perform their primary functions and which can be lawfully and practically transferred;
- nothing done as part of the transfer scheme, to the best of their knowledge, materially affects the interests of a third party;
- the transfer of the employees is consistent with the employee transfer requirements of this Act (for example, a staff support framework).

Clause 58 (1)(b)(ii) contemplates that there may be assets, liabilities and instruments that cannot, lawfully or practically be transferred by a transfer scheme. For example, some contracts or regulatory instruments made under Commonwealth laws may not be able to be lawfully transferred. A software licence for business critical software which may be used in relation to local government water functions but also be required for ongoing local government business, may not practically be able to be transferred.

Clause 59 requires the Minister to consider the request to approve a transfer scheme and decide whether or not to approve the scheme.

Clause 60 sets out the process for publishing a gazette notice when the Minister approves a transfer scheme.

Division 3 Miscellaneous provision

Clause 61 provides that the transfer of a liability of an SEQ local government under a transfer scheme discharges the SEQ local government from the liability from the date of transfer. Similar provision is included in the *South East Queensland Water (Restructuring) Act 2007*.

Part 2 Ministerial powers for transition

Clauses 62 to 63 enables the Minister to undertake a range of actions by way of gazette notice (a transfer notice) to assist the transfer process from local governments to the distributor-retailer entities. The intent of these clauses is to enable the Minister to deal with any matters that may not have been addressed in a transfer scheme or to rectify problems that have arisen because of the transfer scheme. Consequently, *Clause 63* provides that a transfer notice is time limited and may only be given within 12 months of the operational date of 1 July 2010.

Clause 64 provides that the transfer of a liability of a SEQ local government under a transfer notice discharges the SEQ local government from the liability. The transfer notice has effect despite any other law or instrument.

Clause 65 enables the Minister to give a transfer direction to address a situation where a local government fails to cooperate in the transfer process and to address any unforeseen or unintended consequences of the transfer process. A transfer direction may be given to:

- a distributor-retailer entity;
- any of its participating local governments;
- a board of the distributor-retailer entity.

It is an offence to not comply with a transfer direction.

Part 3 Provisions facilitating transition

Division 1 General provisions

Clause 66 provides the transfer processes apply despite any other law and instrument. For example, a transfer scheme or transfer notice may transfer a trustee lease under the *Land Act 1994* without written approvals that would otherwise be required for a transfer under section 58 of that Act.

Clause 67 prevents transfer decisions being subject to any challenges, appeal or reviews. The transfer process will have to be effected in very tight timeframes and must be finalised to ensure ongoing provision of water supply and sewerage services to the SEQ community. For this reason it is considered necessary to prevent the Minister's decisions made for the transfer process being subject to any challenges, appeals or reviews.

Clause 68 provides for the effect on various legal relationships of things done under this Chapter relating to the transfer process. For example, transfer processes completed in accord with this Chapter would not make a relevant entity liable for a contravention of a law.

Clause 69 deals with disclosure and use of information for the purposes of the transition to the distributor-retailer entity.

Clause 70 provides for the registering or recording of assets, liabilities or instruments transferred under a transfer scheme or notice.

Clause 70(2) enables a regulation to be made to exempt the distributor-retailer from having to comply with requirements that might arise as a result of the requirements to register or record the transfer. For example, it would be possible under this provision to make a regulation to exempt the distributor-retailer from having to produce safety certificates to enable the registration of the transfer of a vehicle transferred pursuant to a transfer scheme.

Clause 71 provides that for a transfer scheme or transfer notice, a SEQ local government or the distributor-retailer entity will not be liable to pay:

- a tax under the *Duties Act 2001* or another Act;
- a charge or fee under the *Land Act*, *Land Title Act*, *Transport Operations (Road Use Management) Act 1995* or the *Water Act* or another Act.

Division 2 Provisions of other laws and instruments

Subdivision 1 Acquisition of Land Act

Clauses 72 to 74 deal with implications under the *Acquisition of Land Act 1967*. The distributor-retailer takes over the role of constructing authority (from SEQ local governments) where land has or is being resumed.

Subdivision 2 Land Act

Clauses 75 to 76 enable the ‘subdivision’ of land (including trust land) which is used for multiple purposes by local governments. The subdivided land is then able to be transferred to the distributor-retailer entity. In the case where part of the land being transferred is of sufficient area to be allocated as freehold land, a freehold title may be granted without compensation.

Subdivision 3 Development approval and infrastructure agreements

Clause 77 provides for the transfer of development infrastructure from a local government to a distributor-retailer. It makes clear that the transfer does not affect the validity of certain charges, costs levied or conditions imposed by a local government before the transfer, pursuant to the *Integrated Planning Act 1997*. Any amounts payable will continue to be payable. In relation to an event or relevant action that occurs prior to a transfer, that may give rise to an appeal or other action, the local government continues to be the entity which can bring an action or against which an action can be brought, in respect of that appeal or other action.

Subdivision 4 Reconfigurations

Clause 78 enables a distributor-retailer entity to lodge in the land registry, under the Land Title Act, the plan of subdivision for reconfiguring the lot to give effect to the transfer document.

Part 4 Workforce provisions

Division 1 Staff support framework

Clause 79 provides for the Minister to approve a staff support framework ensuring the proper transition and appropriate treatment of affected employees. The Minister must gazette the approval notice and give a copy of the framework to a distributor-retailer, relevant local government and relevant union. The Minister must also publish a copy of the framework.

Clause 80 provides that the staff support framework prevails over a transfer scheme or transfer notice.

Division 2 Preservation of rights of employees

Clauses 81 to 83 deal with the preservation of employees' rights and entitlements. Transferred employees are employed on the same terms and conditions. No employee can be forcibly retrenched because of a transfer scheme or transfer notice.

Part 5 Provisions for separate transfers of land and attached assets

Clauses 84 to 89 only apply where a local government owned land or was trustee of trust land to which an asset is attached and that land or asset is

transferred to the distributor-retailer or the distributor-retailer is appointed as trustee for the trust land. In these circumstances, reasonable rights of access are provided to the asset owner to operate or maintain their asset. The land owner cannot, without the asset owner's written consent, impact on the asset owner's asset. This includes interfering with the asset, changing the use of the land or giving rights to the land to another person that are inconsistent with the asset owner's rights.

Part 6 Provisions for easements

Clauses 90 to 92 include provision to address the shared use of water supply and sewerage easements by the distributor-retailers and SEQ local governments where a local government remains as the grantee of an easement. The provision allows the distributor-retailer to exercise the same rights as a local government and will be subject to the same liabilities and obligations as the local government.

Chapter 4

Part 1 General provisions about code

Clause 93 provides the Minister may make a Customer Water and Wastewater Code (the Code) to provide for rights and obligations of distributor-retailers and their customers. The Code is subordinate legislation and does not have effect until it has been approved by the Governor in Council.

Clause 94 sets out the matters that may be addressed in the Code including minimum and Guaranteed Service Standards.

Part 2 **Process for making or amending code**

Clause 95 details the process to amend the code including public consultation and consideration of written submissions.

Clause 96 requires the Minister to consider all submissions before preparing and approving a final code.

Clause 97 enables the Minister to make minor amendments to the Code without undertaking a public consultation process.

Clause 98 stipulates that a Regulatory Impact Statement need not be prepared for making or amending the code. This is because the Act provides for a comprehensive public consultation process on a draft Code.

Clause 99 provides that a review of the code is to occur within 3 years after the code commences. The review must involve public submissions. The Minister must notify of the review in a newspaper circulating throughout the State.

Chapter 5

Clause 100 requires the distributor-retailer entities to pay tax equivalents to their participating local governments. The Treasurer may issue a tax equivalents manual (the Manual). The Manual could be the Manual that applies to other entities created by local governments under the *Local Government Act 2009*.

Clause 101 states that the Commissioner under the Water Act may approve forms for use under this Act.

Clause 102 states the regulation making power under this Act. This includes applying the provisions of the Corporations Act to a distributor-retailer entity.

Chapter 6

Clause 103 provides that despite clause 45 (Appointment of a Chief Executive Officer), a distributor-retailer's participating local governments may appoint its first chief executive officer. This clause takes into account that it will take some time to appoint a Board which would generally appoint the CEO. The appointment of the CEO is considered an integral step to assist the new entities to commence planning and be ready for commencement of operations.

Clause 104 provides for interim participation agreements. These are a transitional measure to assist participating local governments to be operational from 1 July 2010. It could include such matters as board members and processes for making board decisions or anything that a participation agreement may provide for. These interim participation agreements must end on 30 June 2010. There is no requirement for the Minister to approve an interim agreement but a copy of an interim agreement must be provided to the Minister as soon as practicable after it is made. A board appointed pursuant to an interim agreement does not have to comply with the requirements of clauses 33 (4) to 33(6), but a person's appointment under an interim agreement as a board member ceases on 30 June 2010. They may only be reappointed if they are eligible under the relevant provisions of the Act.

Clause 105 provides that until the Customer Water and Wastewater Code commences the distributor-retailer entity must comply with existing service standards required under the *Water Supply (Safety and Reliability) Act 2007*.

Clause 106 makes clear that as the distributor-retailers are not to be operational until 1 July 2010 they will not be a grid participants under the market rules before that date.

Clause 107 provides that the amendment of the *Statutory Bodies Financial Arrangements Regulation 2007* under this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Chapter 7

Part 1 Amendment of this Act

Clauses 108 to 112 make minor amendments to this Act to fully list the other Acts that are amended by this Act. These clauses also take account that the Natural Resource provisions (which amend other Acts) will be included in this Act.

Part 2 Amendment of Land Act 1994

Act amended

Clause 113 provides that this part amends the *Land Act 1994*.

Amendment s 154 (Minister may approve additional purposes)

Clause 114 amends s 154 to allow for an additional purpose to be added to a lease if the additional purpose is for production of renewable energy. This amendment will allow for an additional purpose other than grazing and agriculture to be approved over large rural leases such as pastoral holdings. Renewal energy projects such as wind farms for the generation of electricity require access to large areas of land and this amendment will allow lessees of these large properties to benefit from this secondary use being established on the land.

Amendment of s 477 (Change of purpose for special lease)

Clause 115 amends section 477 (change of purpose for special lease) by omitting reference to section ‘154(3)’ and inserting a reference to section ‘154(2)’. The amendment is consequential to the amendment made to section 154 by clause 114.

Part 3 **Amendment of Local Government (Aboriginal Lands) Act 1978**

Act amended

Clause 116 provides that part 5 amends the Local Government (Aboriginal Lands) Act 1978.

Insertion of s 3A (Grant of leases to councils)

Clause 117 inserts a new section 3A into the Act which extends each lease granted under section 3 for a period of 31 years from the day that the lease would have expired.

Part 4 **Amendment of South East Queensland Water (Restructuring) Act 2007**

Clauses 118 to 121 make minor amendments to headings in Chapters 2, 3 and 4 of the *South East Queensland Water (Restructuring) Act 2007*.

Part 5 **Amendment of Statutory Bodies Financial Arrangements Regulation 2007**

Clauses 122 to 125 enable the distributor-retailer entity to undertake certain financial transactions – be allocated a category investment power and able to enter into derivative transactions.

Part 6 Amendment of Valuation of Land Act 1944

Act amended

Clause 126 provides that this part amends the *Valuation of Land Act 1944*.

Amendment of s 75M (Valuation operations may be based on existing local government boundaries)

Clause 127 amends section 75M of the VLA to extend the date that the Act can apply to pre-amalgamation local government boundaries from 31 August 2009 until 31 August 2010. On 12 February 2009, the Premier announced that there would be no annual valuations issued for 2009. Accordingly the Department of Environment and Resource Management (DERM) was unable to provide consistent levels of value within the recently merged local government areas by 31 August 2009, as required under section 75M of the VLA.

Insertion of new pt 9, div 4

Clause 128 inserts a new Division 4, section 103 that provides the transitional provision required for the amendment to the VLA. The amendment to the VLA to extend the date for providing consistent levels of value and an amalgamated valuation roll within the recently merged local government areas must have effect from the original expiry date – 31 August 2009. The amendment is considered justified because the need for it is a direct and necessary consequence of a decision made for the benefit of all Queensland rate payers. That decision, made by the chief executive of the former Department of Natural Resources and Water and announced by the Premier on 12 February 2009, was not to revalue the 17 local government areas previously nominated because of the global financial crisis and extreme weather conditions impacting on Queensland landowners. The timing of that decision meant that this amendment was unable to be made in time to avoid some retrospective operation. The retrospective operation is simply to ensure that the VLA continues to operate on pre-amalgamation local government boundaries until consistent levels of value are provided and valuation rolls amalgamated.

Part 7 Amendment of *Water Act 2000*

Clauses 129 to 131 amend the Water Act providing for delegation powers to administer the SEQ Water Market Rules and to request information from Water Service Providers.

Part 8 Amendment of Water Supply (Safety and Reliability) Act 2008

Act amended

Clause 132 provides that this part amends the *Water Supply (Safety and Reliability) Act 2008* (the Act).

Amendment of s 13 (Requirement for service provider to give information)

Clause 133 expands the range of entities from which the regulator can seek information to ensure all entities involved in the supply of recycled water and drinking water are obligated to give the regulator information needed for the purposes of performing the regulator's functions, including for example, in south-east Queensland (SEQ), a distribution service provider, grid service provider, the Water Grid Manager as well as scheme managers for recycled water schemes.

Replacement of s 14 (Annual reports)

Clause 134 replaces section 14 to provide that the regulator may prepare and publish reports and other communications on a more frequent basis than annually. Such publications may take any form of communication and include information obtained by the regulator under the Act. However, the regulator cannot publish information that is commercially sensitive and information that identifies an individual is only permitted to be published to the extent that it names an individual who is a registered service provider. The regulator may also continue to prepare an annual report on the regulator's activities under this section; an annual report must be kept available for public inspection in accordance with section 574 of the Act.

Amendment of s 20 (Who must apply for registration as a service provider)

Clause 135 corrects an error which occurred in relocating these provisions from the *Water Act 2000* (Water Act) to the Act. The amendment clarifies that a sewerage service provider must also be registered as a service provider.

Amendment of 201 (Preparing particular plans)

Clause 136 inserts a requirement for all recycled water schemes supplying recycled water for dual reticulation purposes (generally used for outdoor watering and toilet flushing and/or in washing machines in laundries) to include details of an education and risk awareness program for customers of the scheme as part of the recycled water management plan for the scheme.

These dual reticulation schemes have the potential to result in customers using recycled water inappropriately due to a lack of knowledge or awareness about safe use of the water, for example, some customers may not be aware that recycled water treated to an appropriate quality for dual reticulation purposes should not be used to fill a swimming pool. The requirement for dual reticulation schemes to include details of an education and risk awareness program for customers of the scheme as part of the recycled water management plan for the scheme will address this issue. Continued compliance with the education and risk awareness program will be required through the dual reticulation scheme's approved recycled water management plan and attached conditions.

Amendment of s 263 (Auditor's responsibility to inform regulator)

Clause 137 amends section 263 to replace the word 'affect' with 'effect' in subsection (1) to correct a spelling error.

Amendment of s 302 (Regulator may seek advice about scheme manager)

Clause 138 amends section 302 to enable the regulator to seek information to assist in preparing a declaration. Currently the section provides that the regulator may, before declaring a recycled water scheme to be a critical scheme, seek information from the recycled water providers and other

entities proposed to be declared to be part of the scheme about who the entities agree is the scheme manager for the scheme.

Clause 138(1) amends the section heading to reflect the changes to the section.

Subclause (2) inserts new subsections (2) to (6) to enable the regulator to also seek information about the scheme from the recycled water providers and other entities proposed to be declared as well as the entity proposed to become the scheme manager. This provision is needed to enable the regulator to prepare an appropriate and accurate declaration for the scheme, for example, by identifying and accurately describing the infrastructure forming part of the scheme.

Amendment of s 419 (General powers after entering places)

Clause 139 amends section 419 to correct an error that occurred in relocating these provisions from the Water Act to the Act. The amendment reinstates powers for authorised officers that may be exercised after entering a place under division 1.

Replacement of s 435 (Application of pt 5)

Clause 140 omits the current section 435 (Application of pt 5) and replaces it with a new Division 1 (Preliminary) incorporating new section 435 and creates new Division 2 (Enforcement Provisions).

New Division 1 Preliminary

New Section 435 - Application of pt 5

New section 435 replaces the existing section 435 to include additional circumstances under which powers under part 5 may be exercised to address an adverse effect on public health.

Additional circumstances prescribed for drinking water in this provision, include non-compliance with a condition of a drinking water quality management plan and non-compliance with a notice issued by the regulator under section 630 which relates to monitoring and reporting drinking water quality; and for recycled water, non-compliance with an exemption (from

the requirement to have a recycled water management plan) for a recycled water scheme or conditions of the exemption are included.

In addition, section 435 is amended to provide that the powers under part 5 may be exercised where the regulator is satisfied or reasonably believes that action is necessary to prevent a non-compliance or event from recurring. Certain words which currently describe an event for this section have been omitted to clarify that an event can relate to the operation of a recycled water scheme or drinking water service or can be something external to a scheme or service and an example is given of such a situation.

New Division 2 Enforcement provisions

Amendment of s 436 (Power about preventing or minimising adverse affects—general)

Clause 141 amends section 436 replace the word ‘affect’ with ‘effect’ in the heading and in subsection (1) to correct a spelling error.

Replacement of s 441 (Sections 441–449 not used)

Clause 142 replaces section 441 and inserts a new division 3 (Cost recovery) incorporating new sections 441 to 445.

New Division 3 Cost recovery

Under current section 436 of the Act, the regulator may give directions to any person to take reasonable steps or alternatively take the reasonable steps or authorise an authorised officer to take reasonable steps for the purpose of preventing or minimising an adverse effect on public health in circumstances set out in section 435 of the Act.

Where the regulator gives a direction to take reasonable steps, the person or entity is liable to meet the costs of taking the steps. However, in circumstances where the regulator or authorised officer instead takes the steps there is currently no ability to recover reasonable costs.

The regulator’s power to intervene directly to prevent or minimise an adverse effect on public health will be used in exceptional circumstances

where it is impracticable or inappropriate to give a direction to another person or the person or entity fails to comply with a direction issued by the regulator.

The cost recovery provisions are necessary to ensure that a person or entity reasonably believed to be responsible for the water supply incident may bear the costs associated with preventing or minimising the adverse effect, rather than the State.

New section 441 – Definitions for div 3

New section 441 provides definitions for the division.

New section 442 – Who is a *prescribed person* for a water supply incident

New section 442 states who is a ‘prescribed person’ for the purposes of issuing a cost recovery notice.

A prescribed person in relation to a reasonable belief of non-compliance is the relevant provider. A prescribed person for an ‘event’ that has happened is any of the following:

- a person who caused or permitted the event to happen;
- a person who at the time of the event was—
 - the occupier of a place at which the event happened; or
 - the owner, or person in control, of a contaminant involved in the event.

New section 443 – Regulator may give notice for recovery of costs

New section 443 provides that the regulator may decide to give a cost recovery notice to recover from a prescribed person the reasonable costs of the regulator or an authorised officer taking reasonable steps under section 436 of the Act to prevent or minimise an adverse effect on public health from a water supply incident.

Subsection (4) stipulates information that must be included in a cost recovery notice and requires that an information notice must also be given for the decision of the regulator to give a cost recovery notice to provide a right of appeal against the decision to give a cost recovery notice. A cost

recovery notice cannot be issued if the water supply incident was caused by a natural disaster.

New section 444 – Regulator may recover costs

New section 444 provides that, if a recipient of a cost recovery notice does not pay the amount claimed within 30 days, the regulator may recover the amount and any interest payable from the recipient as a debt. However, costs are not payable where the person is not a prescribed person or where the incident is caused by a terrorist act or other deliberate act of sabotage and the recipient of the notice took all reasonable steps to prevent the water supply incident.

Additionally, a recipient of a cost recovery notice who pays an amount in compliance with the notice but did not cause or permit the incident may recover the amount as a debt from a person who did cause or permit the incident. Therefore, a recipient that has no direct responsibility for the incident is not prevented from taking legal action to recover the amount as a debt from another person who caused or permitted the water supply incident.

New section 445 – Sections 445–449 not used

New section 445 provides that sections 445 to 449 are not used.

Replacement of ch 5, pt 8, hdg (Show cause and compliance notices)

Clause 143 replaces the current heading for chapter 5, part 8 to reflect the addition of cost recovery provisions in the part inserted by the Bill.

Replacement of s 468 (Sections 468–474 not used)

Clause 144 replaces section 468 and inserts a new division 3 incorporating new sections 468 and 469.

New Division 3 Cost recovery

New section 468 – Regulator may engage expert and recover costs

New section 468, subsections (1) and (2) provide that, if the regulator reasonably believes a person is contravening, or has contravened a provision of the Act, and

- the suspected contravention may have an adverse effect on public health; or
- is a matter about which the regulator needs expert advice;

the regulator may engage an expert to undertake an investigation.

Subsection (3) provides that, if after receiving the expert's advice, the regulator still reasonably believes the person is contravening or has contravened a provision of the Act, the regulator may give the person a notice to recover the reasonable costs incurred by the regulator in engaging the expert.

Subsection (4) stipulates the information a notice must include. A notice must include or be accompanied by an information notice if a compliance notice has not already been given in relation to the non-compliance. This provides a person with a right to appeal against the finding of non-compliance at this point in time. If a compliance notice has already been given in relation to the non-compliance a person can appeal the decision to give the compliance notice.

Subsections (5) and (6) provide that if a person does not pay the amount claimed, the regulator may recover the amount as a debt and that the debt bears interest at the rate stated in a regulation. Costs may not be recovered if a person is found to have complied with the Act.

New section 469 – Sections 469–474 not used

New section 469 provides that sections 469 to 474 are not used.

Amendment of s 571 (Regulator may make guidelines)

Clause 145 omits paragraph (a) relating to water efficiency management plans to correct an error and consequently reorders the paragraphs.

Guidelines for these plans are made by the chief executive rather than the regulator.

Amendment of s 572 (Chief executive may make guidelines)

Clause 146 inserts new paragraph (a) relating to water efficiency management plans to correct an error and reorders the following paragraphs. Guidelines for these plans are made by the chief executive rather than the regulator.

Amendment of s 574 (Documents regulator and chief executive must keep available for inspection and purchase)

Clause 147 amends section 574 to clarify that an annual report prepared by the regulator under section 14 of the Act must be made available to the public. This change is necessary because amendments to section 14 contained in the Bill allow the regulator to make or publish reports on a more frequent basis and publish information by way of different media.

Amendment of s 579 (Regulator may share particular information)

Clause 148 amends section 579 to enable the regulator to share particular information with any person or entity as necessary about ‘responsible entities’ which are defined as a recycled water provider or scheme manager or other declared entity forming part of a recycled water scheme, a drinking water service provider and the SEQ Water Grid Manager, for the purposes of preventing or minimising a risk, or potential risk, to public health. Information can also be shared about a drinking water service or recycled water scheme.

The amendment to this section is partly a response to restrictions in the current provisions on the sharing of information, which became evident following the April 2009 fluoride dosing incident, where the regulator sought to provide an expert investigator certain information for the purpose of conducting the investigation, information to other regulatory agencies also for regulatory purposes as well as other service providers. New subsection (1) also allows the regulator to share such information that would identify an individual, which, but for the provision, may be contrary to certain privacy principles of the *Information Privacy Act 2002*.

Amendment of s 629 (Notice requiring entity to have approved drinking water quality management plan)

Clause 149 amends section 629 to replace the word ‘affect’ with ‘effect’ in subsection (1) to correct a spelling error.

Amendment of s 633 (Application of particular provisions—other schemes)

Clause 150 amends section 633 to correct an error in the original provision. The section provides a transitional period in which certain recycled water providers are not required to have an approved recycled water management plan or an exemption granted to lawfully supply recycled water. During the transition period providers are not required to meet certain regulatory requirements. It was intended that once a plan was approved or exemption granted all regulatory requirements would apply, however the provision inadvertently does not provide for this. The amendment corrects this error.

Omission of ch 9, pt 6, hdg (Regulation-making power for transitional purposes)

Clause 151 omits the heading to chapter 9, part 6 as section 635 has expired.

Insertion of new ch 10A

Clause 152 inserts a new chapter 10A.

New Chapter 10A Transitional provision for South-East Queensland (Distribution and Retail Restructuring) Act 2009

New section 637 – Provision for recovery of costs for particular investigations

New section 637 makes provision for the regulator to retrospectively recover the reasonable costs relating to the expert investigation into the

April 2009 fluoride dosing incident. The State commissioned an independent investigation into the cause of the incident and for the provision of advice on any remedial actions required to ensure safe fluoridation operation in the future but at the time did not have powers to recover costs. The provision will allow the State to recover the reasonable costs of the investigation from Seqwater and LinkWater. In these circumstances there is no requirement for a notice to recover costs to include or be accompanied by an information notice, as no appeal right is provided in relation to the decision to give a cost recovery notice in this instance.

Amendment of sch 3 (Dictionary)

Clause 153 inserts a new definition for ‘SEQ Water Grid Manager’ for the purposes of the Bill.

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