

Disaster Readiness Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Disaster Readiness Amendment Bill 2011.

Objectives of the Bill

The Disaster Readiness Amendment Bill 2011 (the Bill) will implement recommendations of the *Queensland Floods Commission of Inquiry Interim Report* (the Interim Report) and improve the State's disaster preparedness ahead of the next wet season.

The Bill amends the following legislation:

- the *Water Act 2000* and the *South East Queensland Water (Restructuring) Act 2007* to provide a regulatory framework that enables the Minister to effect a temporary alteration to the full supply level of a dam with an approved flood manual after having sought advice, through the chief executive, from relevant entities;
- the *Water Supply (Safety and Reliability) Act 2008* to make it clear that the chief executive can include in dam safety conditions a requirement about giving general flood information to residents immediately downstream of dams;
- the *Disaster Management Act 2003* to strengthen and streamline disaster management planning and preparation, response and recovery, including through amending the membership of the State Disaster Management Group, requiring publication of disaster management plans on websites and streamlining extensions of declared disaster situations;
- the *Transport Infrastructure Act 1994* and the *Transport Operations (Road Use Management) Act 1995* to implement amendments designed to reduce the incidence of people driving on flooded or flood-affected roads; and

- the *Sustainable Planning Act 2009* to ensure that repairs to community infrastructure other than buildings, for example, roads and bridges, that is damaged because of an emergency, such as a natural disaster or accident, can be carried out as quickly as possible to restore the functionality and safety of the infrastructure.

Reasons for the Bill

On 17 January 2011, the Queensland Floods Commission of Inquiry (the Commission) was established to examine Queensland's flooding disasters of 2010-11. The Commission's terms of reference were to review disaster management preparations by all levels of government and the community, and all aspects of the response to the 2010-11 floods.

On 1 August 2011, the Commission released the Interim Report, which made 175 recommendations focused on flood preparedness to enable early recommendations to be implemented before the next wet season.

On 23 August 2011, the Premier and Minister for Reconstruction released the *Queensland Government Response to the Floods Commission of Inquiry Interim Report*, which supported all recommendations relevant to the State Government, and committed to working collaboratively with other levels of government and the community to improve disaster preparedness.

The Interim Report made a number of recommendations which require legislative amendment to fully implement. The Bill has been developed to implement the State's legislative response to the Interim Report and to effect other improvements to the disaster management framework in advance of the next wet season.

Achievement of the Objectives

The Bill is an omnibus Bill which includes amendments to water, disaster management, transport and planning legislation.

Water Act 2000

The Commission examined the processes undertaken to temporarily reduce the full supply level of dams in south east Queensland for the purposes of flood mitigation in October 2010 and February 2011, and found that reform of the process was necessary. In particular, the Commission found that decisions on who should provide what advice to the Minister during

consideration of full supply level should not be left to water agencies and water entities to determine.

The Commission's recommendations included:

- It should be accepted that control over temporary alteration of the full supply level of Wivenhoe, Somerset and North Pine dams is solely the function of the Queensland Government acting through the responsible Minister (Recommendation 2.2).
- The regulatory framework by which the responsible Minister can effect a temporary alteration to full supply level should be simplified (Recommendation 2.3).
- For the purposes of making any decision about a temporary alteration to full supply level, the Minister should receive advice from:
 - Seqwater, as to the flood mitigation impacts of such an alteration;
 - the Water Grid Manager, as to the security of water supply implications of such an alteration;
 - the Queensland Water Commission (QWC), as to both the flood mitigation impacts and the security of water supply implications of such an alteration; and
 - DERM as to an analysis of the above advice, its own advice as to dam safety, the regulatory framework and any other matter within its expertise (Recommendation 2.4).

The Bill amends the *Water Act 2000* to implement these recommendations. The provisions of the Bill will apply to dams where a resource operations licence has been granted in accordance with a resource operations plan and for which a flood mitigation manual is required under the *Water Supply (Safety and Reliability) Act 2008*. Currently, manuals are only required for Wivenhoe, Somerset and North Pine dams.

In line with the Commission's recommendations, the Bill makes it clear that the ultimate decision whether to alter the full supply level of dams in south east Queensland is one for the accountable Minister, based on advice from the chief executive. The Minister may decide to review the full supply level for a dam based on considerations including, for example, meteorological forecasts and the public interest. It is intended that generally this would occur as a result of the seasonal outlook issued by the Bureau of Meteorology indicating a potential emergency situation for the

season under consideration. If the Minister decides to initiate the process, the Minister must seek the advice of the chief executive.

Prior to providing a recommendation to the Minister, the chief executive is given the power to require that the operator of the relevant dam (Seqwater, for dams that will be covered by the Bill) must provide information regarding the impacts and effects of an alteration of the full supply level.

The Bill also requires that the chief executive, before making a recommendation to the Minister, must consult with relevant entities. In south east Queensland, this will be the QWC which, before providing the advice, must seek advice from:

- Seqwater regarding the extent to which the proposed temporary full supply level is likely to minimise the impacts of potential flood or drought; and
- the Water Grid Manager regarding the impacts of the proposed temporary full supply level on water security.

Outside south east Queensland, the chief executive must consult with:

- the QWC (if it is an area in which the QWC is designated by the Minister to perform its functions) which, before providing the advice, must seek advice from the operator of the dam and any other entity responsible for operating the dam; otherwise
- the operator of the dam and any other entity responsible for operating the dam.

The chief executive, in providing advice to the Minister, must consider a range of matters, including the advice provided by the dam operator, the extent to which the proposed temporary full supply level is likely to mitigate the impacts of a potential flood or drought, possible impacts on water security and the safety of the dam, and other positive or negative effects, for example, impacts on public safety and environmental, social and economic impacts downstream of the dam.

After receiving a recommendation from the chief executive, the Bill empowers the Minister, by gazette notice, to alter the full supply level for the dam for a period of no longer than six months, for the purpose of mitigating the effects of a potential developing flood or drought situation. The Minister may make further notices after the expiry of the first notice. Before making each subsequent notice, the Minister must first seek advice as set out above.

If the alteration to the full supply level will be above the previous 100% level, the Bill requires the chief executive to review and make necessary amendments to dam safety procedures for the relevant dam to apply whilst the level remains altered.

The Bill also includes minor consequential amendments to the *Water Act 2000* and *South East Queensland (Restructuring) Act 2007* to confirm the role of the QWC, the Water Grid Manager and Seqwater in providing relevant advice to inform the Minister's decision.

Water Supply (Safety and Reliability) Act 2008

In its Interim Report, the Commission found that residents living immediately downstream of dams require warnings from dam operators because spillway outflow can increase quickly as the result of heavy rain in the catchment.

The Commission's recommendations were:

- Dam operators should plan to contact people identified by their emergency action plans about dam outflow in sufficient time for them to be able to respond to the information (Recommendation 4.16).
- Dam operators should ensure each emergency action plan includes a clear statement as to the frequency of, and circumstances in which, warnings will be issued to people listed in the emergency action plan (Recommendation 4.17).
- Dam operators should assess the effectiveness of using SMS and/or email as a bulk instantaneous communication to all people on the notification list while individually contacting those whom it is essential to inform immediately (Recommendation 4.18).
- The operator of each dam should, upon request, provide to any person on the notification list in the emergency action plan an explanation of the arrangements as to the type and frequency of communications required by that plan (Recommendation 4.20).
- Operators of dams should assess their current compliance with the Department of Environment and Resource Management (DERM) Queensland Dam Safety Management Guidelines (February 2002), the Australian National Committee on Large Dams (ANCOLD) Guidelines on Dam Safety Management (August 2003), and the Australian Government Emergency Management Planning for Floods Affected by Dams (2009) and if appropriate, comply with those guidelines (Recommendation 4.21).

- Operators should include in their emergency action plan a description of the type of information that will be provided to those on the notification list (Recommendation 4.22).
- Operators of dams should publicise, in a newspaper circulating in the local area and by posting a notice on its website every year before the wet season, the opportunity for local residents immediately downstream of a dam to be included on the existing notification list, and:
 - consider whether an applicant for notification is so close to the dam that the warning time before water from the dam affects them is less than that available through the emergency management system
 - consider whether they can be effectively notified by SMS or email
 - if it is necessary to contact the applicant personally, agree with him or her a mode for that communication (Recommendation 4.23).
- The operator of any referable dam and the local disaster management group should develop a common understanding as to their respective roles in a flood event and the type and frequency of information the dam operator will provide to it and local residents (Recommendation 4.24).

The Bill amends the *Water Supply (Safety and Reliability) Act 2008* to reflect the Commission's finding that residents living immediately downstream of dams require warnings from dam operators because spillway outflow can increase quickly as the result of heavy rain in the catchment.

The Commission's recommendations apply to the owners of all (106 in total) referable dams. The Bill provides the chief executive with the power to impose an obligation (by way of a dam safety condition) on owners of referable dams to provide information about flow events to residents downstream of dams. Currently, information provision requirements in the Act only require the owners of dams to provide information to the chief executive for the purpose of regulating the safety of dams.

It is envisaged that a guideline will be prepared and cover matters such as:

- the type of information that a referable dam owner will be required to provide to residents downstream of dams for the purpose of providing warnings and the way in which this information is to be provided; and
- a requirement, where appropriate, for referable dam owners to advertise for people who wish to be provided with such information, and to maintain/update a register of such people. If, for example, all of the residents immediately downstream of the dam reside on the owner's property, then there would be no need to advertise.

Disaster Management Act 2003

The Commission made a number of recommendations relating to the State's disaster management arrangements under the *Disaster Management Act 2003*. The Commission's recommendations included:

- The state disaster management group should include representatives of the Australian Defence Force and the Australian Red Cross in its planning and preparation for the next wet season (Recommendation 3.1).
- Every local government should publish its disaster management plan (and relevant sub-plans) on its website before the next wet season (Recommendation 3.6).
- Local, district and state disaster management groups should include essential services providers in their disaster planning and preparation and in their meetings at an early stage during disasters (Recommendation 6.1).

The Bill therefore amends the *Disaster Management Act 2003* to expand the membership of the State Disaster Management Group (SMDG) to include representatives of the Australian Defence Force and the Australian Red Cross Society. In addition, it is proposed to further expand the membership of the SDMG to include representatives of the Bureau of Meteorology and Surf Life Saving Queensland. These external representatives will ensure that input from relevant agencies can be incorporated into the SDMG's functions to strengthen disaster management planning.

The Bill also places a legislative obligation on each local government to publish a copy of its disaster management plan on its website. In order to increase the accessibility to disaster management plans at all levels, provide consistency across the *Disaster Management Act 2003* and engage in good practice, it is proposed to extend the requirement to publish

disaster management plans to both the State and district disaster management groups.

The Bill inserts a new provision into the *Disaster Management Act 2003* which requires that the chairperson of a disaster management group must consult with an essential services provider if the group considers the provider of the essential services can help the group perform its functions.

In addition to implementing recommendations for legislative change from the Interim Report, the Bill includes amendments to the *Disaster Management Act 2003* to improve and streamline disaster management arrangements in Queensland. These amendments will:

- clarify that a declaration extending the period of the initial disaster situation commences on the expiration of the initial disaster period, not the date the regulation extending the period of the initial disaster period is made;
- allow the Premier and Minister to extend a disaster situation in the event that it is not practicable to make a regulation; and
- specify that district disaster management groups are to review and assess the local disaster management plans of local disaster management groups.

Transport Infrastructure Act 1994 and Transport Operations (Road Use Management) Act 1995

The Bill contains amendments which are designed to minimise the incidence of people driving on flooded or flood-affected roads. The Bill amends section 46 of the *Transport Infrastructure Act 1994* to:

- streamline content requirements for ‘restricted road use notices’ to ensure these signs can be erected in a timely manner in response to a threat presented by an event such as floodwaters;
- allow the chief executive and the Commissioner of Police (or their delegate) to grant a person written approval to drive past a restricted road use notice in limited circumstances (for example, to deliver supplies to a flood-affected area);
- deal appropriately with civil liability for decision-makers who issue an approval to drive past a restricted road use notice; and
- allow road workers carrying out road inspection or repair duties to travel past a restricted road use notice.

Amendments to the *Transport Operations (Road Use Management) Act 1995* will allow transport inspectors (who are employed by the Department of Transport and Main Roads) to stop any type of vehicle, including cars, to enforce a restricted road use notice and to require drivers to produce their driver licence. Currently, transport inspectors can exercise these powers only for heavy vehicles. The amendments will also provide these powers in relation to “No Entry” signs which may also be used to close flooded roads. These changes will ensure transport inspectors are available to assist police in enforcing road restriction and road closure provisions for all types of vehicles in flooding situations and other critical events.

Sustainable Planning Act 2009

Finally, the Bill proposes amendments to clarify and expand the scope of the emergency exemption provisions under the *Sustainable Planning Act 2009*, to facilitate urgent repairs to community infrastructure such as roads and bridges damaged because of an emergency or natural disaster.

The Bill expands the scope of the emergency exemption provisions to community infrastructure that is not a building. This will result in allowing work or development to be carried out in an emergency, enabling necessary repairs to be carried out in a timely manner and without firstly having to obtain any required development approvals under the *Sustainable Planning Act 2009*.

Alternative Ways of Achieving Objectives

Legislative amendment is necessary to fully implement the Interim Report recommendations and other improvements to the State’s disaster management framework.

The amendments to the *Water Act 2000* are necessary to create the new regulatory framework by which the Minister may alter the full supply level of dams as recommended by the Commission. The amendments to the *Water Supply (Safety and Reliability) Act 2008* are necessary to create obligations for owners of referable dams to provide warnings to residents immediately downstream about outflows, as a result of flooding, from the dam. Relying on voluntary compliance is not considered adequate to ensure achievement of the policy objectives.

The amendments to the *Disaster Management Act 2003* are necessary as the Act provides the legislative framework for disaster management in Queensland, including setting the membership of the SDMG. A legislative approach acknowledges the important contribution that key organisations

and essential services providers can make to disaster management in Queensland, ensures that communities have access to disaster management plans at the State, district and local levels and provides a more flexible and responsive approach in extending a disaster situation.

Amendments to transport legislation and the *Sustainable Planning Act 2009* are necessary to implement changes to the existing legislative framework.

Estimated Cost for Government Implementation

The Department of Environment and Resource Management will receive additional funding to undertake a range of actions as recommended in the Interim Report, including reviewing actions relating to temporary alteration of full supply levels of Wivenhoe and Somerset Dams; and enhanced oversight of dam operators' emergency action plans.

Any costs associated with implementing the amendments to disaster management, transport and planning legislation will be met within existing budget allocations.

Consistency with Fundamental Legislative Principles

The Bill has been drafted having regard to fundamental legislative principles, and departures from these principles are outlined below.

Water Act 2000

The proposed new section 32 of the *Water Act 2000* includes a new offence and penalty for a dam operator failing to comply with the requirements of the chief executive to provide information about the impact of a proposed temporary full supply level on the safety of the dam and how the dam operates. By including a new penalty, it is arguable that this provision fails to have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(2)).

The provision is considered justified because the information being sought from the dam operator under this provision is essential to the Minister's decision whether to declare a temporary full supply level. The declaration of a temporary full supply level would be made prior to a potential emergency situation in order to mitigate the effects of an impending flood or drought.

The level of the new penalty, at 200 penalty units, is considered appropriate as it is commensurate with other penalty provisions in the *Water Act 2000* for failure to provide information. In addition, the new penalty includes safeguards to protect the rights of the dam operator by providing that the penalty will only apply where the operator does not have a reasonable excuse for failing to provide the advice. The provision does not include an express protection against self-incrimination as, in practice, only corporations, rather than individuals, would be subject to this provision. The provisions will only apply to dams where a resource operations licence has been granted in accordance with a resource operations plan and for which a flood mitigation manual is required. Currently, manuals are only required for Wivenhoe, Somerset and North Pine dams.

The proposed new section 34A of the *Water Act 2000* empowers the Minister to declare a temporary full supply level for a relevant dam. No appeal rights are provided in relation to the Minister's decision. Arguably, the lack of appeal rights fails to make rights and liberties, or obligations that are dependent on administrative power subject to appropriate review (*Legislative Standards Act 1992*, section 4(3)(a)).

The provision is considered justified because the power to declare a temporary full supply level is exercised prior to a potential emergency situation in order to mitigate the effects of an impending flood or drought. The alteration to full supply level must therefore be implemented quickly. The delay that would be caused by allowing for an appeal would potentially put the community near the relevant dam at significant risk. Given this, the rights of the community as a whole are considered to outweigh rights of individuals in this situation.

The proposed new section 34E of the *Water Act 2000* provides that no compensation is payable as a result of declaring a temporary full supply level. It is possible that a reduction in the full supply level of the dam may impact on water allocation holders, particularly where the dam remains at the lower level for a significant period, due to, for example, conditions remaining much drier than those forecast by the Bureau of Meteorology at the beginning of the wet season. This provision arguably infringes the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(2)).

The provision is considered justified because the public interest in ensuring public safety and mitigation of damage to property in the event of flooding, and loss to the community through water shortages in time of drought,

override the interests of individuals that may suffer loss as a result of the provisions.

In addition, the decision to alter the full supply level will be made on the basis of the best scientific evidence of emerging weather patterns that are available at the time. Any loss suffered would be the result of changes to weather patterns that could not have been predicted rather than the result of any government policy.

Disaster Management Act 2003

The proposed new sections 67A and 72A of the *Disaster Management Act 2003* would allow an extension to a disaster declaration without a regulation being made which potentially infringes on the rights and liberties of individuals through authorising the use of extraordinary powers during a disaster situation. These provisions also potentially infringe on fundamental legislative principles by allowing the delegation of legislative power (*Legislative Standards Act 1992*, sections 4(3)(g) and 4(4)(a)).

However, powers can only be exercised during a declared disaster situation and only for the purpose of preventing or minimising loss of life or damage to property, ensuring public safety or order, or in preparing for, responding to or recovering from a disaster. This provides assurance that powers will only be used where necessary in a disaster context and not for any other purpose. Importantly, the power to extend is only vested in the Premier and Minister, even if the initial declaration was made by the district disaster coordinator.

There is also an existing safeguard in sections 68 and 73 that requires the Minister, or the Minister and Premier, to end a disaster situation declaration once satisfied that it is no longer necessary. In addition, any extension approved by the Premier and Minister may only occur when it is not practicable for the extension to be approved by regulation, and must not be for a period of more than seven days.

Transport Infrastructure Act 1994

Amendments to the *Transport Infrastructure Act 1994* provide a protection from civil liability for the chief executive or police commissioner (or a delegate of these officers) who issue an approval for a person to travel past a restricted road use notice. This may raise fundamental legislative principle considerations by conferring immunity from proceedings (*Legislative Standards Act 1992*, section 4(3)(h)). The amendments provide civil liability does not attach to these decision-makers for giving an

approval if the approval was given in good faith without reckless disregard for the possible occurrence of personal injury or loss or damage to property. Flood events are by their very nature unpredictable and there is a very broad range of circumstances in which a person may apply to travel past a restricted road use notice. In these circumstances, it is appropriate to provide some protection from personal liability for decision-makers.

Importantly, however, where this provision prevents a decision-maker being held personally liable, that liability will instead attach to the State. By ensuring that any liability is transferred to the State, the amendments have sufficient regard to the rights of individuals.

The amendments provide that a person who has been granted an approval may drive past a restricted road use notice without committing an offence. Similarly, a road worker undertaking road inspection or repair duties may legitimately drive past such a notice. This potentially raises fundamental legislative principle considerations as a person who wants to avoid liability bears the onus of proving that they fall within these grounds (*Legislative Standards Act 1992*, section 4(3)(d)). However, any potential impact on a person's rights is considered justifiable as the information necessary to prove these circumstances is peculiarly within the person's knowledge.

Transport Operations (Road Use Management) Act 1995

The proposed amendments to the *Transport Operations (Road Use Management) Act 1995* provide transport inspectors with the power to stop private vehicles (for example, a car) to enforce restricted road use notices and "No Entry" signs. Transport inspectors currently have limited powers to stop private vehicles to enforce certain transport offences but these powers may only be exercised during daylight hours (see section 31(2A) and (2AA) of the Act). However, as dangerous flooding situations and other critical events can arise at any time, it is important that these powers are able to be exercised both during the day and night. Any potential infringement of individual rights is considered justified in light of the overriding safety considerations for the community as a whole.

Consultation

The Commission called for submissions and conducted public consultation and hearings in undertaking its inquiry into the 2010-11 flooding disasters. The Commission received more than 660 public submissions, held community meetings with flood-affected communities and conducted

formal hearings, including in regional areas, in formulating the Interim Report's recommendations.

In developing the Bill, the Government has conducted consultation with relevant stakeholders.

All referable dam owners, and local governments downstream of referable dams, have been advised of the Commission's recommendations and the Queensland Government's response. Consultation has taken place with Seqwater, SunWater, the Queensland Farmers' Federation, and the Local Government Association of Queensland (LGAQ) on the draft regulatory guideline that will give practical effect to the recommendations affecting dam owners. SunWater, Seqwater and LGAQ have been generally supportive of the proposed approach. The Queensland Farmers' Federation has expressed concern at the potential cost impact on its members and advised that it will seek to have its concerns raised through the parliamentary committee that will review the Bill. The Department of Environment and Resource Management will give consideration to providing exemptions in appropriate situations, for example, where all of the residents immediately downstream of a dam reside on the owner's property. It is likely this will be undertaken on a case-by-case basis and negotiated with the owner of the dam.

Consultation regarding the proposed amendments to the *Disaster Management Act 2003* was undertaken with the organisations which will be represented on the SDMG, namely the Australian Defence Force, the Australian Red Cross Society, Surf Life Saving Queensland and the Commonwealth Bureau of Meteorology.

Consultation regarding the proposed amendments relating to road closures and road restrictions was undertaken with the LGAQ, the Royal Automobile Club of Queensland Limited and the Queensland Trucking Association Limited, who support the amendments.

Consultation regarding the proposed amendment to the *Sustainable Planning Act 2009* was undertaken with key State agency infrastructure providers, who support the amendment.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, but is not inconsistent with legislation of the Commonwealth or other states or territories.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill as the Disaster Readiness Amendment Bill 2011.

Part 2 Amendment of Disaster Management Act 2003

Clause 2 provides that part 2 amends the *Disaster Management Act 2003*.

Clause 3 amends section 19 (Membership) to expand the membership of the State Disaster Management Group to include representatives of the Australian Defence Force, the Australian Red Cross Society, Surf Life Saving Queensland and the Commonwealth Bureau of Meteorology. The representatives of these organisations will be appointed by the Governor in Council and must be appropriately qualified to provide advice to the group regarding their organisation's role in contributing to disaster management. This amendment implements recommendation 3.1 of the Interim Report, that the SDMG should include representatives of the Australian Defence Force and the Australian Red Cross in its planning and preparation for the next wet season.

Clause 4 amends section 23 (Functions) to provide that a function of a district disaster management group includes reviewing local disaster management plans for local groups within the district.

Clause 5 inserts a new part 2, division 7 (Requirement for disaster management groups to consult) into the *Disaster Management Act 2003*. The new section 48A (Essential services providers) will require the chairperson of the State, district and local disaster management groups to consult with essential services providers in circumstances where providers can assist the group in performing its functions. This may include inviting essential services providers to participate in disaster planning and preparation and meetings at an early stage during disasters. Essential

services providers may include gas, electricity, telecommunications, water and sewerage infrastructure providers.

This amendment implements recommendation 6.1 of the Interim Report, that local, district and state disaster management groups should include essential services providers in their disaster planning and preparation and in their meetings at an early stage during disasters.

Clause 6 amends section 52 (Plan to be available for inspection etc) to require the chairperson of the State Disaster Management Group to ensure that a copy of the State Disaster Management Plan is available on the department's website. Under the *Disaster Management Act 2003* the 'department' refers to the department that administers the *Disaster Management Act 2003*. Subsection 52(2) requiring the plan to be made available in written or electronic form is omitted as it is considered that this provision is now obsolete.

Clause 7 amends section 56 (Plan to be available for inspection etc) to require district disaster management groups to make a copy of their district disaster plan available on the website of the Queensland Police Service and other places deemed appropriate by the chairperson of the group. Subsection 56(2) requiring the plan to be made available in written or electronic form is omitted as it is considered that this provision is now obsolete.

Clause 8 amends section 60 (Plan to be available for inspection etc) to require the chief executive officer of a local government to make a copy of the local disaster management plan available on the local government's website. Minor renumbering is included to reflect this addition. Consistent with similar provisions, subsection 60(2) is omitted as it is considered that this provision is now obsolete.

This amendment addresses recommendation 3.6 of the Interim Report by creating a statutory obligation for local governments to publish local disaster management plans on websites. The inclusion of requirements for State and district disaster management groups to publish plans on websites will promote consistency with the new requirements applying to local governments.

Clause 9 amends section 66 (Duration) to insert a new subsection 66(b)(ii) into the *Disaster Management Act 2003* which reflects the insertion of a new section 67A allowing for the extension of an initial disaster situation beyond 14 days in certain circumstances.

Clause 10 amends section 67 (Extending disaster situation) to require that a regulation extending a disaster period must state the period by which the situation is extended and the date of previous extensions. This amendment is intended to clarify that the extension period of 14 days does not commence from the date the regulation extending the period of the disaster situation is made.

Clause 11 inserts a new section 67A (Declaration extending disaster situation) into the *Disaster Management Act 2003*.

Decisions regarding whether a disaster situation should be extended should ideally be made at the appropriate time in the period prior to its expiry. To ensure that powers under the *Disaster Management Act 2003* are not exercised unnecessarily and without appropriate authority, subsections 67A(1) and (2) provide the Minister and Premier with the power to extend or further extend a disaster situation in the absence of a regulation, if satisfied the disaster situation should be extended and it is not practicable to make a regulation before the disaster declaration expires.

Subsection 67A(3) sets out the administrative requirements for the declaration and provides that the declaration cannot be for a period of more than seven days.

Subsections 67A(4) and (5) provide that the declaration must be gazetted as soon as practicable after the extension is declared and that the gazette notice must include the time and date of the declaration.

While subsection 67A(6)(a) provides that a declaration made under this section may be made more than once for a particular disaster situation, subsection 67A(6)(b) provides that declarations (without regulation) cannot be made consecutively. This provision reflects the intention that this type of declaration is only to be used sparingly.

Clause 12 amends section 71 (Duration) of the *Disaster Management Act 2003* to insert a new subsection 71(b)(ii) which reflects the insertion of a new section 72A allowing for the extension of an initial disaster situation beyond 14 days in certain circumstances.

Clause 13 amends section 72 (Extending disaster situation) to replicate section 67 and ensure that a regulation extending a disaster situation must state the period by which the situation is extended and the date of previous extensions.

Clause 14 inserts a new section 72A (Declaration extending disaster situation) into the *Disaster Management Act 2003*.

Subsections 72A(1) and (2) replicate powers in the new subsections 67A(1) and (2) to provide that the Minister and Premier may extend or further extend a disaster situation in the absence of a regulation if satisfied the disaster situation should be extended and it is not practicable to make a regulation before the disaster situation expires.

Subsection 72A(3) sets out the administrative requirements for the declaration and provides that the declaration cannot be for a period of more than seven days.

Subsections 72A(4) and (5) provide that the declaration must be gazetted and that the gazette notice must include the time and date of the declaration.

Subsections 72A(6)(a) and (b) mirror the provisions in section 67A to provide that while a declaration made under this section can be made more than once for a particular disaster, the declaration cannot be made consecutively.

Part 3 Amendment of South East Queensland Water (Restructuring) Act 2007

Clause 15 provides that part 3 amends the *South East Queensland Water (Restructuring) Act 2007*.

Clause 16 amends section 9 (Functions of new water entities other than the water grid manager) consequential to amendments being made by this Bill to the *Water Act 2000*. These amendments require the water chief executive to consult, through the Queensland Water Commission, with Seqwater regarding the flood or drought mitigation impacts of any proposed alteration of the full supply level dams having approved flood mitigation manuals (currently, Wivenhoe, Somerset and North Pine dams). The amendment to section 9 confirms that it is a function of Seqwater to provide the advice if requested by the water chief executive under the *Water Act 2000*.

Clause 17 amends section 10 (Functions of the water grid manager) consequential to amendments being made by this Bill to the *Water Act 2000* that require the water chief executive to consult, through the

Queensland Water Commission, with the Water Grid Manager regarding the security of water supply impacts of any proposed alteration of the full supply level of dams having approved flood mitigation manuals (currently Wivenhoe, Somerset and North Pine dams). The amendment to section 10 confirms that it is a function of the Water Grid Manager to provide the advice if requested by the chief executive under the *Water Act 2000*.

Clause 18 amends section 76 (Automatic transfer of instruments relating to transferred works) to omit the definition of “water chief executive”. The omission is being made as the term is being moved to the dictionary because it will be used in other parts of the Act as a result of the expanded functions of Seqwater and the Water Grid Manager being made by this Bill.

Clause 19 amends schedule 3 (Dictionary) to insert the definition of “water chief executive” consequential to the amendment to section 76. The definition is being moved from subsection 76(7) because it will be used in other parts of the Act as a result of the expanded functions of Seqwater and the Water Grid Manager being made by this Bill.

Part 4 Amendment of Sustainable Planning Act 2009

Clause 20 provides that part 4 amends the *Sustainable Planning Act 2009*.

Clause 21 amends section 584 (General exemption for emergency development or use) to expand the general emergency exemption to include development or use necessary because of an emergency, including a natural disaster, in relation to the operation or safety of community infrastructure that is not a building. The intent of the provision is to ensure that the emergency development or use can be carried out without having to firstly obtain any required development approval.

The current provision limits the exemption to development or use because of an emergency endangering the life or health of a person, or the structural safety of a building. The natural disasters in Queensland in 2011 highlighted the need to extend the scope of the exemptions to ensure emergency repairs may be carried out to community infrastructure that is not a building, such as roads, bridges, pipelines and powerlines, in order to reconnect, make safe or restore the function of the infrastructure as quickly as possible.

Clause 22 amends section 585 (Coastal emergency exemption for operational work that is tidal work) to enable the emergency exemption provision to extend to emergency operational work (tidal work) to ensure the operation or safety of community infrastructure that is not a building, such as a bridge, jetty or seawall, is not endangered by a coastal emergency.

The intent of the provision is to enable emergency work or repairs to the community infrastructure to avoid damage, make it safe or restore its function as quickly as possible, while ensuring safety measures are implemented, without firstly having to obtain a development approval. The provision requires the person carrying out the work to make a development application or request for compliance assessment required for the work as soon as practicable after starting the emergency work.

Clause 23 amends section 586 (Exemption for building work on Queensland heritage place or local heritage place) to enable the emergency exemption provisions to extend to emergency building work carried out on a Queensland heritage place or a local heritage place, required because of an emergency endangering the operation or safety of community infrastructure that is not a building. Community infrastructure that is part of a Queensland heritage place or a local heritage place may include, for example, bridges, roads, and rest areas.

The intent of the provision is to enable emergency building work (including demolition) to be carried out as quickly as possible, while ensuring the work is necessary and the impact on heritage significance is reversible or limited to the extent practicable, without firstly having to obtain a development approval. The provision requires the person carrying out the building work to make a development application or request for compliance assessment required for the work as soon as practicable after starting the emergency work.

Part 5 Amendment of Transport Infrastructure Act 1994

Clause 24 provides that part 5 amends the *Transport Infrastructure Act 1994*.

Clause 25 amends section 46 (Temporary restrictions on use of State-controlled roads) of the *Transport Infrastructure Act 1994* to streamline the requirements for a “restricted road use notice”.

A restricted road use notice may be installed if the chief executive considers that it is necessary to prevent damage to road transport infrastructure or to ensure the safety of road users and other persons. The notice may declare that a State-controlled road is temporarily closed to all traffic or traffic of a particular class (see existing subsection (1)(a)).

Clause 25(1) and (2) remove the requirement to include on the notice details about the limits of the road to which the notice applies and the period for which the notice applies. The section, however, retains the requirements that the notice be erected or displayed on the road to which the notice applies and that the notice be easily visible to persons using the road. The notice must also state how the use of the road is restricted. This could be, for example, by temporary closure of the road or by imposing a weight restriction on vehicles using the road. The notice must also state the maximum penalty for failing to comply with the notice.

Clause 25(3) clarifies that the offence in subsection (4) will be committed when a person drives past the notice in contravention of a restriction on the notice. The amendment also provides that a person acting in accordance with a written approval to travel past a notice and a person carrying out road works or road inspection duties for the chief executive will not commit an offence when travelling past a restricted road use notice (new subsections (4)(b) and (4)(c)). These circumstances are in addition to the existing provision which provides for a person who has a reasonable excuse to travel past a notice (subsection (4)(a), as renumbered).

New subsection (4)(b) includes a note which puts beyond doubt that a written approval can be given by text message, email or fax. These means of communication may be required to issue an approval in emergency situations.

Clause 25(4) amends subsection 46(6) to refer directly to a contravention of the requirement contained in subsection (4) rather than to a contravention of the declaration under subsection (1). Clarifying the provision in this manner will ensure that there is no overlap between subsection (6) and the new subsection (7).

Clause 25(6) inserts new subsections (7) and (8) into section 46. These provisions deal with civil liability in proceedings arising out of, or in connection with, the giving of an approval to drive past a restricted road use

notice. Subsection (7) provides that civil liability does not attach to departmental officers for giving an approval mentioned in subsection (4)(b) if the approval was given in good faith and without reckless disregard for the possible occurrence of the personal injury or loss or damage to property from which liability would arise, if this new subsection (7) did not apply. However, subsection (8) provides that where subsection (7) prevents an officer being held personally liable that liability will instead attach to the State.

Part 6 **Amendment of Transport Operations (Road Use Management) Act 1995**

Clause 26 provides that part 6 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 27 amends section 31 (Power to stop private vehicles) of the *Transport Operations (Road Use Management) Act 1995*. Section 31 allows authorised officers who are not police officers to require the person in control of a private vehicle (for example, a car) to stop the vehicle in certain circumstances. Authorised officers who are not police officers are known as transport inspectors and are employed by the Department of Transport and Main Roads. Transport inspectors already have the power to stop heavy vehicles for the purpose of checking compliance with transport legislation.

The amendments to section 31 will allow transport inspectors to stop a private vehicle if the inspector reasonably believes the driver of the vehicle has just committed, is committing, or is about to commit an offence against section 46 of the *Transport Infrastructure Act 1994* or section 100 of the Queensland Road Rules (new section 31(1)(d)(i)). Section 46 of the *Transport Infrastructure Act 1994* makes it an offence to drive past a restricted road use notice in contravention of a restriction stated on the notice. Section 100 of the Queensland Road Rules makes it an offence to drive a vehicle past a “No Entry” sign. Signs may be installed under either of these sections to close or restrict access to a road due to flooding.

Before exercising the power to stop a private vehicle, a transport inspector must also reasonably believe that stopping the vehicle is necessary to

prevent damage to road transport infrastructure or to ensure the safety of road users or other persons (new section 31(1)(d)(ii)).

The amendments expressly allow transport inspectors to stop vehicles if the inspector reasonably believes the driver is about to commit an offence against these road closure provisions. This will allow inspectors to stop and warn drivers of the existence of a road closure/road restriction sign ahead. This provision is aimed at preventing the dangerous practice of drivers attempting to cross flooded roads.

The amendments contained in this clause will ensure that transport inspectors are appropriately empowered to assist in flooding and related emergencies by extending these specific enforcement powers to apply in relation to all types of vehicles.

Clause 28 amends section 49 (Power to require documents to be produced) of the Transport Operations (Road Use Management) Act 1995. Section 49 allows an authorised officer to require a person to produce for inspection a document issued, or required to be kept by the person, under a transport Act or corresponding law. This section allows authorised officers to require a person to produce their driver licence. Currently, only an authorised officer who is a police officer may require the driver of a private vehicle (for example, a car) to produce their licence.

The amendments are complementary to the amendments to section 31 contained in this Bill (as outlined above). After a vehicle has been stopped under section 31, the amendments to section 49 allow transport inspectors to require the driver of a private vehicle to produce their driver licence if the inspector reasonably believes the driver has just committed or is committing an offence against section 46 of the *Transport Infrastructure Act 1994* or section 100 of the Queensland Road Rules. Section 46 of the *Transport Infrastructure Act 1994* makes it an offence to drive past a restricted road use notice in contravention of a restriction stated on the notice. Section 100 of the Queensland Road Rules makes it an offence to drive a vehicle past a “No Entry sign”. Signs may be installed under either of these sections to close or restrict access to a road due to flooding.

The time extension to comply with a requirement to produce a driver licence that currently exists in section 49(2C) for open licence holders will also apply to a person asked to produce their driver licence in these circumstances. That is, a person who holds an open driver licence, but is not carrying it, may produce the licence within two business days to an

office of the Department of Transport and Main Roads nominated by the transport inspector.

Part 7 Amendment of Water Act 2000

Clause 29 provides that part 7 amends the *Water Act 2000*.

Clause 30 inserts a new chapter 2, part 2, division 4 (Declaring temporary full supply levels for relevant dams to mitigate potential emergencies) into the *Water Act 2000*. The new chapter provides for the declaration of full supply levels for relevant dams to minimise potential flood or drought emergencies.

Under the Act, the full supply level of a dam is the level of water surface when the water storage is at maximum operating level when not affected by flood. The full supply level is specified for particular dams in a resource operations plan. Among other things, a resource operations plan identifies, and is intended to apply to, water infrastructure. The resource operations licence holder for that infrastructure must comply with the operations rules for the infrastructure as set out in the resource operations plan.

New section 31 (Application of, and definitions for, div 4) provides that the new chapter 2, part 2, division 4 applies to dams if a resource operations licence has been granted in accordance with a resource operations plan and a flood mitigation manual has been approved for the dam under the *Water Supply (Safety and Reliability) Act 2008*. At present, the dams that meet these requirements would be Wivenhoe, Somerset and North Pine dams.

New section 32 (Minister must require information about impacts of proposed temporary full supply level) empowers the Minister to instruct the chief executive to require information from an owner of a relevant dam about the impacts of how a proposed temporary full supply level alteration may impact on the safety of the dam and how the dam operates. The Minister may decide to review the full supply level for a dam based on considerations including, for example, meteorological forecasts and the public interest. It is intended that generally this would occur as a result of the seasonal outlook issued by the Bureau of Meteorology indicating a potential emergency situation for the season under consideration. If the Minister decides to initiate the process, the Minister must seek the advice of the chief executive.

New section 33 (Consultation requirements) requires that, before the chief executive provides advice to the Minister regarding a possible alteration of the full supply level of a relevant dam, the chief executive must first consult with relevant entities about:

- the extent to which the proposed temporary full supply level is likely to minimise the impacts of potential flood or drought; and
- the impacts of the proposed temporary full supply level on water security.

In south east Queensland this will be the Queensland Water Commission which, before providing the advice, must seek advice from:

- Seqwater regarding the extent to which the proposed temporary full supply level is likely to minimise the impacts of potential flood or drought; and
- the Water Grid Manager regarding the impacts of the proposed temporary full supply level on water security.

Outside south east Queensland, consultation will be with:

- the Queensland Water Commission (if it is an area designated as one in which the Commission is designated by the Minister to perform its functions) which, before providing the advice, must seek advice from the owner of the dam and any other entity responsible for operating the dam; otherwise
- the resource operations licence holder of the dam and any other entity responsible for operating the dam.

This provision implements recommendation 2.4 of the Interim Report that, for the purposes of making any decision about a temporary alteration to full supply level, the Minister should receive advice from specified entities.

New section 34 (Chief executive must advise Minister) requires the chief executive to provide advice to the Minister about declaring a temporary full supply level for a relevant dam. The advice must take into account:

- information provided to the chief executive by the dam owner;
- the extent of the flood or drought mitigation effect that would result from the declaration;
- the impacts on water security from the declaration;
- dam safety impacts of the making of the declaration;

- other positive or negative impacts, for example, impacts on public safety and environmental, social and economic impacts downstream of the dam; and
- another matter that the chief executive considers appropriate.

If the advice includes a recommendation that the full supply level be altered, the chief executive must also provide advice on the likely implications of the declaration on water security and safety of the dam.

New section 34A (Minister may declare temporary full supply level) enables the Minister, following consideration of advice from the chief executive and the public interest, by notice in the gazette, to declare a new full supply level for the relevant dam that was the subject of the chief executive's advice. This provision implements recommendation 2.2 of the Interim Report, that control over temporary alteration of the full supply level of Wivenhoe, Somerset and North Pine dams is a function of the responsible Minister.

New section 34A provides that the temporary full supply level has effect for a period until revoked or a maximum of six months. To ensure that continuing adverse weather conditions can be adequately dealt with, the Minister may declare a temporary full supply level more than once for a particular dam.

New section 34B (Effect of temporary full supply level on resource operations plan) provides that the effect of a declaration by the Minister of a temporary full supply level is that a reference in the relevant resource operations plan to a full supply level is taken to be a reference to the temporary supply level. This provision is necessary because a resource operations licence holder is obliged to comply with the resource operations plan which specifies the full supply level for infrastructure.

New section 34C (Obligations of operator if temporary full supply level declared) requires the resource operations licence holder for the dam for which a temporary full supply level has been declared, to submit to the chief executive, within ten business days, an interim proposed program for complying with the resource operations plan for the period for which the declaration of the temporary full supply level is in force. This interim program will indicate, often among other things, how the resource operations licence holder will operate the dam in order to get the level of water in the dam to the temporary full supply level.

New section 34D (Chief executive must review safety requirements) requires the chief executive to review, within one month or such shorter period as the Minister requests in writing, the safety requirements for a dam where a temporary supply level for that dam exceeds the full supply level stated in the resource operations plan.

New section 34E (No compensation payable) provides that no compensation is payable to any person because of the operation of the new chapter 2, part 2, division 4 being inserted by this Bill.

Clause 31 amends section 98 (Content of draft resource operations plan) to require that if the water infrastructure identified in a draft resource operations plan includes a relevant dam, the draft resource operations plan must state the full supply level for the dam. Whilst in practice a resource operations plan will specify the full supply level for infrastructure, this provision will ensure that that is the case, ensuring that these provisions will be effective in all cases.

Clause 32 amends section 345 (Main functions of commission) to include, as a function of the Queensland Water Commission, the provision of the advice it is required to provide under the new chapter 2, part 2, division 4 being inserted by this Bill regarding the impacts of declaring a temporary full supply level.

Clause 33 amends the dictionary to the *Water Act 2000* to include definitions relevant to the new chapter 2, part 2, division 4 being inserted by this Bill.

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

Clause 34 provides that part 8 amends the *Water Supply (Safety and Reliability) Act 2007*.

Clause 35 amends section 354 (Deciding safety conditions) to provide that dam safety conditions may include requirements about giving warnings to the local community immediately downstream of the dam about the likely release of water from, or flow of water through, the dam as a result of flooding.