South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012

Explanatory Notes

General Outline

Policy Objectives

During 2007 to 2008, significant structural changes were implemented in the South East Queensland (SEQ) bulk water industry, involving the establishment of four State-owned bulk water entities under the *South East Queensland Water (Restructuring) Act 2007* (Restructuring Act), including three asset-owning service providers:

- the Queensland Bulk Water Supply Authority (trading as Seqwater) to own and operate the dams, weirs and water treatment plants in SEQ;
- the Queensland Bulk Water Transport Authority (trading as LinkWater) to own and operate bulk water pipelines across SEQ; and
- the Queensland Manufactured Water Authority (formerly trading as WaterSecure) to own and operate the Tugun Desalination Plant and Western Corridor Recycled Water Scheme. WaterSecure was merged with Seqwater on 1 July 2011.

The Restructuring Act also established the SEQ Water Grid Manager (WGM) as the monopoly purchaser of bulk water services and single seller of bulk water to SEQ councils and the distributor-retailer authorities.

The Queensland Water Commission (QWC) was established in 2006 as an independent source of policy advice to Government on regional water security, and has no operational role in the SEQ water market. It is constituted as a standalone statutory authority under the *Water Act 2000* (Water Act). The QWC also has an advisory role regarding the impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders.

With the completion of major infrastructure projects and a transition to post-drought operating conditions, there is a clear need to redirect the focus of the sector from construction to cost-containment, including targeting duplication of functions across the industry. The continuing requirement for a dedicated source of policy advice on regional water security has also receded with the shift to a full-supply operating environment and the increasing organisational maturity and regional focus of SEQ water industry participants.

As part of the Queensland Government's plan to reduce the cost of bulk water supply in SEQ, the Government has committed to rationalise the SEQ bulk water industry by the merger of three SEQ bulk water entities – the Queensland Bulk Water Supply Authority (the Authority), LinkWater and the WGM - into a single bulk water service provider, and the dissolution of the QWC.

Amendments to Water Fluoridation Act 2008

The *Water Fluoridation Act 2008* (the WF Act) imposes a mandatory obligation on a public potable water supplier (water supplier) to fluoridate a relevant public potable water supply for which they are responsible, if the supply services at least 1,000 members of the public (a relevant water supply). Schedule 1 of the *Water Fluoridation Regulation 2008* (the WF Regulation) prescribes the dates by which relevant water supplies must be fluoridated; ranging from 31 December 2008 to 31 December 2012.

Since April 2012, a number of water suppliers have requested deferral or exemption from the requirement to fluoridate due to the upfront and ongoing cost of fluoridation, the lack of appropriately trained staff to operate the fluoridation infrastructure and the need to rectify on-going water quality problems as a matter of priority.

Currently, section 8 of the WF Act sets out the circumstances under which an exemption may be granted from the requirement that relevant water supplies must be fluoridated. In response to the concerns of water suppliers, it is proposed that the WF Act be amended to expand the criteria under which a water supplier may apply for an exemption and to clarify that an exemption may only be sought for certain relevant water supplies.

An exemption will not be able to be sought for a water supply which has been fluoridated in accordance with the WF Act, or at which the construction of the necessary fluoride dosing infrastructure has been completed or is nearing completion. Water supplies that serve more than 10,000 people will also be ineligible to apply for an exemption.

Reasons for the Bill

Legislation is required to facilitate the merger of the three bulk water entities, the dissolution of the QWC and the reconfiguration of the operating, planning and regulatory frameworks under the Water Act and other key legislation, including the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

Legislation is also required to amend the WF Act to extend the criteria under which an exemption may be sought from the requirement that a relevant water supply be fluoridated and to clarify that an exemption may only be sought for an eligible relevant public potable water supply.

Achievement of the Objectives

Bulk Water Entities Merger

The Bill amends the existing restructure framework under the Restructuring Act to facilitate the transfer of all of WGM's and LinkWater's businesses to the Queensland Bulk Water Supply Authority and the dissolution of the WGM and LinkWater.

Of note, the Bill:

- amends section 9 to confer additional planning functions on the Queensland Bulk Water Supply Authority arising from the fact that it will be taking on some former QWC functions; and
- amends section 105 and inserts a new section 111 to deal with the rights of employees of the relevant bulk water entities. These amendments facilitate the transition of employees to the Queensland Bulk Water Supply Authority.

To the extent that the Bill amends the Restructuring Act, these amendments principally involve minor consequential amendments which remove provisions and references relating to the WGM and update the language of the Restructuring Act arising from the fact that there will be only one statutory body established under this Act following the merger of Seqwater, LinkWater and the WGM.

Bulk Water Supply Arrangements between Bulk Water Entity and Customers

To complement the structural changes, a new chapter 2A, part 5A will be inserted into the Water Act. Under the new market structure, the Queensland Bulk Water Supply Authority will have direct bulk water

supply agreements in place with its customers. Customers currently include the two SEQ distributor-retailers (Queensland Urban Utilities and Unitywater), the water businesses of Gold Coast, Logan and Redland City Councils, power stations and SEQ irrigators.

Current Planning and Regulatory Framework

To reflect and complement this restructure, the current market structure and planning and regulatory framework will also be simplified through amendments to the Water Act and other key legislation, including the Water Supply Act.

(i) Level of Service Objectives and Planning

Currently, the LOS objectives are prescribed in the Regional Water Security Program (RWSP) made by the Minister following advice on options from the QWC. The QWC is required to make a System Operating Plan (SOP) to facilitate the achievement of the desired levels of service. Both requirements for a RWSP and a SOP will fall away with the abolition of the QWC.

The Bill provides for the making of a regulation to set appropriate desired level of service (DLOS) objectives for water supply in SEQ. Once prescribed, the DLOS objectives will be subject to review within five years.

The Bill will impose specific obligations upon the new bulk entity to ensure that it demonstrates how it will achieve the DLOS objectives where these have been prescribed by Regulation, recognising that it will now own, operate and control all bulk water supply and transport assets in SEQ and will need to take ownership of short and long-term planning to ensure it can meet growing demand for safe, secure and reliable water supply in SEQ and be appropriately responsive to emerging security issues.

(ii) SEQ Bulk Water Supply Code

The Bill provides for the making of the SEQ Bulk Water Supply Code (Code) to replace the current SEQ Water Market Rules (Market Rules). The Market Rules prescribe detailed processes, approvals and protocols for the water entities operating within the SEQ water market. The establishment of a single integrated bulk water entity obviates much of the need for governance of these processes.

The Code will primarily focus on the interaction with the single bulk water entity and its direct customers in areas, potentially including:

- demand forecasting and water ordering;

- communications;
- agreed operating protocols;
- infrastructure planning and demand management; and
- emergency responses.

The Code will continue to regulate water pricing by allowing the assessment of efficient costs of the Authority and bulk water prices on-charged to households and businesses, including by the Queensland Competition Authority (QCA). The development of the Code will be undertaken in consultation with stakeholders and, therefore, may provide for other matters to support the effective interaction between the bulk water authority and its customers.

Dissolution of the Queensland Water Commission

Chapter 2A of the Water Act will be amended to dissolve the QWC and remove references to QWC and its functions and powers. Most of the advisory functions of the QWC will revert to the relevant Government department.

Specific functions and powers of SEQ water service providers will be more closely aligned with the position of service providers situated outside SEQ. For instance, SEQ water service providers will no longer be subject to direction from the QWC to require business customers to prepare and comply with water efficiency management plans.

The QWC water restriction powers will also be removed and the SEQ water service providers will no longer be delegated a compliance role to ensure restrictions are adhered to, but will be empowered to impose restrictions where they consider these are necessary, and be subject to a direction from the Water Supply Regulator to impose a restriction consistent with legislative provisions that apply throughout Queensland. SEQ water service providers will achieve a level of reduced business costs with the removal of these QWC functions.

The Bill provides for the establishment of a new statutory office, the Office of Groundwater Impact Assessment (OGIA), which will perform the statutory functions of the QWC as they relate to obtaining and analysing data about impacts of the exercise of underground water rights upon underground water and preparing Underground Water Impact Reports.

Reporting Requirements of SEQ Local Governments – Distributor-Retailer Pricing

Through the *Fairer Water Prices for SEQ Amendment Act 2011*, a number of costly processes were imposed on SEQ local governments, including the preparation of a five-year price path for 1 July 2013 to 30 June 2018.

SEQ councils have argued that such mandated processes fail to take account of councils' overall responsibility and accountability to their residents. The publication of a once-only five-year price path does not improve costs or reduce prices. The SEQ distribution-retail businesses are already required to publish their charges (including annual publication of proposed charges for the following financial year by 31 March).

To relieve local governments of this obligation, the Bill will omit chapter 5, part 2 (Local government price mitigation documents) of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

In addition, the Bill will remedy a potential technical defect in the operation of compliance and enforcement conditions imposed on some dam owners, based on concerns about the enforceability of these conditions under the existing legislative arrangements.

Alternatives to the Bill

The policy objectives can only be implemented through primary legislation.

Estimated Cost for Government Implementation

The amendments to the Restructuring Act and other legislation are facilitative in nature, and, among other things, will give effect to transfers of assets, liabilities, contracts and employees between State-owned entities. It is not expected that the implementation of these amendments will result in any appreciable cost for Government.

The proposed changes to the WF Act will not result in any appreciable cost for Government. To date, 70 relevant public potable water supplies in SEQ and other regional areas of the State have commenced fluoridation in accordance with the obligation under section 7 of the WF Act.

Water suppliers outside SEQ will be able to apply for up to 100 per cent of eligible capital costs (direct costs) of the lowest cost solution for the

installation of water fluoridation dosing infrastructure via the Queensland Fluoridation Capital Assistance Program.

Consistency with Fundamental Legislative Principles

The Bill raises a number of issues relevant to the fundamental legislative principles.

(i) Sufficient regard to rights and liberties of individuals, *Legislative Standards Act 1992* section 4(3)

Clause 30 of the Bill amends section 105 of the Restructuring Act to authorise that a regulation made under that section may make provision about the application of industrial instruments to a relevant water entity. For example, a regulation may provide that, despite the *Industrial Relations Act 1999*:

- an industrial instrument applies to all or some employees of the merged entity; or
- an industrial instrument only applies to employees who have been transferred to another entity, and does not apply to other employees of that entity.

While the regulation will override the usual provisions regarding the transmission of industrial instruments to a new employer under the *Industrial Relations Act 1999*, it will not take away any person's existing or accrued rights such as existing leave entitlements or reduce their total remuneration. This approach is justified on the basis that it enables the transition arrangements for employees of the merged entity to be tailored for the particular transaction.

It is also salient to note that the application of a nominated industrial instrument is arguably within the existing powers available under section 105(1)(l) and (2); the proposed amendment simply operates to clarify this power. Furthermore, the provision should be read in light of the express protection of leave entitlements and continuity of service under new section 111. Insofar as the transfer of benefits and entitlements will be managed through a transfer regulation under section 105, it remains subject to Parliamentary oversight.

Clauses 32 and 33 of the Bill replace section 111 and repeal section 112 of the Restructuring Act, ending:

- the preservation of the employment arrangements for WaterSecure employees transferred to Seqwater until a new certified agreement or other agreement is in place; and
- the three year protection against forced retrenchment of WaterSecure employees transferred to Seqwater under section 112 of the Restructuring Act on 1 July 2011.

The potential adverse effects for employees are to be balanced against extending normal industrial relations prerogatives to the bulk water business.

(ii) Whether legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons —LSA s 4(4)(a)

Penalty units in relation to a delegated Code

Clause 51 (section 360S(a)) of the Bill provides for a maximum 1665 penalty units for breach of an Emergency Plan made under the code. While this may be regarded as a significant penalty, it is considered commensurate with the need to ensure potential public health and safety risks are appropriately managed and coordinated in an emergency event (such as a flooding event).

Clause 51 (section 360Z) of the Bill also imposes a maximum 1665 penalty units for a failure to comply with a direction of the Minister about access, made under principles in the Code (matters relating to access). The urban water sector in SEQ is made up of the bulk and the distribution-retail sectors. It remains important to ensure that customers are the beneficiaries of regulatory arrangements to ensure whole-of-supply chain solutions.

The bulk and distribution-retail sectors are given the opportunity to agree access arrangements between themselves (including cost), but where they cannot, it remains the State's responsibility to ensure that water pricing is not driven up by construction of water assets in circumstances where the same outcomes could be delivered through another sector of the network.

Clause 51 (section 360S(b)) of the Bill imposes a maximum 200 penalty units for failure to comply with any other provision of the Code. This would include other operational matters such as standards for metering where it is important to ensure reliability and efficiency of water supply.

Extending definitions by regulation

Clause 76 (new section 1014(2)(l)) of the bill enables the department to exempt a water service by regulation. The provision will enable policy

flexibility in deciding the critical aspects of water supply that warrant regulation and the consequential costs. Consultation will occur during the development of a regulation to ensure that only appropriate exemptions are applied.

(iii) Other matters—judicial review

To the extent possible, clause 51 (new section 360Y) of the Bill prevents all forms of judicial review in relation to the Minister's pricing power under sections 360W and 360X (noting that jurisdictional error of the executive branch cannot be ousted).

The Queensland Competition Authority (QCA) processes normally include exhaustive public submission processes and extensive reports documenting the reasons for recommendations, which provide adequate rigour around these decisions. Additionally, pricing decisions which affect residents and businesses will normally have regard to affordability and equity considerations, including the need for financial support to the whole or parts of the community.

It is also noted that local governments are exempt from providing reasons for decisions under the *Judicial Review Act 1991* in relation to their rates and charges for water services.

Consultation

On the proposed amendments to the Restructuring Act, Queensland Treasury and Trade (QTT) has consulted with:

- the Department of the Premier and Cabinet (DPC), LinkWater, Seqwater, the WGM and the South East Queensland Bulk Water Company Limited (SEQBWCo) on the overall content of the Bill;
- the Office of State Revenue, QTT, on the proposed exemption from duty on transactions necessary to achieve the merger;
- the Public Service Commission about the transition of staff from the existing businesses to the merged authority;
- the Queensland Audit Office on financial reporting implications of the changed institutional arrangements; and
- the Department of Local Government (DLG) and LG Super regarding amendments to the *Local Government Act 1993* to facilitate the continued LG Super membership of employees transferred from LinkWater to Seqwater.

On the proposed amendments to the Water Act, Department of Energy and Water Supply (DEWS) has consulted with QTT, DPC, the Department of State Development, Infrastructure and Planning (DSDIP), the Department of Natural Resources and Mines, LinkWater, Seqwater, the WGM, SEQBWCo and the Gasfields Commission Queensland.

DEWS has also consulted with SEQ distributor-retailer authorities and southern SEQ councils on the amendments to the Water Act, including arrangements for the application of water restrictions and the proposed bulk water supply agreements.

The following entities were also consulted on the proposed amendment to the WF Act: the Local Government Association of Queensland; the Queensland Water Directorate; the 25 potable water suppliers directly affected by the proposed amendments to the Act; as well as DPC, DSDIP, DEWS, QTT, DLG and the Department of Justice and the Attorney-General.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title for this Bill.

Clause 2 deals with the commencement details for this Bill.

Part 2 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 3 states that part 2 amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Clause 4 omits the note to subsection 4(2)(a) referring to the bulk supply entities.

Clause 5 amends subsection 11(1)(a) by removing the reference to distributor-retailer authorities (DRs) purchasing water only from the water grid manager.

Clause 6 omits the reference to "Queensland Water Commission" and replaces it with a reference to "the Queensland Bulk Water Supply Authority" in relation to disqualifications for independent members of DRs.

Clause 7 omits the reference to directions relating to a council's final price path.

Clause 8 omits section 53AE which deemed DRs to be market participants under the market rules when DRs assumed responsibilities under the rules instead of local councils in accordance with previous water reforms. The repeal of the market rules obviates the need for this section.

Clause 9 omits section 92CT, which operated to apply the relevant provisions of the Southern SEQ Distributor-Retailer Authority contracts made under section 360ZDD of the Water Act to the relevant councils (as far as possible). As new bulk water supply agreements are due to be made to replace the section 360ZDD contracts, this provision is no longer necessary.

Clause 10 omits chapter 4, part 3A.

Clause 11 omits reference to the "commission water restriction" in subsection 99AT(1)(b)(ii).

Clause 12 replaces "commission" with "chief executive" in subsection 99BB(1)(d).

Clause 13 omits references in section 99BQ(1) to documents previously prepared by the Queensland Water Commissioner and replaces "commission" with "chief executive".

Clause 14 omits chapter 5, part 2 referring to local government price mitigation plans.

Clause 15 omits subsection 99BZD(1)(c) referring to a local government price path.

Clause 16 replaces "commission" with "chief executive" in section 100C.

Clause 17 replaces "commission" with "chief executive" in sections 100DA(1) and (2).

Clause 18 omits references in section 100F to offence provisions enforceable by the Queensland Water Commission.

Clause 19 replaces "commissioner" with "chief executive" in section 101 providing for approved forms.

Clause 20 inserts new chapter 6, part 8 providing for transitional provisions for the *South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012*.

Section 130 deems as valid the adoption of the SEQ design and construction code in effect immediately before commencement for those DRs which had adopted the code prior to commencement.

Clause 21 omits the definition of "commission" and "final price path" from the definitions in the schedule.

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

Division 1 Preliminary

Clause 22 states that part 3 amends the *South East Queensland Water (Restructuring) Act 2007*.

Division 2 Amendments commencing on assent

Clause 23 omits subsection 6(1)(c) which established the Queensland Manufactured Water Authority. This entity was dissolved on 1 July 2011.

Clause 24 amends section 9 to confer certain planning functions on the bulk water entities. Specifically, the Queensland Bulk Water Supply Authority's functions, as the merged entity, will include undertaking, with the State and service providers, collaborative planning activities with a view to doing each of the following and having regard to supply and demand:

(i) supporting cost effective operations;

(ii) promoting efficient use of and investment in water infrastructure, and other ancillary infrastructure; and

(iii) ensuring the safe, secure and reliable supply of water.

Clause 25 omits the reference to "water entity" and replaces it with the reference to "new water entity" for consistency with the existing language adopted in chapter 1 of this Act.

Clause 26 amends, relocates and renumbers the existing section 89 contained in chapter 3. Chapters 3 and 4 facilitated the original restructure of the SEQ bulk water industry during 2007-08. As the relevant provisions (other than section 89) of chapters 3 and 4 are spent, it is proposed to repeal them.

Clause 27 relocates and renumbers section 93 to section 116B.

Clause 28 omits chapters 3 and 4. Refer to comments relating to clause 26.

Clause 29 inserts a new subsection into section 104 to declare that the Queensland Water Commission is a relevant water entity for the purposes of this Act.

Clause 30 amends section 105 to facilitate the restructure of Seqwater, LinkWater and the WGM by inserting:

- a new subsection for the purposes of confirming that a regulation may make provision about accounting treatment in relation to a matter mentioned in section 105(1);

- a new subsection permitting a regulation to make provision about the application of industrial instruments to a relevant water entity, despite the *Industrial Relations Act 1999* and any industrial instrument.

Clause 31 amends section 110 to exempt a relevant water entity from a State tax in relation to matters done under a regulation made pursuant to section 105 to give effect to Government-driven restructures between State entities in the SEQ bulk water industry. The existing section 110 was limited to the merger of WaterSecure and Seqwater, undertaken to achieve the previous Government-mandated restructure of the SEQ bulk water sector. The exemption is not intended to apply to non-Government driven matters done under a regulation made under section 105.

Clause 32 omits the existing section 111, and inserts a new section 111 dealing with the rights of employees transferred from a relevant water entity to another relevant water entity under a regulation made under section 105. The application of the existing section 111 was limited to the merger of WaterSecure and Seqwater. Refer also to comments about clause 34.

Clause 33 omits section 112. Refer also to comments about clause 34.

Clause 34 deals with a number of transitional matters relating to the repeal of chapters 3 and 4 and the repeal of sections 111 and 112.

- A new section 118 will provide that the former sections 111 and 112 stop applying for the transferred employees. The practical effect of this item ends the preservation of the employment arrangements for WaterSecure employees transferred to Seqwater until a new certified agreement or other agreement is in place under section 111 and the three year protection against forced retrenchment of WaterSecure employees transferred to Seqwater on 1 July 2011.
- A new section 119 will continue section 95 in the event that the Ministers need to issue a certificate relating to the matters done under the former chapters 3 and 4.

Clauses 35 and 36(1) omit schedule 1 and certain definitions in schedule 3, which are not relevant to the remaining chapters. *Clause 36(2)* relocates the definition of "instrument" from other divisions.

Division 3 Amendments commencing on proclamation

Clauses 37 to 42 amend the heading for chapter 2, sections 6, 9, 10, 11 and 16 respectively. These are minor consequential amendments to remove references to "water grid manager" and "new water entities" and update the language of these sections to reflect the fact that the Queensland Bulk Water Supply Authority will be the only entity to be governed by chapter 2 of the Restructuring Act.

Clause 43 inserts a new section 50A providing that if the Queensland Bulk Water Supply Authority has a statement of obligations when the strategic or operational plan for the financial year is agreed to by the responsible Ministers – the plans must not be inconsistent with the statement of obligations.

Clause 44 amends section 51, which deals with the content of the Authority's operational plan. This subsection provides that the operational plan must include the activities proposed to be undertaken by the Authority in accordance with the statement of obligations.

Clause 45 inserts a new chapter 2, part 4, division 5 outlining the process for the issue of a statement of obligations to the Queensland Bulk Water Supply Authority by the responsible Ministers from time to time.

Clause 46 amends section 104 to remove the reference to "Queensland Water Commission" following its dissolution. Refer also to comments about clause 29.

Clause 47 inserts new transitional provisions dealing with the 2013-14 strategic and operational plans of the Authority and the final quarterly reports by the WGM and LinkWater.

New section 120 outlines the process for the Queensland Bulk Water Supply Authority to prepare, submit and reach agreement with the responsible Ministers on its strategic and operational plans for the 2013-14 financial year.

New section 121 provides that the Queensland Bulk Water Supply Authority must give the responsible Ministers the final quarterly reports for LinkWater and the WGM if all or part of the business of those entities is transferred to the Authority by a regulation made under section 105.

Part 4 Amendment of Water Act 2000

Clause 48 states that part 4 amends the *Water Act 2000*.

Clause 49 makes minor amendments to section 212A to reflect that the Queensland Bulk Water Supply Authority would hold the water licence, enabling it to take water from a receiving water source, including a purified recycled water supply source.

Clause 50 amends the purpose of chapter 2A to take account of the new content of the chapter.

Clause 51 omits chapter 2A, parts 2 to 7, which provided for the functions and powers of the Queensland Water Commission, and inserts a new chapter 2A, parts 2 and 3.

New section 342 (Designation of regions) enables the making of a regulation to designate a region, or part of a region, outside the SEQ region, for the purposes of water security planning.

New section 343 (Nomination of water service providers) provides that, where there is more than 1 water service provider for a designated region, a regulation may nominate 1 or more service providers as being responsible for water security planning for the designated region.

New section 344 (Desired level of service objectives) provides that a regulation may prescribe desired level of service objectives for SEQ or for a designated region.

New section 345 (Public notice about proposed desired level of service objectives) provides that before making the desired level of service objectives (or an amendment to the desired level of service objectives), the chief executive will undertake consultation with the community and entities that are impacted by the desired level of service objectives. Consultation must involve making a public notice on the proposed desired level of service objectives.

New section 346 (Chief executive must consider properly made submissions) requires that the chief executive, before prescribing desired level of service objectives (or amendment to the desired level of service objectives), must consider all properly made submissions and must consult with the community on any revised proposed level of service objectives, unless the revision is only to correct a minor error or to make a change that is not a change of substance.

New section 347 (Report on desired level of service objectives) requires the chief executive to prepare a consultation report about the desired level of service objectives if a regulation prescribes or amends the desired level of service objectives.

New section 348 (Review of desired level of service objectives) provides that the chief executive must review the desired level of service objectives at least every 5 years.

The new division 3 (Water security program) outlines the framework by which the desired level of service objectives, once set under regulation, will be facilitated by the relevant entity (as prescribed under the regulation).

New section 349 defines "designated water security entity" for the purposes of division 3.

New section 350 (Bulk water supply authority to have water security program) creates an offence if the bulk water supply authority for the SEQ region fails to have a water security program (maximum penalty of 1665 penalty units).

New section 351 (Nominated Water Supply Provider to have water security program) creates an offence if a nominated water service provider in a designated region, where a nomination has been made, fails to have a water security program (maximum penalty of 1665 penalty units).

New section 352 (Particular Water Supply Provider to have water security program) creates an offence if a relevant water service provider in a designated region, where no nomination has been made, fails to have a water security program (maximum penalty of 1665 penalty units).

The maximum penalty imposed under each of the new sections 350, 351 and 352 for a failure to have a water security program is 1665 penalty units, which equates to the maximum penalty imposed under the current section 360ZA of the *Water Act 2000* for a failure to comply with the system operating plan, which is considered to be of a severity commensurate to the proposed offence.

New section 353 (Content of water security program) outlines, broadly, the information about the water service provider's arrangements, strategies or measures that are required in a water security program. Additional requirements of a water security program can be prescribed under regulation and the chief executive may make guidelines about the content of a water security program. This approach is considered highly desirable

to provide flexibility and an adequate level of assistance to the water service providers and to provide a level of consistency in the programs.

New section 354 (Preparing draft water security program) requires that a draft water security program must be prepared by a designated water security entity as part of the process to finalise, and give effect to, a water security program. A designated water security entity is a water service provider that is required to facilitate the achievement of prescribed desired level of service objectives.

New section 355 (Consultation for draft water security program) requires that reasonable efforts must be made by the water service provider drafting the water security program to consult with its customers.

New section 356 (Chief executive to review draft water security program) requires the draft water security program prepared by a designated water security entity to be given to the chief executive. The chief executive must undertake a review, and may recommend changes.

New section 357 (Special procedures for draft water security program if changes recommended) provides procedures that apply if, following a review of the draft water security program, the chief executive considers that changes should be made to the water security program and decides to recommend those changes.

New section 358 (Finalisation and publication of water security program) provides that the designated water security entity, after considering the recommendations made by the chief executive, must finalise its water security program. Subsection 358(3) provides the designated water security entity must publish the water security program on its website as soon as practicable after finalising the program. The water security program has effect from the date it is published on the website of the designated water security entity.

New section 359 (Review of water security program) requires that a designated water security entity must complete a review of its water security program at least every 5 years or if there is a significant change to any matter affecting, or likely to affect, the achievement of the desired level of service objectives.

New section 360 (Amendment of water security program) provides that a designated water security entity may amend its water security program as appropriate or if directed by the chief executive.

New section 360A (Procedure for amending water security program) specifies the process that a designated water security entity must follow for amending its water security program.

New section 360B (Designated water security entities not required to prepare drought management plan under Water Supply Act) provides that, if a water service provider is required to provide prescribed desired level of service objectives under the *Water Act 2000* (i.e. is a designated water security entity), then that water service provider is not required to prepare a drought management plan under the *Water Supply (Safety and Reliability) Act 2008*.

New section 360C provides definitions for part 3 (i.e. for bulk agreement and code matters). The section provides for an entity to be declared (under a regulation) to be a bulk water customer, a code-regulated entity or a SEQ bulk water supplier. This approach provides flexibility in choosing whether or not to regulate particular entities in terms of the application of the new bulk water supply agreements or the new bulk water code. This is a departure from the approach under the current provisions, which regulate all activities in a declared service and require those entities to be registered under the Market Rules. The new legislation does not continue the old concepts of 'declared water services' or a 'market' under which participants register.

New section 360D clarifies that the part provides for optimising the efficient and reliable supply of water for the SEQ region by the making of new bulk water supply agreements and the new bulk water supply code.

New section 360E clarifies that the relevant provisions for the code and bulk water supply agreements are not limited to being supplied within SEQ. This section does not limit the application of any other legislation which might set geographic boundaries for the entities' operations, such as section 4 of the *South-East Queensland (Distribution and Retail Restructuring) Act 2009*, which provides that SEQ service providers' functions relate to their geographic regions.

New section 360F (Obtaining information) provides for the chief executive to obtain relevant information from the bulk water authority to support the department's continued role in strategic water planning role and water pricing. The section provides a statutory obligation on the bulk water entity to provide the required information. The notice itself is able to provide the reasonable time by which the information is to be provided. The section is not limited to the provision of information and obtaining information

would include a requirement for the bulk authority to generate the requested information.

New section 360G (Making agreement) provides for the Minister to make new bulk water supply agreements which replace the current section 360ZDD contracts. The agreements provide for supply of a bulk water service between an SEQ bulk supplier (i.e. the bulk entity or other entity prescribed under a regulation) to a bulk water customer (being a DR, an SEQ local government water business or other entity prescribed under a regulation).

That is, the contracts are direct supply contracts (with no WGM interface due to its proposed dissolution) and can be extended beyond the core water entities by prescribing entities under a regulation. As was the case for the previous section 360ZDD provisions, the agreement takes effect as a contract between the parties on the date of the Minister's making.

Subsection 360G(4) clarifies that the parties do not have to sign the contract for it to be considered to be a contract (except that they must sign any amendments to their own negotiable amendments). Subsection 360G(4)(b) indicates that the contract is still a contract even though no consideration passes. This clause would be legally necessary to prevent any argument that the contract 'failed for lack of consideration' in the event that any future debt structuring decisions (in relation to the Authority) resulted in bulk water price revenue being paid to a third party entity rather than being directly paid to the bulk entity.

New section 360H (Bulk water party may amend non-mandatory terms of agreement) provides that the new bulk water supply agreements may contain mandatory terms set by the Minister which cannot be varied by the parties and non-mandatory terms. The new agreements will indicate which of the terms in the agreement can be amended by the parties. Any negotiated amendments must be signed by the parties and given to the Minster as soon as practicable.

New section 360I (Minister's direction about agreement amendment) allows the Minister to direct a bulk water party to amend its agreement if the Minister considers the amendment made by the bulk water party conflicts with the mandatory terms of the bulk water supply agreement. Notice and submission requirements apply and the Minister's direction power lasts for 2 months after having received the parties' amendments. Conflicting amendments are deemed not to have had effect.

New section 360J provides the offence for failing to comply with the Minister's direction.

New section 360K requires the chief executive to keep a copy of each bulk water supply agreement and each amendment to that agreement.

New section 360L (Liability of bulk water parties) replicates the terms of the existing section 360ZDI, but with modifications to reflect the new bulk water supply authority and the new direct supply arrangements.

New section 360M (Minister's power to make code) provides a power for the Minister to make a bulk supply code. The Code will apply to the supply of bulk services and only to 'code-regulated entities', which is any entity regulated by the bulk water supply agreements and any other entity prescribed by regulation. As was the case for the market rules, the Code is a statutory instrument to which the provisions of the *Statutory Instruments Act 1992* apply.

New section 360N (Content of code – costs and prices) provides that the Code may set out principles (e.g. methodologies) for deciding the differing types of costs and prices listed in the section. This section interacts with section 360W, where the Minister may determine certain prices and charges under the Code. It should be noted that the description of the charges, prices, etc. referred to in the Act are only for the purposes of outlining what methodologies the Code can provide for. They are not extensive descriptions of what can and cannot be included in the relevant cost or price. The Code itself may stipulate this.

New section 360O (Content of code – general) provides for Code content (other than price and cost methodologies as outlined in section 360N). The focus of the code will be on areas where there is a policy need to regulate the interface between the merged bulk entity and the distribution retail sector. The provision will also allow the code to provide principles for supply of bulk services by an SEQ service provider (and charges for those services). The Code will include the ability for the nomination of an entity such as the Queensland Competition Authority to play an advisory role to the Minister for the nominated decisions.

New section 360P (When code takes effect) provides for the notification of the making of the Code in much the same way as the market rules.

New section 360Q provides for the tabling of the Code in the Legislative Assembly.

New section 360R provides for the publication of the Code on the department's website.

New section 360S (Compliance with code) provides for penalties for breaches of certain provisions of the Code. The section makes a breach of an emergency plan requirement subject to a 1665 penalty unit maximum. Breaches of other sections of the Code are subject to a lesser 200 penalty unit maximum.

New section 360T (Civil liability not affected by code) provides that compliance (or otherwise) with the Code does not create a civil cause of action or affect civil rights or remedies. This is to ensure that a penalty for a breach of the Code does not preclude either party from pursuing other legal options.

New section 360U (Consultation for code) sets out how consultation is to occur when the code is to be made or amended. The provisions require consultation with each code-regulated entity that is affected by the proposed Code or amendment. The consultation provision should also be read in conjunction with section 1224 (consultation for first code) to recognise that for the making of the Code on 1 January 2013, the consultation may have occurred prior to the passing of the Bill.

The provisions also allow amendments without consultation for a 'stated amendment' as outlined in the Code. A 'stated amendment' will be limited to changes where consultation on the proposed Code change would not affect the outcome such as changes to reflect updates other laws, to remove 'spent' provisions of the Code.

New section 360V (Supply under bulk water supply agreement) replaces the existing provisions of the Water Act which required declared services in the market to be provided under a grid contract made under section 360ZDD. As those concepts no longer apply, the entities that are required to supply under the new bulk water supply agreements will be identified by definition. That is, any entity who is an SEQ bulk supplier and any entity who is a bulk water customer (see section 360C definitions).

While the provision of the bulk service may be regulated, under section 360V(2), there is the ability to exempt an aspect of the water service by regulation (see amended section 1014). This would allow for parts of services to be de-regulated as policy needs change and develop in the future.

New section 360W (Minister may decide cost or price) gives the Minister the power, but not the obligation, to decide costs or prices for supply of bulk services for any period. The default is that the power for matters outlined in the Code rests with the Minister. This default may, however, be changed by the Minister giving a notice that the Minster does not intend to exercise the pricing option (see subsection 360W(7)). Four months' notice is required.

Cost or prices may be decided for any time period (whole or parts of financial years or more than one financial year).

The provision also allows (but does not require) the Minister to seek advice from an entity nominated in the Code (e.g. the Queensland Competition Authority) about pricing under the Code. While the Minister must consider the advice, the Minister is not bound by it.

Affected entities must be given notice of decisions and amend contracts to reflect new prices (although the contractual price will be deemed to be amended from the time of the determination under subsection 360W(1)).

New section 360X (Amended cost or price) enables the Minister to amend a cost or price set under section 360W and effectively requires this to be done using the same process for making the decisions under subsections 360W(2) to (6).

New section 360Y (Limitation of review) provides that the Minister's decisions about costs and prices under section 360W and reviews etc. under section 360X are not subject to judicial review (as far as is possible given that it is not legislatively within power to limit superior court's ability to supervise jurisdictional errors of courts or the executive).

New section 360Z (Minister's direction about bulk services supplied by SEQ service provider) provides for a Ministerial direction regarding certain services in circumstances where the parties are unable to agree on the provision of the service or the charge under their bulk water supply agreement. These are bulk services provided by an SEQ service provider. Determinations must be made under the principles provided for in the Code. Under section 360O, the Minister would also be able to seek assistance from the Investigating Authority when making these determinations.

Clause 52 provides for the purpose of chapter 3, which provides for underground water management to be transferred from the Commission to the 'Office of Groundwater Impact Assessment'.

Clause 53 amends section 365 to transfer the ability to declare a cumulative management area by the Commission to the 'Office of Groundwater Impact Assessment'.

Clause 54 amends section 368 (Who is a *responsible entity*) to omit the Commission and insert the 'Office of Groundwater Impact Assessment', defined in schedule 4 as the 'office'.

Clause 55 amends section 370 (Obligation to give underground water impact report) to omit the Commission and insert the 'office'.

Clause 56 amends section 372 (Obligation to give notice of closure—general) to omit the Commission and insert the 'office'.

Clause 57 amends section 374 (Obligation to give final report) to omit the Commission and insert the 'office'.

Clause 58 amends section 376 (Content of underground water impact report) to omit the Commission and insert the 'office'.

Clause 59 amends section 377 (Content of final report) to omit the Commission and insert the 'office'.

Clause 60 amends section 378 (Content of water monitoring strategy) to omit the Commission and insert the 'office'.

Clause 61 amends section 379 (Content of spring impact management strategy) to omit the Commission and insert the 'office'.

Clause 62 amends section 380 (Identifying responsible tenure holders for cumulative management areas) to omit the Commission and insert the 'office'.

Clause 63 amends section 385 (Decision on report) to omit the Commission and insert the 'office'.

Clause 64 amends section 391 (Minor or agreed amendments of approved report) to omit the Commission and insert the 'office'.

Clause 65 amends section 393 (Other amendments) to omit the Commission and insert the 'office'.

Clause 66 amends section 405 (Notice of outcome of baseline assessment) to omit the Commission and inserts the 'office'.

Clause 67 amends section 419 (Notice of outcome of bore assessment) to omit the Commission and insert the 'office'.

Clause 68 omits chapter 3, part 7 (Functions and powers of commission), dealing with the powers and functions of the Queensland Water Commission under chapter 3.

Clause 69 amends section 449 (Chief executive may direct petroleum tenure holder to carry out water monitoring activities) to omit the Commission and insert the 'office'.

Clause 70 inserts a new chapter 3A. The purpose of chapter 3A is to establish the Office of Groundwater Impact Assessment to perform the underground water functions previously carried out by the Commission and to provide for the functions and powers, the staffing and funding of the office.

New section 455 (Establishment) establishes the Office of Groundwater Impact Assessment (OGIA) to undertake the former underground water management functions of the commission.

New section 456 (Functions of office) provides the main functions of the OGIA, which are:

- to advise the chief executive on matters relating to impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders; and
- establishing and maintaining a database of information about underground water; and
- preparing reports for cumulative management areas.

New section 457 provides that the office has the powers necessary or convenient to perform its functions or to achieve the purposes of new chapter 3A.

New section 458 (Advice to chief executive) provides the chief executive may give the OGIA written directions to provide advice to the chief executive on any matter relating to impacts on underground water caused by the exercise of underground water rights.

New section 459 (Office to keep and maintain database) requires the OGIA to keep and maintain a database of information relevant to monitoring underground water.

New section 460 (Obtaining information about underground water from petroleum tenure holders) provides a power for the OGIA to request, via notice given by the manager of the OGIA, information from a petroleum tenure holder about the exercise of underground water rights under the

petroleum tenure. It is an offence for a petroleum tenure holder to not comply with the notice, unless the holder has a reasonable excuse.

New section 461 (Advisory bodies) provides that the OGIA may establish advisory bodies it considers appropriate to give the OGIA advice on the performance of its functions. These advisory bodies will not have any decision-making role.

New section 462 (Membership of office) provides that the OGIA will consist of a manager and other staff.

New section 463 (Manager of the office) provides that the OGIA must have a manager.

New section 464 (Appointment of manager) provides for the appointment of the manager by the Governor in Council on a full time basis. The manager can only be dismissed by the Governor in Council.

New section 465 (Eligibility for appointment) provides eligibility criteria for appointment of the manager.

New section 466 (Term of appointment) provides that the manager holds office for the term stated in the instrument of the person's appointment, but cannot hold office for longer than 5 years.

New section 467 (Functions of the manager) provides for the main functions of the manager.

New section 468 (Powers of the manager) provides for the manager to have the powers necessary or convenient for performing the manager's functions and discharging the manager's obligations imposed under the Water Act.

New section 469 (Independence in performing functions) ensures the independence of the OGIA by providing for the manager's functions to be performed by exercising independent judgment without direction from anyone else.

New section 470 (Manager not to engage in other paid employment) provides that the manager cannot hold another office of profit, engage in any other paid employment or undertaking outside of the duties of that office, or actively take part in another business.

New section 471 (Vacancy in office of manager) provides that the office of the manager will become vacant if the manager –

- completes the term of office or resigns by notice provided to the Minister;

- is removed from office by the Governor in Council under section 471;
- is convicted of an indictable offence, or offence against this Act; or
- is or becomes an insolvent under administration under section 9 of the Corporations Act.

New section 472 (Termination of appointment) provides for the termination of the manager by the Governor in Council on stated grounds.

New section 473 (Delegation) provides for the manager to delegate the manager's functions to an appropriately qualified person.

New section 474 (Preservation of rights as public service officer) provides that if the person undertaking the role of manager has resigned from the public service, they retain and are entitled to all rights that have accrued to the person because of the person's employment as a public service officer.

New section 475 (Superannuation if previously a public service officer) provides that if the person appointed as the manager was a public service officer, they will remain eligible for the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

New section 476 (Office staff) provides for the other staff of the OGIA to be employed under the *Public Service Act 2008*.

New section 477 (Alternative staffing arrangements) provides for the manager of the OGIA to arrange with the chief executive of a department for services of officers or employees of that department. The officers or employees of the department working for the OGIA will remain as employees of the department on the same terms and conditions, while being considered as a member of staff of the OGIA.

New section 478 provides for the establishment of a Groundwater Impact Assessment Fund.

New section 479 (Annual levy for underground water management—general) provides for the establishment of an annual levy, payable by each petroleum tenure holder, for funding the underground water management functions of the OGIA, established in new chapter 3A of the Water Act. The basis for calculating and charging the levy is identical in its terms to the existing annual levy for underground water management contained in section 360FA of the Water Act.

New section 480 (Payment of amounts into Groundwater Impact Assessment Fund) provides for the payment of levy contributions from petroleum tenure holders into a Groundwater Impact Assessment Fund.

New section 481 (Payment of amounts from Groundwater Impact Assessment Fund) provides for the manager to make payments from the Groundwater Impact Assessment Fund for stated expenses for costs.

New section 482 (Administration of Groundwater Impact Assessment Fund) provides for the keeping of accounts for the Groundwater Impact Assessment Fund as part of departmental accounts for the department.

New section 483 (Public access to database) provides that the office may make information kept on its database publicly available, provided the publicly available information does not include information obtained as part of undertaking a baseline assessment or a bore assessment, or the OGIA reasonably believes the information is commercially sensitive.

New section 484 (Petroleum tenure holder access to information) provides that the office must make any information kept on the database available to a petroleum tenure holder.

Clause 71 amends section 739 (Appointment and qualifications of authorised officers) to omit the Commission and insert the 'office'.

Clause 72 omits section 748A relating to the power of entry for monitoring commission water restrictions and water efficiency management plans.

Clause 73 amends section 749 relating to the power to enter places for other purposes.

Clause 74 omits references in section 932(1) to who may bring proceedings for offences relating to provisions previously administered by the commission.

Clause 75 omits section 1013(2) relating to approved forms of the commission.

Clause 76 amends the regulation making power for the *Water Regulation 2002* to provide for matters related to section 360C and section 360V.

Clause 77 inserts a new chapter 9, part 5, division 19 (Transitional provisions for Water and Other Legislation Amendment Act 2012).

New section 1210 provides definitions for division 19 (Preliminary).

New section 1211 (Transfer of funds into Groundwater Impact Assessment Fund) provides that the following amounts held by the QWC immediately before the commencement must be paid into the Groundwater Impact Assessment Fund –

- the balance of all levy amounts paid by petroleum tenure holders under previous section 360FA; and
- the balance of all interest paid on levy amounts by petroleum tenure holders because of late payment of levy amounts.

New section 1212 (Notices to pay levy) provides that where notices have been provided to petroleum tenure holders before the commencement, the petroleum tenure holder continues to be liable to pay the levy as stated in the notice. The amount to be paid by the petroleum tenure holder under the notice must now be paid into the Groundwater Impact Assessment Fund. The petroleum tenure holder continues to be liable to pay the levy for the relevant financial year, meaning 2010-11 or 2011-12.

New section 1213 provides definitions for subdivision 3 (Transfer of particular authorities to bulk water supply authority).

New section 1214 provides that subdivision 3 applies to certain stated water authorities.

New section 1215 provides that the transfer scheme relates to the transfer of water entitlements from the WGM to the Queensland Bulk Water Supply Authority and to other entities.

New section 1216 provides that the Minister may make a transfer notice to deal with water authorities, including transferring, replacing and imposing requirements on authorities.

New section 1217 enables the chief executive to take whatever action is necessary or convenient for the transfer of the authority under the transfer notice.

New section 1218 provides that, where an authority to take or interfere with water is held by a receiving entity, or continues to be held by a transferring entity, under a transfer notice, that authority continues under the Act until (a) the chief executive grants a water license to replaced the authority or (b) the authority is replace with a water entitlement, whichever happens first.

New section 1219 provides that a reference in an existing supply agreement to the transferring entity will be taken as a reference to the receiving authority.

New section 1220 provides definitions for the relevant transitional provisions as they relate to transitioning from the market rules to the bulk code and from the section 360ZDD contracts to the new bulk supply agreements.

New section 1221 ends the effect of the existing section 360ZDD contracts on the day that the new bulk water supply agreements made under section 360G take effect. The provision also recognises that some of the terms of the existing section 360ZDD contracts will survive termination if the contract nominates the term as a surviving one or if a transitional regulation allows its continuance (for up to a year, after which it must either be continued in new legislation or the new contracts would have to be amended to deal with the substantive issue). The 'old' liability provisions under section 360ZDI would continue to apply to any 'survived' clauses.

New section 1222 provides for any future transfer of raw water customers of an SEQ service provider to Queensland Bulk Water Supply Authority. It does this by providing that an existing customer contract ends on the day that a new contract is entered into with the Authority.

New section 1223 provides that the market rules continue to have effect after the commencement of clause 54, and end on the day the Code takes effect under new section 360M.

New section 1224 (Consultation for first code) recognises that consultation for the first Code may occur prior to the making of the Bill.

New section 1225 provides a transitional regulation making power which may be used for up to one year after commencement to deal with oversights regarding transitional market rules, grid contract matters, certain raw water customer contracts or other matters for which the Act does not make provision or sufficient provision.

New section 1226 provides that a system operating plan for the SEQ region in effect on 31 December 2012 will continue to have effect until the making of a regulation under section 344 setting desired levels of service objectives for SEQ.

New section 1227 delays the application of the offence provisions in relation to the requirement of water service providers in the SEQ or a designated region to have a water security program until 1 year after a regulation is made under section 344.

New section 1228 provides that a notice given to a customer by a water service provider before commencement to prepare a water efficiency management plan is, at commencement, of no effect.

New section 1229 provides that a water efficiency management plan prepared by a customer before commencement is, at commencement, of no effect.

New section 1230 provides that a commission water restriction ceases to have effect upon commencement.

New section 1231 provides that an underground water impact report given to the chief executive by the former commission under section 370, and approved by the chief executive under section 385(1) before commencement, is taken to have been given to the chief executive by the office.

New section 1232 (Expenditure Advisory Committee) provides for the continuation of the Expenditure Advisory Committee established by the QWC, under the previous section 360FA, as a committee established under section 460 with the same name as the former committee.

New section 1233 provides that, at commencement, the person occupying the role of the General Manager, Coal Seam Gas Water will be taken to be appointed as the first manager of the OGIA.

New section 1234 provides a transitional regulation-making power for up to one year, enabling a regulation to make provision of a saving or transitional nature about a matter necessary to give effect to the transition from the former commission to the OGIA, and for which the Act does not make provision or sufficient provision.

Clause 78 amends schedule 4 (Dictionary) to remove old terms relevant to the existing institutional arrangements, contracts and market rules and inserts new definitions relevant to the new arrangements.

Part 5 Amendment of Water Fluoridation Act 2008

Clause 79 states that part 5 amends the *Water Fluoridation Act 2008* (WF Act).

Clause 80 inserts a new subsection 6A into the WF Act as a consequence of the proposed amendments to section 8. That is, to specify that a public potable water supplier will only be able to apply for an exemption for a relevant public potable water supply under their control or management if it is an eligible relevant public potable water supply.

A public potable water supplier is currently defined for the purposes of the Act to mean the owner of a water treatment plant, or where there is no water treatment plant, the owner of the reticulation equipment for the water supply.

A relevant public potable water supply is also defined for the purposes of the WF Act to mean a public potable water supply supplying potable water to at least 1,000 members of the public.

An application for an exemption will be able to be submitted for a relevant public potable water supply under section 8 if a substantial financial investment in the construction of fluoride dosing equipment had not been undertaken by the public potable water supplier responsible for the supply, immediately before the commencement of part 5 of the Bill.

The new subsection 6A also clarifies which relevant public potable water supplies are not considered to be an eligible relevant public potable water supply. A water supply would not be eligible to apply for an exemption under section 8 if, immediately before the commencement of part 5 of the Bill:

- fluoride was being added to the water supply by the public potable water supplier responsible for the supply; or
- fluoride dosing equipment had been constructed but dosing had not commenced; or
- a substantial financial investment in the construction of fluoride dosing equipment for the supply had been made.

In addition, a water supplier will not be able to apply for an exemption if they control or manage:

- one water supply that services an urban centre with a population of more than 10,000; or
- a water supply that services a number of urban centres or localities with a total population of more than 10,000; or
- a number of water supplies that provide an integrated service to an urban centre with a population of more than 10,000.

For the purposes of this provision, the terms urban centre and locality are defined having regard to the Australian Standard Geographical Classification Urban Centres and Localities Digital Boundaries, Australia, 2006 published by the Australian Bureau of Statistics (1259.0.30.003). The

definition of urban centre is to be added to the Dictionary for the Act by clause 86.

If a relevant public potable water supply is not an eligible relevant public potable water supply, the responsible water supplier will be obliged to continue to fluoridate the water supply, progress to the implementation of fluoridation by the date prescribed within Schedule 1 of the Regulation, or if that date has passed, implement fluoridation as soon as possible.

Clause 81 replaces section 7. The new section 7 will continue to impose a statutory obligation on a public potable water supplier for a relevant public potable water supply to add fluoride to the water supply on or before the date prescribed for the supply under the *Water Fluoridation Regulation 2008*.

However, this obligation does not capture those water suppliers who elected to commence fluoridation under the repealed *Fluoridation of Public Water Supplies Act 1963*, which preceded the current Act.

Given that these suppliers were already fluoridating at the time the Act commenced, a prescribed date by which they were required to commence fluoridation under the new Act was not included in Schedule 1 of the Regulation. Consequently, a new clause has been added to section 7 to specify that if a public potable water supplier was adding fluoride to a relevant public potable water supply under their control or management before the commencement of the WF Act and they were still doing so as of 1 December 2012, the water supplier must continue to fluoridate the water supply.

Clause 82 amends section 8 which enables a public potable water supplier for a relevant public potable water supply to apply for an exemption from the obligation that fluoride must be added to the water supply under section 7.

The Bill will amend section 8 to clarify that a public potable water supplier will only be able to apply for an exemption if a relevant public potable water supply under the supplier's control or management is an eligible relevant public potable water supply (see new subsection 6A).

In addition, the amendments to section 8 will expand the grounds under which an exemption may be granted by the Minister. The criteria detailed in subsection (1)(a) and (1)(b) are to be retained so that an exemption may be granted if:

- the water supply contains naturally occurring fluoride at an average concentration that is within the minimum and maximum concentrations prescribed under the Regulation or above that maximum concentration; or
- fluoride cannot be maintained at an average concentration that is within the minimum and maximum concentrations prescribed under the Regulation because of the natural water chemistry of the water supply.

The exemption provided for by subsection (1)(c) is to be reworded in order to address difficulties water suppliers have experienced in being able to demonstrate that they are eligible for an exemption under this criterion. Currently, an exemption may be granted if the addition of fluoride to a water supply is unlikely to result in a substantial ongoing oral health benefit to the community, or part of the community, of the area serviced by a water supply and the number of members of the public who consume water from the water supply is less than 1,000.

Under the proposed amendment, an exemption may be granted if the addition of fluoride to the water supply is unlikely to result in a substantial ongoing oral health benefit to 1,000 or more members of the public serviced by the water supply. In other words, it will no longer be necessary for an applicant to prove that no part of the community (no matter how small) will receive an ongoing oral health benefit, just that no more than 1,000 persons will receive the benefit.

Three new exemption criteria are to be inserted into section 8, namely if:

- there will be an unreasonable cost to the members of the public, or the water supplier, of implementing and maintaining the addition of fluoride to the water supply for an urban centre of fewer than 10,000 members of the public; or
- the water supplier cannot ensure the effective and safe addition of fluoride to the water supply, for example due to the inability of the supplier to employ and retain adequately qualified persons capable of operating the fluoride dosing equipment or due to the natural properties of the water such as temperature; or
- there are water quality issues relating to the safe supply of potable water for the members of the public who consume water from a water supply. For example, if issues concerning the quality of the drinking water need to be addressed prior to commencement of fluoridation.

The application and decision making processes for the granting of an exemption are not to be amended. The Act will continue to require that a written application be submitted to the Minister for Health, including sufficient information to enable the Minister to make a decision on the application. All applications will be referred to the Queensland Fluoridation Committee, which must advise the Minister on the merits of the application within 90 days of receiving an application.

Exemptions may be granted, on conditions, for a period of five years from the date the water supplier is notified of the Minister's decision. At the end of the five year exemption period, a supplier must either apply for a new exemption prior to the expiry of the current exemption, or comply with the requirement under section 7 and commence fluoridation.

In the event that an application for an exemption is refused, a water supplier will have 12 months to comply with the obligation under section 7 from the date the supplier is advised of the Minister's decision.

Clause 83 amends section 9, which sets out the applicable time frames should the Minister decide to grant or refuse to grant an exemption from the obligation that a relevant public potable water supply be fluoridated.

Section 9 is to be amended as a consequence of the proposed changes to section 7 and the inclusion of new subsection 6A. As outlined above, the Bill amends section 7 to specify that a public potable water supplier for a pre-existing fluoridated water supply must continue to fluoridate the supply. In addition, the new subsection 6A(2)(a) clarifies that these supplies are not an eligible relevant public potable water supply for which an exemption may be sought under section 8. Consequently, the existing references to section 7 need to be amended so that reference is only made to subsection 7(1).

Clause 84 amends section 10 which empowers the Minister to refuse an application for an exemption if the Minister reasonably believes the application is vexatious. The existing reference to section 7 in this provision also needs to be amended as a consequence of the proposed changes to section 7 and the inclusion of new subsection 6A.

Clause 85 inserts a new part 12 into the Act comprised of section 102. This section specifies that an application for an exemption may be dealt with under section 8, as amended by the Bill, if the application was not dealt with prior to the commencement of the amendments to the Act as provided for by part 5 of the Bill.

Clause 86 inserts three new definitions into the dictionary as a consequence of the amendments being made to the Act – that is, *eligible relevant public potable water supply*, *relevant commencement* and *urban centre*.

Eligible relevant public potable water supply is defined in new subsection 6A as discussed above.

Relevant commencement is to be defined to mean the commencement of part 5 of the South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012, which provides for the amendments to the WF Act.

The term urban centre (used in the new section 6A and section 8) is to be defined in accordance with the Australian Standard Geographical Classification Urban Centres and Localities Digital Boundaries, Australia, 2006 published by the Australian Bureau of Statistics (1259.0.30.003).

Part 6 Amendment of Water Supply (Safety and Reliability) Act 2008

Clause 87 states that part 6 amends the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

Clause 88 amends section 13 to require certain entities to give the regulator (of the Office of Water Supply Regulator) certain information. The amendments reflect the new bulk water arrangements with the establishment of the single bulk water supply authority and the abolition of the WGM.

Clause 89 amends section 41 to extend the power for water service providers to impose restrictions to all Queensland, upon meeting the stated criteria, and enables the imposition of restrictions of an urgent nature, to provide for asset failures and other emergencies.

Clause 90 amends section 42 to extend the power of the regulator to direct water service providers to impose restrictions to apply to the whole of Queensland.

Clause 91 amends section 51 to extend the power of water service providers to make water efficiency management plans under section 52 to the whole of Queensland.

Clause 92 omits the requirement in section 52 for water service providers to seek the approval of the chief executive of the form of a notice requiring their customers to have a water efficiency management plan.

Clause 93 omits the reference to "designated region" from section 132.

Clause 94 omits the reference to "commission" in section 138.

Clause 95 omits the reference to "commission water restriction" in section 139.

Clause 96 extends the application of section 169 (Restricting domestic water supply in particular circumstances) to non-domestic and omits the reference to "commission water restriction".

Clause 97 amends section 318 (Meaning of a relevant location for a drinking water service provider) to reflect the new bulk water arrangements with the establishment of the single bulk water supply authority and the abolition of the WGM.

Clause 98 inserts new section 356A (Compliance with safety or development condition) to provide that the owner of a referable dam to which a safety condition or development condition applies must not contravene the condition. An offence with the maximum penalty of 1665 penalty units is created.

While this is a new offence for the Water Supply Act, safety conditions are deemed to be development conditions attaching to a development permit. Non-compliance with a development permit and the conditions attaching to the permit is an offence under the *Sustainable Planning Act 2009* for which a maximum financial penalty of 1665 penalty units applies. This provision will enable the compliance and enforcement provisions of the Water Supply Act to be relied upon instead to ensure compliance with dam safety conditions.

Clause 99 inserts new section 497(1)(d) to limit the persons who may bring a proceeding for an offence against a provision of Chapter 4 (Referable dams and flood mitigation) to the Attorney-General and the chief executive. The chief executive is the dam safety regulator under the Water Supply Act.

Clause 100 amends section 579 (Regulator may share particular information) to reflect the new bulk water arrangements with the establishment of the single bulk water supply authority and the abolition of the WGM.

Clause 101(1) amends schedule 3 (Dictionary) to remove the definition of the WGM due to its proposed abolition. *Clause 101(2)* inserts a definition of 'development permit' for the purpose of Chapter 4 (Referable dams and flood mitigation).

Part 7 Minor and consequential amendments

Schedule Acts amended

Part 1 Amendments commencing on assent

Local Government Act 2009

Clause 102 Item 1 inserts a note into section 290 of the *Local Government Act 2009* to clarify that some of the employees to whom this section applies, since the enactment of this section, have been transferred to the Queensland Bulk Water Supply Authority under a regulation made under section 105 of the Restructuring Act. The LG Super scheme continues to apply to those employees. Refer also to comments about clause 102 Item 2.

Clause 102 Item 2 inserts a transitional provision into the *Local Government Act 2009* to facilitate the continued LG Super membership of LinkWater employees who are, or have been, transferred to the Queensland Bulk Water Supply Authority.

Part 2 Amendments commencing by proclamation

Energy and Water Ombudsman Act 2006

Clause 102 Items 1 to 5 make minor consequential amendments to *Energy and Water Ombudsman Act 2006*.

Public Service Act 2008

Clause 102 Item 1 makes minor consequential amendments to the *Public Service Act 2008*.

South East Queensland Water (Restructuring) Act 2007

Clause 102 Items 1 to 7 make minor consequential amendments to update the language of the Restructuring Act to reflect the fact that the Queensland Bulk Water Supply Authority will be the only entity to be governed by chapter 2 of the Restructuring Act (i.e. remove references to "new water entity" and replace it with a reference to the "Queensland Bulk Water Supply Authority").

Water Act 2000

Clause 102 Items 1 to 6 make minor consequential amendments to the *Water Act 2000* to replace references to the "water grid manager" and "new water entities" with a reference to the Queensland Bulk Water Supply Authority.