Water Reform and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the *Water Reform and Other Legislation Amendment Bill 2014*.

Policy objectives and the reasons for them

In March 2014, the Queensland Government announced a review of water legislation to deliver on its promise to grow agriculture as one of the four pillars of the economy. The *Water Act 2000* (Water Act) is the primary framework for the planning, allocation and management of water in Queensland; however it is more than thirteen years old and does not recognise advances in managing water resources. The proposed amendments will ensure that Queensland's water legislation keeps pace with current water management best practice, government service delivery and technology.

The *Water Reform and Other Legislation Amendment Bill 2014* (the Bill) delivers on the Government's commitment to ensure the State's water resources are used responsibly and productively for the benefit of all Queenslanders, while retaining certainty and security of water entitlements, and balancing economic, social and environmental outcomes. The changes form part of a whole-of-water business transformation which will responsibly accelerate productivity for Queensland and deliver an efficient, effective and modern water resource management framework. The water business transformation is a significant part of the Government's commitment to accelerate growth of the agriculture and resources sectors and create economic development opportunities for rural and regional Queensland.

The objectives of the Bill are to:

- establish a new purpose for the whole Water Act that will encompass the broad nature of the Water Act's provisions to ensure it provides for the responsible and productive management, allocation and use of Queensland's water and riverine quarry resources
- establish a watercourse identification map to identify what is and is not a watercourse
- provide a new framework for management and allocation of water to deliver a significantly more efficient, flexible and responsive framework for water resource planning by:

  - providing for the development of statutory water plans as the primary catchment-based water management instrument
  - providing for the development of water entitlement notices to grant, amend, refuse, repeal or cancel entitlements (under certain situations) to implement a water plan
  - establishing a streamlined assessment and approval framework to facilitate major water infrastructure projects (including large-scale agricultural projects)
  - streamlining the framework for regulating the take and interference with water to reduce the regulatory burden
  - reforming the framework for water licensing
  - enabling the surrender of water allocations
  - making other changes to chapter 2 such as minor amendments to align the streamlined frameworks.
- establish a consistent framework for underground water rights for the resources sector and for the management of impacts on underground water due to resources sector activities through changes to:
  - the *Mineral Resources Act 1989* (Mineral Resources Act) and *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act)
  - expand the application of chapter 3 of the Water Act to the mineral resources sector.
- enact safety and health legislative provisions for the new overlapping tenure framework for Queensland's coal and coal seam gas industries
- broaden the categories of mandatory qualification for eligibility for appointment as the Commissioner for Mine Safety and Health
- support the transition of category 2 water authorities to other institutional forms and simplify the administrative requirements for both category 2 water authorities and river improvement trusts
- provide a pathway for water rights held under special agreement legislation to be transitioned into the Water Act framework to ensure consistency with the Water Act and provide clarity of access to water for all water users
- removing the reversal of the onus of proof under section 812A and 812B of the Water Act
- make other amendments to:
  - remove provisions of the Water Act relating to drainage and embankment areas
  - provide flexible 'fit for purpose' public notice requirements
  - provide for online fees and payment
  - remove spent transitional provisions from the Water Act.

Purpose of the Water Act

The current Water Act includes a purpose for chapter 2 only. While this chapter is fundamental to the function of the Water Act as it provides for planning and management of Queensland's water resources, it is just one of a number of chapters. The Bill includes a new purpose to guide the entire Water Act, which encompasses the broader nature of the Water Act provisions and sets a new direction for water resource management in Queensland.

The new purpose ensures Queensland's water legislation aligns with contemporary water management approaches, utilises best available technologies and facilitates strong uptake of water resource development opportunities.

Watercourse identification map

Headwaters of catchments have drainage features that direct water into small tributaries which in turn feed larger watercourses. It is often difficult to identify where the boundary between a drainage feature and a watercourse lies, or the location of the downstream extent of the watercourse. Information on these boundaries is not readily accessible to water users and the general public. To deal with this, the Bill includes an amendment to the Water Act to enable the chief executive to prepare a watercourse identification map that will identify the extent of watercourses and drainage features. The amendment will also allow the map to show lakes and springs. This map will be available on the Department of Natural Resources and Mines (the department) website.

Framework for management and allocation of water

The Bill proposes a new chapter 2 to deal solely with the management and allocation of water. The new chapter will no longer include division 2A (Other water supply emergencies) or division 2B (Restrictions on use of subartesian water) as these provisions have been moved to the new chapter 1A of the Water Act.

Streamlined water resource planning

The existing water resource planning process in chapter 2 of the Water Act is designed to manage the allocation and sustainable management of water to meet Queensland's current and future water needs. Two fundamental components of the process are the development of statutory water resource plans and resource operations plans. A water resource plan provides the management framework for water resources in a given catchment, outlining outcomes, objectives and strategies for achieving a sustainable balance between water for industry, irrigators, town water supply and the environment. A resource operations plan implements the outcomes and strategies defined in the water resource plan by specifying day-to-day rules and management arrangements for water users and infrastructure operators.

While this framework is comprehensive it is also lengthy, overly prescriptive and inflexible. The Bill provides a new framework structured around a catchment-based statutory water plan (subordinate legislation) that specifies the allocation and management of water resources of a river basin or aquifer system. Operational matters such as water sharing rules will be contained in either a water management protocol (for unsupplemented water) or an operations manual (for supplemented water).

Combined with other changes to the management and allocation framework, this will provide a more responsive and timely risk-based approach to water resource planning and management by enabling more efficient delivery of planning outcomes while reducing regulatory burden, and maintaining security of entitlements.

Fast tracked conversions of water licences to water allocations

Under the current Water Act, the conversion of water licences and other authorities to water allocations requires preparation or amendment of a water resource plan and resource

operations plan, each with iterative consultation processes. The process is also dependent on comprehensive data-intensive hydrologic models that are used, among other things, to define the probability of being able to obtain water under each entitlement. The need to determine the probability is a requirement of the existing provisions of the Water Act, however in some situations determining the probability is unnecessary or not feasible. In many parts of Queensland, there is a lack of data (such as records of historical river flows or underground water levels) to support the timely development of these models. This can unnecessarily impede the process of creating water allocations.

The Bill establishes a separate statutory instrument called a water entitlement notice. This notice will be used to convert, grant, amend, or refuse entitlements and will be applied to multiple plan areas, enabling bulk conversions of water licences to water allocations. The Bill also amends the definition of a water allocation security objective which combined with the water entitlement notice will facilitate an expansion in the number of secure tradeable water allocations.

Facilitating large scale water related development

Proponents of large scale water resource development projects require a commitment from government of future access to water in order to secure the financial status to progress.

The Bill amends the Water Act to introduce a 'water development option' which provides a Government commitment (at an early stage in the impact assessment process) of access to water for coordinated projects. This is designed to facilitate the responsible development of large-scale developments which have a water infrastructure component.

The Bill amends the Water Act to enable the Minister to amend a water plan, if appropriate, to implement the outcomes of an environmental impact statement process by reserving unallocated water for large scale projects. Providing more certainty for developers will encourage and facilitate greater private sector involvement in relevant projects.

Reforming the framework for regulation of taking and interference with water

There are three main components to this part of the Bill. These are:

- addressing the regulation of take and interference of water in minor watercourses
- take of water where the purpose or volume of take is of low risk
- take and interference where the two activities are closely linked.

Statutory authorisations - deregulation of watercourses and low risk take or interference

In some locations, such as small headwater streams, the take and interference with water and other activities, such as extraction of riverine quarry material or excavation or placing fill in a watercourse, pose a low risk to sustainability of the resource. Where this situation exists, the chief executive may deregulate these activities and allow for local or self management.

In some situations it may not be appropriate to entirely deregulate all of these activities in a particular watercourse (or reach of a watercourse). However, it may also be the case that certain activities (take and/or interference) pose a low risk to the resource. In these situations, the Bill provides for the use of catchment-based water plans to remove the need for a water licence.

The Bill also amends the Water Act to remove the requirement for licences in other parts of the state where there is no water plan, or the water plan does not otherwise remove the need for a licence and where risk to the resource is low.

Combined authorisation for both take and interference

There are situations where both the take and interference with water are closely linked, such as the building of a weir (interference works) to impound water to enhance the ability to take water. Under the existing framework a weir requires a licence to interfere while take of water from the weir requires a licence to take water. The Bill amends the licencing framework to allow a single licence to authorise both the interference and take where these two activities are inextricably linked. This will remove the requirement for a water user to hold two entitlements for what is effectively a single activity and will allow flexibility in the use of water from the storage.

Streamlined water licence process

This amendment removes the need for dealings of a routine nature that do not impact on the water resource, to be assessed as if they were a new licence. New licences and dealings with existing licences that have the potential to impact on other water users or the water resource will still be the subject of public notice, submissions and appropriate decision criteria.

A large number of applications are received each year across the State for changes to water licences. It is estimated that at least 75% of these will be able to follow the new simple dealing process, removing the need to advertise (saving customers up to $1500 for each application) and significantly reducing the time taken for a resolution on the application.

The existing licensing framework is resource intensive for the department and often onerous and expensive for applicants. In 2013, the department received approximately 3000 dealings to amend, transfer, reinstate, subdivide, amalgamate or replace existing water licences. A number of these were consecutive dealings for the same water licence.

The Bill amends the licence application process to ensure that simple changes to a water licence are not required to follow a lengthy application process and may simply be registered in the department's systems.

This amendment also removes the need for dealings of a routine nature to be assessed as if they were a new licence. These reforms will reduce the regulatory burden and costs associated with the processing of water licence dealings for both the department and water users and will allow licence holders to do business more efficiently.

Surrender of water allocations

The Bill will include a provision that enables a water allocation to be surrendered. This inclusion recognises that there are circumstances that warrant surrender of a water allocation. These may include where an allocation has been issued in error, where regulatory changes mean an entitlement is no longer required for a particular purpose or in a particular area, or where a water supply scheme ceases operation and a supplemented water allocation is no longer appropriate.

Other changes to chapter 2 of the Water Act

As well as the above reforms there have been a number of significant structural changes and minor amendments to chapter 2 of the Water Act including:

- streamlining provisions for publishing and implementing water restrictions
- simplification of moratorium provisions
- streamlining elements of the water use plans and operations licences provisions to ensure consistency of style and terminology with other parts of the Water Act
- amendments relating to the process for reserving and releasing unallocated water to allow faster access to unallocated water
- broad restructuring of chapter 2 to enhance clarity and readability.

Consistent framework for underground water rights for the resource sector

Currently the take of underground water by the resource sectors is managed under an inconsistent framework of rights and obligations established through various resources legislation and the Water Act. Mining tenure holders are required to obtain a water entitlement under chapter 2 of the Water Act before extracting underground water in a regulated area; however, landholders whose bores may be affected are not protected by a statutory 'make good' obligation. In comparison, the petroleum and gas industry has a right to take underground water which is not managed under the planning and allocation processes of chapter 2, however it is subject to statutory obligations to manage impacts, including an obligation to enter 'make good' agreements with affected landholders, which are established by chapter 3 of the Water Act. The Bill provides a more consistent framework for underground water rights for the resource sector and for appropriate management of impacts on underground water due to resource sector activities.

Mineral resource sector

The holder of a mining lease or mineral development licence under the Mineral Resources Act may need to remove underground water from a mine site in order to carry out the operations, for example to create safe operating conditions. Water extracted under these circumstances that is a direct and unavoidable consequence of undertaking the mining activity is referred to as 'associated water'. Currently, there is inconsistency in the statutory frameworks for addressing the impacts on landholders whose water supply bores may be affected as a result of extraction of associated water.

For the petroleum and gas sector, associated water take is managed through a statutory right and associated reporting, monitoring and make good requirements under chapter 3 of the Water Act as well as the ability for a cumulative management regime to be applied. However in underground water management areas established under a water resource plan or declared subartesian area, mining tenure holders are required to obtain a water licence for this take of underground water. Such a licence may be subject to conditions that require the mine owner to enter into agreements to make good any impacts on landholders' water supply bores.

Furthermore, mines in unregulated areas may take underground water without any legal framework for managing impacts on bores. This leads to uncertainty over the timing and

process for developing make good arrangements, and may have an adverse effect on reliability and security of access to water for some landholders who use underground water.

The Bill brings the take of associated water by mining operations into line with the provisions for the petroleum and gas sector through amendments to the Mineral Resources Act and chapter 3 of the Water Act. These will provide the holder of a mining lease or mineral development licence with a statutory right to take associated water which is subject to their compliance with the requirements of chapter 3.

Petroleum and gas sector

The petroleum and gas resource sector is undergoing considerable growth, with further expansion predicted of an onshore oil and deep gas industry. In many situations, these activities will require the take of water to be used consumptively in the activity, for example, for hydraulic fracturing. Water taken for consumptive purposes such as this is referred to as 'non-associated water'.

The take of underground water by the petroleum and gas sector is not subject to the same assessment as applies to the mining and other sectors. Instead, take of both associated and non-associated water is a statutory right under the Petroleum and Gas Act. Increased demand for non-associated water could, if not appropriately managed, affect the security of access to water for existing water users. Without an appropriate framework, there is a risk that either the existing agricultural industry or the expanding onshore oil and deep gas industry would be adversely affected.

The Bill establishes a more consistent framework for managing access to the State's underground water resources including the take of non-associated water for the petroleum and gas sector, by limiting the statutory right to apply only to take of associated water. As a consequence, a petroleum tenure holder will be required to obtain a water entitlement before extracting non-associated water in a regulated area, allowing the take of non-associated water to be managed under the planning and allocation processes of chapter 2 of the Water Act.

Safety and health legislative provisions for the new overlapping tenure framework

In May 2012, the Queensland Resources Council presented the government with a joint industry proposal for a new legislative framework for managing coal and petroleum (coal seam gas) overlapping tenure in Queensland in a paper titled 'Maximising Utilisation of Queensland's Coal and Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland' (the White Paper). A government-industry steering group and five technical working groups were established to progress the issues presented.

Based upon this work, the new overlapping tenure framework introduced through the *Mineral and Energy Resources (Common Provisions) Act 2014* (Common Provisions Act) provides a process for managing situations where a resource authority for one resource type (e.g. coal mining lease) overlaps a resource authority for another resource type (e.g. petroleum lease).

The joint industry White Paper and Safety and Health Technical Working Group (the technical working group) working papers generally noted that there is also a need for amendments to harmonise safety and health requirements for overlapping coal and coal seam

gas tenures, and covered safety considerations for the new overlapping tenure framework including simultaneous operations zones.

The technical working group identified possible amendments to the *Coal Mining Safety and Health Act 1999* (Coal Mining Safety and Health Act) and Regulation and Petroleum and Gas Act and Regulation and Mineral Resources Regulation 2013 to provide greater guidance to both the coal and coal seam gas industries about their obligations when in an overlapping tenure arrangement.

This Bill includes safety and health amendments to the Coal Mining Safety and Health Act and the Petroleum and Gas Act for the overlapping tenure framework based upon the work of the technical working group. The amendments improve the current framework for overlapping activities by requiring joint interaction management plans and provide for an alternative dispute resolution process. Disputes between the respective industry parties will be able to be resolved in a fast, final (as between the industry parties) and fair manner through this process but this will not limit the Mines and Petroleum and Gas inspectorates' ability to regulate safety and health.

As part of the amendments, there is harmonisation of some key terminology across these industries, to clarify the approach and language to safely manage interactions across overlapping coal and coal seam gas tenures under the Coal Mining Safety and Health Act and Regulation and Petroleum and Gas Act and Regulation.

Safety and health outcomes will not be compromised by these less restrictive overlapping tenure arrangements, with both industries operating safely through joint interaction management plans, over the same area.

Qualifications for appointment as Commissioner for Mine Safety and Health

In 2009 the statutory position of Commissioner for Mine Safety and Health was created under the Coal Mining Safety and Health Act and the *Mining and Quarrying Safety and Health Act 1999*. The functions of the Commissioner are to:

- advise the Minister on mine safety and health matters generally
- fulfil the roles of chairperson of the coal mining safety and health advisory committee and chairperson of the mining safety and health advisory committee
- monitor and report to the Minister and to Parliament on the administration of provisions about safety and health under the Acts and other mining legislation
- perform the functions given to the Commissioner under the legislation.

The Commissioner is appointed by the Governor in Council by gazette notice. To be appointed as the Commissioner a person must have a science or engineering qualification relevant to the mining industry and professional experience in mine safety.

Experience since 2009 indicates that the role of the Commissioner, whilst requiring an understanding of the technically challenging matters that occur in front line mining operations, also requires an independent, knowledgeable and balanced source of advice and

advocacy in relation to safety and health in mining. The current mandatory qualifications necessary for appointment are overly restrictive having regard to the scope of the role.

Transitioning water rights under special agreement legislation to the Water Act

While water allocation and management is largely regulated through the Water Act, there are also water rights contained in a number of special agreement Acts. The original purpose of these Acts was to provide the specified business with clear state government support for development. It is not always clear how much water could potentially be taken under these rights, which has led to uncertainty about the security of access to water for surrounding water users.

In particular, the water rights in special agreement Acts are not well specified and excess water cannot be traded (or transitioned to allow for trading). It is desirable to have a clearly defined set of rights, and to potentially allow these companies to trade water allocations in the same manner as other businesses.

In addition, because special agreement Acts are primary legislation, amendments are time consuming to both negotiate and enact.

The Bill includes measures to simplify and standardise the process of bringing these companies water rights under the Water Act. The Bill also provides long term security to mining companies and other water users by providing these companies with well specified water entitlements.

Category 2 water authorities and river improvement trusts

The Water Act provides the framework for the establishment and ongoing administration of category 2 water authorities and the *River Improvement Trust Act 1941* (River Improvement Trust Act) for river improvement trusts. There are significant costs for these entities to comply with the reporting and administrative requirements for statutory bodies.

Many of the existing water authorities are seeking to transition into alternative non-statutory entities with reduced reporting requirements but are facing impediments to doing this. The Bill amends the Water Act to address impediments such as distribution contracts for category 2 water authorities that also hold a distributions operations licence to support their transition to more efficient alternative institutional structures.

The Bill amends the River Improvement Trust Act and the Water Act to ensure these entities are not restricted by unnecessary regulatory burden and prescriptive reporting requirements. More specifically, amendments will reduce the need for government approvals for river improvement trusts to make it easier for them to conduct river improvement activities.

Removing the reversal of the onus of proof

Section 812A and it supporting section 812B currently provide for the holder of a water allocation, interim water allocation, water licence or water permit to be responsible, in the absence of evidence to the contrary, for the taking of unauthorised water. The Bill amends the

Water Act to remove this reversal of the onus of proof to ensure that standard prosecution principles apply.

Amendments to the Water Resource (Great Artesian Basin) Plan 2006

A peer reviewed assessment by the Department of Science, Information Technology, Innovation and the Arts of the Great Artesian Basin water resource in the Cape York area identified that artesian water could be used to support two new mining projects in the area, with manageable and minor effects on existing water users, the resource, or springs.

The Bill proposes amendments to the Water Resource (Great Artesian Basin) Plan 2006 to allow for the release of unallocated water to support new development opportunities in Cape York. The amendment will promote development by potentially identifying underground water available for consumptive use in the Cape York area, especially for bauxite mining.

Additionally, the Bill will enable granting of a underground water licence to take water from the Great Artesian Basin to improve the security of water supply for Toowoomba Regional Council.

Minor amendments

The Bill also makes a number of miscellaneous amendments including:

- Flexible public notice requirements: The current public notice requirements are inflexible, outdated and often expensive. The Bill includes a new provision for publishing that will enable greater flexibility in how the department communicates information to its clients.
- Drainage and embankment areas: The Bill removes provisions for declared drainage and embankment areas which are now dealt with under a new state-wide regulatory framework for levees.
- Online fees and payment: The Bill enables flexible payment methods to make the payment of fees easier and more convenient for water users.
- Removing spent transitional provisions: The Bill removes the ‘spent’ transitional provisions that are no longer necessary which will make it easier and simpler for stakeholders to understand the Water Act.
- Underground water impact management: In addition to expanding the underground water impact management framework to the mineral resources sector, the Bill makes several operational improvements to chapters 3 and 3A of the Water Act.
- Mine safety related amendments: The Bill also proposes some minor amendments to the Coal Mining Safety and Health Act relating to the appointment of Mine Safety and Health Commissioners.

Achievement of policy objectives

To achieve the policy objectives the Bill will amend the:

- *Alcan Queensland Pty. Limited Agreement Act 1965*
- *Coal Mining Safety and Health Act 1999*

- *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*
- *Mineral and Energy Resources (Common Provisions) Act 2014*
- *Mineral Resources Act 1989*
- Mineral Resources Regulation 2013
- *Mining and Quarrying Safety and Health Act 1999*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *River Improvement Trust Act 1940*
- Sustainable Planning Regulation 2009
- *Water Act 2000*
- Water planning statutory instruments including:
  - Water Resource (Baffle Creek Basin) Plan 2010
  - Water Resource (Barron) Plan 2002
  - Water Resource (Boyne River Basin) Plan 2013
  - Water Resource (Border Rivers) Plan 2003
  - Water Resource (Burdekin Basin) Plan 2007
  - Water Resource (Burnett Basin) Plan 2000
  - Water Resource (Calliope River Basin) Plan 2006
  - Water Resource (Condamine and Balonne) Plan 2004
  - Water Resource (Cooper Creek) Plan 2011
  - Water Resource (Fitzroy Basin) Plan 2011
  - Water Resource (Georgina and Diamantina) Plan 2004
  - Water Resource (Gold Coast) Plan 2006
  - Water Resource (Great Artesian Basin) Plan 2006
  - Water Resource (Gulf) Plan 2007
  - Water Resource (Logan Basin) Plan 2007
  - Water Resource (Mary Basin) Plan 2006
  - Water Resource (Mitchell) Plan 2007
  - Water Resource (Moonie) Plan 2003
  - Water Resource (Moreton) Plan 2007
  - Water Resource (Pioneer Valley) Plan 2002
  - Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003
  - Water Resource (Wet Tropics) Plan 2013
  - Water Resource (Whitsunday) Plan 2010
- Other minor and consequential amendments are being made to the following Acts and regulations:
  - *Water Supply (Safety and Reliability) Act 2008.*
  - *Cape York Peninsula Heritage Act 2007*
  - *Land Valuation Act 2010*
  - *Coastal Protection and Management Act 1995*

- *State Development and Public Works Organisation Act 1971*
- Sustainable Planning Regulation 2009.

Purpose of the Act

The new overarching purpose will provide necessary guidance for the whole Water Act. A key focus of the new purpose is the responsible and productive management, allocation and use of water for the benefit of Queenslanders. It recognises the need to balance social, economic and environmental values and that water is a key driver of economic development in the State. The new purpose will continue to recognise the importance of sustaining ecosystem health, water quality and water-dependent ecological processes and biological diversity associated with catchments, watercourses, lakes, springs, aquifers and other natural systems.

Watercourse identification map

The Bill includes amendments to the Water Act to enable the chief executive to prepare a watercourse identification map that will identify the longitudinal limits of a watercourse, downstream limits of a watercourse, drainage features, lakes and springs. This will provide clarity for water users about the regulatory framework that applies for activities such as taking or interfering with water, extracting riverine quarry material and excavation / fill in the riverine environment.

The map will also identify the extent of 'designated' watercourses where an entitlement to take or interfere is not necessary (refer to the discussion of statutory authorisations below for further information).

The map will be publicly available on the department's website. The use of the map negates the need for the Water Regulation 2002 (Water Regulation) to declare upstream and downstream limits of a watercourse.

Framework for management and allocation of water

Streamlined water resource planning process

The Bill proposes a transformation of the current water resource plan and resource operations plan framework to a simpler suite of regulatory plans and processes. The primary catchment-based water planning instrument will be a water plan (subordinate legislation). These plans will specify high level objectives such as desired economic, social and environmental outcomes, volume of unallocated water reserved under the plan and water security objectives where the plan enables the conversion of water licences to water allocations. Depending on the catchment they may also include measures or strategies that contribute to achieving the water plan outcomes, limitations on taking or interfering with water in the plan area, the location of unallocated water reserves, and specify whether a water management protocol is required for the plan area.

Operational matters such as water sharing rules will be contained in either a water management protocol (unsupplemented water) or an operations manual (supplemented water i.e. for water supply schemes).

The processes to amend or establish these regulatory plans are more efficient and flexible and will significantly reduce the amount of time taken to undertake planning activities. Robust science, clear outcomes and strong community engagement will remain critical characteristics of the water planning process.

The Bill provides for an outcome-based regulatory framework for water supply scheme operators to give them the flexibility to deliver outcomes in the most efficient way. Resource operations licence holders (licensees) will be able to prepare and tailor their operating arrangements, environmental flow rules and water sharing rules in accordance with the relevant water plans. This will enable the department to concentrate its efforts on managing water resources while water supply scheme owners will have increased opportunity for self-management.

The Bill provides for flexible and appropriate reporting by the Minister through requiring a regulation to establish the timeframe, and specific matters to be addressed in the Minister's report. This will provide meaningful and resource-efficient reporting on the effectiveness of the water plan in advancing the purpose of the Water Act.

The new chapter 2 also combines the Minister's moratorium panel and the chief executive's ROP referral panel into a single panel with the jurisdiction to consider both matters. It also includes amendments to provide greater flexibility in the establishment of the panel.

The Bill includes specific transitional provisions to ensure existing water planning instruments transition smoothly into the new framework.

Fast tracked conversions of water licences to water allocations

Water entitlement notice

Water entitlement notices replace the conversion, granting and amending schedules in resource operations plans prepared under the existing framework. This notice will be able to be used to convert, grant and amend as well as refuse and cancel or repeal (in certain situations) entitlements. Under this framework water users affected by the notice will be able to submit on the notice before it is finalised.

The Bill also amends the definition of a water allocation security objective so that it protects a share of the water available to the holder of a water allocation. This combined with the water entitlement notice will facilitate an expansion in the number of secure, tradeable water allocations.

Provision of flexibility in the specification of water allocation security objectives

The Bill amends the definition of a water allocation security objective to protect the share of the water available to the water allocation holder. The provision of flexibility in the specification of water allocation security objectives will allow principle and rule-based approaches to be applied to the creation of water allocations and trading rules in areas where insufficient data exists to develop comprehensive hydrological models. Principle and rule-based conversion processes would apply in areas where adequate information does not exist to provide confidence in statistically-based modelling approaches.

Facilitating large scale water related development

The Bill facilitates major large-scale development projects with a water infrastructure component (e.g. agricultural projects) by providing a streamlined assessment and approvals process, and a framework for an upfront commitment of access to water for the project. This will only occur provided the environmental impact assessment process finds there is sufficient water to support the project and impacts are adequately mitigated. This will be achieved through the following steps discussed below.

Ability for Government to grant a 'water development option'

The Government will be able to grant a 'water development option', which effectively provides a commitment of access to water for the proponent. This will occur only if the environmental impact assessment findings support the granting of water authorisations for the project. For example, the assessment demonstrates there is sufficient water available to support the project, *and* that impacts on flows that support the environment and existing water users are adequately mitigated and that appropriate consultation has been undertaken through the assessment. A water development option would provide the project proponent with assurance and exclusivity over future access to water resources while assessments are being undertaken.

Allowing for the environmental impact assessment process to inform Ministerial decisions to amend water plans to reserve unallocated water

By allowing the environmental impact assessment to inform any changes to a water plan, much of the duplication of work between the two processes (such as duplication of community consultation) can be avoided. This will enable a short form plan amendment process. Significantly, this change would result in time savings to proponents who would otherwise have had to wait for a plan amendment to be completed after work had been completed for the environmental impact assessment.

Allowing for the environmental impact assessment process to inform chief executive decisions to grant a water entitlement to a water development option holder to meet the project's water demands

A water entitlement will be able to be granted under the Water Act, with the volume and conditions informed by the outcomes of the environmental impact assessment. Allowing the environmental impact assessment to inform the chief executive in deciding to grant a water entitlement avoids overlapping work between the two processes such as assessing the compliance of the water development proposal with statutory water plan outcomes and measures.

Significantly, this change will result in time savings for proponents who would otherwise have to wait for a subsequent assessment process under the Water Act to be completed after work had been completed for the purposes of the environmental impact assessment.

Note that the short form process for amending a planning instrument and granting a water entitlement would only be used where the environmental impact assessment has demonstrated that there is sufficient water to support the project, the volume of water required has taken into account the most efficient use of the resource, any adverse impacts on existing water users or the environment are adequately mitigated, and that there has been sufficient opportunity for community consultation.

Reforming the framework for regulation of taking and interference with water

The objective of this reform is to reduce the regulatory burden associated with licensing take and/or interference with water where there is a low risk to the water resource.

Statutory authorisations - deregulation of watercourses and low risk take or interference

The Bill enables the deregulation of certain watercourses or parts or watercourses where the need to manage the water resource through a licensing framework is low. The new watercourse identification map will be used to identify which reaches of watercourses are deregulated.

The Bill provides for a water plan or a regulation to identify thresholds for the take or interference with water to remove the requirement for a licence; and identify the take or interference with water for stock or domestic purposes that does not require a licence.

The Bill also amends the Water Act to remove the requirement for a water licence where risk to the resource is low. New state-wide exemptions from licensing include the:

- take of overland flow water that is contaminated agricultural runoff
- take or interference with overland flow water for an environmental authority (all sectors)
- interference with the flow of water by impoundment for an environmental authority (all sectors)
- interference with the flow of water by impoundment for state/commonwealth structures for collecting monitoring data.

This reform will benefit water users who are involved in taking water where there is low risk to the resource. Water users will be able to access water without a licence in areas where a threshold has been set for take and/or interference by a statutory plan or where a watercourse has been deregulated. Water users who currently hold a licence for low risk takes will continue to be able to access water while their licence is repealed through water planning processes. It is envisaged that online access to information about regulation of watercourses in specific areas will allow water users to establish the licensing requirements for their local area.

Any risk of over-use of water in areas that are deregulated or have low risk thresholds applied will be mitigated through ensuring a rigorous assessment process prior to any deregulation, and applying thresholds for take and interference where a statutory planning process determines risk to be low. The risks will be monitored and if the risk profile changes then regulation may be reintroduced.

This reform will generate a net benefit to water users by reducing regulatory burden and removing financial barriers to developing water resources in low risk watercourses.

Combined take and interference

The Bill amends the licencing framework to allow a single licence to authorise both the take and interference with water where the take is from the storage created by the interference.

Streamlined water licence process

The Bill reforms the framework for dealing with water licence applications by essentially splitting the assessment of licence applications into complex changes and simple dealings for a water licence. Complex changes are typically allocative decisions i.e. decisions about apportioning the consumptive pool of available water in a catchment. Whereas simple dealings are typically non-allocative or administrative licencing dealings such as transfer, reinstate, subdivide, amalgamate or replace existing water licences.

New licences and dealings with existing licences that have the potential to impact on other water users or the water resource will still be the subject of public notice, submissions and appropriate decision criteria requirements in the Water Act. In addition, the Bill provides for multiple dealings within a single application.

Surrender of water allocations

The Bill includes new provisions in the Water Act to enable the surrender of a water allocation and subsequent cancelation where it is appropriate. If water allocation is managed under a resource operations licence or a distribution operations licence then the holder of the water allocation cannot surrender the allocation without the consent of the licence holder.

Other changes and restructuring of chapter 2 of the Water Act

Streamlining water restrictions

The existing provisions regarding restricting the use of water provide for either the Minister or the chief executive to publish a notice limiting the use of water. The Minister may also prohibit the use of, or interference with water. The Minister's notice is limited to a 21 day duration, after which a regulation must be introduced if the water shortage continues, or if there is a harmful substance in the water. Provisions for the chief executive are divided into statutory authorisations to take water; and water entitlements, which creates unnecessary repetition. The Bill removes the requirement to introduce a regulation and combines the chief executive's provisions into one section.

Simplify moratoriums

Existing moratorium provisions are complicated and overly prescriptive about how these may apply to the construction of works. Historically, amendment notices have been published and had to be read in conjunction with the original notice. The provisions of the Bill more clearly articulate how a notice may be applied and what is affected by the notice, and remove the unnecessary prescription related to the works. Further, if a notice is to be amended, the amending notice now replaces the original notice so that it can be read without reference to the previous notice.

Streamlining water use plans and operations licences

The Bill amends sections regarding water use plans to align with other amended provisions so that they read in a similar way. Unnecessary provisions have also been removed to streamline the process for granting a water use plan.

The provisions for operations licences have not been changed significantly. The amendments bring the sections regarding operations licences into alignment with other amended

provisions so that they read in a similar way. Unnecessary provisions have also been removed to streamline the process for granting an operations licence.

Rationalise the process for reserving and releasing unallocated water

The Bill will allow for unallocated water to be reserved outside a water plan area, and will also significantly simplify the process and timeframes for releasing unallocated water. Importantly, unallocated water will be able to be released as a water licence or a water allocation as a result of the reforms. The Bill also provides a head of power in the Water Act for the chief executive to set a price for unallocated water.

Consistent framework for underground water rights for the resource sector

The Bill proposes the amendment of the Water Act, Mineral Resources Act and Petroleum and Gas Act to achieve a more consistent framework for underground water rights for the resource sectors and for the management of impacts on underground water due to resource sector activities.

Mineral resource sector

The Bill brings the take of associated water by the mining industry into line with the provisions for the petroleum and gas industry, so that associated water is dealt with consistently across the resource sectors. The new provisions provide a simpler and more consistent framework for the resource sectors. They will provide certainty and consistency to landholders whose bores may be affected by mine dewatering activities; as the 'make good' obligations within chapter 3 will apply to the take of associated water by all holders of mining leases and mineral development licences.

Amendments to chapter 3 will expand its scope from its current application to petroleum tenure holders to include mining tenure holders. Holders of mining leases and mineral development licences will in future be required to notify the chief executive when they commence taking associated water, and will be subject to an obligation to submit an underground water impact report and baseline assessment plan, and to enter into a make good agreement with the owner of a water supply bore if the bore is likely to be impaired by their take of associated water. Existing mining and mine development operations will be recognised by transitional provisions where they have the existing authority to take or interfere with underground water.

The cumulative management framework in chapter 3 provides a process to manage the cumulative impacts on bores where two or more tenures have overlapping impacts, through declaring an area in which the Office of Groundwater Impact Assessment prepares one underground water impact report on behalf of the tenure holders within the area. This process will also be expanded to enable mining tenures to be included where they are contributing to cumulative impacts on an area. The Bill provides for future cumulative management areas to have effect only on specified tenures within their area, enabling the cumulative management areas to be tailored so that it applies to just those tenures which are contributing to the cumulative impacts.

This increase in regulatory requirements is offset by amending the Mineral Resources Act to provide these tenure holders with a right to take associated water, removing the need to obtain a licence or permit. In addition, regulatory impacts on existing tenure holders will be reduced by amendments to chapter 3 to exempt most existing mining tenures from the requirement for a baseline assessment plan and an underground water impact report, and a streamlined reporting framework for low-risk tenures will be established including some exemption provisions. Take of water other than 'associated water' will still be subject to management under a licence or permit under chapter 2 of the Water Act.

The Bill contains a number of amendments to improve the operation of chapter 3. These amendments include: streamlining requirements; including minor penalty provisions; including a head of power for fees for assessing baseline assessment plans, underground water impact reports and final reports; clarifying the intent of ambiguous provisions; relaxing the regulation of low risk activities, such as conventional exploration activities; linking spring impact mitigation strategies to risk assessments; providing for data to be submitted in digital format; and enabling public access to baseline and bore assessment information.

Petroleum and gas sector

The Bill amends the Petroleum and Gas Act to limit the underground water right to apply only to associated water. The potential impacts of taking water for 'non-associated' purposes, such as hydraulic fracturing, will be managed by petroleum tenure holders needing to comply with requirements under chapter 2 of the Water Act. Provision is made for a transition period of 2 years for existing tenure holders to come into compliance, with an extended transition period of 5 years applying for tenures within the area of the Surat Cumulative Management Area. During this transitional period, tenure holders' existing investment and development commitments will be recognised by a transitional process that provides for issuing licences and permits where there is a demonstrated water requirement for the project. In addition, the transitional period provides time for the relevant water planning instruments (such as the Great Artesian Basin Water Resource Plan) to be reviewed to enable the water requirements of the petroleum and gas sector to be specifically addressed, ensuring the responsible and productive management of the underground water resources for the benefit of all sectors. Impacts on industry will also be reduced by a revision of the regulation for activities exempt from the requirement for authorisation to ensure it reflects activities conducted by this sector. This work will be progressed in parallel with the Bill.

Safety and health legislative provisions for the new overlapping tenure framework

The Bill also introduces safety related provisions for managing Queensland's overlapping coal and petroleum tenures, based on an industry proposal set out in the paper 'Maximising Utilisation of Queensland's Coal and Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland' (the White Paper). The concepts and principles outlined in the White Paper and the various technical working group reports provided the basis for the new overlapping tenure framework.

The new safety and health overlapping tenure provisions require joint interaction management plans and provide an alternative dispute resolution process for independent arbitration. These amendments will contribute to the safe cooperation between Queensland's

coal and coal seam gas industries whilst they work together to achieve the best commercial outcomes for both industries and for Queensland.

The new overlapping tenure requirements for joint interaction management plans will also apply to existing overlapping tenures through transitional arrangements.

Qualifications for appointment as Commissioner for Mine Safety and Health

The Bill will amend the Coal Mining Safety and Health Act to expand the categories of qualification for eligibility for appointment as the Commissioner for Mine Safety and Health (the Commissioner).

Two additional categories of qualification will be inserted into the mandatory requirements for appointment as Commissioner. In addition to the existing categories of qualification, a person with either a qualification in law with professional experience in improving mine safety and health or ten years' experience in an operational mine safety senior management role and improving mine safety will also be eligible for appointment as the Commissioner.

A candidate with a qualification in law with professional experience in advocacy for improvements in mine safety and health is likely to demonstrate an ability to analyse, reason, negotiate and communicate with people from all walks of life. Skills are also likely to include a capacity to analyse both sides of complex problems and to devise an effective and equitable solution within the existing legal safety and health framework.

The additional categories also recognise the immense regard to be attributed to the skills and knowledge obtained through experience in operational mine safety management including problem solving skills, analytical skills, legal knowledge and practical 'on the ground' knowledge in dealing with complex safety and health matters.

Transitioning water rights under special agreement legislation to the Water Act

The Bill amends the Water Act to include a process for future specification and alignment of special agreement legislation water rights with the Water Act framework through negotiation with mining companies. This will bring water allocation and management for special agreement Act companies under a single framework and provide certainty for water planning activities.

The Bill also amends the Water Act to enable the chief executive to grant a water licence to a special agreement Act company in Cape York without the requirement for a water licence application and public notification of the application. This recognises that a water licence in these circumstances simply reflects the company's existing right to take or interfere with the water under the special agreement Acts. Granting of a licence under this provision is intended to be an interim step for a special agreement act company as the preferred pathway is through the full transition of their rights into the Water Act framework.

In addition to these changes, the *Alcan Queensland Pty. Limited Agreement Act 1965*, *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* and the Water Act will be amended to provide clarity in relation to Rio Tinto Alcan's rights to take water from

the Wenlock Basin. This is needed as a result of the repeal of the *Wild Rivers Act 2005* (Wild Rivers Act) and subsequent removal of the Wenlock Basin wild river declaration.

Category 2 water authorities and river improvement trusts

The Water Act provides the framework for the establishment and ongoing administration of category 2 water authorities and the River Improvement Trust Act for river improvement trusts.

The Bill amends the River Improvement Trust Act to reduce the need for government approvals for river improvement trusts to conduct river improvement activities. These amendments include improving and streamlining the process for commencing, amending, expanding, amalgamating or dissolving existing trusts and removing the requirement for the chief executive to approve the works program and budgets.

The Bill includes a number of amendments to the Water Act to cut red tape and provide more flexibility for category 2 water authorities to operate more efficiently and autonomously. These amendments include support for the transition of water authorities to alternative institutional arrangements, including to provide for transitional distribution contracts to allow these entities to continue to rate and charge; disclosure statements for prospective water allocation buyer in a distribution scheme and more flexible board proceedings.

Removing the reversal of the onus of proof

Section 812A and its supporting section 812B of the Water Act currently provides that the holder of a water allocation, interim water allocation, water licence, seasonal water assignment notice or water permit is responsible, in the absence of evidence to the contrary, for the unauthorised take or supply of water where the water was:

- taken or supplied using works owned/controlled by the holder
- taken on land owned by the holder
- used on land owned by the holder.

In effect, this provision reverses the onus of proof because it automatically assumes that an authorisation holder is responsible for any unauthorised take or supply of water on their land. To rebut this presumption, an authorisation holder needs to prove that they were not responsible for the unauthorised activity. This approach places a high evidentiary burden on the authorisation holder, and risks an authorisation holder being wrongly accused of unlawful taking or interfering with water where there is no evidence to suggest that it was their fault. The Bill removes this reversal of the onus of proof to ensure that standard prosecution principles apply.

Amendments to the Water Resource (Great Artesian Basin) Plan 2006

The Bill amends the Water Resource (Great Artesian Basin) Plan 2006 to allow for the release of 9800 megalitres of state reserve unallocated water in the Cape York management area to support new development opportunities in Cape York. The combined total of 10 000 megalitres of state reserve unallocated water available across all management areas since commencement of the plan in 2006, remains for all management areas other than the Cape.

Additionally, the Bill will enable granting of a underground water licence for Great Artesian Basin water to improve the security of water supply for Toowoomba Regional Council.

Miscellaneous amendments

Flexible public notice requirements

The Bill amends the definition of 'publish' to provide greater flexibility regarding publishing requirements. The chief executive, having regard to the intended audience for the information or notice, will be able to decide the most appropriate medium. For example, the publishing of public notices on the department's website, which already occurs in some instances, will be further expanded.

Publishing public notices online will allow interested parties to access all information in respect to the relevant public notices in one location, as opposed to searching local newspapers, or radio broadcasts. SMS and email can also be utilised to allow instantaneous communication of water announcements such as a reduction in riparian water rights, to allow the immediate transfer of information which could in effect be outdated by the time of its publication in newspapers.

Drainage and embankment areas

The Water Act currently includes provisions for declared drainage and embankment areas which were used to regulate the construction of new levee banks. The Bill will remove the requirement for a second authorisation for embankments/levees (through the new levee regulation framework) and will remove the regulatory burden of low risk constructed drains that can now be established under river protection exemption guidelines.

Online fees and payment

The Bill includes provisions to enable the chief executive to prepare a regulation to prescribe the methods for payment of fees, enabling more convenient options such as online payment.

Removal of spent transitional provisions

The Water Act has been in effect since 2000 and all of the transitional provisions included in the Bill at that time are still contained in the substantive provisions, despite being spent and having no further effect. The Bill removes the 'spent' transitional provisions from the Water Act so that it only deals with current management requirements.

Underground water impact management

In addition to expanding the underground water impact management framework to the mineral resources sector, the Bill makes several operational improvements to chapters 3 and 3A of the Water Act, including:

- establishing a head of power to establish fees for assessing underground water impact reports and baseline assessment plans
- identifying low risk circumstances where baseline assessment plans and underground water impact reports are not required
- changing the term 'potentially affected spring' to 'spring of interest' to reflect that springs identified for monitoring purposes may not necessarily be affected

- allowing for data to be provided to the Office of Groundwater Impact Assessment via electronic format
- clarifying some existing ambiguities, such as that baseline assessments are not required for water bores which are used only for monitoring purposes.

Alternative ways of achieving policy objectives

Framework for management and allocation of water

With the exception of those discussed below, no alternative courses of action have been explored for the framework for management and allocation of water.

Facilitating large scale water related development

No alternative courses of action have been explored. The only viable option to this reform would be to leave the process as it currently operates, however significant disadvantages have been identified should the status quo continue. Dealing with development proponents on an individual basis does not provide the necessary transparency and consistency, and may not provide developers with the certainty they require in securing project funding. It also continues the duplication of work and effort across existing assessment and approvals processes for proponents, affected communities and government.

Consistent framework for underground water rights for the resource sector

Two alternative options to the reforms to underground water management for the petroleum and gas sector were considered.

- *No legislative change, work cooperatively with industry*:
  Under this option, the status quo would be maintained i.e. no legislative change to the current underground water rights framework, however government and industry would work together to encourage the responsible minimisation of potential impacts and to promote coexistence of landholders, regional communities and the industry.
- *Increased statutory obligations*:
  An option to retain current statutory rights and introduce further statutory obligations, to require tenure holders to undertake an assessment of the options for sourcing non-associated water, and to minimise impacts of taking non-associated water on aquifers and springs used by other water users.

The amendments to the Petroleum and Gas Act were adopted on the basis that they provide greatest consistency in statutory frameworks applying across the resource sectors; they provide the greater transparency and equity with the framework applying to all other sectors, and have the greatest ability to ensure that the emerging onshore oil and deep gas industry's demand for water can be met without impact to water security for existing industries and communities in a region highly dependent on underground water.

Safety and health legislative provisions for the new overlapping tenure framework

An alternative option of modifying the existing overlapping tenure framework was considered, rather than an overall revision of the framework. This option was not supported by either the coal or petroleum industries as they did not consider that modifying the current framework would provide the security and certainty needed for large, integrated petroleum to

liquefied natural gas projects nor address the coal industry's key concern about obtaining access to the resource. Also industry considered that this option represented a missed opportunity to harmonise safety provisions and optimise the extraction of resources.

The coal and petroleum industries are major pillars of the Queensland economy. Concurrent operation of coal mining and petroleum extraction from the same area is highly complex and safety and health need to be ensured.

To effectively maximise the benefits from the State's energy resources, the safety and health regulatory regime needs to enable both industries to co-operate and implement joint interaction management plans. This will allow the best safety outcomes as well as optimal commercial outcomes for both industries and for the State.

Qualifications for appointment as Commissioner for Mine Safety and Health

The current mandatory requirements for eligibility for appointment as Commissioner for Mine Safety and Health are statutory and may only be amended by legislation. There are no other means of achieving the policy objective.

Transitioning water rights under special agreement legislation to the Water Act

The Bill seeks to negotiate the transition of the remaining special agreement acts water rights into the Water Act framework. No other options were considered viable, as the Water Act is the appropriate legislation for managing water resources.

Estimated cost for government implementation

The amendments will deliver savings for government, industry and community including the following.

Framework for management and allocation of water

The proposed legislative framework for strategic water planning will allow future planning processes to be more flexible and responsive. The key benefits will include:

- fast tracking the conversion of water allocations to allow access to the water market
- shorter timeframes for making changes to water management regulations
- flexibility for major water supply scheme operators to allow them to operate their schemes more effectively and efficiently.

Streamlined conversions of water licences to water allocations

The costs and benefits of the fast tracking of water allocations have been assessed through the regulatory impact statement. Significant benefits were identified as a result of faster planning processes and reduced administrative burdens for entitlement holders. However increased costs associated with metering and government delivering faster conversions, lead to a net cost estimated at around $4.5 million in net present value (NPV) terms. These costs are small when compared to estimated benefits of increased opportunity for water trading, which could plausibly be as much as $15 million NPV.

Facilitating large scale development

This reform will provide earlier certainty and reduce delays in gaining access to water for major infrastructure projects, potentially leading to savings (due to delayed commencement) of as much as $162 million in NPV terms.

Reforming the framework for regulation of taking and interference and the framework for dealing with licence applications

Streamlining water licencing processes and removing licencing requirements for low risk and small scale activities will result in customer savings of approximately $1600 in application costs and annual licence fee $69.00 for certain licences and dealings.

Other changes to chapter 2 of the Water Act

The amendments relating to reserving and releasing unallocated water will reduce the regulatory burden and time required for these processes.

Consistent framework for underground water rights for the resource sector

The Department of Environment and Heritage Protection will, with support from the department, investigate cost recovery options – including the charging of efficient fees – for administering chapter 3 of the Water Act before commencement of the amendments to chapter 3.

Safety and health legislative provisions for the new overlapping tenure framework

There will not be any significant government implementation costs associated with the safety and health legislative provisions for the new overlapping tenure framework. Implementation will be managed within the existing Departmental budget.

Qualifications for appointment as Commissioner for Mine Safety and Health

There will not be any costs associated with implementing the amendments to the mandatory qualifications for eligibility for appointment as Commissioner for Mine Safety and Health.

Consistency with fundamental legislative principles

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

The Institution of Parliament – Prohibition on Henry VIII clauses

Removing the requirement for an entitlement for low risk activities

The submission proposes amendments to the Water Act to:

- enable a water plan or a regulation to authorise the take and interference with water for certain low risk activities without an entitlement
- enable a water plan to specify the area that can be irrigated (or an alternative volume) to define the water that can be taken for domestic purposes without an entitlement
- enable a map to identify streams that are not to be regulated as watercourses.

It is arguable that this is a breach of the fundamental legislative principle that legislation should only authorise the amendment of an Act by another Act – *Legislative Standards Act 1992*, section 4(4)(c) (commonly called Henry VIII clauses). A water plan and regulation are subordinate legislation and if the above provisions are utilised the result would be subordinate legislation modifying the operation of the Water Act.

This breach is considered justified because the provisions contained in the Water Act establish a broad framework for the management of water across the State. However, resources risks vary from catchment to catchment and therefore should be addressed through a catchment based instrument. The water plan (for low risk activities) and the Water Regulation (for de-regulation of watercourses) are the instruments utilised to provide for various catchment specific regulation. There is strong consultation undertaken during development of catchment specific regulatory frameworks which offsets the effect of modifying the operation of the Water Act by subordinate legislation. Subordinate legislation is tabled and therefore remains subject to Parliamentary scrutiny and disallowance motions, therefore having sufficient regard to the institution of Parliament.

Regulation making power to exempt low risk resource tenures from preparing an underground water impact report

This submission proposes amendments to the Water Act to establish a new regulation making power to exempt low risk resource tenures from the need to prepare an underground water impact report.

It is arguable that this is a breach of the fundamental legislative principle that legislation should only authorise the amendment of an Act by another Act – Legislative Standards Act, section 4(4)(c) (commonly called Henry VIII clauses). A regulation is subordinate legislation and if the above provisions is utilised the result would be subordinate legislation modifying the operation of the Water Act to not apply the requirement for an underground water impact report for particular tenures.

This breach is considered justified as the underground water management framework is to be expanded to apply to the associated water take of the mineral resources sector. The nature scale and impact of associated water take by the mineral resources sector can vary substantially, and as such, there may be types of mineral resources tenure that are of a low risk nature and it is considered an unnecessary burden for the holder to prepare an underground water impact report.

Further, regardless of whether a regulation is made exempting low risk tenures from the underground water impact report requirements, the general obligation to enter a make good with affected bore owners will still apply to the tenure holder. This will ensure that, if there is an impacted bore owner despite the low risk nature of the tenure, the bore owner has the right be made good.

Further, the provision is not unbounded as it identifies the circumstances for a regulation may identify a low risk tenure. Identification of low risk tenures must have regard to the impact considerations (as per the purpose of chapter 3 of the Water Act) and the circumstances include the likely impacts of the water take on water bores and springs; the nature and scale of the mining or petroleum operation; the characteristics of the underground water resource and the location of the resource tenure.

Chief executive power to apply reporting or baseline assessments to existing mining tenure holders

This submission proposes amendments to assist in the transition of existing mines to the underground water management framework. These amendments will exempt existing mining tenure holders from the application of part 2 (Reporting) and part 3 (Baseline Assessments). These amendments will provide a power to the chief executive to issue a notice to an existing mining tenure to override the exemption.

It is arguable that this is a breach of the fundamental legislative principle that legislation should only authorise the amendment of an Act by another Act – Legislative Standards Act, section 4(4)(c) (commonly called Henry VIII clauses). If the chief executive uses this provision it would override the operation of the Water Act by removing the application of the exemption.

This breach is considered justified as there may be scenarios where the current management arrangements relating to the associated water take of an existing mine are not considered sufficient to monitor, predict or manage the impacts. Associated water take by existing mining tenures may be subject to a range of different management requirements depending on the location of the mining operation. While some mines have water licences which authorise the take of associated water, with make good, monitoring and reporting requirements, others may be in an unregulated area in relation to underground water and have no requirements. While it is considered important to recognise existing operations and allow them to continue under the current regime where there are no issues (subject to the general obligation to make good), it is also appropriate to have the ability to apply the new regime in circumstances where the current regime does not sufficiently protect water bores and springs from the impact of the industry.

The chief executive notification provision is not unbounded. The amendment requires that the chief executive must make the decision having regard to the impact considerations and must issue an information notice about the decision. The information notice gives the tenure holder a right to appeal the decision.

Administrative power should be sufficiently defined and subject to appropriate review

Streamlined water resource planning process

The submission proposes Water Act amendments to:

- provide for a chief executive water management protocol to include operational matters previously included in a resource operations plan, such as water sharing rules
- establish a process, separate from the water plan, to provide for bulk conversion of water licences to tradeable water allocations through a 'Water Entitlement Notice (Conversion, Grant, Amend, Refuse)'.

It is arguable that these amendments are a breach of the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – Legislative Standards Act, section 4(3)(a).

For the chief executive water management protocol, this is considered a potential breach because there is less rigour around the development and approval of a water management protocol than under its predecessor, the resource operation plan. This is considered justified as there will still be consultation around the development of the operational protocol, providing opportunity for stakeholder input, and the legislation explicitly states this.

For the water entitlement notice, this is considered a potential breach because the notice does not have a review process or appeal rights for affected parties. This breach is justified as the water entitlement notice provisions will incorporate a right of reply for interested parties by including a submission process. In addition to this, the Water Act provides a framework for an independent referral panel to provide advice to the chief executive on submissions relating to water entitlements. In making any final notice, the chief executive will be required to consider the submissions and any recommendations of the panel.

Natural justice – right to be heard

Issuing of decision notices for particular decisions made by the chief executive

As part of the replacement of chapter 2 of the Water Act, the legislation continues the power to issue decision notices for particular decisions made by the chief executive. These decisions are those where the chief executive has no discretion due to a direction or requirement of a planning instrument. This occurs in water licensing where the chief executive needs to decide an application, and if a water plan applies to the application, the chief executive must either approve or refuse the application in accordance with the plan. Where the application is inconsistent with the plan or where the application is consistent and no alternative decision could have been made, the chief executive decides the application and gives a decision notice to the applicant. The same process applies for dealings with water licences. This also applies to the grant of water licences or water allocations under an unallocated water release process where the chief executive enters into a binding agreement for the sale or grant of water with an applicant prior to granting the licence or allocation.

In these circumstances the applicant does not have a right of review of the administrative decision. This is a potential breach of the fundamental legislative principle consistency with natural justice - right to be heard.

This breach is considered justified as a water plan is the instrument that provides a person with natural justice in relation water allocation and management in a plan area. For example, a water plan can state limitations on taking or interfering with water in the plan area and it can state criteria for deciding licence applications. As a draft of a water plan is released for public consultation, a person is able to make a submission to the Minister to express their views on a plan and its contents for consideration by the Minister in finalising a water plan. If a plan therefore gives no discretion to the chief executive in making a particular licensing decision then there is no need for that decision to be subject to a merits based review. This is also justified for granting a water licence or allocation from an unallocated water process as the agreement is already reached between the applicant and chief executive with the granting process simply giving effect to the agreement.

Transitional pathway for petroleum tenure holder water rights

The request by a petroleum tenure holder for an authorisation for the take of non-associated water made during the transitional period will not be subject to public notification requirements.

This amendment could be perceived to be a breach of the fundamental legislative principle that legislation is to be consistent with the principles of natural justice – (right to be heard). However this potential breach is considered justified for the following reasons:

- *No adverse effect on other parties*: the provision permits the chief executive to consider the historical take of non-associated water by the tenure holder, as well as the take that is necessary to carry out the holder's work program (for an authority to prospect) or development plan (for a petroleum lease), and further requires the chief executive to grant an authority or authorities for the take to the extent that the tenure holder demonstrates the need for the authority. As such the licence or permit issued cannot authorise more take of non-associated water than would have occurred under the previous statutory right applying in the absence of the amendments. The issue of the licence or permit would not, therefore, result in any greater impact on the water rights or availability of water for any other person, than would occur in the absence of the amendments.
- *Limited to the transitional period*: the ability to request an authorisation for take of non-associated water under this provision is available to petroleum tenure holders only during the transitional period of 2 years, or 5 years within the Surat cumulative management area. After this time, a tenure holder who requires further authorisation for non-associated water would be required to apply for a licence or permit under the processes provided by chapter 2, part 3 for these authorisations, including public notification where required.

Individual's rights and liberties

Transition of petroleum and gas sector statutory water rights to management under the Water Act framework

The submission proposes amendments to the Petroleum and Gas Act which transition, over time, the removal of the non-associated water component of the existing statutory right for petroleum tenure holders to take underground water. Currently, petroleum tenure holders may take any underground water to support their activities, regardless of whether the take of water is an unavoidable consequence of resource extraction (associated water) or whether it is taken in addition for a consumptive purpose (non-associated). After the transitional period, petroleum tenure holders' take of non-associated water would need to be authorised under the Water Act, which may mean the petroleum tenure holder would need to obtain a water licence or permit if the take is to occur within a regulated underground water management area, consistent with other water users. The statutory right to take associated water will remain under the Petroleum and Gas Act.

These amendments could be perceived to be a breach of the fundamental legislative principle 'Abrogation of established statute law rights and liberties must be justified'. The potential breach relates to the application of the reduction in the statutory rights currently afforded to petroleum tenure holders to existing tenures.

However this potential breach is considered justified for the following reasons:

- *Rights to align with other water users:* It is considered appropriate to afford petroleum tenure holders a statutory right to take water that is an unavoidable consequence of extracting the petroleum resource authorised under the tenure (the continuing associated water rights) and manage the impacts of this water take. However, for the take of water that is for a consumptive use, where the source and location of take is optional, it is considered appropriate to consider and manage the take and where possible avoid impacts on other users upfront. As such, it is considered that, for this non-associated water component of the existing statutory water right, there is no reason why water take by petroleum tenure holders should not be managed under the same framework as other water users. When the non-associated water rights were originally established, the take of non-associated water was considered a relatively small, minor take, particularly as many operations produce excess associated water which is sufficient to keep the take of non-associated water to a minimum. However, with potential expansion of the petroleum and gas sector, particularly in regard to shale gas, and its non-associated water take, it is considered to bring the management framework in line with other users.
- *Appropriate transition period:* In recognition of petroleum tenures that are currently exercising the non-associated component of the statutory water right, or have plans to in the future, the amendments include an appropriate transition period for industry before the non-associated component of the statutory water right will cease. These transition periods are five years for petroleum tenure holders within the Surat cumulative management area and two years for all other petroleum tenures. The Surat cumulative management area is afforded a longer timeframe because the water use in this area is overseen by the Office of Groundwater Impact Assessment and petroleum tenure holders are well down the path of establishing make good agreements with bore owners in the area, and as such a larger transition period is considered appropriate. The transition period provides opportunity for the review of the relevant water planning instruments so that they can specifically address the requirements of the petroleum and gas sector, as well as providing time for tenure holders to prepare applications for an authorisation.
- *Transitional pathway for where a water licence may be required:* In recognition of existing petroleum tenure holders that may be required to obtain a water licence to authorise their continued non-associated take beyond the transitional period, the amendments propose transitional arrangements. These transitional arrangements provide that the chief executive considering a request for a water authorisation submitted by existing petroleum tenure holders (including the holders of petroleum tenures that are granted after commencement from an application made prior) before the end of the transitional period mentioned above will consider the historical take and future work program of the tenure holder. These particular requests for water authorisations will be exempt from the public notice requirements. Further, the chief executive will be required to grant an entitlement as a result of receiving an application from an existing tenure holder within the transitional period that reasonably demonstrates a demand for the water.

Powers of Entry

Whether legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer – Legislative Standards Act 1992, s 4(3)(e)

- The River Improvement Trust Act currently gives the chief executive and a river improvement trust a power to enter upon land for various matters related to the River Improvement Trust Act as listed in section 10(7), and section 10(7A) expands on those powers (e.g. allows the taking on of vehicles). Under the Bill, section 10(7A) is being simplified, though section 10(7) itself is not being amended. Section 10(7) does not relate to any offence and therefore does not provide for seizure, but the entry nevertheless does not require any authorisation other than that of the chief executive or the river improvement trust. Section 10(7) does require notice of intended entry to be given except in an emergency. In practical terms it would appear that the operation of the River Improvement Trust Act has fairly limited scope and that any entry to land in the normal course is unlikely to be contentious.
- Access powers to land for trusts where they are undertaking works or maintenance are provided in sections 10(7A) to 10(9) and are streamlined here to allow trusts to do all things reasonably necessary to achieve the purpose of entry, including for example to take any equipment on the land or to stay on the land as necessary to undertake the works. In most if not all cases trusts enter land with owner or occupier consent because trusts may be examining, remedying or constructing works to protect land or property from flooding or erosion. The access powers are retained to ensure trusts may carry out their functions in those rare instances where voluntary consent is not available and perhaps a public purpose is served or other property is at risk of damage if access is not available and the power otherwise allows certain protective works to be undertaken.

Consultation

Water reforms

In August 2013, the department advised its then joint industry-government Water Consultation Group of its proposal to reform the Water Act. A new consultation forum, the Water Engagement Forum, was established in 2014. The Water Engagement Forum currently comprises the following peak body organisations:

- Agforce
- Association of Mining and Exploration Companies
- Australian Bankers' Association
- Australian Petroleum Production and Exploration Association Ltd
- Irrigation Australia
- Local Government Association of Queensland
- Local Management Arrangements for Irrigation Channel Schemes
- Queensland Farmers' Federation
- Queensland Regional Natural Resource Management Groups Collective
- Queensland Resources Council

- State Council of River Trusts
- Seqwater
- SunWater.

The Water Engagement Forum was consulted on 9 April, 28 May, 19 June and 29 July 2014.

The Groundwater Management Working Group met several times between April and August 2014 to discuss reforms to address resource sector impacts on underground water resources and water supply bores. Further targeted consultation sessions have been held with members of relevant stakeholder organisations including Queensland Farmers' Federation, Agforce, Queensland Resources Council, Australian Petroleum Production and Exploration Association, Seqwater and SunWater on particular aspects of the reforms.

A consultation Regulatory Impact Statement was prepared for aspects of the reforms that may have significant adverse impacts to business and the community or may be contentious. The submissions received were considered in finalising the Bill and the decision Regulatory Impact Statement.

Safety and health legislative provisions for the new overlapping tenure framework

In May 2012, the Queensland Resources Council presented the government with a joint industry proposal for a new legislative framework for managing coal and petroleum overlapping tenure in Queensland (the White Paper). A government-industry steering group and five technical working groups were established to further progress technical issues including proposals for safety and health amendments to ensure safety and health during overlapping operations. The overlapping tenure safety and health amendments complement the new framework for overlapping coal and petroleum tenures introduced into Parliament in June 2014 through the Common Provisions Act.

The department worked closely with external stakeholders in the development of the safety and health amendments. The department continued to meet with representatives from the peak industry bodies including the Queensland Resources Council and the Australian Petroleum Production and Exploration Association and with representatives from industry during the drafting of the amendments.

Qualifications for appointment as Commissioner for Mine Safety and Health

Given that the amendments continue to ensure that appropriate qualifications and experience are required for eligibility for appointment as Commissioner for Mine Safety and Health no consultation outside government has been undertaken.

Consistency with legislation of other jurisdictions

Below is a broad comparison of the key legislative proposals with other Australian jurisdictions.

Purpose of the Water Act

The Bills proposal to include an overarching purpose aligns with most other jurisdictions across Australia.

The focus of responsible and productive management, allocation and use in the proposed new purpose is generally consistent with the content of the objects and purpose of water management legislation in other jurisdictions.

Streamlined water resource planning process

Most jurisdictions' water plans are based in legislation and are binding, however Queensland is the only jurisdiction that has a two-tier system that separates the management framework (water resource plans) from the operational framework (resource operations plans).

Jurisdictional legislation generally specifies how water plans should be developed and what they should contain, with the detail and level of prescription varying across jurisdictions with Queensland's legislation being more prescriptive than that of NSW or Victoria.

There is also variation in the content and format of water plans across jurisdictions. Plans in Queensland and NSW are very detailed documents written in a formal legal style while others are more informal and high level. Much of the detail included in Queensland's planning instruments would in other States be left for local water managers and the Department/Minister to determine.

Fast tracked conversion of water licences to water allocations

All jurisdictions typically have legislatively secure systems of water access entitlements. Separating these entitlements from the land enables the trading of these entitlements and the establishment of water markets. The extent to which entitlements are separated will determine the scale and efficiency of the water market.

Most jurisdictions have separated their water entitlements for their regulated water sources. Those that remain unseparated are typically licences associated with unregulated water sources and/or underground water sources. Queensland is approximately half way to the full conversion of its water entitlements to tradeable water allocations (according to the National Water Commission Biennial Assessment – 2011). As a result, Queensland has a less developed water market compared to some other jurisdictions.

Reforming the framework for regulation of taking and interference with water

All jurisdictions require an authorisation to take water, typically in the form of a licence and sometimes an associated water allocation, while a separate authority is usually required as authorisation to interfere. Many jurisdictions provide for exemptions for take for particular uses, for example for domestic and stock use and firefighting.

Regulating impacts of the resources sector on underground water resources and water supply bores

There is significant variation between jurisdictions regarding take as part of a mining and petroleum and gas activities. Only New South Wales has make good provisions and this Bill's proposal to extend make good provisions to the mining sector broadly aligns with these; however in New South Wales make good requirements are only applied if an offence is found to have occurred under the *Water Management Act 2000*.

Streamlined water licence process

The proposals to streamline the water licencing process broadly align with those of New South Wales and Victoria.

Safety and health legislative provisions for the new overlapping tenure framework

Within Australia, Queensland already has the most developed legislative provisions for managing overlapping coal and coal seam gas operations. There are no specific legislative provisions for dealing with overlapping coal and coal seam gas operations in New South Wales, which is the most comparable state to Queensland with its coal and coal seam gas industries.

Qualifications for appointment as Commissioner for Mine Safety and Health

There is no equivalent statutory position in mine safety and health legislation in Australian jurisdictions.

Reasons for non-inclusion of information

No information relevant to the Bill has been deliberately withheld from the Bill.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 states that when enacted, the Bill will be cited as the *Water Reform and Other Legislation Amendment Act 2014.*

Commencement

Clause 2 provides that the provisions of this Act will commence on a day to be fixed by proclamation.

Part 2 Amendment of Alcan Queensland Pty. Limited Agreement Act 1965

Act amended

Clause 3 provides that this part amends the *Alcan Queensland Pty. Limited Agreement Act 1965*.

Insertion of new s 4D

New section 4D - Authorisation of variation by further agreement

Clause 4 inserts section 4D to provide that the existing agreement may be varied by a further agreement that corresponds to the proposed further agreement in the new schedule 4.

Insertion of new sch 4

Clause 5 inserts new schedule 4.

New - Schedule 4 Proposed further agreement

New schedule 4 contains a proposed further agreement between the State of Queensland and Alcan South Pacific Pty. Ltd. The proposed further agreement amends the Principal Agreement by deleting clause 29A and replacing with a new clause 29A. This proposed further agreement is necessary to address the repeal of the Wild Rivers Act which will result in the Wenlock Basin wild river declaration no longer having effect.

The proposed further agreement continues the effect of the previous schedule 3 Further Agreement by amending the Principal Agreement to the extent of the authorisation provided to the Company under the Alcan special agreement Act to take or interfere with water in the Wenlock Basin and applies to water other than artesian water or subartesian water connected to artesian water.

The proposed further agreement operates to separate the Company's rights to take or interfere with water in the Wenlock Basin from the general authorisation to take or interfere with water provided under the Principal Agreement. Effectively, this proposed further agreement will operate, in conjunction with the new chapter 8, part 3C, division 1 of the Water Act, to facilitate the relocation of the water rights in the Wenlock Basin from the Alcan special

agreement Act and separately, the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* (Comalco special agreement Act) to the Water Act.

The proposed further agreement amends the Principal Agreement by imposing conditions that limit the water rights, afforded to the Company under the Alcan special agreement Act, to take or interfere with water in the Wenlock Basin to a maximum volume of 90 000 million litres. This maximum volume is the sum of the water that may be taken or interfered with under both the Alcan special agreement Act and the Comalco special agreement Act.

The proposed further agreement clarifies that the location from which water may be taken or interfered with in the Wenlock Basin is restricted to within, or in the vicinity of, the bauxite field referred to in clause 28(a) of the Principal Agreement.

Part 3 Amendment of Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957

Act amended

Clause 6 provides that this part amends the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957.*

Insertion of new s 4E

New section 4E - Authorisation of variation by further agreement

Clause 7 inserts new section 4E that provides that the existing agreement may be varied by a further agreement that corresponds to the proposed further agreement in the new schedule 5.

Insertion of new sch 5

Clause 8 inserts new schedule 5.

New - Schedule 5 Proposed further agreement

New schedule 5 contains a proposed further agreement between the State of Queensland and Rio Tinto Aluminium Pty. Limited and RTA Weipa Pty. Ltd. The proposed further agreement amends the Principal Agreement by deleting clause 32A and replacing it with a new clause 32A. This proposed further agreement is necessary to address the repeal of the Wild Rivers Act which will result in the Wenlock Basin wild river declaration no longer having effect.

The proposed further agreement continues the effect of the previous schedule 4 Further Agreement by amending the Principal Agreement only to the extent of the authorisation provided to the Company under the Comalco special agreement Act to take or interfere with water in the Wenlock Basin and applies to water other than artesian water or subartesian water connected to artesian water.

The proposed further agreement operates to separate the Companies rights to take or interfere with water in the Wenlock Basin from the general authorisation to take or interfere with water provided under the Principal Agreement. Effectively, this proposed further agreement will operate, in conjunction with the new chapter 8, part 3C, division 1 of the Water Act, to

facilitate the relocation of the water rights in the Wenlock Basin from the Comalco special agreement Act and the *Alcan Queensland Pty. Limited Agreement Act 1965* (Alcan special agreement Act) to the Water Act.

The proposed further agreement amends the Principal Agreement by imposing conditions that limit the rights, afforded to the Company under the Comalco special agreement Act, to take or interfere with water in the Wenlock Basin to a maximum volume of 90 000 million litres. This maximum volume is the sum of the water that may be taken or interfered with under both the Comalco special agreement Act and the Alcan special agreement Act.

The proposed further agreement clarifies that the location from which water may be taken or interfered with in the Wenlock Basin is restricted to within, or in the vicinity of, the bauxite field referred to in clause 31(a) of the Principal Agreement.

Part 4 Amendment of Mineral Resources Act 1989

Act amended

Clause 9 provides that this part amends the *Mineral Resources Act 1989*.

Amendment of s 235 (General entitlements of holder of mining lease)

Clause 10 amends section 235 to reflect that water rights for the holder of a mining lease are provided for under new chapter 12A, inserted by the Bill. New section 334ZS now makes it clear that the holder of a mining lease or mineral development licence must be authorised under the Water Act to take or interfere with water, unless otherwise authorised under the new chapter 12A of the Mineral Resources Act.

Insertion of new ch 12A

Clause 11 inserts new chapter 12A into the Mineral Resources Act.

New - Chapter 12A Provisions about water for mineral development licences and mining leases

New chapter 12A provides provisions about water for the holder of a mineral development licence or mining lease.

New - Part 1 Water rights for mineral development licences and mining leases

New section 334ZP - Entitlement to use underground water

New section 334ZP establishes a statutory authority for the holder of a mineral development licence or mining lease to take or interfere with underground water in the area of the licence or lease, where the taking or interference happens during the course of, or results from, the holders' authorised activities. This taking or interfering with water is termed 'associated water'.

Subsection (1) provides clarity in relation to when the taking or interfering with underground water is authorised. The authorisation applies to the take of underground water that is:

- taken for mine dewatering activities, however is limited to the extent necessary to ensure safe operating conditions of the mine
- taken as a result of evaporation from an open mine void.

The intent is that this underground water right is limited to incidental take that is reasonably necessary and can't be reasonably avoided in carrying out the authorised activities to extract the mineral resource. The authority is not intended to provide a right to take underground water for the purpose of using the water for any consumptive purpose, although the right does allow for the holder to make use of any water incidentally taken. As such, any take of underground water that does not 'happen during the course of, or result from, the holders authorised activities, would be required to be authorised in accordance with the Water Act.

Subsection (3) makes it clear that the underground water rights provided to the holder of a mineral development licence or mining lease under this section are subject to the holder complying with their underground water obligations established by the Bill in chapter 3 of the Water Act.

Subsection (5) makes it clear that water that is taken as associated water may be used for any purpose, whether it is for a purpose within the area of the licence or lease, or a purpose outside of the area of the licence or lease. Note that *Environmental Protection Act 1994* (Environmental Protection Act) and the associated environment authority for the operation addresses the potential environmental impacts from the disposal of water.

The holder is required to measure and report the amount of associated water taken in accordance with any requirements prescribed by regulation. This section makes it clear that if the associated water take is a result of water evaporating, then the volume must be estimated. A failure to measure and report the volume of associated water taken to the chief executive in the way prescribed by regulation attracts a maximum penalty of 500 penalty units.

The holder of a mineral development licence or mining lease must advise the chief executive of the department administering chapter 3 of the Water Act if the holder starts to take associated water. For the holders of any mineral development licences or mining leases in existence when the Bill commences, then the holder has up to three months to advise the chief executive if they are taking associated water. This requirement to notify the chief executive administering the Water Act, chapter 3 is to acknowledge that the holder would now have to comply with its underground water obligations under the Water Act, chapter 3. Failure to notify under this section attracts a maximum penalty of 500 penalty units.

This section also makes it clear that the take of associated water by the holder of a mineral development licence or mining lease under the authority of a water licence or water permit granted under the Water Act is still considered to be the exercise of underground water rights for the purpose of this section. This is included to make it clear that the holder is subject to any obligations the holder may have under chapter 3 of the Water Act in relation to this associated water take. This acknowledges that some mineral development licence holders or mining lease holders currently operate under the authority of a water licence or permit issued under the Water Act. Amendments by the Bill to chapter 3 of the Water Act acknowledge special arrangements for holders who operate under a water licence or permit, however it is the intent that all holders will now be subject to the general obligation to make good affected

bore owners. This provision removes any doubt about the application of chapter 3 obligations in relation to a holder operating under the authority of a water licence or water permit.

New section 334ZQ - Water monitoring activities

New section 334ZQ defines certain activities as water monitoring activities. Water monitoring activities are activities carried out by a mineral development licence or mining lease holder for the purpose of complying with, or assessing the need to comply with, its underground water obligations for the licence or lease. This section authorises the mineral development or mining lease holder to carry out water monitoring activities, in the area of the licence or lease for that specified purpose.

Further, this section provides that if the holder of a mineral development licence or mining lease also holds an exploration permit, they can carry out water monitoring activities on the area of their exploration permit in order to comply, or assess the need to comply with, the underground water obligations in relation to the licence or lease. This ability to carry out water monitoring activities in the area of an exploration permit is to ensure that, where there is the same holder, the holder would not be required to obtain a water monitoring authority in order to carry out water monitoring activities in an area where they are already authorised to carry out exploration activities.

This section also makes it clear that the construction, plugging and abandoning of a water monitoring bore, must be carried out by an individual that holds a water bore drillers licence under the Water Act, chapter 8, part 2B. Doing so without an appropriate licence, is an offence under this Bill which attracts a maximum penalty of 500 penalty units.

New section 334ZR - Authorisation for Water Act

New section 334ZR authorises the taking or interference with, or use of, underground water under section 334ZP for the purpose of the Water Act. Section 808 of the Water Act makes it an offence to take or interfere with Water unless authorised under the Water Act, or another Act.

New section 334ZS - Water Act not otherwise affected

New section 334ZS removes any doubt about the authority for a mineral development licence or mining lease holder to take or interfere with or use water. The holder of a mineral development licence or mining lease is authorised under this Bill to only take or interfere with, or use, water in accordance with the Bill or Water Act.

This section also defines water to mean water as defined in schedule 4 of the Water Act.

New - Part 2 Water monitoring authorities

New - Division 1 Obtaining water monitoring authority

New section 334ZT - Who may apply for water monitoring authority

New section 334ZT provides for who may apply for a water monitoring authority. The restriction of the applicant to a mineral development licence or mining lease holder is intended to ensure that a water monitoring authority is only granted in relation to the effects of authorised activities of this holder and is not to be available to anyone else. The ability for

a water monitoring authority to be granted over land in another mining tenement is needed as the impact on authorised water activities may extend beyond the mineral development licence or mining lease boundary. The ability to grant over other mineral authorities will ensure that the mineral development licence or mining lease holder has a right of access to undertake their obligations in relation to water, irrespective of the presence of an underlying mining tenement.

New section 334ZU - Requirements for making application

New section 334ZU provides for the application to be made in the approved form and accompanied by the prescribed fee.

New section 334ZV - Deciding application for water monitoring authority

New section 334ZV enables the Minister to grant a water monitoring authority.

This section provides that before deciding the application, the Minister may seek advice from the chief executive of the department in which the Water Act is administered, about the application. The ability of the Minister to refuse a water monitoring authority is to ensure that the authority is appropriate and necessary, in relation to the likely impacts from the exercise of the water right on the nominated licence/lease. Further, the Minister must not grant the water monitoring authority unless the relevant environmental authority has been issued.

This section specifies that any conditions, or other provisions, the Minister places on the authority must not be inconsistent with other conditions applying to the authority or a condition of the mineral development licence or mining lease to which the authority relates. This includes any land access requirements in relation to a water monitoring authority under the Common Provisions Act.

There are specific provisions requiring the area to be stated and each mineral development licence or mining lease to which it relates. The ability for a water monitoring authority to relate to one or more licence or lease is to minimise the administrative impact in relation to their grant and administration.

Also, the Minister may exclude or restrict the carrying out of water monitoring activities when granting a water monitoring authority. This section provides that these exclusions or restrictions cannot prevent a mining development licence or mining lease holder from complying with their water obligations under the Water Act.

This section also enables the Minister to require the applicant to pay the annual rent for the first year of the authority, and give security for the water monitoring authority, within a stated reasonable period. If this is not complied with, the application may be refused.

New - Division 2 Particular activities authorised for water monitoring authorities

New section 334ZW - Operation of div 2

New section 334ZW states that this division provides for particular activities that are authorised for a water monitoring authority, subject to the listed sections.

New section 334ZX - Water monitoring activities

New section 334ZX authorises the holder of a water monitoring authority to the carry out water monitoring activities in the area of the authority, subject to any restrictions imposed through the provisions of the authority.

New section 334ZY - Limited right to take or interfere with underground water

New section 334ZY provides a limited right to take or interfering with underground water in the area of a water monitoring activities. This right to take underground water is limited to the unavoidable result of carrying out a water monitoring activity in the area of the authority. This therefore recognises that some water will be taken or interfered with as a result of undertaking water monitoring activities.

New section 334ZZ - Authorisation for Water Act

New section 334ZZ provides that underground water taken or interfered with as part of an authorised activity (under section 334ZY), is an authorised activity under the Water Act. The absence of this authorisation would result in the taking or interfering with underground water being an offence under the Act.

New section 334ZZA - Water Act not otherwise affected

New section 334ZZA removes doubt by stating that water as defined in the Water Act cannot be taken or interfered with by the holder of a water monitoring authority, unless the taking or interference is authorised under this division of the Water Act.

New section 334ZZB - Restriction on carrying out authorised activities

New section 334ZZB provides for an offence if the holder of a water monitoring authority interferes with the carrying out of authorised activities for a mining tenement, petroleum authority or another water monitoring authority. This provision is required as a water monitoring authority can be granted over the area of another tenement or water monitoring authority, and there is a possibility that the various authorised activities could be undertaken in the same area at the same time.

New section 334ZZC - No right to mineral discovered

New section 334ZZC states that a water monitoring authority gives no right to the holder, to any mineral discovered while carrying out water monitoring activities.

New - Division 3 Miscellaneous provisions

New section 334ZZD - Term of authority

New section 334ZZD provides, subject to any action taken by the Minister in relation to the holder committing a contravention in relation to their mineral development licence or mining lease, a water monitoring authority continues in force until there is no longer any mineral development licence or mining lease to which the authority relates.

New section 334ZZE - Provision for who is the holder of a water monitoring authority

New section 334ZZE provides that if the water monitoring authority relates to only one mineral development licence or mining lease, then the holder of the licence or lease is also the holder of the authority.

Where transfer of a mineral development licence or mining lease occurs, the transferee is taken to be the holder of the water monitoring authority. If there is more than one but not all licences or leases transferred, the transferor continues to be the holder of the water monitoring authority.

The section also states that a water monitoring authority, or interest in a water monitoring authority, cannot be transferred except by under this section.

New section 334ZZF - Additional condition of relevant mineral development licence or mining lease

New section 334ZZF provides for a condition imposed on a water monitoring authority to become a condition of each mineral development licence or mining lease to which the authority relates. If there is a breach of a condition of a water monitoring authority, then non-compliance action can be taken against the holder of the related mining development licence or mining lease.

New section 334ZZG - Annual rent

New section 334ZZG provides that an annual rent is to be paid to the State by the water monitoring authority, in the way and on or before the day, prescribed by regulation.

New section 334ZZH - Power to use security

New section 334ZZH sets conditions on which the Minister needs to be satisfied to call upon the mineral development licence or mining lease holder to take action necessary to rectify noncompliance or damage. If the holder is requested and does not rectify the noncompliance or damage, the Minister may use the security deposited for the water monitoring authority to do so.

Damage relating to this section is defined in this section.

New section 334ZZI - Amending water monitoring authority by application

New section 334ZZI allows for the holder of a water monitoring authority to apply to amend the authority by increasing the area or changing the mineral development licence or mining lease to which it relates. The amendment is to allow for a change in its area to reflect a change in the extent of the impact of the exercise of underground water rights or the addition of new licences or leases to which the water monitoring authority relates. The ability to amend a water monitoring authority ensures that the authority remains relevant to changes in circumstances.

This new section provides that before deciding the application, the Minister may seek advice from the chief executive of the department in which the Water Act is administered, about the application.

Further if the amendment is refused, or granted subject to conditions, an information notice must be given which provides the reasons for the decisions and appeal rights to the applicant.

New - Part 3 Ownership of particular works

New section 334ZZJ - Ownership of works constructed in connection with water monitoring bore

New section 334ZZJ provides for the works constructed in connection with a water monitoring bore to be owned by the holder of the mining lease or mineral development licence that constructed the water monitoring bore. This section applies in relation to a water monitoring bore constructed by the holder of a mineral development licence or mining lease in the area of the licence or lease or the area of a water monitoring authority or exploration permit held by the holder of the licence or lease in carrying out a water monitoring activity. This section is required to make it clear that the owner of land on which the water monitoring bore is constructed does not automatically become the owner of the bore.

New section 334ZZK - Interfering with water monitoring bore

New section 334ZZK provides that a person must not interfere with a water monitoring bore unless the person is the owner of the bore or a person authorised by the owner. This offence attracts a maximum penalty of 1000 penalty units.

Amendment of sch 2 (Dictionary)

Clause 12 amends the schedule 2 (Dictionary) to include definitions relevant to the amendments made by the Bill.

Part 5 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 13 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004.*

Amendment of s 185 (Underground water rights)

Clause 14 amends section 185 to remove part of the statutory right for petroleum tenure holders to take or interfere with underground water. Currently, petroleum tenure holders can take or interfere with underground water for any purpose relating to another authorised activity for the tenure. This section limits the right to the taking or interfering with water that happens during the course of, or results from, the carrying out of another authorised activity for the tenure. The take of water will now be limited to the take of associated water. Any take of underground water for a consumptive purpose (non-associated water) will now, subject to new section 186, need to be authorised under the Water Act, consistent with all other water users.

This section also omits subsections (6) and (7) which provided the authority for a petroleum tenure holder to drill a water supply bore for the purpose of taking non-associated water. As this component of the water right is being removed, these subsections are no longer relevant. Petroleum tenure holders will continue to be authorised, subject to certain requirements,

under section 282 of the Petroleum and Gas Act to drill a water observation bore or water supply bore. However, the taking of, or interfering with, water associated with the bore will now need to be authorised under the Water Act.

Insertion of new s 186

Clause 15 inserts a new section 186 to provide for the limited continuation of the component of the existing underground water rights that are being removed by *clause 14* of the Bill.

New section 186 - Underground water rights—limited additional rights

This section continues the right for a petroleum tenure holder to take or interfere with underground water in the area of the tenure for use in carrying out another authorised activity for the tenure (non-associated water right). However, this right is only continued for five years after commencement for petroleum tenure holders within the Surat cumulative management area, and for two years for petroleum tenures outside of the cumulative management area. After the two or five years, petroleum tenure holders will be required to be authorised in accordance with the Water Act for any underground water take, other than associated water take authorised under section 185.

During the transitional period, new section 1277 provides a streamlined process to ensure that existing tenure holders' existing investment and development commitments will be recognised in issuing licences and permits. The transitional period also provides time to review the relevant water planning instruments to ensure they specifically address the needs of the petroleum and gas sector.

While a petroleum tenure holder continues to take water under the authority of this continued right, the underground water obligations continue to apply to the holder in relation to the take.

Further, this section requires petroleum tenure holders to measure and report the volume of water taken under the authority of this continued right to the chief executive of the department administering, chapter 2 of the Water Act. This must be in accordance with the requirements prescribed by regulation. Non-compliance with this requirement attracts an offence with a maximum penalty of 500 penalty units.

Amendment of s 188 (Authorisation for Water Act)

Clause 16 makes an editorial change to section 188 of the Petroleum and Gas Act to acknowledge that the underground water rights authorise the take of underground water.

Amendment of s 189 (Water Act not otherwise affected)

Clause 17 amends section 198 of the Petroleum and Gas Act to make it clear that water, as referred to in the section, is water as defined under the Water Act.

Amendment of sch 2 (Dictionary)

Clause 18 amends the definitions of underground water, water observation bore and water supply bore.

Part 6 Amendment of River Improvement Trust Act 1940

Act amended

Clause 19 provides that this part amends the *River Improvement Trust Act 1940.*

Replacement of long title

Clause 20 amends and simplifies the long title of the River Improvement Trust Act, introduces the concept of river catchments into river trust considerations and operations and condenses the focus of trusts to protection and improvement of river catchments by appropriately qualified persons and entities. This allows the objects of the River Improvement Trust Act to be more clearly articulated and ordered in a later section.

Amendment of s 1 (Short title)

Clause 21 amends the short title by replacing simply referring to the River Improvement Trust Act name and removes a superfluous reference to its application.

Insertion of new s 2A

Clause 22 inserts a new section 2A.

New section 2A - Object

New section 2A provides the objects of the River Improvement Trust Act outlined more clearly for the management of river areas and also describes the way in which the objects will be achieved. In particular planning, river catchment protection, resilience, health and implementation measures are featured. Former objects are brought forward such as repair and prevention of damage to rivers, and prevention and mitigation of flooding are also highlighted. A new outcome focus for river improvement trusts will be protection of water security and the improvement of water quality in rivers and streams. River trusts will achieve these goals through establishment of trust areas, that is areas within which trusts may conduct activities, and by the establishment or constitution of river improvement trusts that will have the powers to achieve the outcomes mentioned previously in the River Improvement Trust Act objects (above).

Replacement of pt 2 (Constitution of river improvement areas and trusts)

Clause 23 replaces former part 2 of the River Improvement Trust Act with a new part 2 that includes two new sections.

New - Part 2 Establishment of river improvement areas and trusts

New section 3 - River improvement areas

New section 3 retains original procedural elements about how a river improvement area is established, but presents the procedural material in a more contemporary way. The section also introduces an exception as to how a river improvement area may be established. The Minister may not require an application from one or more local governments to recommend that a river improvement area be established, and further, may not have to recommend that a river improvement area be established consistent with an application from one or more local governments.

The section also states that a regulation establishing a river improvement area must give it a name and also if a regulation is changing a river improvement area it may also change the name of the river improvement area.

New section 4 - Trusts for river improvement areas

New section 4 is about establishing trusts for river improvement areas. The original procedural elements of the River Improvement Trust Act are retained however are represented in a more ordered way. River improvement trusts are created, changed, named or abolished by a regulation. The Minister must be satisfied with the name of a trust being recommended noting that the name may not necessarily incorporate the word 'trust'. A trust may, for example, be constituted with a name such as a board or an authority, noting that the trust so created operates in compliance with all provisions of the River Improvement Trust Act despite not being called a trust. Where a trust is being abolished a regulation may provide for any matter necessary to give effect to the abolition, including by necessity, the abolition of the area for the trust and the transfer of any assets and liabilities.

Amendment of s 5 (Membership of trust)

Clause 24 amends section 5 of the River Improvement Trust Act and replaces it with a new section which re-orders existing subsections and introduces a new subsection that prevents councillors from being appointed by the Minister as members except under the constituent local government member provision. A subsection also allows for non-residents of the local government area to be appointed by the Minister under the non-councillor member provision.

The section also introduces a new provision or alternative way for creating a river trust with members as specified in the regulation establishing the trust. This is an alternative way of defining the membership of a trust, and is intended to be utilized where several local government areas or parts of local government areas are to be incorporated into the river improvement trust area. Such members may be nominated from bodies identified in the regulation and also persons up to the number specified in the regulation and nominated by the Minister and appointed by the Governor in Council. These members hold office for a term not exceeding 4 years as decided by the Governor in Council and in accord with the creating regulation. These provisions also allow for these members identified in the regulation to be known as directors or another term as stated in the regulation. In accord with the regulation these members may not necessarily be councillors from a local government comprising the river improvement trust area or that any such local governments be provided for in the regulation to make a member nomination to the Minister.

Amendment of s 5A (Appointment of members to vacancies)

Clause 25 amends section 5A to incorporate vacancies for trusts established in the alternative way. Replacement members are appointed in these cases by the Governor in Council and the Minister must recommend nominations to the Governor in Council as appropriate having regard to the creating regulation such that if an entity nominates a member, the Minister must have regard to the views of the entity so mentioned.

Amendment of s 5F (Chairperson)

Clause 26 inserts a new subsection (4) to confirm that the Governor in Council appoints the chairperson of a trust that is created in the alternate way as mentioned in section 5(1A).

Amendment of s 5I (Casual vacancy)

Clause 27 inserts a new subsection (1)(c) to make an additional provision such that a vacancy is created in cases where the Governor in Council appoints a member such as with alternative trusts and the Governor in Council removes that member from office.

Amendment of s 5K (Removal from office as member)

Clause 28 amends section 5K to incorporate cases where in addition to existing nominations by local government and appointments by the Minister, the Governor in Council may also remove a person on the same grounds if such person was appointed by the Governor in Council.

The section is also amended to include a provision in cases where the Minister has made an appointment to a trust under section 5(1)(b). The Minister may remove the person from office if he believes that reasonable grounds exist such as the person not acting in the best interests of the trust.

Amendment of s 5L (Removal from office as chairperson or deputy chairperson)

Clause 29 amends section 5L by expanding it to incorporate the cases where the Governor in Council appoints the chairperson or deputy chairperson, such that the same grounds (for removal) apply.

Amendment of s 5M (Removal of all trust members)

Clause 30 amends section 5M that deals with removal of all trust members. The section has been amended to encompass those members appointed by the Governor in Council, clarifies that for subsection (a) trusts must meet at least twice in a financial year and that the Minister may also remove members of a trust appointed by a local government. The subsection also states that only the Governor in Council may remove the members of a trust appointed by the Governor in Council.

Amendment of s 5N (Times and places of meetings)

Clause 31 amends section 5N to clarify that a trust must meet twice in a financial year.

Insertion of new s 5RA

Clause 32 inserts a new section 5RA dealing with trust committees and states that trusts may establish committees for a range of purposes.

New section 5RA - Trust committees

New section 5RA provides that committees may advise trusts on any matter they are created for by the trust and exist at the discretion of the trust. Committee persons may be comprised from trust members or any other suitably qualified person decided by the trust to provide advice to the committee for which it was tasked. Committee persons may be paid as decided by the trust and up to the same amount that relevant trust members are remunerated per their notices of appointment by the Minister or the Governor in Council.

Amendment of s 6 (Secretary, officers, and employees)

Clause 33 amends section 6 to clarify its application in the cases where a river improvement trust may include more than one local government area and be able to appoint a member to the trust, that the trust may with the consent of the relevant local government appoint the chief executive of that local government to the secretary position of the trust. The section incorporates a definition of 'relevant local government' for this purpose, meaning a local government that may appoint a member to the trust.

Omission of s 6A (Maintenance of a superannuation scheme)

Clause 34 omits section 6A as no trusts have superannuation schemes nor is it envisaged a need for trusts to do so as commercial schemes are readily available and accessible by trusts.

Replacement of s 7 (Trusts are bodies corporate)

Clause 35 replaces section 7 with a new division heading such that the contemporised section 7 and existing section 8 are under this new division 1 (Status of trusts).

New - Division 1 Status of trusts

New section 7 - Trusts are bodies corporate etc.

New section 7 replaces the previous section 7 to bring the River Improvement Trust Act into line with modern drafting where there is a need to describe the legal capacities and powers of statutory bodies such as river improvement trusts. The existing provision is omitted and a new and much abbreviated section is provided. Some existing provisions are removed because they duplicate common law application and references to the Burdekin Shire River Improvement Trust are removed as that trust has exactly the same characteristics, powers and capacities of other river improvement trusts. The section now simply confirms that a trust is a body corporate, has a seal and may be sued or sue in its own name. Similarly a trust may enter into contracts and otherwise deal with property. This section confirms that a trust is an independent body that does not represent the State.

Replacement of s 9 (Compulsory acquisition of land)

Clause 36 replaces section 9 (Compulsory acquisition of land) with a new section 9 and introduces a new division 2 heading such that the relaced section 9 and amended section 10 (see *clause 37*) are under this new division 2 (Powers for land and works).

New - Division 2 Powers for land and works

New section 9 - Compulsory acquisition of land

New section 9 replaces the previous section 9 with a contemporised provision that (continues to) enable a trust to compulsorily acquire land for any purpose under the River Improvement Trust Act, including for the maintenance of works undertaken within the powers of the River Improvement Trust Act. This provision confirms that a trust is a constructing authority for the purposes of the *Land Act 1994* and the *Acquisition of Land Act 1967*.

Amendment of s 10 (Works which trust shall undertake or maintain)

Clause 37 amends section 10 to make it optional for a trust to undertake or maintain works that is a trust is not compelled to undertake works. However if a trust does undertake works, they must align with and achieve the purposes of the River Improvement Trust Act and subject to that, must undertake any works the chief executive directs the trust to undertake or maintain. The section confirms that all other laws must be complied with when a trust undertakes or maintains any works. Each trust must now simply provide a report to the chief executive on what works the trust undertook during each financial year.

The section also replaces subsections (5), (5A) and (6) to restate that trusts may enter into agreements with any person with an interest in land (such as a lessee or occupier) so that the trust can effectively undertake or maintain works associated with that land. It is noted that existing sections of the River Improvement Trust Act for example those dealing with access, are stated elsewhere in this amended section. Provisions dealing with the registration with the registrar of titles of the agreement as an administrative advice and its cancellation are retained in a contemporary and streamlined way. Similarly the section states that all obligations under the agreement attach to the land and bind the owner of the land and the owner's successors.

Access powers to land for trusts where they are undertaking works or maintenance are provided in subsections (7A) to (9) and are streamlined here to allow trusts to do all things reasonably necessary to achieve the purpose of entry, including for example to take any equipment on the land or to stay on the land as necessary to undertake the works. In most if not all cases trusts enter land with owner or occupier consent because trusts may be examining, remedying or constructing works to protect land from flooding or erosion. The access powers are retained to ensure trusts may carry out their functions in those rare instances where voluntary consent is not available and perhaps a public purpose is served or other property is at risk of damage if access is not available.

Compensation provisions have been omitted from the River Improvement Trust Act as common law remedies are available in these circumstances.

Replacement of ss 11 and 11A

Clause 38 replaces the former sections 11 and 11A with new division 3 (Improvement notices) and division 4 (General) dealing with improvement notices and notification of existence of improvement notices and to reorder existing provisions into sequential headings. The new sections provide for the same powers as presently exist.

New - Division 3 Improvement notices

New section 11 - Definitions

New section 11 provides definitions for the terms used in the division.

New section 11A - Improvement notice

New section 11A provides for an improvement notice that may prohibit an activity by a person or require a person to do something that may prevent damage or remedy some damage. Particulars such as time, place, and land description must be provided in the improvement notice. They can only apply within a trust's area, may only be given to a person

if it is reasonable to do so, and if provided to an occupier such notice also applies to any other person who is also an occupier while the notice is in force.

New section 11B - Recording of improvement notice

New section 11B provides that a trust may request the registrar of titles to record the improvement notice it in a way such that it is searchable against the land records for the land in question. When the notice ceases to have effect the trust must request the registrar to remove the notice from the relevant title of the affected land and the registrar must comply with such request.

New section 11C - Requirement to comply with improvement notice

New section 11C requires that improvement notices must be complied with unless there is a reasonable excuse for non-compliance, such as there being no record of the improvement notice as provided for under section 11B, or where a person is not aware of the notice and could not be reasonably expected to be aware of the notice. Penalties of 20 units for a first offense or 100 units for a second or subsequent offence are applicable.

New section 11D - Compensation for crop damage

New section 11D requires that where an owner or occupier suffers a loss of crops through complying with an improvement notice or cannot avoid incurring a loss while taking compliance action, the trust must pay compensation by agreement, or as decided by the Land Court.

New section 11E - Work by trust to ensure compliance with improvement notice

New section 11E provides that a trust may perform all or sufficient work to comply with an improvement notice in cases where an owner or occupier fails to comply or does not fully comply with the notice. In such cases the trust is able to enter upon the land to perform the works and it may then recover the costs as a debt payable to the trust by the owner or occupiers as the case may be.

New section 11F - Action for debt does not stop proceeding for offence

New section 11F provide for an action to be taken against a person where the trust performs the work under section 11E(2) while another action under the compliance provisions in section 11C(1) is being taken. In such cases a court may apply a penalty and an amount payable under section 11E(3) or in lieu of a penalty an amount payable in satisfaction of the debt.

New section 11G - Injunction

New section 11G provides for a trust to apply to the Supreme Court for an injunction in cases where a person has not complied with an improvement notice. The court may grant the injunction on terms it considers appropriate to achieve the purposes of the notice either to restrain the person or require the person to do certain things, or if it so considers, grant an interim injunction pending its decision, vary an injunction or discharge an injunction.

New - Division 4 General

New section 11H - Other dealings in land are available to trust

New section 11H provides for trusts to undertake other dealings in land in order to achieve the purposes of the River Improvement Trust Act. Such dealings may include the taking of an easement or a lease over land. Trusts are also authorised through this provision to provide a public utility service as provided or mentioned in the *Land Title Act 1994* and the *Land Act 1994*. Such cases may arise where access through a right of way provision is required.

Replacement of s 12 (Fund of the trust)

Clause 39 replaces section 12 with a new section 12.

New section 12 – Funds of the trusts

New section 12 provides a more streamlined series of subsections dealing with the requirement for trusts to establish three types of funds, that is, a general fund which will be named after the trust (name), a loan fund for each loan created and a reserve fund comprising any reserve accounts established for the continued function of the trust.

The general fund is to be made up of all revenues and expenses of the trust excepting those expenses for which trust approval is available to expend from the loan fund. Any loan fund must be created for a specific purpose and funds from than account may only be expended against a purpose for which the loan was established. Similarly a trust must establish a reserve fund made up of amounts from its general account as provided for from time to time in its annual budget. Monies held in a reserve account can only be applied against purposes stated for that account.

Replacement of s 13 (Budget)

Clause 40 replaces previous section 13 with a new section 13 and 13A.

New section 13 - Budget

New section 13 streamlines trust budget requirements. In compiling and approving an annual budget the trust must provide estimates for revenues (this amount must balance with expenditures), expenditures for doing and maintaining works, expenditures to be made from loan(s) including interest where applicable, and amounts transferred from the general account to any reserve account.

The trust must provide a copy of its approved budget to the chief executive before a day prescribed under a regulation, and must follow its budget as far as possible and balance expenditures with the budget.

New section 13A - Unanticipated expenditure

New section 13A requires a trust to approve by a resolution of the trust any payments from the general or loan fund(s) in a financial year where the budget does not provide for such expense or that the proposed expense exceeds the funds available in the account. Loan funds must not be diverted into expenses that are not related to that already approved by the Treasurer. Further to this, nothing prevents a trust from expending revenue or loan funds in the maintenance or repair of works impacted by a flood or cyclone.

Amendment of s 14 (Liability of local government to contribute to trust)

Clause 41 amends section 14 to require that each trust and the constituent local governments must negotiate the agreed annual contribution by the local government to the trust. Section 14(1C) is replaced entirely with a new provision that provides for the Minister to decide the amount a local government must contribute to a trust in cases where both parties fail to agree on an amount. Subsection (2) is simplified by removing specific elements dealing with how trusts invoice local governments, and in subsections (3) and (4) removing which particular fund classes a local government must draw the precept funds from.

Omission of s 14A (Contribution by harbour board in aid of works)

Clause 42 omits section 14A as it is no longer relevant or applicable. Trusts generally negotiate all contributions made by entities regardless of being public bodies or otherwise. Nothing in the River Improvement Trust Act as amended prevents this arrangement from continuing.

Amendment of s 14B (Other contributions in aid of works)

Clause 43 amends section 14B to simplify provision for where trusts enter into arrangements with owners or occupiers of land to contribute to the maintenance or development of works in cases where the owner or occupier is a beneficiary of the works. These arrangements may be formalised by way of contracts between the parties, by the holding of securities and applying any interest charges as appropriate where expenses need to be charged to an owner or occupier. The provision makes these arrangements binding on all successors with any amount payable also being recoverable by the trust through common law.

Omission of pt 7 (State powers to undertake or maintain works)

Clause 44 omits part 7 as it is no longer relevant or applicable.

Omission of s 19A (Chief executive may conduct research and experiments)

Clause 45 omits section 19A as it is no longer relevant to trusts or the chief executive.

Replacement of s 20 (Offences)

Clause 46 replaces section 20 with a new simplified offence provision.

New section 20 - Proceedings for offences

New section 20 retains the time limits for proceedings being brought and confirms that a court may only apply a penalty and any costs that are reasonably necessary to reinstate the trust works.

Omission of s 20A (Arrangements for auditing accounts of superannuation schemes)

Clause 47 omits section 20A as it is no longer relevant or applicable.

Amendment of s 21 (Delegations)

Clause 48 amends section 21 to remove a definition in the section that is now redundant.

Amendment of s 22 (Regulation-making power)

Clause 49 amends section 22 by removing redundant or unnecessary subsections and renumbering the retained provisions.

Omission of pt 9 (Transitional provisions)

Clause 50 omits part 9 as the transitional provisions are now redundant.

Amendment of sch 1 (Dictionary)

Clause 51 amends the Dictionary by providing new definitions as required in the River Improvement Trust Act and amends the definition of 'works'. New definitions are provided where a word or term used in the River Improvement Trust Act has a particular meaning for the purposes of the River Improvement Trust Act or relies on another statute for that meaning, in which case a reference to the other statute is provided.

Three new themes related to 'works' are introduced to allow trusts to undertake a catchment management function as it relates to land in or about rivers and streams, in and near stream works that influence the flow and ecosystem or natural function in the bed and banks of a river or stream, and the improvement of water quality in rivers and streams. Such works may employ a preventative strategy or a restorative approach where damage to the natural function is compromised and proposed works are aimed at reducing sediment loads or improving water quality.

Some trusts currently maintain levees for public purposes and so the definition of 'works' is also expanded to formally recognise the ability of trusts to undertake the construction and maintenance of levees.

Part 7 Amendment of Vegetation Management Act 1999

Act amended

Clause 52 provides that this part amends the *Vegetation Management Act 1999*.

Replacement of s 20AB (What is the vegetation management watercourse map)

Clause 53 replaces section 20AB with anew section 20AB.

New section 20AB - What is the vegetation management watercourse and drainage feature map

New section 20AB changes the name of the vegetation management watercourse map to be the vegetation management watercourse and drainage feature map. This is to remove any potential confusion following the introduction of the new watercourse identification map under the Water Act. On the vegetation management watercourse map, something may be mapped as a watercourse, however the same feature may be mapped as a drainage feature on the watercourse identification map under the Water Act. Under the Water Act, a watercourse does not include a drainage feature.

Amendment of s 20ANA (What is a category R area)

Clause 54 amends the name of regrowth watercourse area to be regrowth watercourse and drainage feature area to reflect the change in name of the vegetation management watercourse map to be the vegetation management watercourse and drainage feature map.

Insertion of new pt 6, div 11

Clause 55 inserts a new section 124 under its own new division 11.

New - Division 11 Transitional provision for Water Reform and Other Legislation Amendment Act 2014

New section 124 - References to regrowth watercourse area and vegetation management watercourse map

New section 124 provides a transitional provision to reflect the change in name of the vegetation management watercourse map to the vegetation management watercourse and drainage feature map, and the name of the regrowth watercourse area to the regrowth watercourse and drainage feature area. This provision allows a reference to the existing name in another Act or document, to be taken to be a reference to the new name.

Amendment of sch (Dictionary)

Clause 56 replaces several definitions in the dictionary to reflect the changes in terminology relating to watercourses and drainage features by the Bill.

The new definition of *watercourse* under the Vegetation Management Act will now refer to the definition of watercourse under the Water Act. However, in addition to what is considered a watercourse for the Water Act, a watercourse under the Vegetation Management Act includes things such as rivers, creeks, streams, drainage lines and gullies within tidal areas.

Part 8 Amendment of Water Act 2000

Act amended

Clause 57 provides that this part amends the *Water Act 2000.*

Replacement of long title

Clause 58 replaces the long title for the Water Act.

Replacement of s 2 (Commencement)

Clause 59 replaces section 2 of the Water Act with a new section 2 outlining the purpose of the Water Act.

New section 2 - Purposes of Act and their achievement

New section 2 establishes the overarching purposes that set the new direction for water resource management in Queensland. The section states the four main purposes of the Water Act. Whilst each main purpose is intended to guide the entire Act, each can be viewed as particularly relevant to certain chapters.

The first main purpose is to provide a framework for the responsible and productive management of water resources and quarry material for the benefit of Queenslanders and to optimise economic, social and environmental outcomes. This is viewed as particularly relevant to chapters 1A and 2. Responsible and productive management is defined further, to provide a framework for water resources and quarry material to be allocated and managed in a manner that encourages investment, by providing flexibility, certainty and security for all water users. It does this by incorporating economic, social and environmental considerations; provides for fair, transparent and orderly processes; and facilitates community involvement. It continues to recognise the importance of sustaining ecosystem health, water quality and water-dependent ecological processes and biological diversity associated with catchments, watercourses, lakes, springs, aquifers and other natural systems, and promotes the efficient use of water. Subsection (3) provides an explanation of what efficient use of water includes.

The new purpose also clarifies that concepts such as the efficient use of water are promoted only through the water planning framework and the initial allocation of water rather than at each simple dealing with a water licence such as a subdivision of an existing licence.

The other main purposes listed provide for the sustainable and secure water supply (particularly relevant to chapter 2A), management of potential impacts on underground water from the resource sector (particularly relevant to chapter 3), and the effective operation of water authorities (particularly relevant to chapter 4).

The purposes combine to deliver an efficient regulatory framework for the responsible and productive management and use of water in Queensland; that facilitates strong uptake of water resource development opportunities and balances social, economic and environmental values.

Relocation and renumbering of s 3 (Definitions)

Clause 60 relocates section 3 to chapter 1, part 2; and renumbers it as section 4.

Renumbering of s 4 (Act binds all persons)

Clause 61 renumbers section 4 as section 3.

Replacement of ch 1, pt 2, hdg (Watercourses)

Clause 62 replaces the heading of chapter 1, part 2.

New heading - Part 2 Interpretation

Amendment of s 5 (Meaning of watercourse)

Clause 63 amends section 5 to replaces the reference to outer bank of a watercourse with the lateral limit of a watercourse. The reference to upstream limit of a watercourse is not required because the longitudinal extent of a watercourse will be determined by the watercourse identification map provided for in *clause 64*.

The section also defines the lateral limit of watercourse to distinguish the lateral limit from the longitudinal extent of a watercourse shown on the watercourse identification map.

Insertion of new 5AA

Clause 64 inserts new section 5AA.

New section - 5AA Watercourse etc. may be mapped

New section 5AA allows the chief executive to prepare a watercourse identification map showing the extent of watercourses, designated watercourses, drainage features, lakes and springs as defined by the Water Act. Those features identified on the map are taken to be the features as defined by the Water Act. The map will be publically available on the department's website. The map will initially show the extent of watercourse that was defined by the upstream and downstream limits identified in the Water Regulation. The map will be progressively updated over time to show the extent of further watercourse, designated watercourse, drainage feature, lake and spring, as the extent of additional features are mapped throughout the state.

New section 5AA requires the chief executive to consult with the chief executive of the department in which the *Coastal Protection and Management Act 1995* is administered prior to identifying a downstream limit of a watercourse on the map. This is to recognise that downstream limits determine the boundary of jurisdiction between the Coastal Protection and Management Act and the Water Act, and as such identifying a downstream limit has implications for the operation of both pieces of legislation.

Insertion of new s 6

Clause 65 inserts a new section 6 into the Water Act to define 'domestic purposes'.

New section 6 - Meaning of domestic purposes

New section 6 replaces and expands on the definition in schedule 4 of the Water Act before commencement. The definition for domestic purposes in the existing Water Act was that it included 'irrigating a garden, not exceeding 0.25ha, being a garden cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden'.

The new definition includes the following changes:

- increasing the area of garden able to be watered from 0.25ha to 0.5ha
- water plans to have the ability to define (including a volume) 'domestic purposes', which supersedes the Act's definition
- the reference to 'not for the sale, barter or exchange of goods produced in the garden' has been removed.

Replacement of ch 2, hdg

Clause 66 replaces the chapter 2 heading with the new heading to reflect the chapters focus on Water supply emergencies and restrictions.

New heading - Chapter 1A Water supply emergencies and restrictions

Amendment of particular provisions of ch 2 (Allocation and sustainable management)

Clause 67(1) to (3) omits from chapter 2 of the Water Act provisions that do not relate to water supply emergencies and restrictions and relocates them under the new chapter 1A.

Refer to schedule 1 – Minor or consequential amendments of particular Acts (*clauses 1* to *13*), for the amendments of the remaining provisions of chapter 2.

Clause 67(4) relocates the previous section 36A as a new section 25Y under a new part 2 under new chapter 1A.

New - Part 2 Obtaining information

New section 25Y - Obtaining information from a service provider

The new section 25Y continues to allow the chief executive to request information (of the type listed in subsections (a) to (f)) that may assist the Minister in deciding whether or not to publish a water supply emergency declaration.

Insertion of new ch 2

Clause 68 inserts a new chapter 2 dealing with the management and allocation of water.

New - Chapter 2 Management and allocation of water

New - Part 1 Water rights

New - Division 1 Ownership of water

New section 26 - Rights in all water vests in the State

New section 26 vests all rights to the use, flow and control of all water in the State.

New - Division 2 Allowing use of water

New section 27 - State may allow the use of water

New section 27 provides for the State to authorise the take or interference with water through various authorisations in legislation, statutory instruments and through specific entitlements.

New - Division 3 Restricting use of water

New - Subdivision 1 Restrictions for contamination and water shortages

New section 28 - Limiting or prohibiting taking, or interfering with, water during contamination or water shortages

New section 28 provides for the Minister to publish a notice limiting or prohibiting the use of water; or the interference with water. The Minister must publish a notice if the Minister is

satisfied that there is a water shortage or something harmful in the water, such as a pollutant. The notice remains in force not more than 1 year, or until the notice is withdrawn. It remains an offence to take water, or interfere with water in contravention of a notice.

New section 29 - Limiting water taken under water licence, water permit or water allocation

New section 29 provides for the chief executive to publish a notice limiting the use of water under a water authorisation, or for the domestic purpose of watering a garden; or water taken by a constructing authority under section 101(1). The notice remains in force for the period stated in the notice or until withdrawn. It remains an offence to take water in contravention of a notice.

New - Subdivision 2 Moratorium notices

New section 30 - Moratorium notices

New section 30 provides for the Minister to publish a moratorium notice to protect existing water entitlements and other authorities under the Water Act or to protect natural ecosystems for a part of the State. The notice may limit applications for or about existing water entitlements; and may also limit or prohibit the construction of the works used for taking or interfering with water where the application or construction of works would have a particular effect. If the notice applies to applications, the effect of the notice applies to applications made before the notice was published.

The notice may provide for works that have been started to be completed to the extent, and by the day stated in the notice.

Subsection (7) defines that works are considered to be started if they meet the following criteria:

- Construction of the works have physically commenced or, if the construction has not commenced, a contract for the imminent commencement of the construction of the works exists. The existence of a contract for the construction of the works could be demonstrated, for example, by evidence of a contract signed or evidence of a deposit for purchase of materials made prior to the date the moratorium took effect.
- A program for the construction of the works exists, and can be verified independently. Such a program might, for example, show a number of stages for the progressive construction of large earthworks, however for smaller works such as a bore may be constructed and installed in a single stage, meaning that the program of construction would be very limited. For example, an existing construction standard.
- Design plans showing the extent of the works exist, where such a plan would be required to establish the extent of final works that are started.
- If a development permit would be required—the permit has been given.

New section 31 - Effect of moratorium notice

New section 31 describes when limitations stated in the notice come into effect and provides for the notice to be withdrawn or replaced by publishing a further notice. The section also states that a moratorium notice prevails over a water planning instrument that may have effect

for the same area. A moratorium notice does not affect the issuing of water permits, certain statutory authorisations to take water, or any matter specifically excluded by the notice.

New section 32 - Offence to contravene moratorium notice

New section 32 provides that a person must not start the construction of works, or continue to construct works, in contravention of a moratorium notice.

New section 33 - Application to vary effect of moratorium notice

New section 33 provides that an owner of land who has started works for taking water, or interfering with water, that was affected by a moratorium notice may make an application to the Minister to vary the effect of the notice. The Minister may refer an application under this section to a referral panel established under section 242 before deciding the application. If the Minister grants an application under this section, the works must be completed by the day stated in a notice provided to the owner of land.

Subsection (7) defines that works are considered to be started if they meet the following criteria:

- Construction of the works have physically commenced or, if the construction has not commenced, a contract for the imminent commencement of the construction of the works exists. The existence of a contract for the construction of the works could be demonstrated, for example, by evidence of a contract signed or evidence of a deposit for purchase of materials made prior to the date the moratorium took effect.
- A program for the construction of the works exists, and can be verified independently. Such a program might, for example, show a number of stages for the progressive construction of large earthworks, however for smaller works such as a bore may be constructed and installed in a single stage, meaning that the program of construction would be very limited. For example, an existing construction standard.
- Design plans showing the extent of the works exist, where such a plan would be required to establish the extent of final works that are started.
- If a development permit would be required—the permit has been given.

New section 34 - Reviewing and replacing moratorium notices

New section 34 provides for the Minister to review moratorium notices periodically and, if the Minister is satisfied the notice should be amended, replace the notice with a new notice containing the amended provisions.

New - Division 4 Collecting information about water

New section 35 - Obtaining water information

New section 35 empowers the chief executive to require all persons with an authority to take or interfere with water under the Water Act including water entitlement holders, those persons authorised under chapter 2, division 1, subdivision 1 and resource operations licence holders or distribution operations licence holders, to give information to the chief executive. The information requested must be information that would reasonably be collected by the holder of the particular authority to take or otherwise interfere with water. Examples include

details of how water infrastructure is being operated and how water allocations are being managed by a resource operations licence holder.

New section 36 - Notice of works and water use

New section 36 provides that the owner of land on which works used to take water under chapter 2, division 1, subdivision 1 are, or are to be, constructed to notify the chief executive of the works and the end use of the water taken.

New - Part 2 Water planning

New - Division 1 Planning by the State

New section 37 - Planning for the management of water

New section 37 provides for the management of water by the State of Queensland, through the preparation and implementation of water plans and water use plans.

New section 38 - Information for planning

New section 38 requires the chief executive to measure and keep records of water resources, collect information on the water requirements of natural ecosystems and the impact of water management on natural ecosystems, and collect information about future water needs.

New - Division 2 Matters for and related to regulation

New section 39 - Matters for regulation

New section 39 provides the head of power for common planning provisions to be included in the water regulation. Provisions proposed to be included provide for: reserving unallocated water, stating a process to release unallocated water, criteria for establishing elements on water allocations, prescribe water allocation dealing rules, prescribe a process for granting seasonal water assignments for water allocations, identifying types of works that are regulated as assessable or self-assessable development, and monitoring and reporting requirements for resource operations licence holders and distribution operations licence holders.

Subsection (2) includes a specific requirement for the regulation in prescribing a process under subsection (1)(b).

New section 40 - Chief executive may release unallocated water

New section 40 provides that the chief executive may release unallocated water, where a reserve of unallocated water is explicitly provided for in a water plan, or a regulation. The chief executive must release the unallocated water using a process prescribed by regulation, however provisions in a water plan may override the provisions in the regulation for some or all of the unallocated water reserved in a plan. For example, the chief executive may release water in the general reserve through the process under the regulation, however unallocated water held in strategic reserve for indigenous purposes in the same area, may be released through an alternate process provided in the water plan.

The chief executive may set the price for unallocated water if required under the release process.

New - Division 3 Water plans

New section 41 - What is a water plan

New section 41 states that a water plan is a plan that applies to a part of the State and advances the responsible and productive management of Queensland's water.

New section 42 - Minister may prepare a water plan

New section 42 states the Minister may prepare a water plan for any part of the State.

New section 43 - Contents of a water plan

New section 43 provides that a water plan must contain details about the water to which the plan applies, for example surface water, overland flow water, or underground water; the desired economic, social and environmental outcomes which are to be achieved through management and allocation of water; explicitly state the volume of unallocated water reserved for release under the plan, including the volume of zero where no unallocated water is reserved for release; state the arrangements under the plan for providing water for the environment, including measures, strategies or statistical targets for ensuring that environmental flows are provided.

If the plan provides a framework for water allocations, it must include the zones in which water allocations can be traded; and state the security objectives for water allocations under the plan.

The plan may also:

- State specific measures that contribute to, and strategies for, achieving plan outcomes. The measures stated in a plan will provide quantifiable and objective links between high-level outcomes and specific management actions. These measures can inform decisions about how water management and allocation can contribute to achieving the stated economic, social and environmental outcomes. Strategies include rules and processes that will achieve the outcomes of the plan.
- In accordance with subdivision 2 of part 3, division 1:
  - provide limitations on specific statutory authorisations to take or interfere with water that contribute to the responsible and productive management of water for the plan area.
  - authorise taking of water, up to a specific volume or for specific activities, and interfering with water, without an entitlement.
- Provide detail regarding the unallocated water reserved under the plan, including the volumes available for particular parts of the plan area, or reserved for particular purposes.
- Provide a process for releasing some or all of the unallocated water reserved in the water plan, for example stating a process for the release of unallocated water held for particular infrastructure.
- Provide specific arrangements for the conversion, amendment or grant of water allocations, licences or other authorisations through a water entitlement notice. The arrangements that may be provided for the conversion of water licences and other water authorisations into water allocations, including specifying criteria for establishing particular elements of the granted water allocation, for example the nominal volume and

volumetric limit. The plan may also contain arrangements for amending existing entitlements, or for granting allocations or licences. These arrangements will be given effect through making a water entitlement notice.

- Provide the criteria for deciding water licence applications, and state types of applications for water licences that must not be accepted.
- State water supply schemes, and the proposed holders of resource operations licences, for those water supply schemes, to enable the grant of a resource operations licence without application.
- Provide a requirement for a water management protocol to be prepared to implement the water plan, and the matters that the protocol must address, including for example detail of unallocated water reserves, or processes for releasing unallocated water.
- State the types of amendments that can be made to a plan without consultation; and state categories of water licences that are to be cancelled or repealed.

The plan may also include other elements that the Minister considers relevant to advancing the responsible and productive management of water.

New section 44 - Preliminary public consultation

New section 44 provides the Minister with a framework for consulting publicly about the preparation of a water plan where the Minister considers such consultation necessary. It provides minimum requirements for public notification if the Minister does decide to undertake such consultation.

New section 45 - Making draft water plan

New section 45 requires the Minister to prepare a draft water plan before preparing a final water plan, and specifies the matters that the Minister must consider when preparing a draft water plan. These include regional plans made under the Sustainable Planning Act, environmental values established under the Environmental Protection (Water) Policy 2009, the Murray-Darling Basin Plan under the Commonwealth *Water Act 2007* (if the draft plan is in the Queensland Murray-Darling Basin), the results of any consultation about a proposal to prepare a draft water plan, and the public interest.

New section 46 - Publishing draft water plan

New section 46 requires the Minister to publish a draft statutory plan, and as soon as practicable afterwards, a notice that states:

- that a draft plan has been published
- where copies of the draft plan can be inspected
- that written submissions may be made by any entity about the draft plan
- the day by which submissions must be made, and the person to whom, and the place where, the submissions must be made on the draft plan.

This section also requires the Minister to publish a statement of intent that summarises the intent and effect of the draft plan.

New section 47 - Decision about finalising water plan

New section 47 requires the Minister to consider all properly made submissions on the draft plan before deciding to finalise the plan. 'Properly made submission' for the purpose of this section means a written submission made and signed by a person or representative of an entity, that is received by the person stated in the notice under section 46, for example, the chief executive, on or before the last day for the making of submissions, and that states the name and address of each person or representative of an entity making the submission, the grounds of the submission and the facts and circumstances relied on in support of the grounds.

This section also requires that if the Minister decides to finalise a water plan, the plan must be approved by the Governor in Council. If the Minister decides not to finalise the plan, the Minister must publish a notice of the decision and the reasons for the decision.

New section 48 - Effect of a water plan

New section 48 provides that the final statutory water plan takes effect only after it is approved by the Governor in Council as subordinate legislation, and as the statutory water plan for an area. Subsection (2) provides that a report must be published stating the considerations made in finalising the plan, including issues raised in submissions on the draft plan and how those issues have been dealt with.

New section 49 - Report on water plan

New section 49 requires the Minister to prepare reports on each water plan, with the timing of reports and matters to be included prescribed by regulation. The reports will address the effectiveness of the plan and its implementation in relation to the matters mentioned in section 41, and is intended to provide transparency to the community about the appropriateness of the plan. These reports support a proposal to postpone the expiry of a water plan under section 54.

New section 50 - Amending or replacing a water plan

New section 50 provides that the Minister may amend a water plan or prepare a new plan to replace one or more water plans. This section also allows the Minister to amend or replace a water plan if the Minister is satisfied that the plan is no longer advancing the matters mentioned in section 41.

New section 51 - Preparing an amendment or replacement of water plan

New section 51 provides that the process for amendment of a water plan is the same as the process for preparation of a water plan provided for in sections 44 to 48 inclusive. However consultation (sections 44 to 46) is not necessary if the amendment is to correct a minor error, is not a change of substance, or is an amendment which the plan has explicitly provided for as not needing consultation and the Minister is satisfied the amendment will not adversely impact on the rights of other water entitlement holders or natural ecosystems. The consultation provisions also do not apply where the water plan is being amended to implement a water development option or where two or more existing plans are being amalgamated and the new plan does not change the substance of the plans being replaced.

New section 52 - Amending a water plan to implement a water development option

New section 52 provides that the Minister may amend a water plan to enable the implementation of a water development option, for example by changing unallocated water reserves to provide for the grant of water entitlements and other authorisations. In making a decision to amend or not to amend a water plan, the Minister must consider the same criteria that the chief executive must have regard to in making a decision about implementing a water development option.

However the Minister may only amend the water plan if the following apply:

- if the amendment would advance the responsible and productive management of water
- where any significant impacts of the implementation of the water development option on the environment or on existing water authorisations can be mitigated
- if consultation equivalent to that required under sections 44 to 46 has already been undertaken.

New section 53 - Expiry of water plan

New section 53 specifies that water plans are not subject to expiry provisions for subordinate legislation under part 7 of the *Statutory Instruments Act 1992*, and instead generally expire as subordinate legislation on 1 September following the tenth anniversary of its approval by the Governor in Council, unless repealed sooner or the plan's expiry is postponed under section 54.

New section 54 - Postponement of expiry of water plan if water plan is not being replaced

New section 54 provides that the Minister may postpone the expiry of a water plan if the Minister is `satisfied the plan should be postponed and reasonably believes that the postponement will not adversely affect water entitlement holders or natural ecosystems.

Before making the decision to postpone the expiry of a plan the Minister must first publish a notice stating the Minister's intention to postpone the expiry, where a report prepared under section 49 about the effectiveness of the plan has been published, and the proposed new expiry date. The notice must also provide that submissions may be made about the proposal and submitted to the Minister by a date no sooner than 30 business days after publication of the notice. The Minister must consider any submissions on the notice before deciding to postpone the expiry of a water plan.

This provision also states that a water plan may have its expiry postponed more than once but cannot have its expiry postponed beyond the twentieth anniversary of a water plan's commencement.

New section 55 - Postponement of expiry of water plan while water plan is being replaced

New section 55 provides that the expiry of a water plan may be postponed for up to three years while a replacement water plan is being prepared, without public consultation requirements under sections 54(2) to 54(5) applying.

New section 56 - Publication of new expiry date for plan

New section 56 requires the Minister to publish a notice in the gazette stating the new expiry date of the plan, if the Minister decides to postpone the expiry of a water plan under sections 54 or 55. The gazette notice is subordinate legislation.

New - Division 4 Water use plans

New section 57 - Minister may prepare water use plan

New section 57 provides that the Minister may prepare a water use plan for any part of Queensland.

New section 58 - What is a water use plan

New section 58 provides that a water use plan may be prepared for any part of Queensland if there are risks of land and water degradation in that part of the state. This section gives examples of risks of land and water degradation including rising underground water levels, increasing salinization, deteriorating water quality, water logging of soils, destabilisation of bed and banks of watercourses, damage to riverine environment, and increasing soil erosion.

New section 59 - Contents of water use plans

New section 59 sets out the content of draft water use plans.

Subsection (1) provides that the draft water use plan must state the purpose of the draft plan, contain a map of the proposed plan area, state the types of water use subject to the plan, state the standards for water use practices, state standards for water use practices, state the objectives for water use efficiency, water reuse and water quality and state the monitoring requirements and responsibilities.

Subsection (2) provides that the plan may include, but is not limited to, schedules for the progressive implementation of the plan's requirements.

New section 60 - Making draft water use plan

New section 60 details obligations for the Minister when making a water use plan. Subsection (1) provides that before finalising a water use plan the Minister must make a draft plan. Subsection (2) provides that in preparing a draft water use plan the Minister must consider changes to water use practices that will reduce the risk to land and water resources arising from the use of water on land and to existing industry codes of practice for water use.

New section 61 - Publishing draft water use plan

New section 61 details obligations for the Minister when publishing a water use plan. Subsection (1) provides that after the Minister makes a draft of a water use plan, the Minister must publish the draft plan.

Subsection (2) provides that a notice must be published as soon as practicable after publishing the draft of a water use plan. The notice must state that the draft plan has been published, how copies of the plan can be inspected, that submissions about the draft plan may be made by any entity and the day by which, how and to whom submissions must be made.

Subsection (3) provides that the period for making submissions must not be less than 30 business days after the notice is published.

New section 62 - Decision about finalising water use plan

New section 62 details obligations for the Minister when finalising a water use plan. Subsection (1) provides that before deciding to finalise a water use plan, the Minister must consider all properly made submissions about the draft of the plan published under section 61.

Subsection (2) provides that if the Minister decides to finalise the plan, it must be submitted to the Governor in Council for approval.

Subsection (3) applies if a decision is made not to finalise the plan. A notice of the decision and the reasons for the decision must be published.

New section 63 - Effect of water use plan

New section 63 provides that the water use plan does not have effect until it has been approved by the Governor in Council, and from the approval is subordinate legislation, and is the water use plan for its plan area.

New section 64 - Public notice of content of water use plan

New section 64 provides that as soon as practicable after a water use plan is approved, the chief executive must publicly notify the requirements of the plan for water users and conduct public meetings to explain the requirements. The intention is that all reasonable efforts are to be made to ensure that water users affected by the plan are aware of their obligations under the plan.

New section 65 - Amending or replacing a water use plan

New section 65 details obligations for the Minister when amending or replacing a water use plan. Subsection (1) provides that the Minister may amend a water use plan or prepare a new water use plan to replace an existing water use plan.

Subsection (2) requires the Minister to amend a water use plan or prepare a new water use plan if the Minister is satisfied that an existing water use plan is not addressing the risk to land and water arising from the use of water on land in the plan area.

New section 66 - Preparing an amendment or replacement of a water use plan

New section 66 details obligations for the Minister when preparing an amendment or replacement of a water use plan. Subsection (1) provides that the publishing requirements under section 61 apply when amending or replacing a water use plan.

Subsection (2) provides that section 61 does not apply if the amendment to be made is to correct a minor error in the water use plan, or make another change that is not a change of substance, or is of a type stated in the plan as note requiring public consultation.

New - Division 5 Water management protocols

New section 67 - What is a water management protocol

New section 67 provides that a water management protocol is an instrument for giving effect to the intent of a water plan. The water management protocol applies within the area of the relevant water plan. A water management protocol may, if directed by the water plan, reserve volumes of unallocated water for particular parts of the plan area, or for particular purposes, or establish a process for the release of unallocated water. The volumes of water reserved must be consistent with the volume stated in the water plan, and may not alter any provision regarding unallocated water in the water plan.

The water allocation dealing rules for water allocations in the plan area may be set out in the water management protocol. The water allocation dealing rules in the protocol provide for supplemented water allocations managed under a resource operations licence as well as unsupplemented water allocations i.e. not managed under a resource operations licence. The water management protocol may also include water sharing rules and seasonal water assignment rules for water allocations that are not managed under a resource operations licence.

The water management protocol may provide the criteria for deciding applications for water licences, where the criteria are consistent with the intent of the relevant water plan.

The water management protocol may also include other things that the chief executive considers necessary for implementing the water plan.

New section 68 - Making a water management protocol

New section 68 empowers the chief executive to make one or more water management protocols to implement a water plan, for example where one water management protocol provided for the management of underground water, and another provided for surface water.

A water management protocol is an implementation tool for the water plan, and as such cannot be inconsistent with the relevant water plan. The water management protocol must be consistent with the outcomes and any measure that contribute to achieving these outcomes stated in the plan, as well as any numerical objectives stated in the plan, including the water allocation security objectives for water allocations, and environmental flow objectives in the plan area, and the plan must have been developed with adequate consultation with persons affected by the protocol.

Adequate consultation with persons affected by the protocol cannot be prescriptively defined, as it will vary with the scope and intent of each water management protocol. In all cases, adequate consultation will require that persons reasonably considered to be directly affected by the water management protocol be afforded an opportunity to be made aware of the proposal to prepare a water management protocol in advance of its making, to have an opportunity to make comment on the arrangements proposed to be implemented, and to have those comments considered and addressed.

New section 69 - Amending or replacing a water management protocol

New section 69 provides that a water management protocol may be amended or replaced at any time. Amending or replacing a water management protocol must meet the same requirements as making a water management protocol, that is, the amended or replaced water

management protocol must be consistent with the outcomes and any measure that contribute to achieving these outcomes stated in the plan, as well as any numerical objectives stated in the plan, including the water allocation security objectives for water allocations, and environmental flow objectives in the plan area, and the amended or replaced protocol must have been developed with adequate consultation with persons affected by the protocol.

New - Division 6 Water entitlement notice

New section 70 - What is a water entitlement notice

New section 70 states that a water entitlement notice is a notice that implements a water plan through converting, granting, cancelling, amending or repealing water entitlements and through refusing applications for water licences.

A water entitlement notice can, where directed by a water plan:

- covert to a water allocation a water licence, interim water allocation or other water authorisation
- grant a water allocation or water licence either to give effect to an unallocated water release process, or to implement a water development option
- amend a water licence to the extent necessary to give effect to a water plan
- repeal a water licence where a water licence is no longer necessary to authorise a particular take of, or interference with water
- cancel a water allocation surrendered under section 162
- refuse outstanding water licence applications where a water plan provides for the refusal of a particular category of applications
- replace a water licence with another water licence (for example replacing a water licence to take water from a watercourse with a licence to take overland flow water) where a change such as the declaration of an upstream limit makes such a replacement necessary.

Where a water licence is repealed, the water entitlement notice may state the authority which is replacing the take authorised by the water licence, to ensure that there is transparency about the reason for the repeal.

New section 71 - Making a water entitlement notice

New section 71 empowers the chief executive to make a water entitlement notice.

New section 72 - Draft water entitlement notice

New section 72 requires the chief executive to publish a draft of the water entitlement notice prior to making the final water entitlement notice. The chief executive must also publish a notice to inform consultation on the draft water entitlement notice.

The notice published to inform consultation must state:

- that a draft water entitlement notice has been published
- where copies of the draft can be inspected
- that submissions are invited on the draft water entitlement notice by any affected person
- the date by which submissions must be made

- that notices under section 73 about the holding of, and registering existing interests in, water allocations converted under the notice may be made at any time before the water entitlement notice has effect.

The date for submissions must be no earlier than 30 business days (approximately 6 weeks) after the publication date.

New section 73 - Additional requirements for notices for draft water entitlement notices that establish water allocations

New section 73 provides that the notice published under section 72(2) must also state that notices may be given to the chief executive by existing water entitlement holders or entities that have or claim to have an interest in the water entitlement that is to be converted to a water allocation.

Under subsection (1)(a), if a water allocation is to be granted to more than one holder, the existing water entitlement holders may give the chief executive a notice in the approved form requesting to be recorded on the water allocations register other than the default position as tenants in common in equal shares. This will ensure that registration can subsequently be affected in accordance with the notice mentioned in this section.

Under the Water Act, it is not necessary for a person to be the registered proprietor of land in order to hold a water entitlement. Therefore, even in circumstances where a water entitlement attached to land title that is to be converted to a water allocation, that entitlement is not necessarily held by all (or any) registered proprietors of that land.

Even if the registered proprietors of land were the entitlement holders, it could not be presumed that on conversion of the entitlement to a water allocation, that those people would want to hold the water allocation in the same tenancy as the land is held, because new property is created on the grant of the water allocation and the allocation is separate to land.

Therefore a default tenancy position (tenants in common in equal shares) is adopted for multiple holders for water allocations that are converted from an existing entitlement when a water entitlement notice takes effect. A notice under subsection (1)(b) can also be given, without the proposed allocation holder's consent, indicating that an existing interest holder wishes to have their interest recorded on granting of the water allocation. An example of an existing interest holder who may wish to take advantage of this provision would be a financier who has an existing interest in land to which an existing water entitlement attaches. An interest currently registered on a land title (such as a mortgage) will not automatically be recorded against a water allocation that replaces an existing water entitlement, such as a water licence, that was previously attached to the mortgaged land title. It is the responsibility of the existing interest holder to take steps to register an existing or a new interest for the granted water allocation on the water allocations register.

In addition to giving a notice under subsection (1)(b), where an existing interest holder has the consent of the proposed water allocation holder/s (to the recording of the existing interest recorded as an encumbrance against the new water allocation granted from the converted entitlement), a notice under subsection (1)(c) may also be given in an approved form. If this notice is given to the chief executive, the registrar of the water allocations register is then required to record the notice under subsection 73(1)(c) against the water allocation.

Subsection (2) declares a specified entity to be an existing interest holder and its existing interest to be an interest for the purposes of subsection (2)(b). This means a mortgagee of land, to which a water entitlement attaches, has an interest in the water entitlement. The declaring of the interest ensures the rights of the mortgagee are protected at the time of conversion of water entitlements to water allocations, for a prescribed time. The rights of the mortgagee in relation to mortgaged land, to which a water licence or other authority to take water is attached, together with the current Water Act provisions operating to attach water licences to land and be held on default by the registered landowner if the licensee ceases to hold the licence, afford a mortgagee certain rights over the land and the attached water entitlement. It is necessary that a mortgagee is afforded an opportunity to initiate action to ensure that these rights are not otherwise affected on the separation of land and water when a water allocation is granted on conversion from an existing water entitlement attaching to land.

Subsection (3) states that the proposed allocation holder for this notice must also be the registered owner of all of the land to which the existing water entitlement or other authority attaches and the interest holder's interest in the existing water entitlement or other authority to take water must relate to all of that land.

New section 74 - Reviewing submissions about draft water entitlement notice

New section 74 applies where relevant properly made submissions are made on the draft water entitlement notice by affected persons. Relevant submissions for this section are those which request a change to the water entitlement notice that could be made while still remaining consistent with the relevant water plan, but the chief executive does not propose to make to the water entitlement notice.

The chief executive must collate information about relevant properly made submissions, and give the information to a referral panel established under section 241. The panel must review the water entitlement notice in light of the relevant submissions and the information collated by the chief executive, and make recommendations to the chief executive within 40 business days.

New section 75 - Finalising water entitlement notice

New section 75 provides that the chief executive must consider all properly made submissions and any recommendations made by a referral panel prior to finalising a water entitlement. The water entitlement notice must be submitted to the Governor in Council for approval.

New section 76 - Effect of water entitlement notice

New section 76 provides that the water entitlement notice is not effective until it has been approved by the Governor in Council, however the notice may have a delayed effect for part or all of the notice, where the notice states the day of effect.

New section 77 - Publication of approved water entitlement notice

New section 77 provides that after a water entitlement notice is approved by the Governor in Council, the notice must be published, and that each affected person be notified of the publication of the notice within 30 business days (approximately 6 weeks).

New section 78 - When water entitlement notice ceases to have effect

New section 78 provides that a water entitlement notice, being a transitional instrument, ceases to have effect when the water entitlement dealings stated in the notice have been completed.

New - Division 7 Water development options

New - Subdivision 1 Preliminary

New section 79 - Definition for div 7

New section 79 provides a definition of the term major water infrastructure project.

New section 80 - What is a water development option

New section 80 provides a definition of the term water development option.

New - Subdivision 2 Granting water development options

New section 81 - Declaration of major water infrastructure project

New section 81 provides the chief executive with the power to declare a project as a major water infrastructure project. It also states the circumstances which the chief executive must be satisfied have occurred or will occur, prior to the chief executive determining that the project is a major water infrastructure project.

New section 82 - Matters chief executive must have regard to before making declaration

New section 82 provides clarity on what matters the chief executive must take into consideration before declaring a project as a major water infrastructure project. It also states which matters, if not present, mean that the chief executive need not consider a project at all. This section provides the chief executive with the discretion to not declare a project as a major water infrastructure project, even if it appears to meet the specified requirements.

New section 83 - Granting a water development option on application

New section 83 provides for a proponent to make application to the chief executive for a water development option for their project. It states how the application must be made, what it must contain and that it must be accompanied by the prescribed fee. This section provides the chief executive with the power to approve or not approve an application for a water development option and states within what timeframe and how the chief executive must notify the proponent of the outcome of their application and publish details on the department's website about the grant of the option.

New section 84 - Granting a water development option without application

New section 84 provides for the chief executive to approve a water development option without an application having been made through a process prescribed in a regulation. It states that the water development option may only be granted in this manner, if it is consistent with the terms of an agreement between the state and the proponent.

New section 85 - Deciding to grant a water development option

New section 85 provides clarity on what the chief executive must take into consideration when making a decision on whether to grant the water development option.

New section 86 - Content of a water development option

New section 86 provides detail on what information must be included in the water development option, for example: the name of the holder of the option, the term of the water development option, milestones to be achieved by particular dates and any conditions to be placed on the water development option.

New section 87 - Expiry of water development option

New section 87 provides the circumstances under which a water development option expires.

New section 88 - Extending term of water development option

New section 88 provides the ability for the term or milestones of the water development option to be extended and states the matters to be addressed for this to occur.

New section 89 - Transferring water development option

New section 89 provides the ability for a water development option holder to apply to the chief executive to transfer the option to another person. The transfer may proceed if the chief executive is satisfied that the holder has also notified the Coordinator General of the change of the proponent for the project.

New section 90 - Cancelling a water development option

New section 90 provides the chief executive with the ability to cancel a water development option and states the circumstances when this can occur. This section requires the chief executive to notify the holder of the water development option of their intent to cancel it and provide them with the opportunity to make submission as to why this should not occur. If the chief executive, after considering the submission, decides to cancel the water development option, the chief executive must provide the holder a notice of the decision including reasons for the decision. The chief executive may decide to revoke the declaration that determined the project to be a major water infrastructure project.

New - Subdivision 3 Implementing water development options

New section 91 - Implementing a water development option

New section 91 provides that the chief executive must give effect to a water development option by granting the appropriate instrument under section 92 if it is consistent with the water plan and any moratorium notice relevant to the project. However, the chief executive must be satisfied that the Coordinator-General has recommended the project proceed and the holder of the water development option has met the conditions placed on the option.

If giving effect to a water development option requires amendment of a water management protocol, the chief executive must amend the protocol if satisfied that adequate consultation has been undertaken by the holder of the water development option and that the proposed arrangements following implementation will mitigate significant impacts on flows that would affect the environment or existing water authorisations.

If giving effect to a water development option requires the amendment of a water plan or moratorium notice, the Minister must have amended the plan or notice before the chief executive proceeds with implementing the water development option.

New section 92 - Granting water entitlements and other authorisations for water development options

New section 92 provides that to implement the water development option the chief executive must grant a water entitlement, a resource operations licence or a distribution operations licence once the appropriate fees have been paid. However, the relevant instrument can only be granted if it is consistent with both the Coordinator-General's approval for the project including any conditions and the water planning instruments relevant to the water development option.

New - Part 3 How State authorises take or interference with water

New - Division 1 Statutory authorisation to take or interfere with water

New - Subdivision 1 Authorisations that may not be limited by water planning instrument or regulation

New section 93 - General authorisations to take water

New section 93 authorises the taking of water without a water entitlement. In doing so, this section provides exceptions to the general rule that the State issues entitlements to take water following a prescribed process.

This section provides that a water entitlement is not required for the taking of water in an emergency situation provided the taking is for a public purpose or for fighting a fire and taking water to test firefighting equipment. Water may also be taken for camping purposes and to water travelling stock without an entitlement.

This section clarifies a water entitlement is not necessary to take water from a watercourse that is identified on a map from which water may be taken without a water entitlement.

The statutory authority to take water under this section cannot be diminished by a moratorium or other planning instruments.

New section 94 - General authorisations to interfere with water

New section 94 provides a statutory authority to interfere with water without the requirement for a water entitlement. In doing so, this section provides exceptions to the general rule that the State issues entitlements to take water following a prescribed process.

Under this section a person may interfere with water that is overland flow water. A person may also interfere with water with structures used to collect monitoring data for the State or Commonwealth.

This section also clarifies that a water entitlement is not necessary to interfere with water in a watercourse that is identified as a designated watercourse on a map.

The statutory authority to take water under this section cannot be diminished by a moratorium or other planning instrument.

New section 95 - Aboriginal and Torres Strait Islander parties

New section 95 provides Aboriginal and Torres Strait Islander parties the right to take or interfere with water for traditional activities or cultural purposes. This reflects the rights afforded traditional owners under the *Native Title Act 1993*.

New section 96 - Land owners may take water for stock purposes

New section 96 authorises an owner of land on which there is water collected in a dam to take that water for stock purposes.

Subsection (2) provides that an owner of land adjoining a watercourse, lake or spring may take water from the watercourse, lake or spring for stock purposes.

New section 97 - Environmental authorities

New section 97 specifies that a person may take overland flow water to satisfy the requirements of an environmental authority or a development permit for carrying out an environmentally relevant activity, other than mining or petroleum activity, issued under the Environmental Protection Act.

The volume of take must not be more than necessary to satisfy the requirements of the environmental authority. Proponents undertaking activities will be required to provide information regarding the take or interference with water as part of their environmental authority application where the take or interference is necessary for an environmental authority or environmentally relevant activity. As part of the environmental authority process the impacts of the take or interference will be assessed and the Environmental Authority conditioned accordingly.

This exemption was previously allowed for under each water resource plan and has been consolidated into the Water Act.

New section 98 - Resource activities

New section 98 provides an exemption for diversion-type interference works, associated with a resource activity which does not require a water licence if the works are authorised under an environmental authority granted under the Environmental Protection Act. Proponents undertaking resource activities, where a watercourse diversion is necessary to undertake the activity, will be required to provide information regarding the watercourse diversion as part of their environmental authority application. As part of the environmental authority process the impacts of the interference will be assessed and the environmental authority conditioned accordingly. For example, the environmental authority will authorise that water diversion works take place, subject to statements of compliance being given for both the design and the construction of the diversion. This is necessary to ensure that the design of the works maintains the environmental values of the site.

New section 99 - Constructing authorities and water service providers

New section 99 provides an exemption for constructing authorities and water service providers to take water to operate pubic showers and toilets.

Under subsection (2) constructing authorities maintaining or constructing infrastructure in particular circumstances are authorised to take water without a water entitlement, however conditions apply as prescribed by regulation or a notice from the chief executive.

New - Subdivision 2 Authorisations that may be limited by water planning instrument or regulation

New section 100 - How this subdivision applies

New section 100 provides clarity that none of the planning instruments or a regulation mentioned under subdivision 2 can limit an authorisation provided for under the preceding subdivision.

New section 101 - Authorisation that may be limited by water planning instrument

New section 101 authorises a person to take water for the activities prescribed but provides that a moratorium or other planning instrument may limit these activities.

New section 102 - Authorisations under water plans or regulation

New section 102 provides for a water plan, moratorium notice or regulation to allow a person to take or interfere with water up to a volume or to a specified extent as stated in the plan, notice or regulation. The setting of these thresholds for take or interference will then have the effect of exempting a person from having to obtain a water entitlement for the take or interference below the stated threshold in a particular plan area or in the area to which the moratorium or regulation applies.

New section 103 - Authorisation to take water for stock or domestic purposes may be limited

New section 103 authorises an owner of land on which there is water collected in a dam across a watercourse or lake to take that water for domestic purposes. The owner of land may also take water from the adjoining watercourse, lake or spring.

Subsection (2) provides that a regulation may declare that if specified land abutting a watercourse, lake or spring is subdivided after the making of the regulation, the owners of such subdivided land will not have a statutory authorisation to take water for domestic purposes. The provision is necessary to prevent the proliferation of irrigated gardens on the fringe of urban areas. Such development can have significant impacts on the availability of water for the environment and other water users.

Subsection (3) provides an additional exemption, authorising the take of water for stock or domestic purposes from a watercourse, lake or spring, where provided for in either a water plan or, where there is no water plan, a regulation.

New - Division 2 Water licences

New - Subdivision 1 Preliminary

New section 104 - Definitions for div 2

New section 104 provides a definition of who is considered to be an owner of land and a definition of a prescribed entity for the purpose of making an application for a water licence.

New section 105 - Purpose of div 2

New section 105 provides clarity for the purpose of this division; particularly providing the power for the chief executive to issue water licences for taking and interfering with the flow of water, and water permits to take water.

New section 106 - What is a water licence

New section 106 provides guidance to what a water licence is and what dealings can occur with it.

It provides that a water licence may authorise the take of water from a location or the interference with water at a location, and that unless the licensee is a prescribed entity, a licence generally attaches to the licensee's land. The section also provides for certain circumstances when a water licence attaches only to a parcel, or may attach to all parcels, of land on which the water is taken and used.

New - Subdivision 2 Obtaining a water licence

New section 107 - Applying for a water licence

New section 107 describes who may apply for a water licence and the sources of water in relation to which an application for a licence to take and use water, or to interfere with water, may be made.

Subsection (1)(c) enables an application to be made for a single water licence for both the taking and interference with the flow of water, where the take of water is from storage created by the interference, for example a dam or weir. This is intended to provide flexibility in the volume of water taken from the storage.

New section 108 - Applying for transmission water licence

New section 108 provides a process for applying for a particular water licence, called a transmission water licence, in circumstances where the water licence will authorise the taking of water from a watercourse or lake conditional on 'recycled water' having first been supplied (the 'receiving source') into the same watercourse or lake.

Recycled water for the purposes of this new section means only that recycled water supplied under an approved recycled water management plan to augment a supply of drinking water.

The bulk water supply authority, a relevant entity for a recycled water scheme and an entity nominated by a relevant entity for a recycled water scheme, may only apply for a water licence for taking water from a receiving water source. In the case of the bulk water supply authority, the section specifically provides that if recycled water in a receiving water source is supplied from water supply works that supply a declared water service, it is only the bulk water supply authority that may make a licence application under this new section.

This section also provides that the chief executive may decide the licence application without notice of the licence application being published. If the chief executive grants a licence application, the transmission water licence does not attach to the licensee's land and section 117 does not apply to the transmission water licence.

In this section 'receiving water source' is defined as a lake or watercourse into which recycled water is supplied under an approved recycled water management plan to augment a supply of drinking water.

New section 109 - When application may not be made

New section 109 provides that an application cannot be made for a water licence for an activity that the applicant is authorised to do under part 3, division 1.

New section 110 - How application may be made

New section 110 provides that an application for a water licence must be made to the chief executive in the approved form and be accompanied by the prescribed fee.

New section 111 - Additional information may be required

New section 111 provides for the chief executive to require an applicant for a water licence to give additional information about the application. It also enables the chief executive to require a person who has made a submission about an application to give additional information about the submission. The chief executive may also require any information submitted to be verified by statutory declaration. The chief executive may exercise discretion to require further information at any time prior to deciding the application.

Subsection (2) provides that the chief executive may lapse an application if the applicant fails without a reasonable excuse to provide the information requested within the required timeframe.

New section 112 - Public notice of application for water licence

New section 112 provides the requirements relating to the public notice for an application for a water licence.

Subsection (2) provides exemptions from the requirement to publically notify an application where the licence is for stock or domestic purposes, or where the chief executive considers that granting the application would be inconsistent with a statutory water plan or water management protocol.

Subsections (3) to (7) prescribe the requirements for public notification and receipt of submissions in relation to the application for a water licence.

New section 113 - Criteria for deciding application for water licence

New section 113 provides the criteria which the chief executive must consider along with the application when making a decision on an application for a water licence. The criteria include:

- any relevant statutory water plan or water management protocol

- the long term average sustainable diversion limits included in the Basin Plan, if the application relates to the Murray-Darling Basin
- any additional information provided to the chief executive under section 111
- any properly made submissions about the application received by the chief executive in response to a notice published under section 112
- and if the application relates to water not managed under a statutory water plan or water management protocol:
  - existing water entitlements and other authorisations to take or interfere with water
  - any information about the effect the taking or interfering with water has on natural ecosystems or the physical integrity of watercourses, lakes, springs or aquifers
  - strategies and policies for water resource management in the area to which the application relates
  - the public interest.

New section 114 - Deciding application for water licence

New section 114 provides direction to the chief executive on how to decide an application for a water licence and how to notify the applicant of the decision, including the circumstances which would support granting, granting in part, or refusing an application.

In notifying the applicant of the decision, the chief executive must, within 30 business days of deciding the application, give the applicant a decision notice in circumstances where no other decision could have been made. Where another decision could have been made the chief executive must give the applicant an information notice. Where the decision is to grant the application, or grant the application in part, the chief executive must give the applicant the licence along with the notice.

The applicant may appeal a decision included in an information notice but may not appeal a decision notice. Where an applicant for a water licence ceases to be the owner of the land to which the application relates after the application is made, notice of the chief executive's decision and any resulting licence must instead be provided to the registered owner of the land.

This section also provides that the licence takes effect the day the licence is given to the licensee.

New section 115 - Effect of disposal of part of land to which application for water licence relates

New section 115 provides that if an applicant disposes of part of the land to which the application relates before the chief executive makes a decision on the application, the application lapses on the day the disposal of land occurs.

New section 116 - Granting a water licence under a process in a plan or regulation

New section 116 provides for the chief executive to issue a water licence without making an application under section 110 if a statutory water plan or regulation provides a process for allocating water or interfering with the flow of water under a water licence, or where the chief executive decides to grant a water licence to implement a water development option.

This section also requires the chief executive to notify the applicant of a decision about a water licence and give the licensee a licence in the same way as required under section 114.

New - Subdivision 3 Contents, terms and conditions of water licences

New section 117 - Contents of water licence

New section 117 provides the mandatory attributes of a water licence. The licence must state the period for which the licence is issued and it must state the water to which it relates and the location at which that water may be taken or interfered with.

New section 118 - Conditions of water licence

New section 118 provides that a water licence is subject to conditions prescribed by regulation or imposed by the chief executive. This section also lists examples of conditions which may be applied to a water licence.

New section 119 - Where water under certain licences must be used

New section 119 provides that the water authorised to be taken under a water licence that is attached to land may be used only on the land to which the licence attaches.

Subsection (2) provides an exemption from the requirement to only use the water on land to which a water licence attaches for particular water licences, including licences attached to land that is the subject of a water facility agreement under the *Land Protection (Pest and Stock Route Management) Act 2002*, licences to take artesian water for stock purposes, and licences to take subartesian water connected to artesian water for stock and domestic purposes.

New - Subdivision 4 Dealings with water licences

New section 120 - What are dealings with water licences

New section 120 provides clarity for the type of changes which are considered dealings under this subdivision.

New section 121 - Who may apply for dealing with water licence

New section 121 specifies who may apply for a dealing to change an existing water licence, based on the type of dealing proposed.

New section 122 - How to apply for dealing with water licence

New section 122 provides that an application for a dealing must be made to the chief executive in the approved form and must also be accompanied by the prescribed fee.

Subsection (2) provides that the application must also comply with any additional requirements under section 123, 126 and 127 if the application is of a type mentioned in section 126 to 130.

New section 123 - Application to amend water licence to add or remove land

New section 123 provides additional requirements for an application to amend a water licence by adding or removing land. Specifically it requires that the applicant must give

notice of the application to any entity that has an interest in the land to which the licence attaches, the land to be added, or the land to be removed. The applicant must then provide a copy of the notice to the chief executive within 10 business days. The application lapses if the chief executive is not given a copy of the notice within 10 business days. The chief executive may provide a copy of the notice to any entity the chief executive considers appropriate.

New section 124 - Water licence remains in force until application for renewal decided

New section 124 provides that where a licensee applies for the renewal of a licence before it expires, the licence remains in force until the applicant has been advised of the decision on the application, or where the application is refused and the applicant has appealed against the decision, until the appeal has been decided. Where the application is refused and the applicant has not appealed the decision, the licence remains in force until 30 business days after the applicant is given the information notice about the decision.

New section 125 - Application to reinstate expired water licence

New section 125 provides for an application to be made to reinstate an expired water licence up to 60 business days after the licence expires. The expired licence is taken to be in force from the date the application is made until the applicant has been notified of the chief executive's decision about the application.

New section 126 - Application to relocate water licence etc.

New section 126 provides that a licensee may apply to transfer, amend or amalgamate all or part of a water licence so that it relates to other land or is held by a prescribed person. This can only occur if the process for such a transfer, amendment or amalgamation is prescribed by regulation and a water management protocol or regulation states that the application may be made.

Subsection (2) provides that the application must be made in accordance with the process prescribed by regulation.

New section 127 - Application for a seasonal water assignment

New section 127 provides for an application to be made for the seasonal assignment of water authorised to be taken under a water licence, if a water management protocol or regulation allows for the seasonal assignment of the water. This section also specifies the information required in the application.

New section 128 - Additional information may be required for application for dealings

New section 128 provides that the chief executive may require an applicant for a water licence to give additional information about the application. It also enables the chief executive to require a person who has made a submission about an application to give additional information about the submission. The chief executive may also require any information submitted to be verified by statutory declaration. The chief executive may exercise the discretion to require further information at any time prior to deciding the application.

Subsection (2) provides that the chief executive may lapse an application if the applicant fails without a reasonable excuse to provide the information requested within the required timeframe.

New section 129 - When chief executive must refuse application

New section 129 requires the chief executive to refuse an application for a dealing if the granting of the application would be inconsistent with a statutory water plan, water management protocol or seasonal assignment rules prescribed by regulation. This section also requires the chief executive to give the applicant notice of the refusal within 30 business days of making the decision.

New section 130 - When dealing must be assessed as if it were a new water licence

New section 130 provides criteria for when an application for a dealing is required to be assessed as if was an application for a new water licence..

New section 131 - Recording other dealings

New section 131 requires the chief executive to record dealings within 30 business days of receiving an application, if the chief executive is satisfied that the application is properly made and consistent with any relevant regulation, statutory water plan or water management protocol. However this does not apply to dealings mentioned in section 130.

The chief executive must also issue, if required, one or more new water licences or a seasonal water assignment notice. If the dealing is not recorded by the chief executive, the chief executive must provide the applicant with notice of the decision and the reasons for the decision.

A water licence or notice issued under subsection (2)(b) takes effect on the day it is given to the applicant and any licence replaced under (2)(b) expires on the same day.

Subsection (6) essentially states that the licensee must not take any of the water that they have seasonally assigned to another water user.

New section 132 - Actions chief executive may take in relation to water licences

New section 132 provides for a water licence to be amended, cancelled or repealed by the chief executive under certain circumstances without complying with provisions of this division apart from sections 132 to 135, including to:

- amend a licence to correct a minor error or make another change that is not a change of substance
- amend a licence after a show cause process if the chief executive is satisfied the amendments are required
- cancel a water licence after a water entitlement notice is finalised or a show cause process if the chief executive is satisfied the licence should be cancelled
- repeal a water licence if the licence is no longer required to authorise the taking or interference with water.

This section requires the chief executive to give an applicant notice of a decision to repeal a licence, and the reasons for the decision. It also requires the chief executive to give a licensee

an amended licence in the approved form if the chief executive decides to amend a licence to correct a minor error or make another change that is not a change of substance.

New section 133 - Actions chief executive must take in relation to water licences

New section 133 provides for the chief executive to amend, replace or repeal an existing water licence if the existing licence is inconsistent with a statutory water plan or water entitlement notice, and provides the process that the chief executive must follow in amending or replacing the licence.

Subsection (2) requires the chief executive to amend, replace or repeal a licence that is inconsistent with a statutory water plan or water entitlement notice within the time stated in the plan or notice, or as soon as possible after the plan or notice is approved. The chief executive must advise the licensee of the aspects of the licence that are inconsistent with the plan and must issue a new or amended licence if necessary.

Subsection (3) specifies that a licence amended or replaced under this section takes effect from the day that the chief executive gives the licensee the new or amended licence. A licence is repealed under this section on the day that the chief executive gives the licensee a notice of the repeal.

New section 134 - Amendment of water licence after show cause process

New section 134 requires that an amendment under section 132(1)(b) must not:

- increase the amount of water that may be taken under the licence
- increase the rate at which water may be taken under the licence
- change the location of taking or interfering with water under the licence, except where the dealing is permitted under a regulation or water management protocol
- increase or change the interference with water under the licence.

This section requires that the chief executive may only take action to amend a licence in accordance with this section after the licensee has been given a show cause notice, and also that in deciding whether to amend a licence in accordance with this section, the chief executive must consider any properly made submissions about the proposed amendment.

If the chief executive decides to amend the licence, the chief executive must give the licensee an amended licence and an information notice about the decision within 30 business days of the decision. If the chief executive decides not to amend the licence, a notice must be given to the licensee advising that the licence will not be amended. The amended licence takes effect from the day the licence is given to the licensee.

Subsection (7) specifies that an amended licence takes effect from the day the licence is given to the licensee.

New section 135 - Cancellation of water licence

New section 135 requires the chief executive to apply provisions of section 134 to the cancellation of a licence under section 132(1)(c) as if reference in that section to an amendment of the licence were a reference to the cancellation. However, this does not apply to the cancellation of a licence under a water entitlement notice.

This section also prohibits the chief executive from cancelling a licence to which a seasonal water assignment notice applies.

New section 136 - Surrender of a water licence

New section 136 provides for a licensee to surrender a water licence by giving the chief executive a notice of surrender.

Subsection (2) provides that the surrender takes effect on the day the surrender notice is received by the chief executive and does not in any way effect the duty under this act imposed on a licensee about any works associated with the surrendered water licence.

Subsection (3) prohibits a licensee from surrendering a licence if a seasonal water assignment notice applies to the licence.

New - Division 3 Water permits

New section 137 - Applying for water permit

New section 137 provides that a person may apply for a water permit to take water for an activity, as long as the activity has, at the time the application is made, a reasonably foreseeable end date. The expectation is that the taking of water would be of a temporary nature and that the permit would be issued for the period of the activity. Common examples of activities for which water would be taken under a permit include infrastructure construction and mineral or petroleum exploration. The provision does not require the applicant to be the owner of land and, in specifying that water may be taken for an activity, does not require that water taken be used on land.

This section also requires that an application for a water permit must be made to the chief executive in the approved form and must also be accompanied by the prescribed fee.

New section 138 - Criteria for deciding application for water permit

New section 138 provides the criteria which the chief executive must consider when making a decision about an application for a water permit or the conditions of a water permit, including:

- the application and additional information given in relation to the application
- existing water entitlements and authorisations to take or interfere with water
- any information about the impacts on natural ecosystems
- any information about the impacts on the physical integrity of watercourses, lakes, springs or aquifers
- the public interest.

However, this section also provides that the chief executive is not required to consider these criteria if the application is to take water for an activity for less than 1 month.

New section 139 - Deciding application for water permit

New section 139 requires the chief executive to grant, or grant in part, an application for a water permit for a stated period, with or without conditions, if the chief executive is satisfied

that the application should be granted, or granted in part. Otherwise the chief executive must refuse the application.

This section also requires the chief executive to give the applicant an information notice about the decision, and if appropriate, a water permit, within 30 business days of making a decision about the application for a water permit. A water permit has effect from the day the information notice is given to the applicant.

New section 140 - Contents of water permit

New section 140 provides the content of a water permit, including that a permit:

- relates to a particular location or locations
- applies for a stated period
- cannot be transferred, amended, renewed or suspended
- is for a stated activity.

New section 141 - Conditions of water permit

New section 141 provides that conditions for a water permit may be prescribed by regulation or imposed by the chief executive.

New section 142 - Cancelling water permit

New section 142 provides that the chief executive may cancel a water permit if the chief executive is satisfied that the permit should be cancelled. This section also requires the chief executive to apply provisions of section 134 when acting to cancel a water permit in accordance with this section, as if references in that section to ‘amendment’, ‘licence’ and ‘licensee’ were references to ‘cancellation’, ‘permit’ and ‘permittee’, respectively.

New - Division 4 Water allocations

New - Subdivision 1 Preliminary

New section 143 - Meaning of element of a water allocation

Section 143 provides a definition of the attributes and conditions of water allocations. The attributes of a water allocation are the nominal volume, the maximum rate (see section 144) and the volumetric limit (see section 145). These attributes express the central beneficial elements of the authorisation to take water. The conditions of a water allocation provide limitations on the authorised taking of water, and include the location from which water may be taken, the purpose for which water may be taken, the flow conditions and any other conditions necessary for the water allocation.

The definition of attributes and conditions of water allocations allows specification of particular water allocation dealings through the water allocation dealing rules, as provided for in section 158. Section 152 provides that not all water allocations will specify all attributes and conditions.

New section 144 - Meaning of maximum rate for div 4

New section 144 defines maximum rate for the purposes of division 4 of this part of the Water Act. The maximum rate is a beneficial attribute of a water allocation. Unless otherwise provided by a water sharing rule, the maximum rate is the maximum volume of water, in megalitres, that may be taken under the allocation during a day. However a water sharing rule, on the water allocation or in a water management protocol, may provide for a different period of time or method of calculation of the maximum rate.

Where a water allocation or water management protocol does contain a water sharing rule about the maximum rate, the maximum rate is the maximum volume of water that may be taken during a particular period.

A water allocation may provide for more than one maximum rate, where the allocation has multiple conditions that limit the taking of water.

New section 145 - Meaning of volumetric limit for div 4

New section 145 defines volumetric limit for the purposes of division 4 of this part of the Water Act. The volumetric limit is a beneficial attribute of a water allocation. Unless otherwise provided by a water sharing rule, the volumetric limit is the maximum volume of water, in megalitres, that may be taken under the allocation during a water year. However a water sharing rule, on the water allocation or in a water management protocol, may provide for a different period of time or method of calculation of the volumetric limit.

Where the water allocation or water management protocol does contain a water sharing rule about volumetric limits, the volumetric limit is used to calculate (under the rule) the maximum volume of water that may be taken during a particular period or circumstance, for example to provide flexibility to address seasonal variation or other management arrangements.

A water allocation may provide for more than one volumetric limit, where the allocation has multiple conditions that limit the taking of water.

New - Subdivision 2 Converting water entitlements and granting water allocations

New section 146 - Converting water entitlements

New section 146 provides for the conversion of existing water licences and interim water allocations to water allocations. On the date the water entitlement notice takes effect, details of converted water allocations are to be recorded on the water allocations register.

Subsection (2) provides that if the water allocation is managed under a resource operations licence, a water supply contract between the water allocation holder and resource operations licence holder must exist. This contractual arrangement is necessary for the existence of water allocation in those parts of a watercourse or other body of water where water infrastructure is operated and the supply of water is controlled by a resource operations licence holder managed under a resource operations licence and also to protect the resource operations licence holder’s interests.

Subsections (3) and (4) specify that on the day a water allocation is granted, if a resource operations licence holder and a water allocation holder do not have a supply contract for the allocation and the licence holder has a standard supply contract placed on their website, then the licence holder and the allocation holder are taken to have been entered into the supply contract.

Subsections (5) and (6) specify that on the day a water allocation is granted, if a resource operations licence holder and a water allocation holder do not have a supply contract for the allocation and the licence holder does not have a standard supply contract on their website, then the licence holder and the allocation holder are taken to have been entered into the standard supply contract published on the department's website.

Subsection (7) provides that the subsection (2) requirements for a supply contract does not apply if the resource operations licence holder and water allocation holder are one and the same person.

Subsections (8) and (9) provide that the chief executive must record the details of the holder of a water allocation in the way notified under section 73(1)(a), for example, as joint tenants instead of as tenants in common in equal shares.

New section 147 - Granting water allocations under a process in a plan or to implement a water development option

New section 147 provides for the granting and registration of new water allocations according to a process set out in a planning instrument or to implement a water development option.

Subsection (4) provides that if the water allocation to be granted is to be supplied water by a resource operations licence holder, the resource operations licence holder and the allocation holder must have a supply contract. Subsection (5) specifies that the subsection (4) requirement for a water supply contract does not apply if the resource operations licence holder and water allocation holder are one and the same person.

Subsection (6) provides a requirement for the chief executive to notify the holder of the allocation within 30 business days of the grant, and subsection (7) provides that the allocation is granted on the day that the registrar records the granting in the register under section 168.

New section 148 - Relationship between water plans and water allocation

New section 148 provides the relationship between water plans and a water allocation. This provision also establishes a hierarchy for resolving conflicts between the allocation and the water plan.

New section 149 - Security for supply and storage of water allocation

New section 149 provides that if a resource operations licence holder considers security is needed to ensure payment of any outstanding water storage and supply fees, the holder may require water users who benefit from its services to provide, as a precondition to receiving service, a form of security such as a reasonable monetary bond or letter of credit set at a reasonable level.

New section 150 - Amending water allocations

New section 150 provides for the chief executive to amend water allocations in the circumstances detailed under subsection (1). These include if:

- a water plan states that a water allocation (or allocations) must be amended
- there is change to the name of a water management area that a water allocation (or allocations) is located in i.e. authorised to take from within—this relates to unsupplemented water allocations which under section 152, must state a water management area
- there is a change to name of the resource operations licence under which the water allocation is managed.

Where any of the above apply, the chief executive must amend the water allocation in accordance with the water plan or the name change. This amendment must be recorded by the registrar on the water allocation register on the day it is amended, giving the amendment effect. The chief executive must also give notice to the allocation holder about the amendment within 30 days of the amendment taking effect.

New section 151 - Correcting water allocation when recording the granting or amending

New section 151 permits the registrar (after calling for any necessary information or statutory declarations) to make necessary corrections to the name of existing water entitlement holders when recording the granting of water allocations. This will assist the registrar to ensure that water allocations are correctly recorded in the name of the appropriate legal entity. The provision will permit the correction of any existing anomalies in the names recorded in the current database held by the Department in respect of licences under the Water Act.

New section 152 - Registration details for water allocations

New section 152 specifies the details to be recorded in the water allocation register in respect of water allocations.

Subsections (1)(a) to (1)(g) specify the details that must be recorded on the water allocations register for all water allocations which include:

- the name of the person who holds, and how the person holds the allocation i.e. tenancy arrangements
- the nominal volume which defines the entitlements share of total water available
- the location which may be specified as a point, as an area, a reach of watercourse or in some other way
- the purpose which is required to assist with monitoring of movement of water between sectors, for example, shifts in agricultural water to urban water or vice versa
- any conditions required such as a requirement to only store water taken under an allocation in specified storage works
- the water plan under which the water allocation is managed
- other matters prescribed by regulation e.g. a nominal location (refer to s 3E of the Water Regulation).

Where a water allocation is supplied by an infrastructure operator (supplemented water allocation) under a resource operations licence, then the registration of the water allocation will also need to include the name of this resource operations licence. It will also need to include the product supplied by the resource operations licence holder under that resource operations licence, for example, high priority water.

Where a water allocation is not supplied by infrastructure i.e. an unsupplemented water allocation, then the registration of the water allocation will need to include a volumetric limit, a maximum rate at which water may be taken and the flow conditions under which water may be taken. Registration details will also include the water allocation group and the water management area to which the water allocation belongs.

New section 153 - Water allocations to which a distribution operations licence applies

New section 153 provides a means for managing certain risks associated with the trade or movement of water entitlements allocations in particular areas. In supplemented systems that have entities other than, or in addition to, the resource operations licence holder distributing water to irrigators (e.g. water authorities), there is the risk that the trade of water entitlements may tend to move entitlements away from that entity's distribution area. This could lead to a reduction in the number of customers in a distribution area (a reduced customer base), which in turn could result in increased costs for remaining water users. At its extreme, where the majority of allocations are traded away from an area, the distribution assets could become 'stranded' – with insufficient water users to maintain the viability of the distribution scheme.

In this case, although not strictly a resource management issue, it is important that there is a means for water trades to take account of certain costs associated with the distribution works in a distribution area.

Subsection (1) establishes that the section applies both where water allocations granted through conversion of another authorisation under section 146, where the licence holder distributes water under the allocation, and where the chief executive is satisfied that, as the result of a change to the location from where water may be taken under a water allocation, the allocation is now accessing water supply under a distribution operations licence.

Subsection (2) requires the chief executive to give the registrar a notice that the water allocation is one to which a distribution operations licence applies. The registrar will include a note—recorded as an administrative advice—on the allocation to make it clear to allocation holders, and the market generally, that an allocation of this type has particular characteristics namely that the distribution operations licence holder can require a charge of holders of the allocation under section 154.

New section 154 - Preservation of obligation in particular circumstances

New section 154 preserves an obligation on the holder of an allocation, mentioned in section 153(1), to pay the distribution operations licence holder a charge in relation to the licensee's distribution works. The charge is reflected in the licence holder's distribution arrangements with the allocation holder.

The section provides that the obligation continues to be recorded on the allocation even where:

- the allocation is changed e.g. the location of the allocation is moved to an area where the water under the allocation may not actually be distributed by the licence holder
- the allocation is subdivided
- the allocation is amalgamated with another allocation.

It is implicit in the provision that the obligation to pay the charge will apply where there is a change of allocation holder.

The obligation continues until the distribution operations licence holder agrees that the obligation has been satisfied under subsection (2).

Another aspect of this provision relates to the removal of an administrative advice recorded on the allocation under subsection 153(2). Where the distribution operations licence holder agrees that the obligation under this section, for a particular allocation, has been satisfied, the licence holder must give the chief executive a notice about this fact under subsection (3). Upon receiving this notice, the chief executive is then obliged to give the registrar notice of this fact under subsection (4).

Section 1007 enables the registrar to act in accordance with the notices provided by the chief executive under subsection (4).

New section 155 - Disclosure to proposed transferee or lessee of water allocation to which distribution operations licence applies

New section 155 ensures that a distribution operations licence holder is made aware of any proposed transfer or lease of a water allocation which is subject to the distribution operations licence. This section also ensures that the proposed transferee or lessee is aware of their obligations under the licensee's distribution arrangements, prior to entering into a contract with the allocation holder for a transfer or lease of the allocation.

Subsection (2) requires the holder of the allocation proposed to be transferred or leased, to obtain from the licensee and provide to the proposed transferee or lessee, a disclosure statement outlining the distribution arrangements applying to the allocation, and the obligations of the allocation holder under those distribution arrangements.

It is the responsibility of the licensee under subsection (3) and (4) to prepare the disclosure statement in its own form, providing all relevant details of the distribution arrangements and the obligations of the allocation holder relevant to the allocation of which the proposed transferee or lessee should be aware.

Under subsection (5) and (6) the proposed transferee or lessee is then required to sign an acknowledgement notice (on an approved form) that they have been given the disclosure statement by the water allocation holder before entering into a contract for the transfer or lease of the allocation and acknowledging that they understand their obligations under the distribution arrangements as detailed in the disclosure statement.

If the contract for the sale or lease has not settled and the allocation holder did not provide the disclosure statement and acknowledgement notice for signing before entering into the contract, the transferee or lessee may terminate the contract. Sections 170(6) and (7) provide additional detail on the registration requirements for this acknowledgement notice.

New - Subdivision 3 Dealings with water allocations

New section 156 - Meaning of water allocation dealing

New section 156 states that a water allocation dealing includes the transfer or lease of a water allocation dealt with under section 157, or a change to a water allocation, a subdivision of a water allocation or an amalgamation of two or more water allocations.

A change to a water allocation for this provision is the reconfiguration of one or more of the elements of the allocation listed in section 143 or a change to a priority group or water allocation group.

New section 157 - Transfers or leases of water allocations not managed under a resource operations licence

New section 157 provides the framework for transferring or registering a lease of a water allocation not managed under a resource operations licence. This section requires the holder of this type of water allocation to give notice of a proposed transfer or lease of the allocation in the approved form. The giving of the notice serves to inform rather than seek the approval of the chief executive of the proposed transfer or lease. This causes the chief executive to administratively deal with changes in holders of this type of allocation. The chief executive must give the holder a certificate acknowledging the receipt of the notice about the proposed transfer or lease within 10 business days. Section 170(8) provides additional detail on the registration requirements for this certificate.

New section 158 - Water allocation dealing rules

New section 158 provides for rules that allow dealings (other than transfers and leases) to be made to a water allocation. The rules, to the extent that they have effect for the whole of the state, may be prescribed in a regulation, and particular rules for a catchment may be stated in a water management protocol made under section 68. This arrangement allows the flexibility to provide for universal rules about subdividing, amalgamating or otherwise changing water allocations, as well as rules that support the management of water to advance the outcomes for a particular water plan.

Water allocation dealing rules, made by the regulation or in a water management protocol, must not allow a dealing that changes the water sharing arrangements between existing water entitlement holders, or between the consumptive and environmental shares of the resource. For supplemented water allocations i.e. allocations managed under a resource operations licence, this means that the rules may not allow an increase in the total consumptive pool managed under the resource operations licence, as well as the particular share of that total consumptive pool that is available to be taken under the water allocation being dealt with.

For a water allocation that is not managed under a resource operations licence (i.e. unsupplemented water allocation), the rules may not allow an increase in the nominal volume

attribute stated on the water allocation, or the actual share of the water resource that can be taken under the water allocation.

Water allocation dealing rules may provide for three distinct categories of dealings, dealings permitted under the rules, assessed against particular criteria stated in the rules, and those that are prohibited.

The water allocation dealing rules must prescribe, or state the process, for making an application for a dealing and deciding the application. The process elements of the rules will clarify the requirements for:

- how an application must be made
- whether fees and other costs are to be charged
- the circumstances in which public notice of a proposed dealing is required to allow public submissions to be made by affected parties
- what considerations the chief executive must make in deciding an application
- how the decision and the reasons for that decision will be communicated to the applicant.

New section 159 - Applying for water allocation dealing consistent with water allocation dealing rules

New section 159 provides the statutory right for a water allocation holder to make application for a water allocation dealing (other than a transfer or lease) under dealing rules. The way that the proposed dealing is decided depends on which of the categories provided for in section 156 the dealing falls under. Dealings that are permitted under the dealing rules must be approved by the chief executive without consideration. Dealings that are prohibited under the dealing rules must be refused without consideration. Dealings that are assessed must be considered against the criteria stated in the dealing rules, and where consistent with the dealing rules, the chief executive may approve the application, or approve the application with conditions necessary to make it consistent with the dealing rules. The chief executive must not approve an application unless the dealing is consistent with the dealing rules.

If the chief executive does approve an application, the chief executive must give the applicant a certificate of the dealing, which can then be registered by the registrar of water allocation to give effect to the dealing, under section 161.

New section 160 - Form and validity of certificate

New section 160 provides that a certificate must be in the approved form and remains valid for 40 business days, unless a different period is stated on the certificate. The issuing of a dealing certificate by the chief executive does not give effect to the dealing, it merely permits the dealing to be registered on the water allocations register. Once the certificate is issued, the person may then elect whether or not to give effect to the dealing by lodging it with the Registrar for recording on the water allocations register. Because there is no obligation on the water allocation holder to lodge the dealing for registration on the water allocations register, it is necessary to manage the risk of persons to apply for a dealing and holding a certificate without lodging it for registration, potentially limiting the ability of other water allocation holder to be able to make a similar change.

New section 161 - Registering approved application for a water allocation dealing

New section 161 provides for the registrar to give effect to a dealing by recording the details of the dealing on the water allocations register. The registrar will not record the dealing unless the holder of the water allocation lodges a certificate issued under section 157 and 159, along with any other necessary conveyance documentation.

New section 162 - Water allocations may be surrendered

New section 162 provides for a mechanism for the holder of a water allocation to surrender the entitlement to the chief executive by agreement. However, a water allocation managed under a resource operations licence or a resource operations licence and a distribution operations licence cannot be surrendered without the consent of the holder of the licence, for example to prevent surrender of entitlements eroding the financial viability of a water supply scheme. Where an allocation managed under a resource operations licence or a resource operations licence and a distribution operations licence is surrendered, the chief executive remains liable for fees under the contractual arrangements, unless through agreement with the holder of the resource operations licence or distribution operations licence.

The chief executive may deal with a surrendered water allocation by:

- holding the allocation
- leasing or selling the water allocation by public auction, public ballot, public tender or in another way decided by the chief executive
- transferring the allocation to the holder of the resource operations licence or distribution operations licence under which the allocation is managed and/or supplied
- cancelling the water allocation under a water entitlement notice and replacing it with an alternative authority under the Water Act
- cancelling the water allocation.

New section 163 - Cancelling water allocations

New section 163 provides that the chief executive may cancel a water allocation, where the water allocation has been surrendered to the chief executive.

If the water allocation is managed under a resource operations licence or a resource operations licence and distributed under a distributions operations licence, the chief executive must give notice to the holder of the licence, and to the registrar, who must record the cancellation on the water allocations register.

New section 164 - Water allocations may be forfeited

New section 164 provides for the forfeiture of a water allocation by the chief executive where the holder of the water allocation has been convicted of an offence against the Water Act in certain circumstances. The section sets out the process the chief executive must follow including provision of an information notice to the water allocation holder, within 10 business days of making the decision.

On forfeiture, the chief executive must sell the water allocation by public auction, public ballot, public tender or in another way decided by the chief executive. The water allocation is forfeited but not cancelled, so that its value is not lost for other interest holders in the

allocation. Registered interest holders will receive part of the distribution of the proceeds of sale, subject to the interests of those stated in the section to have a higher priority to the distribution.

The forfeiture takes effect on the later of the day when the appeal period ends, or the appeal is withdrawn, or the appeal is decided.

New section 165 - Dealing with water allocations granted or dealt with through fraud

New section 165 confirms that the Supreme Court has power to make orders regarding water allocations granted, dealt with or recorded on the water allocations register in consequence of a false or misleading representation or declaration.

New section 166 - Priority for applying proceeds of sale of water allocations under a power of sale

New section 166 applies the priorities specified in section 164(7) to the distribution of the proceeds of forced sales instigated by the resource operations licence holder, the chief executive or another person, for example, a financier who has a power of sale under a mortgage document.

New - Subdivision 4 Registering interests and dealings for water allocations

New section 167 - Registrar

New section 167 establishes that there is a registrar of water allocations. The registrar is to be employed under the *Public Service Act 1996*, and in acting under the Bill is subject to the chief executive. The section also contains evidentiary provisions regarding the registrar's seal of office, and signature.

New section 168 - Water allocations register

New section 168 requires that the registrar keep a water allocations register. Regulations may prescribe the location of offices of the registry, the documents which may or may not be lodged, how documents may be lodged and associated fees. A person is taken to have notice of an interest in a water allocation if the notice is included in the register. The notice deemed to have been given of interests on the register, may have implications for other registers, statutory provisions or contractual provisions with an application to the interest held by the water allocation holder. For example the holder of a registered charge may lose priority to an unregistered charge, where the unregistered charge is in fact registered (as a mortgage) on the water allocation register.

New section 169 - Form of register

New section 169 provides for the registrar to decide on the form of the register.

New section 170 - Interests and dealings that may be registered

New section 170 specifies that all interests and dealings which may be registered for land under the Land Title Act may be registered for water under the Land Title Act, except those excluded by virtue of section 173(1)(e) which are not appropriate for water allocations, and how interests and dealings may be registered on the water allocations register. An interest in

or dealing for a water allocation does not take effect until it is registered on the water allocations register.

Subsection (3) ensures that the registrar of water allocations does not record an interest in or dealing for a water allocation that is managed under a resource operations licence, without receiving from the resource operations licence holder, notice of an existing supply contract with the water allocation holder or the transferee or lessee (along with any other necessary conveyance documentation). This ensures that only transferees, lessees and existing water allocation holders with contractual arrangements for water supply may register an interest in or dealing for this type of water allocation.

Subsection (4) clarifies that the requirement under subsection (3) does not apply if the water allocation holder or proposed holder is also the resource operations licence holder or a subsidiary company of the resource operations licence holder. This is necessary to recognise that the holder of a resource operations licence or a subsidiary company will not have a supply contract with itself.

Subsection (5) provides that a mortgagee's consent is required before the registrar of the water allocations register will record an amalgamation or subdivision of a water allocation, subject to a mortgage. This is similar to land subdivision and amalgamation.

Subsections (6) and (7) specify that whether or not the water allocation holder has complied with their obligation to provide a disclosure statement under section 155 to the transferee or lessee, the registration of a transfer or lease of a water allocation to which a distribution operations licence applies must not occur unless the registrar has sighted the acknowledgement notice signed by the transferee or lessee.

Subsection (8) specifies that the registrar must not record a transfer or lease of a water allocation not managed under a resource operations licence, without receiving from the water allocation holder the certificate issued by the chief executive under section 157 (along with the lodgement of any other necessary transfer or lease documents) about the proposed transfer or lease. This ensures that the chief executive has been notified of the proposed transfer or lease of a water allocation before it is registered on the water allocations register.

Subsection (9) provides that an instrument does not transfer or create an interest at law until it is registered on the register. The section is modelled on section 181 of the Land Title Act. The possibility of there being interests off the register recognised in equity has not been excluded by this provision, and the priorities of such interests as against registered interests would be as established in the Courts.

New section 171 - Effect on priority of notices given under s 73(1)(b)

New section 171 deals with the effect of priority notices given under section 73(1)(b). Note that section 72 and 73 provide additional detail on the timing and requirements for giving a notice under this section.

The notice is evidence of the intention of an existing interest holder to take action to have the holder's interest recorded against the granted water allocation. The notice can be given without the proposed allocation holder's consent but of itself does not create a registered interest in the new water allocation. Subsection (1) and (2) provide that the notice has the

effect of continuing an interest equivalent to the existing interest had by the interest holder in the former water entitlement or other authority to take water for 60 business days or until the interest mentioned in the notice is recorded on the register. That is, the existing interest does not expire or lapse at the time the existing water entitlement is converted to a water allocation under section 146, despite the expiry of the existing water entitlement.

Subsection (3) and (4) provide that this 'transitional' continuing interest allows the interest holder to take action, if such action is available to the holder, to protect their existing interest before the end of the prescribed period after the water allocation is recorded on the water allocations register or to record an interest stated in the notice. In effect this section establishes a moratorium for 60 business days which prevents the registration of further dealings for the water allocation, other than an interest claimed in the notice. This 'freezing' of the register for a water allocation gives the existing interest holder time, with the allocation holder's consent or using a valid power of attorney clause in the previous mortgage, to prepare and lodge a new mortgage instrument over the allocation with the registrar. If the existing interest holder cannot secure the allocation holder's consent to lodgement of a new mortgage over the allocation, the interest holder may then, in the prescribed period, take action to lodge a caveat over the water allocation with the registrar to protect its interest until the dispute is resolved. This has the effect of continuing the equivalent interest until the interest claimed in the caveat is recorded on the water allocations register or the caveat lapses or is cancelled, removed or withdrawn.

This provides that the 'freezing' of the register for a water allocation, to which one or a number of section 73(1)(b) notices have been given to the chief executive, will either be a maximum period of 60 business days (excluding additional time if a caveat claiming an equivalent interest is recorded on the register) or an earlier period if all interests under the section 73(1)(b) notices are recorded on the register or the notice is withdrawn or a caveat that is subsequently recorded lapses or is cancelled, removed or withdrawn. For example, if the chief executive receives two section 73(1)(b) notices and the requisite instruments to register the interests claimed in the notices are subsequently lodged with the registrar before the end of 60 business days, the registrar may then record other dealings for the water allocation after registration of the interests under the two section 73(1)(b) notices.

Subsection (5) and (6) specify the procedure to be followed in determining the priority for registration of existing interests for the land to which the former water entitlement was attached at the time of granting the water allocation. If more than one notice under section 73(1)(b) is lodged for a water allocation, the registrar must record the interests subsequently lodged for registration against the allocation in accordance with the interests stated in the notices and the following priority rules:

- For interests recorded in the Land Registry—according to the priority the interests have on the land registry for the land to which the existing interest is attached, as at the day the water allocation is recorded
- For interests recorded on a register other than the Land Registry (for example, the Bills of Sale Registry)—according to the time the interests were recorded on the other register
- For interests not recorded on a register—according to the day it was lodged for registration on the water allocations register.

At the end of the 60 business days, the notice under section 73(1)(b) will cease to have effect. If an existing interest holder, or other persons with an interest in a water allocation, lodges instruments for registration after the prescribed period, the instruments are registered in the order in which they are lodged.

New section 172 - Effect on priority of notices given under s 73(1)(c)

New section 172, together with section 73, provides for an entity, with an existing interest in a water entitlement that is to be converted to a water allocation, to have its interest recorded against the water allocation at the time it is first recorded on the water allocations register. An existing interest holder in a water entitlement (or other authorisation under the Water Act), who has the consent of the proposed water allocation holder, may give notice to the chief executive of the allocation holder's consent to the recording of the existing interest as an encumbrance against the new water allocation granted from the conversion of that existing entitlement or other authorisation. Section 72 and 73 provide additional detail on the timing and requirements for giving a notice under this section.

If a section 73(1)(c) notice is given, subsection (1)(a) and (b) requires that the registrar must record the notice against the water allocation within 60 business days after the allocation registered on the water allocations register, with the same priority as the interest mentioned in the notice had in the land registry for the land to which the interest relates as at the day the water allocation is granted. For example, if there is an existing mortgage over land to which a water licence is attached and the water licence is converted to a water allocation, the recording of the notice has the effect of encumbering the water allocation with the existing mortgage—there will not be a need to lodge new mortgage documents.

Subsection (2) specifies that the recording of the notice has the effect of then being taken to be a mortgage for the purposes of the Land Title Act. For example, the provisions of the Land Title Act dealing with release of a mortgage would apply. Also the recording of this notice does not attract registry fees or duty.

New section 173 - Application of Land Title Act 1994 to water allocations register

New section 173 specifies that the Land Title Act applies, other than the provisions listed in this section and other than provisions in the Land Title Regulation 2005, and establishes a rule to resolve conflicts between the Bill and the Land Title Act.

An interest in or dealing for a water allocation may be registered similar to land. However, for land there can be a lease of part or whole of a lot. Although section 64 of the Land Title Act applies, it is not intended that part of a water allocation may be leased. Subsection (1)(e) provides that section 64 of the Land Title Act does not apply to matters under this part of the Water Act to the extent it permits a lease of part of a lot.

Provisions not applied include those in respect of easements, covenants and profits a prendre, and references to compensation are excluded. Powers of attorney registered under the Land Title Act, are recognised under subsection (3) for the purposes of the water allocations register.

New section 174 - Application of other Acts to the water allocations register

New section 174 provides for the application of other legislation which refers to the Land Title Act, being the *Property Law Act 1974*. References to land are to be taken as references to water allocations.

The provisions of the Land Valuation Act 2010 regarding the obtaining and dealing with sales information about land will be applicable as if a reference to land is a reference to a water allocation. This will allow sales information to be obtained and provided about water allocations.

New section 175 - Searching water allocations register

New section 175 permits a person to search and obtain a copy of a water allocation, and other instruments and information, at an office of the department.

New - Division 5 Resource operations licences and distribution operations licences

New - Subdivision 1 Nature and content of resource operations licences and distribution operations licences

New section 176 - What is a resource operations licence

New section 176 states that a resource operations licence authorises the holder of the licence to interfere with the flow of water to the extent necessary to construct or to operate the water infrastructure to which the licence relates, and to take water or interfere with water to distribute the water to the water allocations managed under the licence. This section also states that a resource operations licence can only be held by the owner of the water infrastructure, or the parent company of a subsidiary company that owns the water infrastructure, to which the licence relates.

New section 177 - What is a distribution operations licence

New section 177 states that a distribution operations licence authorises the holder to take water or interfere with the flow of water to distribute water under water allocations. This section also states that a distribution operations licence can only be held by:

- the owner of water infrastructure
- the parent company of a subsidiary company that owns the water infrastructure
- an entity nominated by the owner of the water infrastructure, if approved under section 178 to be the holder of the licence, regardless of whether the approval under that section occurred before or after:
  - the entity became the owner of the water infrastructure
  - the licence started to apply to the water infrastructure.

New section 178 - Nomination and approval of entity as distribution operations licence holder

New section 178 sets out the process for the nomination by a water infrastructure owner (or the entity that is to be the future owner), and subsequent approval by the chief executive, of an entity to hold a distributions operations licence.

This section requires the chief executive to only approve an entity as the holder of the licence if the chief executive is satisfied that the entity is suitable to hold the licence and can carry out the activities authorised and comply with the conditions of the licence. In addition, in order to protect the water allocations being supplied under the licence, the chief executive must be satisfied that the nominating water infrastructure owner could itself undertake activities authorised and comply with the conditions of the licence. Alternatively, that the nominating water infrastructure owner be capable of nominating a suitable alternative entity to hold the licence within a reasonable period of time, if the entity approved as the licence holder under this section ceases to be the licence holder for any reason.

New section 179 - Content of a resource operations licence or distribution operations licence

New section 179 states the contents of a resource operations licence including the details of the licensee, the water plan to which the licence relates, the water infrastructure to which the licence relates and any specific conditions applying to the licence. Conditions may include a requirement to comply with and have an approved operations manual, the full supply level for the relevant infrastructure, water sharing and other operational rules, monitoring and reporting requirements, a requirement to pay fees prescribed by regulation, and any other conditions considered appropriate by the chief executive.

New - Subdivision 2 Granting or amending resource operations licence or distribution operations licence

New section 180 - Chief executive may grant a resource operations licence or distribution operations licence without application

New section 180 states that the chief executive may grant a resource operations licence without an application being made, to an entity that owns water infrastructure to which the licence relates, or their parent company, if they are named in a statutory water plan. This section similarly provides for the granting of a distribution operations licence without an application being made, either to an entity that owns relevant water infrastructure, their parent company, or a nominated entity approved to hold the licence under section 178, if they are named in a statutory water plan. This section also provides for the grant of either a resource operations licence or distribution operations licence without an application being made, to implement a water development option.

New section 181 - Application for resource operations licence or distribution operations licence

New section 181 states the process for an entity to apply for a resource operations licence or a distribution operations licence. The provision outlines the details to be included in the application. The application must include information about the infrastructure, operating arrangements and proposed arrangements for the mitigation of any potential impacts.

New section 182 - Deciding application for resource operations licence or distribution operations licence

New section 182 specifies the minimum criteria that the chief executive must consider for deciding an application. Other matters may also be considered.

New section 183 - Chief executive must amend a resource operations licence or distribution operations licence for consistency with water plan

New section 183 provides that where a resource operations licence or a distributions operations licence is inconsistent with the outcomes, measures or numerical objectives of a water plan, for example as a result of the amendment or replacement of a water plan through the consultative process stated in part 2, division 3, the chief executive must amend the licence to make it consistent with the outcomes, measures or numerical objectives of a water plan. The chief executive must consult with the holder of the licence before amending the licence.

New section 184 - Holder may apply to amend resource operations licence or distribution operations licence

New section 184 states the process for a holder of a resource operations licence or a distribution operations licence when applying to the chief executive to amend the licence. The provision outlines the details to be included in the application. The application requires information about the amendment and the proposed arrangements for the mitigation of any potential impacts. The provision includes the minimum criteria that the chief executive must consider for deciding an application.

New section 185 - Chief executive may amend resource operations licence or distribution operations licence in an emergency

New section 185 states the chief executive may amend a resource operations licence or a distribution operations licence if the chief executive is satisfied this is necessary to deal with a shortage of water for essential services or because there is a risk to public safety. If a licence is amended the chief executive must provide the holder of the licence with a notice of the amendment.

New section 186 - Minor, stated or agreed amendments of resource operations licence or distribution operations licence

New section 186 provides that the chief executive may amend a licence without complying with the provisions of this subdivision, if the amendment is to correct a minor error or other change that is not of substance, or is a type of amendment contemplated in the resource operations licence or the licensee agrees to the amendment.

New - Subdivision 3 Transferring, amalgamating and cancelling resource operations licences or distribution operations licences

New section 187 - Applying for transfer of licence

New section 187 provides that a holder of a resource operations licence or a distribution operations licence may apply to transfer the resource operations licence. The application must be made in the approved form together with supporting information and be accompanied by the prescribed fee. The application of transfer can only be in relation to change of beneficial ownership of the licence. It cannot refer to relocation of the water infrastructure.

An application to transfer a distribution operations licence may only be made to transfer the licence or a part of the licence to another entity that can hold the licence. In this section it is

necessary to be clear that the 'transferor' and 'transferee' refer to the licence not the infrastructure.

New section 188 - Additional requirements for transfer of distribution operations licence to nominee

New section 188 provides that where a distribution operations licence is to be transferred from or to a nominee of the relevant infrastructure owner, the application must be accompanied by the owner's written consent to the transfer. In addition, if the proposed transferee is the nominee of the relevant infrastructure owner, the application must be supported by sufficient information to enable the chief executive to decide whether or not to approve the nominee under section 178.

New section 189 - Additional information may be required

New section 189 provides details about who the chief executive may seek extra information from in relation to an application to transfer a licence. Extra information may be sought from:

- the applicant
- the transferee
- for an application to transfer all or part of a distribution operations licence—the current owner
- for an application to transfer all or part of a distribution operations licence—the incoming owner.

The section provides that if the applicant or owner fails, without a reasonable excuse, to provide the extra information within the time specified, the application will lapse.

New section 190 - Deciding application to transfer licence

New section 190 provides that the chief executive's decision about the application of the resource operations licence or a distribution operations licence must be made within 30 business days (6 weeks) of the application or receipt of further information requested by the chief executive.

New section 191 - Approving application to transfer licence

New section 191 sets out the process for transferring a resource operations licence or a distributions operations licence. The chief executive must give notice of the decision to the applicant and transferee and cancel the existing licence and grant a new licence to the transferee. For the transfer of all or part of a distribution operations licence, the notice may also need to be sent to the current infrastructure owner, unless the owner was the applicant; and if the transferee is the nominee of the incoming owner—the incoming owner.

If the transfer applies to only part of a licence the chief executive must amend and grant the remaining part of the licence.

New section 192 - Refusing application to transfer licence

New section 192 provides that if the transfer is refused, the applicant must be notified within 30 business days of the decision and the reasons for the refusal. The transfer may be refused if, in the chief executive's opinion, the applicant does not have the necessary

experience to be a licensee or is not a suitable person to hold a resource operations licence based on the following grounds:

- The applicant has been convicted of an offence against the Water Act or an interstate law, or has held a resource operations licence that was cancelled or suspended under the Water Act or an interstate law.
- If the applicant is a corporation and, an executive officer of the corporation:
  - has been convicted of an offence against the Water Act or an interstate law, or has held a resource operations licence that was cancelled or suspended under the Water Act or an interstate law
  - is or has been an executive officer of a corporation that has been convicted of an offence against the Water Act or an interstate law, or that held a resource operations licence that was cancelled or suspended under the Water Act or an interstate law.

New section 193 - Amalgamating licences

New section 193 provides for an application by a resource operations licence holder or distribution operations licence to amalgamate, into a single licence, the licence with one or more resource operations licences or distribution operations licence in the same water supply scheme. The application, amongst other matters, must be accompanied by the written consent of the holder of the other licensee proposed to be amalgamated. If the applicant is not the owner of infrastructure (i.e. the infrastructure owner's nominee) the applicant must include the owner's consent to the application.

New section 194 - Cancelling licence

New section 194 provides the grounds on which the chief executive may cancel a resource operations licence or distribution operations licence. If a licence holder is first convicted of an offence under section 813 for non-compliance with the conditions of the licence, the chief executive cannot require that the licence holder's licence also be cancelled under this section. It is not intended that any action taken by the chief executive under this section, would prevent a third party from claiming for compensation for loss or damage in any way.

New section 195 - Procedure for cancelling licence

New section 195 provides that if the chief executive is satisfied that grounds exist for the cancellation of a resource operations licence or distribution operations licence, the licence holder is to be given a show cause notice. The requirements for the show cause notice are set out in section 779 of the Water Act. The licence may be cancelled if, after considering any properly made submissions by the licensee, the chief executive decides that sufficient grounds exist for cancellation. The licence holder must be given notice within 10 business days (2 weeks) of the decision.

The decision takes effect on the later of the day when the appeal period ends, or the appeal is withdrawn, or the appeal is decided. However, if cancellation is based on the conviction of a person for an offence, the cancellation does not take effect until:

- The day the period for appeal against the conviction ends
- If an appeal is made, the appeal is finally decided.

Cancellation does not take effect if the conviction is quashed on appeal.

New section 196 - Cancelling licence no longer required

New section 196 provides for cancelling a resource operations licence or a distribution operations licence that is no longer required. Where the chief executive decides to cancel a distribution operations licence held by the approved nominee of the water infrastructure owner, the chief executive must give notice of the decision to the water infrastructure owner as well as the licence holder. An information notice will need to be issued to both parties if the chief executive then decides to cancel the licence.

New - Subdivision 4 Operations manuals

New section 197 - Requirement to have an operations manual

New section 197 provides that, where a condition on a resource operations licence or distribution operations licence requires the licence holder to prepare an operations manual, the holder must prepare the manual, addressing the requirements of the condition on the licence, and submit the manual to the chief executive for approval. The condition requiring an operations manual to be prepared may state that the manual must contain rules for the water supply scheme to which the licence applies, for example operational rules, environmental flow release rules, water sharing rules, or other arrangements relevant to the operation of the water supply scheme, for example monitoring and reporting arrangements.

In submitting the manual to the chief executive for approval, the licence holder must also include enough information to allow the chief executive to decide whether the manual should be approved in accordance with section 198. This information may include, for example, proposed monitoring arrangements that will demonstrate that proposed operational rules under the manual will be consistent with the water plan outcomes, the output of model runs that demonstrate that proposed water sharing rules will achieve the water allocation security objectives and environmental flow objectives of the water plan and evidence of consultation with affected persons, including issues raised, and how they were addressed.

The requirement to have an operations manual provides a flexible outcome-based regulatory arrangement for the management of water supply schemes. The requirement to prepare an operations manual reflects the competence of water supply scheme operators in deciding how water infrastructure should be operated.

New section 198 - Approval of operations manual

New section 198 provides the decision making criteria for the chief executive when approving an operations manual. The manual must be consistent with the outcomes and any measures that contribute to achieving these outcomes stated in the plan, as well as any numerical objectives stated in the plan, including the water allocation security objectives for water allocations, and environmental flow objectives in the plan area, and the plan must have been developed with adequate consultation with persons affected by the protocol

Adequate consultation with persons affected by the operations manual is not prescriptively defined, and will vary with the scope and intent of each operations manual. In all cases, adequate consultation will require that persons reasonably considered to be directly affected by the operations manual be afforded an opportunity to be made aware of the proposal to prepare an operations manual in advance of its making, to have an opportunity to make

comment on the arrangements proposed to be implemented through an operations manual, and to have those comments considered and addressed.

New section 199 - Resolving disputes about approval of operations manual

New section 199 provides a framework for resolving disputes with regard to the approval of an operations manual. In such circumstances the licensee may apply to have the matter referred to an independent panel.

New section 200 - Application to amend or replace operations manual

New section 200 provides that an operations manual may be amended or replaced at any time. In approving an amended or replaced operations manual, the chief executive must be satisfied that the amended or replaced operations manual is consistent with the outcomes and any measure that contribute to achieving these outcomes stated in the plan. Also consistent with any numerical objectives stated in the plan, including the water allocation security objectives for water allocations, and environmental flow objectives in the plan area. The amended or replaced manual must have been developed with adequate consultation with persons affected by the manual.

Subsection (3), (4) and (5) provide that an amendment to the operations manual of a type that could not occur without an amendment to the resource operations licence or distributions operations licence may be made where an application is made at the same time for the amendment to the licence under section 184. For example, an amendment to a water sharing rule that would require a change to infrastructure may require both an amendment to the operations manual and the relevant licence.

Where an application is made to amend the licence and the operations manual, the chief executive must not decide the application to amend the operations manual before deciding the application to amend the licence.

New section 201 - Operations manual must remain consistent with water plan, resource operations licence and distribution operations licence

New section 201 provides that the operations manual must remain consistent with the economic, social and environmental outcomes, and the measure that contribute to achieving these outcomes, stated in the water plan, as well as the water allocation security objectives and environmental flow objectives, for example following the amendment or replacement of a water plan under section 50.

The operations manual must be amended if it becomes inconsistent with any of these elements, either application by the licence holder, or following direction by the chief executive.

Subsection (7) provides that the conditions of a resource operations licence or distribution operations licence prevail over the provisions of the operations manual made under the licence.

New - Subdivision 5 Audit reports

New section 202 - Preparing regular audit reports

New section 202 for audit reports prepared by the chief executive. The chief executive may prepare an audit report about a resource operations licence holder's or distributions operations licence holder's compliance with the licence and to verify the accuracy of monitoring and reporting information given under the requirements of the licence.

New section 203 - Access for conducting a relevant audit

New section 203 provides for access to the licence holder's infrastructure and records for the purpose of conducting an audit.

New - Division 6 Operations licences

New - Subdivision 1 Preliminary

New section 204 - Purpose of div 6

New section 204 provides that the chief executive may issue an operations licence for the taking of water as a single operation by a person as an agent for two or more water entitlement holders. The entitlement may be either a water allocation or a water licence. The operations licence must state the water entitlements that are to be supplied under the operations licence and the total volume that may be taken and the rates and times that the water may be taken. The volumes, rates and times will be a consolidation of the volumes, rates and times that apply to the related water entitlements. The operations licence may be transferred, amended, suspended or cancelled.

New section 205 - Application of div 6

New section 205 provides that an operations licence is not required in respect of water allocations managed under a resource operations licence. Resource operations licence holders will be accountable for water supplied to customers whether the customers take the water themselves or whether it is taken for them by an agent.

New - Subdivision 2 Granting operations licences

New section 206 - Applying for operations licence

New section 206 provides that any person may apply for an operations licence. The application must be made to the chief executive in the approved form and be supported by sufficient information to enable the chief executive to decide the application. The application must also be accompanied by the written consent of the holders of the related water entitlements.

New section 207 - Additional information may be required

New section 207 provides that the chief executive may require additional information to be given about the application and the chief executive may require this information to be supported by a statutory declaration.

New section 208 - Criteria for deciding application for operations licence

New section 208 provides that in deciding whether to grant or refuse the application the chief executive may consider whether the applicant has been found guilty of an offence under the Water Act, the repealed Act or an interstate law.

New section 209 - Deciding application for operations licence

New section 209 provides for the approval, approval subject to conditions or refusal of an application. After making a decision, the chief executive must give the applicant notice about the decision. If the chief executive grants the application in full or part the chief executive must give the applicant the licence and advise the applicable entitlement holders that they must not take water under their entitlement.

New section 210 - Conditions of operations licence

New section 210 enables conditions to be applied to an operations licence and specifies two possible conditions that may be applied.

New - Subdivision 3 Dealings with operations licences

New section 211 - Amending operations licences on application of licensee

New section 211 provides that a licensee may apply to amend an operations licence and that any such application is dealt with in the same way as an application for a licence.

New section 212 - Giving show cause notice about proposed amendment of operations licence

New section 212 provides the procedure by which the chief executive may amend an operations licence. The chief executive must first give the licensee a show cause notice about the amendment and consider any submissions made in response. If the chief executive does amend the licence, then an amended licence and information notice is given to the operations licence holder. If the chief executive does not amend the licence, then notice is given to the operations licence holder that the licence will not be amended.

New section 213 - When chief executive must amend operations licence

New section 213 describes the circumstances under which the chief executive must amend an operations licence. If the holder of a water entitlement to which the operations licence relates, notifies the chief executive that the entitlement holder no longer wishes the licensee to take water as their agent then the chief executive must amend the operations licence accordingly. Also, if the holder of a water entitlement to which the water licence relates ceases to be the holder of the entitlement, then the chief executive must amend the operations licence.

New section 214 - Minor amendment of operations licence

New section 214 provides that the chief executive may amend an operations licence if the amendment is only to correct a minor error or to make a change that is not a change of substance.

New section 215 - Transferring operations licence

New section 215 provides that an operations licence may be transferred to another person on the same terms and conditions.

New section 216 - Surrendering operations licence

New section 216 provides that a licensee may surrender an operations licence.

New section 217 - Cancelling operations licence

New section 217 provides that the chief executive may cancel an operations licence if the chief executive is satisfied the licence should be cancelled.

New - Part 4 Riverine protection

New - Division 1 Granting permits for excavating or placing fill in a watercourse, lake or spring

New section 218 - Applying for permit to excavate or place fill in a watercourse, lake or spring

New section 218 specifies that a riverine protection permit must be obtained for the excavation or the placing of fill in a watercourse, lake or spring. The section also specifies who may apply for a riverine protection permit and outlines a number of procedural matters concerning applications. The section requires an application to be in the approved form, that it must state the proposed activity and its purpose and be accompanied by the fee. The fee is prescribed by regulation.

New section 219 - Additional information may be required

New section 219 allows the chief executive to request the applicant for a riverine protection permit to provide additional information if deemed necessary to enable the application to be decided.

The chief executive may require that the correctness of any information provided be sworn before a Justice of the Peace in statutory declaration form. This requirement is not mandatory and where it is impractical or not considered necessary, information may be supplied in a form that is not verified by statutory declaration.

If the applicant fails to comply with the request without a reasonable excuse, the application will lapse.

New section 220 - Criteria for deciding application

New section 220 provides the matters to be considered by the chief executive in deciding whether to issue a riverine protection permit. Matters include the likely effects on the physical integrity of the watercourse, lake or spring, and water quality, cumulative effects on the whole stream system, the quantity, location and timing of the activity, the type of material to be excavated or placed and any other matters that the chief executive considers relevant for the application.

New section 221 - Deciding application

New section 221 provides that the chief executive must issue a riverine protection permit if satisfied that the application should be granted. The application may be granted in full or in part. If not satisfied that the application should be granted, the chief executive must refuse the application.

If the chief executive grants the application in full or in part, and with or without conditions, a riverine protection permit in the approved form must be provided to the applicant with an information notice about the decision within 30 business days.

If the application is refused, the chief executive must, within 30 business days, notify the applicant of the decision by giving the applicant an information notice.

The applicant may appeal in the Land Court any decision of the chief executive in regard to a riverine protection permit. Prior to lodging an appeal, the applicant must make application for an internal review. This process involves a review of the original decision by an officer of equal or greater authority than the original decision maker.

New - Division 2 Dealings with riverine protection permits

New section 222 - Amending conditions or cancelling permit

New section 222 deals with the cancellation of, or the amendment of the conditions of, riverine protection permits. It provides the grounds for cancellation and amendment, including non-compliance or contravention with permit conditions or the impacts of the activity being greater than was anticipated when the permit was issued. Prior to making a decision, the chief executive must give the permittee a show cause notice asking why the riverine protection permit should not be cancelled or the conditions amended. The notice must state the proposed grounds for cancellation or amendment, outline the facts and circumstances that form the basis of the grounds, and must invite the permittee to make a submission within a reasonable time. This timeframe is generally not less than 30 business days.

New section 223 - Deciding whether to proceed with proposed cancellation or amendment

New section 223 provides that the chief executive must consider any properly made submissions about the proposed cancellation or amendment in making the decision whether to amend or cancel the riverine protection permit. If the chief executive decides to amend or cancel the riverine protection permit, the chief executive must give the permittee an information notice about the decision and, if the decision is to amend, issue an amended riverine protection permit within 30 business days.

New section 224 - Immediate suspension of riverine protection permit in exceptional circumstances

New section 224 provides that, in exceptional circumstances where the chief executive has reasonable concern for the physical integrity of the watercourse, lake or spring, the chief executive may give a riverine protection permit holder an information notice that immediately suspends the permit. The suspension is effective from the date the notice is given to the permittee. It is an offence to not comply with a suspension notice without

reasonable excuse. The maximum penalty for not complying with a suspension notice is 1665 penalty units.

The suspension notice has effect until the riverine protection permit is amended or cancelled or the chief executive withdraws the notice and notifies the permittee of the withdrawal. The withdrawal has effect when the permittee is given the notice. The section also provides that the riverine protection permit remain in effect only for the period it would have been in effect but for the suspension.

New - Division 3 Notices

New section 225 - Notice to owner of land to remove vegetation etc.

New section 225 provides for the chief executive, in certain circumstances, to give notice requiring the owner or occupier of any land to take action in relation to vegetation, litter, refuse or other matter on the land. Circumstances include where the matter has or is likely to enter a watercourse, lake or spring and significantly obstruct the flow of water, disturb the physical integrity of the watercourse, or reduce the water quality. If the watercourse forms part of a boundary watercourse of the owner's land, the notice must not require the owner to take action beyond the centre-line of the watercourse.

It is an offence to not comply with this notice. The maximum penalty for non-compliance with this notice is 1665 penalty units.

New - Part 5 Quarry materials

New - Division 1 Preliminary

New section 226 - Ownership and management of certain quarry material

New section 226 clarifies the State's ownership of certain quarry materials. Such resources (within watercourses or lakes) are situated on State lands where the quarry materials have been reserved in the deed of grant. Being a State resource, these quarry materials attract a royalty when removed. This is the only distinction from general quarry materials, i.e. all quarry materials are treated the same in terms of allocation and management arrangements. This section also clarifies the chief executive's control of all quarry materials.

This section cross-references the Land Act in relation to quarry materials that are situated on State property within a watercourse.

New - Division 2 Granting and selling allocations of quarry material

New section 227 - Applying for allocation of quarry material

New section 227 specifies the process for applying for a quarry material allocation. It provides clarification for applications relating to wild river areas.

New section 228 - Additional information may be required

New section 228 provides that the chief executive may ask for additional information to support an application, for information provided to be verified, or for a contribution to be

paid toward the cost of investigating the application. An application will lapse if the applicant does not provide requested information, verification or contribution within the specified time.

New section 229 - Criteria for deciding application for allocation of quarry material

New section 229 provides specific criteria by which the chief executive must consider an application for allocation. These include the likely impact of extracting the allocated material on the physical integrity of the watercourse or lake, on the condition of the watercourse or lake, on the supply of sediments to estuaries and the sea, and on the rights of existing allocation holders. Overall consideration is of the long term sustainable use of the watercourse or lake. The chief executive no longer needs to seek the views of the holder of a State lease when considering an application for allocation.

This section also provides that if any part of an application for a quarry allocation notice relates to a wild river area, the chief executive must not grant the application unless satisfied there is no other suitable material available that is outside a watercourse, or within a reasonable distance from where the material is to be used.

New section 230 - Deciding application for allocation of quarry material

New section 230 specifies the process for the chief executive to decide an application. The applicant is to be notified of the decision and, if the application was granted, be issued with an allocation notice, with or without conditions. An allocation remains in force, unless sooner surrendered, cancelled or suspended, for up to 5 years.

New section 231 - Selling allocation of State quarry material by auction or tender

New section 231 allows the chief executive to sell an allocation of State quarry material by auction or tender. The chief executive must consider the criteria given in this division for deciding an application. An allocation notice must be given to the buyer.

New - Division 3 Content and conditions of allocation notices

New section 232 - Content of allocation notices

New section 232 requires that an allocation notice must state the quantity of an allocation and the maximum rate of extracting the quarry material.

New section 233 - Conditions of allocation notices

New section 233 provides that an allocation notice is subject to conditions, including the need for the allocation holder to submit monthly returns on material extracted.

New section 234 - Financial assurance for allocation of quarry material

New section 234 states the condition of an allocation notice may require the holder to give the chief executive financial assurance before the quarry operation begins. Security may take the form of a deposit, a bond, or other suitable arrangements such as an insurance policy. The financial assurance must continue in force until the chief executive is satisfied that the conditions of the allocation notice are complied with.

New - Division 4 Dealings with allocations of quarry material

New section 235 - Transferring allocation of quarry material

New section 235 provides for the holder of an allocation notice to apply to transfer all or part of the allocation to another person. The chief executive may affect the transfer if the chief executive is satisfied that the transfer would not alter the original decision to grant the allocation, for example, the overall benefit of the parts of the allocation do not exceed the benefit of the original allocation. If the whole allocation is to be transferred, there is no reason for the chief executive to reject the transfer. If part of the allocation is to be transferred, the chief executive may amend or reject the transfer if it does not meet the criteria on which the original allocation was granted. The applicant (allocation holder) may appeal against the chief executive's decision in the Land Court. To affect the transfer, new allocation notices will be issued.

New section 236 - Renewing allocations of quarry material

New section 236 provides for the voluntary renewal of an allocation before it expires. In assessing the application to renew, the chief executive must consider the criteria on which the original allocation was granted. If the allocation is renewed, it can be varied if the chief executive believes such variations are necessary to ensure the long term sustainable use of the watercourse or lake. A renewed allocation notice remains in force for a period of not more than 5 years.

The applicant can appeal against the decision in the Land Court.

New section 237 - Amending, suspending or cancelling allocation notice

New section 237 provides for the amendment, suspension or cancellation of an allocation of quarry material in response to specified criteria. This includes an unforseen change in the condition of the watercourse or lake (such as after a large flood event which removes most of the available material) where continuation of the quarry operation would cause unacceptable damage to the watercourse or lake.

There is also scope for the allocation to be amended, suspended or cancelled if the allocation was granted in error or if the allocation holder fails to comply with the conditions of the allocation notice, or is convicted of an offence against the Water Act. The chief executive cannot increase the benefit of the allocation notice under this provision. The chief executive must invite the holder of an allocation to show cause why the allocation should not be amended, suspended or cancelled.

New section 238 - Deciding whether to proceed with proposed amendment, suspension or cancellation of allocation notice

New section 238 specifies the process for the chief executive to decide whether to amend, suspend or cancel an allocation notice. The chief executive must consider any valid show cause submission or representation made. If the chief executive decides to amend, suspend or cancel the allocation notice, the allocation holder is to be notified of the decision and, if the allocation notice is amended, be issued with an amended allocation notice. The amendment, suspension or cancellation takes effect from when the allocation holder is given notice of the decision. A suspension does not extend the original expiry date of the allocation notice. The allocation holder may appeal the decision in the Land Court.

New section 239 - Surrendering allocation notice

New section 239 provides that the holder of a quarry allocation notice may surrender the notice by giving the chief executive notice of its surrender.

New - Division 5 General

New section 240 - Royalty or price for State quarry material

New section 240 provides that the holder of an allocation notice for State quarry material is required to pay a royalty or, where the allocation is sold, the sale price set for the material removed. The royalty, which is prescribed by regulation, presently provides rates for material taken for local government uses, for State uses, and for other uses. Failure to pay the royalty or sale price is an offence with a maximum penalty of 50 penalty units, and outstanding amounts can be recovered as a debt to the State.

New - Part 6 Miscellaneous

New section 241 - Referral panels

New section 241 provides for the establishment, function and membership of a referral panel. The section also provides that the members of the referral panel may receive remuneration in accordance with the fees and allowances as decided by the Governor in Council.

New section 242 - Minister may direct chief executive to establish referral panel

New section 242 provides that the Minister may direct the chief executive to establish a referral panel under section 241 and for the panel to consider applications under section 33 for a variation of a moratorium notice. The panel has 20 business days to provide its recommendation to the Minister.

Amendment of s 361 (Purpose of ch 3)

Clause 69 amends the purpose of chapter 3 of the Water Act to reflect the expansion of its application to the mineral resources sector.

Amendment of s 362 (Definitions for ch 3)

Clause 70 amends several key definitions for chapter 3 of the Water Act to reflect the expansion of the chapter to the mineral resources sector.

Amendment of s 363 (Water bores to which ch 3 applies)

Clause 71 amends section 363 to make it clear that chapter 3 does not apply to water bores that are only used for water monitoring purposes. Chapter 3 imposes obligations on resource tenure holders to undertake baseline assessments, bore assessments and enter make good agreements about water bores. It is not intended that a resource tenure holder be required to undertake these obligations in relation to water monitoring bores.

Replacement of s 364 (References to petroleum tenure holder in ch 3)

Clause 72 replaces section 364 to reflect the application of chapter 3 to the mineral resources sector.

New section 364 - References in ch 3 to resource tenures and holders of resource tenures if the tenure ends

New section 364 provides clarity around references to resource tenure throughout the chapter and ensures that the obligations under chapter 3 continue in the circumstances where a mining lease is granted from a mineral development licence, a petroleum lease is granted from an authority to prospect, or when tenure ends.

Amendment of s 365 (Declaring cumulative management areas)

Clause 73 amends section 365, which provides for the chief executive to declare a cumulative management area, to accommodate the expanded application of the underground water management framework to both the mineral resources sector and the petroleum and gas sector. Consistent with the existing declaration requirements, the amended section will allow for a cumulative management area to be declared where the chief executive considers that the area may be affected by the exercise of underground water rights by two or more resource tenures. Significantly, the declaration of a cumulative management area will now apply only for the identified resources tenures.

A gazette notice declaring a cumulative management area will identify the resource tenures for which the cumulative management area declaration applies. The Bill gives the flexibility for the gazette notice to identify these tenures either specifically or generally. For example, a gazette notice declaring a cumulative management area may identify that it applies to tenures in a general way, e.g. 'All mining tenure holders in the area, including future mining tenures granted within the area', or in a specific way, for example identifying the specific tenures within the area to which it applies, e.g. 'Petroleum Lease 237, Petroleum Lease 5168, Authority to Prospect 78 and any petroleum lease granted from Authority to Prospect 78'. It is intended that the provision operate so that a cumulative management area can be applied appropriately to reflect both the area that may be affected by the exercise of underground water rights and the relevant resource tenure holders that may be contributing to the cumulative impact. It is intended cumulative management areas could, if appropriate, be established with any of, but not limited to, the following applications for example:

- petroleum tenures in the area only
- mining tenures in the area only
- both petroleum tenures and mining tenures in the area
- petroleum tenures in the area and some mining tenures, but not all
- mining tenures in the area and some petroleum tenures, but not all
- mining tenures in the area only, excluding mining tenures which only authorise the extraction of gold.

Further, this section allows for tenures granted in the area of a declared cumulative management area after the declaration is made, to be identified tenures for the declaration of the area. This is consistent with the operation of existing section 365, in that any petroleum tenures within the declared cumulative management area (new or existing at the time of the declaration) are considered cumulative management area tenures.

Identifying the resource tenures to which a cumulative management area applies provides the chief executive the flexibility to ensure that such declarations appropriately reflect the relevant resource tenures and the cumulative impact to be managed.

The purpose of the gazette notice identifying the resource tenures to which a cumulative management area applies, is to acknowledge that in some cases it may be appropriate to declare that a cumulative impact area only applies to one resource sector. However there may be other circumstances where the impacts of multiple industry sectors overlap, such as a mining operation affecting the same underground water that a petroleum tenures is affecting. But other mining operations may not, as the different resource sectors may affect aquifers in the same area but at different depths. For example, the petroleum industry might affect deep aquifers, and as such it would not be intended to capture a mine within the cumulative management area that is only impacting a small shallow aquifer that would not contribute to any overlapping or cumulative impacts.

Further, the amended section makes it clear that for a resource tenure that is partly within and partly outside a cumulative management area, the declared area is taken to include the whole of the resource tenure.

Note: new section 1278 provides transitional arrangements for the existing Surat cumulative management area, and makes it clear that it continues to be a cumulative management area applying to petroleum tenure holders only.

Amendment of ch 3, pt 1, div 3, hdg

Clause 74 amends the heading of chapter 3, part 1, division 3 to reflect the expanded application of the underground water management framework to mining tenure holders.

Amendment of s 366 (Obligation to use best endeavours to obtain approvals)

Clause 75 amends section 366 to expand its application to mining tenure holders. A mining tenure holder will be obliged to use best endeavours to obtain any approval necessary to comply with its obligations under chapter 3.

Amendment of s 367 (Obligation to use best endeavours to obtain information)

Clause 76 amends section 367 to expand its application to mining tenure holders. A mining tenure holder be obliged to use best endeavours to obtain all information about water bores necessary to comply with its obligations under chapter 3.

Amendment of s 368 (Who is a responsible entity)

Clause 77 amends section 368, which provides for who is the responsible entity for giving the chief executive an underground water impact report, to reflect the application of the underground water impact management framework to mining tenure holders. The responsible entity in relation to a cumulative management area is the Office of Groundwater Impact Assessment, other than for a closing cumulative management area tenure. In relation to a resource tenure (i.e. petroleum tenure or mining tenure) that is not identified as part of a cumulative management area, or for a closing cumulative management area tenure, the holder of the resource tenure is the responsible entity.

Amendment of s 369 (Who is a *responsible tenure holder*)

Clause 78 amends section 369, which provides for who is the responsible tenure holder for complying with a make good obligation for a water bore or for complying with a report obligation, to reflect the application of the underground water impact management framework to mining tenure holders.

Insertion of new s 369A

Clause 79 inserts a new section 369A which provides for how part 2 applies in relation to the holders of existing mineral development licences or mining leases on commencement of the Bill.

New section 369A - Application of pt 2

New section 369A provides that the holders of a mineral development licence or mining lease that hold a water licence or water permit for their associated water take are exempt from the requirement to prepare an underground water impact report or final report while the holder continues to take associated water under the authority of the licence or permit.

Further, where the holder, prior to commencement of the Bill, was lawfully authorised in relation to their associated take (for example, dewatering), the holder is exempt from the requirement to prepare an underground water impact report or final report. This relates primarily to the holders of mineral development licences and mining leases in areas where underground water is not regulated under the Water Act through a declared subartesian area, underground water management area, or under a water resource plan. To remove any doubt, in relation to subsection (3), the exemption is limited to the underground water take that the holder would have previously been authorised to carry out prior to commencement. For example:

- If only part of the area of a tenure is within a underground water management area prior to commencement the holder would have been required to obtain a water licence or water permit to undertake dewatering activities in this part of the tenure. In this situation the holder would be subject to the part if the holder decided after commencement to carry out dewatering activities in that part of the tenure. This is because, before commencement, the holder would not have been authorised to carry out this take. However, any take in the unregulated area of the tenure would not trigger the application of the part.
- If the holder was the holder of a mineral development licence on commencement and following commencement the holder becomes the holder of a mining lease. In this situation any associated water taken in relation to activities authorised under the mining lease that were not previously authorised under the mineral development licence would trigger the part to apply to the holder. This is because, before commencement, the holder would not have been authorised to undertake the authorised activities for the mining lease, and as such, would not have been authorised to take or interfere with water in connection with the activity.

However, this section provides for circumstances where the exemption will cease to apply. These circumstances include where a cumulative management area is declared which applies to the holder of the licence or lease. The chief executive may decide to issue a notice applying the reporting obligations to the holder. In giving such a notice, the chief executive

must have regard to the impact considerations, and provide an information notice about the decision, affording the holder a right of appeal.

Amendment of s 370 (Obligation to give underground water impact report)

Clause 80 amends section 370 to expand the obligation to prepare an underground water impact report to mining tenure holders.

Section 370 provides that if the responsible entity is a mining tenure holder, the underground water impact report is to be given before the day the holder exercises its underground water rights, unless the chief executive agrees to a later day. This varies from the initial reporting period applicable if the responsible entity is a petroleum tenure holder or the Office of Groundwater Impact Assessment, in acknowledgement of the difference in nature of operations and potential for underground water impacts to occur over a shorter timeframe.

Further, this section provides for an underground water impact report to be accompanied by the prescribed fee.

Insertion of new ss 370A and 370B

Clause 81 inserts new sections 370A and 370B.

New section 370A - When obligation to give underground water impact report does not apply—exemption for low risk resource tenures

New section 370A provides a regulation making power to identify low risk resource tenures that are not required to prepare an underground water impact report.

The holder of a low risk tenure continues to have the obligation to enter a general agreement about make good under section 406 of the Water Act, to ensure that a tenure is a low risk tenure, but the tenure does impact a water bore, then the bore owner has a right to be made good in relation to any impairment.

The section provides that the circumstances prescribed by regulation may relate to the likely impacts on water bores and springs, the nature and scale of the operations, the characteristics of the underground water resources and the location of the tenure.

New section 370B - When obligation to give further underground water impact report does not apply

New section 370B provides for when the obligation to give a further underground water impact report does not apply.

A resource tenure holder that is not part of a cumulative management area, is not required to give a further underground water impact report to the chief executive, where the existing approved report did not estimate any future water take, and did not identify an immediately affected, or long term affected area. The tenure holder would continue to be required to comply with any obligations in the existing report, rather than preparing a new report every three years.

If this section applies to the holder of a resource tenure, then the holder has the obligation to notify the chief executive of any exercise of underground water rights after the approval of

the existing report. This will allow the chief executive to determine if, on the basis of the notified take, there may be a change to the predictions in the existing report, and whether the report should be amended. A failure to notify the chief executive under this section is an offence and attracts a maximum penalty of 500 penalty units.

If the chief executive has required an amendment to an existing underground water impact report, and as a result the report now predicts a decline in the water level because of the exercise of underground water rights, then the holders obligation to prepare underground water impact reports every three years applies. It is intended that this provision could operate more than once in relation to a resource tenure holder.

Amendment of s 371 (When obligation to give underground water impact report does not apply)

Clause 82 amends section 371 to expand its application to mining tenure holders. It provides the circumstances where a resource tenure holder is not required to give an underground water impact report. If a resource tenure holder gives a notice of closure before the day an underground water impact report is required to be given to the chief executive, the holder is not required to give the report, unless a renewal application is granted for the tenure.

Replacement of s 372 (Obligation to give notice of closure—general)

Clause 83 replaces section 372 to reflect the application of chapter 3 to the mineral resources sector.

New section 372 - Obligation to give notice of closure—general

New section 372 creates an obligation for a resource tenure holder to give the chief executive notice of closure.

Further, this section makes it clear that the holder of a low risk tenure in accordance with section 370A, is not required to prepare a final report and also that the obligation to give notice of closure only applies in relation to a resource tenure holder who has exercised their underground water rights.

Amendment of s 373 (Obligation to give notice of closure—relevant events)

Clause 84 amends section 373 to reflect the application of chapter 3 to the mineral resources sector. It also makes it clear that a notice of closure is not required to be given to the chief executive if the resource tenure has not started exercising its underground water rights.

Amendment of s 374 (Obligation to give final report)

Clause 85 amends section 374 to reflect the application of chapter 3 to the mineral resources sector. It imposes an obligation on the responsible entity to give the chief executive a final report for the tenure.

Further this amendment provides for a final report to be accompanied by the prescribed fee.

Amendment of s 375 (When obligation to give final report does not apply)

Clause 86 amends section 375 to expand its application to mining tenure holders. This section provides the circumstances when the obligation to give a final report does not apply.

Amendment of s 376 (Content of underground water impact report)

Clause 87 amends section 376, which provides the requirements for underground water impact reports.

The amendment to section 376 clarifies this requirement by providing an example that the quantity of water predicted to be taken may be shown as zero in the report.

Further, the amendment allows for an underground water impact report that does not predict a decline in water level by more than the bore trigger threshold to not include a program for conducting an annual review of the predictions.

Amendment of s 378 (Content of water monitoring strategy)

Clause 88 amends section 378 to expand its application to mining tenure holders.

Amendment of s 379 (Content of spring impact management strategy)

Clause 89 amends section 379, which provides for the content of a spring impact management strategy, by changing the terminology of 'potentially affected spring' to 'spring of interest'. The new terminology more accurately reflects the context of the springs to which the term refers, which may in fact not be affected.

Amendment of s 382 (Public notice and copies of report)

Clause 90 amends section 382 to remove the requirement for the public notification requirements relating to underground water impact reports and final reports to be complied with at least two months prior to giving the report to the chief executive. This acknowledges that if the responsible entity has complied with their obligations, and is ready to submit their report to the chief executive, it does not have to wait two months.

Amendment of s 385 (Decision on report)

Clause 91 amends section 385 to expand its application to mining tenure holders.

Amendment of s 386 (Publishing approval and making report available)

Clause 92 amends section 386 to introduce the requirement for the responsible entity to publish a notice about the approval of an underground water impact report and give a copy of the notice to the owner of any water bores within the area to which the report relates. The responsible entity must to notify the chief executive once the entity has complied with these requirements.

Amendment of s 388 (Effect of approved underground water impact report)

Clause 93 amends section 388, which provides for the effect of an approved underground water impact report, to reflect the application of chapter 3 to the mineral resources sector. Further, section 388 is amended to reflect that a cumulative management area will now be declared in relation to the tenure holders identified in the notice declaring the cumulative management area.

Amendment of s 389 (Effect of approved final report)

Clause 94 amends section 389, which provides for the effect of approved final report, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 390 (Compliance with approved reports)

Clause 95 amends section 390, which provides the requirement for resource tenure holders to comply with approved underground water impact reports and final reports, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 391 (Minor or agreed amendments of approved report)

Clause 96 amends section 391, which provides for minor or agreed amendments to approved underground water impact reports or final reports, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 393 (Other amendments)

Clause 97 amends section 393 to establish an offence in relation to the failure of a responsible entity to publish a notice under this section about an amendment to an underground water impact report or final report within 10 business days. Such an offence attracts a maximum penalty of 50 penalty units.

Amendment of s 394 (What is a baseline assessment)

Clause 98 amends section 394, which provides for what is a baseline assessment, to reflect the application of chapter 3 to the mineral resources sector..

Insertion of new s 394A

Clause 99 inserts new section 394A.

New section 394A - Application of pt 3

New section 394A provides for how part 3 applies in relation to the holders of existing mineral development licences or mining leases on commencement of the Bill.

The holders of a mineral development licence or mining lease that hold a water licence or water permit for their associated water take are exempt from the requirement to prepare a baseline assessment plan while the holder continues to take associated water under the authority of the licence or permit.

Further, where the holder, prior to commencement of the Bill, was lawfully authorised in relation to their associated take (for example, dewatering), the holder is exempt from the requirement to prepare a baseline assessment plan. This relates primarily to the holders of mineral development licences and mining leases in areas where underground water is not regulated under the Water Act through a declared subartesian area, underground water management area, or under a water resource plan. To remove any doubt, in relation to subsection (3), the exemption is limited to the underground water take that the holder would have previously been authorised to carry out prior to commencement. For example:

- If only part of the area of a tenure is within a underground water management area prior to commencement the holder would have been required to obtain a water licence or water

permit to undertake dewatering activities in this part of the tenure. In this situation the holder would be subject to the part if the holder decided after commencement to carry out dewatering activities in that part of the tenure. This is because, before commencement, the holder would not have been authorised to carry out this take. However, any take in the unregulated area of the tenure would not trigger the application of the part.

- If the holder was the holder of a mineral development licence on commencement and following commencement the holder becomes the holder of a mining lease. In this situation any associated water taken in relation to activities authorised under the mining lease that were not previously authorised under the mineral development licence would trigger the part to apply to the holder. This is because, before commencement, the holder would not have been authorised to undertake the authorised activities for the mining lease, and as such, would not have been authorised to take or interfere with water in connection with the activity.

However, this section provides that this exemption will cease to apply if the chief executive decides that this part applies to the holder, having regard to the impact considerations relating to the holder. Having decided, the chief executive must give the holder a notice, and provide an information notice about the decision, affording the holder a right of appeal.

Amendment of s 396 (Method of undertaking baseline assessment)

Clause 100 amends section 396, which provides the methods required for undertaking baseline assessments, to reflect the application of chapter 3 to the mineral resources sector.

Further, this section introduces that a failure to comply with these requirements is an offence, with a maximum penalty of 50 penalty units.

Amendment of s 397 (Obligation to prepare baseline assessment plan)

Clause 101 amends section 397, obligation to prepare a baseline assessment plan, to expand its application to mining tenure holders. A mining tenure holder will be required to give the chief executive a baseline assessment plan for the area of the holder's tenure before the day the holder exercises its underground water rights, unless a later day is agreed to by the chief executive. Failure to give a baseline assessment plan under this section is an offence, and attracts a maximum penalty of 500 penalty units.

Further, this section makes it clear that there is no requirement for a resource tenure holder to prepare a baseline assessment plan while there are no water bores in the area of the resource tenure.

This section also introduces exceptions to what must be included in a baseline assessment plan, where there are low risks of impacts occurring. A resource tenure holder that is the holder of an authority to prospect under the petroleum legislation may provide a baseline assessment plan that excludes a discontiguous block of the tenure where no production testing is being undertaken, or is planned to be undertaken. Further, any resource tenure holder may provide a baseline assessment plan excluding an area of the holder tenure where they can demonstrate that any relevant aquifer in the area is not affected, or likely to be affected, because of the holder's exercise of underground water rights.

Replacement of s 398 (Requirements for baseline assessment timetable)

Clause 102 replaces section 398, which provides the requirements for a baseline assessment timetable, which is a required component of a baseline assessment plan.

New section 398 - Requirements for baseline assessment timetable

New section 398 details requirements for a baseline assessment timetable, a required component of a baseline assessment plan.

For a mining tenure holder, the timetable must provide for baseline assessments to be undertaken before the holder exercises underground water rights in the priority area. However, if the chief executive issues a notice requiring the mining tenure holder to submit a baseline assessment plan, the baseline assessment timetable must propose a day by which a baseline assessment will be undertaken for each water bore in a priority area.

For a petroleum tenure holder, the requirements for a baseline assessment timetable are continued from the existing section 398.

Amendment of s 399 (Approval of baseline assessment plan)

Clause 103 amends section 399, which provides for the approval of a baseline assessment plan, to create an offence for failure to submit an amended baseline assessment plan to the chief executive within the specified period. This offence attracts a maximum penalty of 50 penalty units.

Replacement of s 400 (Compliance with approved baseline assessment plan)

Clause 104 replaces section 400 with a new section.

New section 400 - Compliance with approved baseline assessment plan

New section 400 expands the original application to mining tenure holders, and the offence to ensure resource tenure holders must comply with the conditions of a baseline assessment plan. Under the existing section 400 the offence only clearly applies to the failure to carry out a baseline assessment by the date specified in the approved baseline assessment plan.

Amendment of s 401 (Application to amend)

Clause 105 amends section 401, which provides for an application to amend a baseline assessment plan, to expand its application to mining tenure holders. A mining tenure holder is required to apply to the chief executive for an amendment of the baseline assessment plan if they become aware of a material change to their program for carrying out mining activities that means the baseline assessment timetable in the holders approved baseline assessment plan no longer complies with the requirements under section 398 of the Water Act.

Further, to reflect the ability for a resource tenure holder to exclude particular areas of the tenure from the baseline assessment plan, this section makes it a requirement to amend a baseline assessment plan if the circumstances for excluding the area change. It is an offence of maximum 50 penalty units if the resource tenure holder fails to apply for an amendment of the plan.

Amendment of s 402 (Direction by chief executive to undertake baseline assessment)

Clause 106 amends section 402, direction by chief executive to undertake baseline assessment, to reflect the application of chapter 3 to the mineral resources sector.

The chief executive may issue a direction to a resource tenure holder requiring the holder to carry out a baseline assessment of a water bore outside the area of the holders' resource tenure. The chief executive may utilise this power where it is reasonably believed that a bore may become affected by the future exercise of underground water rights by the tenure holder.

Amendment of s 403 (Notice of intention to undertake baseline assessment)

Clause 107 amends section 403, notice of intention to undertake baseline assessment, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 404 (Bore owner must give information)

Clause 108 amends section 404 to expand its application to mining tenure holders. This section allows a resource tenure holder to request information from the owner of land about the location of the water bore, and any other information reasonably required to undertake a baseline assessment.

Amendment of s 405 (Notice of outcome of baseline assessment)

Clause 109 amends section 405, which provides for the notice of the outcome of a baseline assessment, to expand the application to the mineral resources sector. This section is also amended to provide that if the resource tenure holder gives the notice by an electronic communication method, then it must be in the format require by the Office of Groundwater Impact Assessment, unless otherwise agreed to by the office in writing.

Note: the *Electronic Transactions (Queensland) Act 2001* provides regulation in relation to electronic communications.

Amendment of s 406 (Obligation to negotiate general agreement)

Clause 110 amends section 406, obligation to negotiate a general agreement about make good, to expand its application to mining tenure holders, and to acknowledge the exemptions from preparing an underground water impact report introduced through the Bill.

Under section 406, a resource tenure holder is obliged to use best endeavours to negotiate and enter into an agreement with the owner of a water bore the holder reasonably believes has an impaired capacity because of the holders exercise of underground water rights. The agreement, similar to a make good agreement, is to be about make good measures, and or compensation payable in relation to the impaired capacity of the water bore. An agreement made under this section is taken to be a make good agreement, and as such a tenure holder is not required to undertake a bore assessment, or enter into a further agreement about make good after the approval of an underground water impact report.

This section is intended to apply only to mining tenure holders prospectively from commencement of the Bill. This obligation applies for a mining tenure from the day the holder first exercises underground water rights, or for a petroleum tenure from the start day

for the tenure, and continues until an underground water impact report applies to the holders tenure. The obligation ends when an underground water impact report is approved, as this will initiate the obligation to undertake bore assessments and make good in a proactive nature, for any water bores that are likely to be impacted within a three year period.

For a resource tenure holder that is exempt from the requirement to prepare an underground water impact report, this obligation will apply from the day the holder first exercises their underground water right and until the tenure ends.

Amendment of s 407 (Effect of an agreement under this part)

Clause 111 amends section 407 to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 409 (*Make good obligations* for water bores)

Clause 112 amends section 409, which provides for the make good obligations for water bores, to extend to mining tenure holders.

The make good obligations require tenure holders to undertake assessments of water bores, enter into make good agreements with water bore owners about the make good measures to be undertaken in relation to their water bores and to comply with the make good agreements.

The make good obligations can be initiated through the approval of an underground water impact report which identifies an immediately affected area, a final report which identifies a long term affected area or through a chief executive direction to undertake a bore assessment.

Amendment of s 411 (What is a bore assessment)

Clause 113 amends section 411, which provides for what is a *bore assessment*, to expand its application to mining tenure holders. A *bore assessment* is an assessment of a water bore undertaken by a resource tenure holder to establish whether the bore has an impaired capacity, or whether the bore is likely to have an impaired capacity in the future.

Undertaking a *bore assessment* is the first step a resource tenure holder is required to undertake prior to negotiating a make good agreement, and is considered part of the make good obligations for a tenure holder.

Amendment of s 414 (Method of undertaking bore assessment)

Clause 114 amends section 414, which provides the methods required for undertaking a bore assessment, to introduce that a failure to comply with these requirements is an offence, with a maximum penalty of 50 penalty units.

Amendment of s 416 (Bore owner must give information)

Clause 115 amends section 416 to reflect the application of chapter 3 to the mineral resources sector. This section allows a resource tenure holder to request information from the owner of land about the location of the water bore, and any other information reasonably required to undertake a bore assessment.

Amendment of s 418 (Direction by chief executive to undertake bore assessment)

Clause 116 amends section 418, to expand the circumstances under which the chief executive may issue a direction to a resource tenure holder requiring the holder to undertake a bore assessment. A bore assessment directed by the chief executive under section 418 is a trigger for requiring the tenure holder to negotiate a make good agreement with the bore owner.

Under section 418 the chief executive may issue a notice requiring a bore assessment to be undertaken if it is reasonably believed a water bore can no longer supply a reasonably quantity or quality of water for its authorised use or purpose, or where it is reasonably believed a bore is affected, or likely to be affected in the future, by the exercise of underground water rights.

The amendment expands the ability for the chief executive to direct a bore assessment in the circumstances it is reasonably believed a bore is affected, or likely to be affected in the future, by the exercise of underground water rights. This enables the chief executive to provide upfront certainty for bore owners about make good where underground water impacts of a resource operation may have been predicted, for example in an Environmental Impact Assessment in relation to a mining operation, however the impacts are yet to occur and the resource operation is yet to have an approved underground water impact report.

Amendment of s 419 (Notice of outcome of bore assessment)

Clause 117 amends section 419, which provides for the notice of the outcome of a bore assessment, to expand the application to the mineral resources sector. Further, this section is amended to provide that if the resource tenure holder gives the notice by an electronic communication method, then it must be in the format required by the Office of Groundwater Impact Assessment, unless otherwise agreed to by the office in writing.

Amendment of s 422 (Persons bound by make good agreement)

Clause 118 amends section 422, which provides that any make good agreement binds the parties and their successors and assigns, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 423 (Requirement to enter into make good agreement and reimburse bore owner)

Clause 119 amends section 423, which provides a requirement for resource tenure holders to enter into make good agreements and reimburse the bore owner, to include a requirement for the holder to notify the chief executive if the holder has entered into the agreement. This notification will allow the chief executive to more effectively monitor compliance with the obligation.

Amendment of s 425 (Application of div 4)

Clause 120 amends section 425 to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 436 (Provisions for deciding any compensation)

Clause 121 amends section 436, which provides the circumstances where the Land Court can decide to require a resource tenure holder to compensate the bore owner in relation to a dispute about a make good agreement, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 437 (Land Court's decision binds successors and assigns)

Clause 122 amends section 437 to reflect the application of chapter 3 to the mineral resources sector. This section provides that a make good agreement, or a decision by the Land Court in relation to a make good agreement, is for the benefit of, and is taken to have been agreed to or decided for and is binding on, the owner of the relevant water bore, the relevant resource tenure holder, and each of their successors and assigns, including the successors and assigns of the relevant resource tenure holder.

Amendment of s 438 (Application of make good obligations to particular bores)

Clause 123 amends section 438, which provides the requirements in relation to entering make good agreements following the approval of a final report, to reflect the application of chapter 3 to the mineral resources sector.

Amendment of s 439 (Continuation of underground water obligations)

Clause 124 amends section 438 to reflect the application of chapter 3 to the mineral resources sector. This section clarifies that the obligation to give a final report and the underground water obligations of a resource tenure holder, continue to apply despite the end of the resource tenure.

Amendment of s 440 (Petroleum tenure holder may start complying with make good obligations before final report approved)

Clause 125 amends section 440, which provides that a resource tenure holder may start complying with make good obligations before the final report is approved, to reflect the expanded application of chapter 3 to the mineral resources sector.

Amendment of s 441 (Right of entry after petroleum tenure ends to comply with particular obligations)

Clause 126 amends section 441, to provide a continued right of entry after the resource tenure ends for the purpose of complying with underground water obligations. The section provides that any right of entry is subject to the land access requirements under chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (Common Provisions Act). The Bill makes it clear that the relevant entry provisions under the Common Provisions Act apply as though the tenure were a resource authority to which the relevant entry provisions apply. This is to ensure, that despite chapter 3 of the Common Provisions Act generally not applying in relation to a mining lease, these provisions would apply to the previous holder of a mining lease in relation to land access for the purpose of this section.

The clause also amends the heading of section 441 to replace reference to 'petroleum' with 'resource'.

Amendment of s 448 (Application of div 1)

Clause 127 amends section 448 to reflect the expanded application of chapter 3 to the mineral resources sector.

Amendment of s 449 (Chief executive may direct petroleum tenure holder to carry out water monitoring activities)

Clause 128 amends section 449, which provides a direction power to the chief executive in relation to requiring a tenure holder to carry out water monitoring activities, to expand its application to include mining tenure holders.

Amendment of s 451 (Power to give direction)

Clause 129 amends section 451 to expand its application to include mining tenure holders.

Amendment of s 452 (Offence to fail to comply with direction)

Clause 130 amends section 452 to expand its application to include mining tenure holders.

Amendment of s 453 (Chief executive may take action and recover costs)

Clause 131 amends section 453 to expand its application to include mining tenure holders.

Amendment of s 454 (Directions to petroleum tenure holders and bore owners to give information)

Clause 132 amends section 454 to expand its application to include mining tenure holders.

Amendment of s 456 (Functions of office)

Clause 133 amends section 456 to reflect the expanded application of chapter 3 to the mineral resource sector.

Amendment of s 460 (Obtaining information about underground water from petroleum tenure holders)

Clause 134 amends section 460 to reflect the expanded application of chapter 3 to the mineral resources sector.

Further, this section amends subsection (1) to ensure that the information the manager of the Office of Groundwater Impact Assessment may request is not limited to information about water taken under the exercise of underground water rights by resource tenure holders. This reflects amendments to the Petroleum and Gas Act by the Bill to reduce over time the statutory right for petroleum tenure holders to take or interfere with underground water, other than associated water. It also reflects that mining tenure holders may have underground water take beyond what is considered the exercise of underground water rights. The manager of the Office of Groundwater Impact Assessment may need information about all underground water take by the resource tenure holder, whether it is taken as part of the exercise of underground water rights or not, to ensure accuracy in modelling.

In addition, section 460 is amended to clarify the person to whom a notice under this section may be served by the Office. This is amended to be consistent with the provisions for service of documents under the relevant resources Acts.

Amendment of s 479 (Annual levy for underground water management)

Clause 135 amends section 479 to allow for an annual levy for underground water management to be established in relation to mining tenure holders. This reflects the expanded application of chapter 3 to the mineral resources sector.

In addition, section 479 is amended to clarify the person to whom a notice under this section may be served by the office. This is amended to be consistent with the provisions for service of documents under the relevant resources Acts.

Insertion of new s 479A

Clause 136 inserts new section 479A.

New section 479A - Recovery of levy

New section 479A reflects a change in drafting practice and creates a new section from existing subsections (7) and (8) of section 479.

Amendment of s 480 (Payment of amounts into Groundwater Impact Assessment Fund)

Clause 137 amends section 480 to expand its application to mining tenure holders.

Amendment of s 483 (Public access to database)

Clause 138 amends section 483 to remove the limitation that information obtained as a result of a baseline assessment and bore assessment cannot be included in the publicly available part of the database. The amended section does however retain the limitation that the publicly available part of the database must not include information the office reasonably believes is commercially sensitive.

Amendment of s 484 (Petroleum tenure holder access to information)

Clause 139 amends section 484, which requires the office to make information in the database available to assist a resource tenure holder in complying with its underground water obligations, to expand its application to include mining tenure holders.

Insertion of new s 485

Clause 140 inserts new section 485.

New section 485 - Chief executive's access to information

New section 485 provides that the Office of Groundwater Impact Assessment must make any information in the database, including information the Office reasonably believes is commercially sensitive, available to the chief executive if the information might be relevant to the administration of chapter 3.

Amendment of s 542 (Purposes of ch 4)

Clause 141 amends section 542 to reflect the Bills reform of water authorities by omitting reference to the establishment of water authorities as they will no longer be established under the Water Act.

Replacement of ch 4, pt 2, hdg (Establishing water authorities)

Clause 142 replaces with a new heading for part 2 of chapter 4.

New heading - Part 2 Water authorities

Amendment of s 548 (Establishing water authorities)

Clause 143 amends section 548 to remove the power to create or establish new water authorities, however water authorities may continue to be amended or amalgamated.

Omission of ss 552–555

Clause 144 omits sections 552 to 555 that dealt with the procedures for establishing a water authority as water authorities will no longer be able to be established.

Amendment of s 556 (Amending establishment regulation)

Clause 145 amends section 556 to provide that the chief executive may not be required to publish a notice of a proposed amendment to an establishment regulation if a board has resolved to include or exclude land from its authority area and that the chief executive is satisfied that all relevant landholders have been informed and have agreed to the proposal.

Amendment of s 572 (Power to make and levy rates and charges)

Clause 146 amends section 572 to clarify the meaning and application of rates and charges. A charge can only apply to a customer such as a person outside of the authority's water authority area. However a charge and a rate may apply to a customer within an authority's water authority area. Furthermore subsection (5) is clarified to state that for irrigable land where water volumes are not metered, a rate may be charged on a property basis or on a basis correlated to the land being irrigated.

Omission of s 574 (Interest on overdue rates and charges)

Clause 147 omits section 574 as water authorities may levy such a rate through a board policy or resolution without an express statutory power.

Amendment of s 584 (Water authority may enter into work performance arrangements)

Clause 148 amends section 584 to remove all references to employing office in the section as none of these offices have ever operated.

Amendment of s 585 (Duties and liabilities of water authority officers)

Clause 149 amends section 585 to remove all references to employing office from the definition for officer.

Amendment of s 598 (Composition of board for water authorities)

Clause 150 amends section 598 to remove any references to established water authorities and will now only refer to amalgamated water authorities. As the regulation prescribing how ballots for water authorities will be omitted, this section continues to allow for such a

regulation to be made, but also makes provision for the chief executive to approve such a procedure.

Replacement of s 600 (Appointment)

Clause 151 replaces section 600 with a new section 600.

New section 600 - Appointment of directors

New section 600 provides that category 1 water authority directors will continue to be appointed by the Governor in Council, but that category 2 water authority directors will be appointed by the Minister.

Amendment of s 602 (Administration of water authority)

Clause 152 amends section 602 to restrict the scope of the provision to amalgamated water authorities. It also provides that where the chief executive or another person is not appropriate to administer the water authority until the new board is appointed, the Minister or a regulation, may provide that an interim board made up of former directors of the former boards may administer the water authority until the first board of the amalgamated water authority is appointed.

Insertion of new s 604A

Clause 153 inserts a new section 604A.

New section 604A - Special provision for director nominated by local government

New section 604A provides for a special provision for directors nominated by local government so that the directors' term ends not later than 6 months after the respective local government's quadrennial election.

Amendment of s 607 (Termination of appointment as director)

Clause 154 amends section 607 to deal with the termination of category 2 water authority appointments that will have directors appointed by the Minister. The amendment also confirms that the Minister may terminate a category 2 director even if appointed by the Governor in Council.

Amendment of s 608 (Casual vacancy)

Clause 155 amends section 608 to deal with casual vacancies for category 2 water authority appointments that will have directors appointed by the Minister upon the commencement of these amendments.

Amendment of s 609 (Removal of board)

Clause 156 amends section 609 to deal with the termination of category 2 water authority boards that will have directors appointed by the Minister on the commencement of the Bill. The amendment also confirms that the Minister may remove a category 2 board even if the directors were appointed by the Governor in Council.

Amendment of s 618 (Power to grant relief)

Clause 157 amends section 618 to removes all references to employing office in the section.

Amendment of s 619 (False or misleading information or documents)

Clause 158 amends section 619 to remove all references to employing office in the section definition.

Insertion of new s 619A

Clause 159 inserts new section 619A.

New section 619A - Application

New section 619A does not impose any new or different requirements on board proceedings for category 1 water authorities however it requires category 2 water authorities to keep minutes of its meetings. Standard meeting proceedings are to be otherwise adopted by category 2 water authorities or else other procedures as appropriate resolved and agreed to by a board resolution.

Omission of ch 4, pt 4A (Employing offices for water authorities)

Clause 160 omits part 4A entirely as there is no longer any requirement for powers or procedures to provide for employing offices for any water authority.

Amendment of s 691 (Dissolution of water authority and authority area)

Clause 161 provides a broader power for the Minister to dissolve a category 2 water authority and authority area if a water authority does not comply with the Water Act or evidence suggests it will be unlikely to be able to comply in the future. An example might be that a water authority fails to make and pass an annual report or continues to receive qualified audit reports for its annual financial statements. This is in addition to the existing provision for the Minister to dissolve a category 2 water authority if a board is no longer serving its intended function.

Insertion of new s 691A

Clause 162 inserts a new section 691A.

New section 691A - Distribution contract applying for particular water allocations

New section 691A applies only to transitioning category 2 water authority distribution operations licence holders.

This provision is to establish a fair and equitable transitional contractual arrangement between the transitioning distribution operations licence holder and water allocation holders subject to the licensee arrangements.

The contractual arrangement will ensure that the new entity distribution operations licence holder has a secure arrangement in place to enable them to secure ongoing revenue from the provision of the distribution service to allocation holders, in place of the former statutory charging regime under which they operated as a water authority.

Under this provision, a category 2 water authority licence holder proposing to transition to a non-statutory entity, will be required to prepare a draft distribution contract (the old entity document) reflective of their current distribution arrangements and charges. This will become

the distribution contract under which the new entity distribution operations licence holder and the allocation holders subject to the licensee will be bound.

It is intended that the distribution contract will be enduring on successors in title to the water allocation and, once in place, will only be able to be varied by agreement between the distribution operations licence holder and the allocation holder.

Prior to the transition being finalised by regulation, the chief executive administering the Water Act will need to be satisfied that the draft distribution contract fairly represents the existing arrangements and charges and is not inconsistent with the relevant provisions of the Water Act.

Once the transitional distribution contract is declared by regulation, the chief executive administering the Water Act will have no further involvement in the contractual arrangements between the new licensee entity and allocation holders subject to the licensee arrangements.

Amendment of s 692 (Public notice of proposed amalgamation or dissolution)

Clause 163 amends section 692 to remove its application to former water areas and only allowing its application to water authorities dissolved where the chief executive has been appointed to perform its functions. It allows the chief executive to prescribe what public notice information is required, where written submissions may be made, and that they must be made within 20 business days after publication.

Omission of s 693 (Content of notice of proposed amalgamation or dissolution)

Clause 164 omits the section as these provisions will be prescribed by the chief executive.

Amendment of s 695 (Water authority may request its dissolution)

Clause 165 amends section 695 to specify that water authorities that secure a closed water activity agreement, are not required to obtain a special ballot agreement by a majority of ratepayers to make the request to dissolve. An executed closed water activity agreement does not require a special ballot because all relevant ratepayers have signed and therefore agreed to the boards' proposal. The section is also amended to allow that the chief executive may approve the way in which a special ballot may be conducted, in addition to by regulation.

Amendment of s 695A (Closed water activity agreement)

Clause 166 amends the section by inclusion of a definition for relevant registered owner so that only ratepayers that pay rates may enter or are required to enter into the agreement. This excludes property owners within an authority area who do not pay rates, from entering or being required to enter into a closed water activity agreement.

Omission of ss 698–700

Clause 167 removes sections 698 to 700 dealing with one of the ways that water authorities may transfer functions to a local government. Another way is preserved in the Water Act to allow this type of transfer to potentially occur in the future.

Amendment of s 700A (Alternative process for proposed transfer)

Clause 168 renames section 700A as it will no longer be an alternative process. It also removes the reference and requirement that a proposed transfer be due to action taken by the State in response to the Webbe-Weller review.

Amendment of s 704 (Existing employees)

Clause 169 amends section 704 to remove all references to employing office in the section and condenses remaining provisions.

Amendment of s 706 (Non-liability for State taxes)

Clause 170 amends section 706 to sunset the provision at 30 June 2015 for former water authorities that amalgamate, dissolve or transition to not be liable for any State taxes.

Amendment of s 808 (Unauthorised taking, supplying or interfering with water)

Clause 171 amends section 808 to acknowledge the statutory authority to take, supply or interfere with water provided by the Bill to the holders of mineral development licences and mining leases under the Mineral Resources Act. Currently, section 808 makes it an offence to take, supply or interfere with water other than in accordance with the Water Act. The amendment simply recognises authorities provided under the Mineral Resources Act and Petroleum and Gas Act, and makes it clear that acting under such an authority is not an offence.

Omission of ss 812A and 812B

Clause 172 omits section 812A and its supporting section 812B of the Water Act which provide for the holder of a water allocation, interim water allocation, water licence, seasonal water assignment notice or water permit to be responsible, in the absence of evidence to the contrary, for the unauthorised take or supply of water where the water was:

- taken or supplied using works owned/controlled by the holder
- taken on land owned by the holder
- used on land owned by the holder.

The omission of section 812A and 812B will remove this reversal of the onus of proof to ensure that standard prosecution principles apply.

Amendment of s 813 (Contravening licence condition)

Clause 173 amends section 813 of the Water Act and is a consequence of omitting sections 31 to 34 which dealt with the declaration of temporary full supply levels for relevant dams to mitigate potential emergencies. Under the Water 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 will be specified for particular dams in a resource operations licence. Among other things, a resource operations licence identifies, and is intended to apply to, water infrastructure. The resource operations licence holder for that infrastructure must comply with the operation rules for the infrastructure as set out in the resource operations licence or an operations manual.

The exemption to comply with a licence condition under this section applies if a resource operations licence has been granted 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.

If the Minister responsible for the administration of Water Supply Act declares a temporary full supply level which necessitates the release of water from the dam, the effect of a declaration by the Minister of a temporary full supply level is that a reference in the relevant resource operations licence to a full supply level is taken to be a reference to the temporary supply level.

Amendment of s 814 (Excavating or placing fill without permit)

Clause 174 amends section 814 to change the definition of prescribed assessable development. The previous definition included operations related to drainage and embankments.

Amendment of s 816 (Unauthorised water bore activities)

Clause 175 amends section 816 to reflect the water monitoring activities under the Mineral Resources Act and ensure that water monitoring bores are constructed by a water bore driller.

Amendment of s 921 (Evidentiary aids)

Clause 176 amends section 921 to enable a certificate purporting to be signed by the chief executive to be a copy of the watercourse identification map, as in force on a stated day, or a feature or position on the watercourse identification map, to be used as evidence of the matter.

Amendment of s 936 (Responsibility for acts or omissions of representatives)

Clause 177 amends section 936 to clarify the definition of a 'representative' for a water authority.

Amendment of s 968 (Chief executive as assessing authority or advice agency)

Clause 178 amends section 968 to remove reference to drainage and embankment areas.

Insertion of new ch 8, pt 2B

Clause 179 inserts part 2B, into chapter 8 as these provisions have been relocated from chapter 2.

New - Part 2B Water bore drillers

New - Division 1 Granting water bore driller's licences

New section 981 - Applying for water bore driller's licence

New section 981 provides that an individual person (not corporation or other legal entity) may apply for a water bore driller's licence.

Applications are to be made to the chief executive in the approved form and accompanied by the fee prescribed in regulation. The approved form will include all application forms, interview sheets and internal examinations as required by the chief executive.

Water bore drillers are to be defined by class. The class of driller relates to the nature and type of aquifer system in which a driller may operate and the skill level required.

A person will be entitled to a licence if the chief executive is satisfied that the person has successfully completed examinations, interviews and met other qualification and experience criteria approved by the chief executive for a particular licence class and drilling equipment endorsement.

Details of classes, endorsements, minimum qualification and experience standards, mutual recognition of interstate licences and fees will be set out in a regulation.

New section 982 - Additional information may be required

New section 982 provides that the chief executive may require an applicant to provide additional information to assist the chief executive to make a decision. Requests for further information are limited to relevant information about the applicant's experience or history in the water bore drilling business. Information about any prior convictions of an offence relevant to water bore drilling or about previous cancellation or suspension of a similar licence would be reasonable for the purposes of this section.

Information about an applicant's general criminal history would not be relevant. If the applicant fails to comply with the request, without a reasonable excuse, the application will lapse.

The chief executive may require that the correctness of any information provided be sworn before a Justice of the Peace in statutory declaration form. This requirement is not mandatory and where it is impractical or not considered necessary, information may be supplied in a form that is not verified by statutory declaration.

New section 983 - Deciding application for water bore driller's licence

New section 983 provides that the chief executive is required to decide an application. If the chief executive approves an application, a driller's licence showing the class, any endorsements and any conditions must be given to the applicant. If the chief executive grants a licence that is different to the application received, the applicant must also be notified of the decision. This may occur where a person applies for a certain class or endorsement but is not adequately qualified. Rather than require a fresh application with further fees, the chief executive can grant a licence based on the person's qualifications and experience.

The applicant can appeal in a Magistrates Court any decision of the chief executive in regard to a driller's licence. Prior to lodging an appeal, the applicant must make application for an internal review. This process involves a review of the original decision by an officer of equal or greater authority than the original decision maker.

If an application is refused the chief executive must, within 30 business days, notify the applicant of the decision which is appealable.

New section 983A - Conditions of water bore driller's licence

New section 983A provides that specific conditions can be placed on an individual water bore driller's licence. This will enable the chief executive to restrict licensed water bore drillers in relation to specific water bore drilling or construction activities not adequately covered by the generic licence classes or endorsements. It may also limit the types of equipment or drilling methods that may be employed. Examples of conditions include: restrictions in relation to geographical areas, aquifer types, aquifer depth, aquifer diameter, bucket auger only, and non-contaminated sites only. If special restrictions are to apply to a water bore driller's licence in particular areas those restrictions must be referred to separately on the licence.

All driller's licences will be required to include any condition specified by regulation. One such condition is likely to be compliance with minimum standards such as, for example, Minimum Construction Requirements for Water Bores in Australia (National Uniform Drillers Licensing Committee, 2012). This document defines the minimum standards applying to construction, modification, repairing and decommissioning of all water bores

Where artesian bores must be constructed to comply with the specifications for construction, reconditioning or plugging of bores tapping aquifers of the Great Artesian Basin in Queensland this condition may be referred to on the driller's licence.

New - Division 2 Dealings with water bore driller's licences

New section 983B - Applying to amend water bore driller's licence

New section 983B provides that the holder of a driller's licence may apply to amend his or her licence at any time, including any upgrades. The process for application to amend or upgrade is the same as the original application process outlined in division 1.

This provision enables a driller who gains additional qualifications to apply to have the class upgraded or to have endorsements added to his or her licence during the licence period (before it is due for renewal).

The chief executive may approve, approve with conditions or refuse an application to amend within 30 business days.

New section 983C - Giving show cause notice about proposed amendment of water bore driller's licence

New section 983C provides that the chief executive may amend a licence if the chief executive is satisfied the class or endorsements or conditions require amendment because the licensee's competency is considered to have diminished since the time the driller's licence was granted. Prior to amending the licence the chief executive must give the licensee a written notice, called a show cause notice, asking the licensee to show cause why the licence should not be amended. The notice must state the proposed amendment and grounds for the amendment, outline the facts and circumstances that form the basis of the grounds, and must invite the licensee to make a submission within a specified time, of not less than 30 business days, to a specified place.

New section 983D - Deciding proposed amendment of water bore driller's licence

New section 983D provides that the chief executive may amend the licence if, after considering all submissions made within the specified time, the chief executive decides that the licence should be amended in the manner specified in the show cause notice.

If the chief executive decides to amend the licence, the chief executive must give the licensee a written notice, called an information notice. The licensee may appeal against the amendment of the licence within 30 business days after the notice is given.

If the chief executive and licensee agree to an alternative amendment to the licence, the agreement must be recorded in writing and signed by both parties. The chief executive may amend the licence in accordance with the agreed alternative without providing a further show cause notice. The chief executive must however provide notice that the licence is to be amended in accordance with the written agreement.

If the chief executive amends a licence the chief executive must give the licensee an amended licence within 30 business days. The amended licence takes effect from the day it is given to the licensee. There will be no compensation in relation to the amendment of a licence. If the chief executive decides to not proceed with amending the licence, the licensee is to be notified of the decision.

New section 983E - Minor or stated amendments of water bore driller's licence

New section 983E provides that minor changes may be made to a water bore driller's licence without the need to give a show cause notice and without appeal. Any change amounting to a diminution of a water bore driller's licence would be beyond the scope of a minor change.

This intention is that this provision be used to correct clerical mistakes or to make standard modifications to all driller's licences.

New section 983F - Renewing water bore driller's licence

New section 983F provides that a licensee may apply to the chief executive, using the approved form, for the renewal of a licence before the licence expires and be accompanied by the fee prescribed in regulation. If an application for renewal of a licence is made, the existing licence remains in force until the licensee is notified of the chief executive's decision.

Applications for renewal may be approved, approved subject to variation of the class, endorsements or conditions, or refused. If an application is refused the chief executive must, within 30 business days, notify the applicant of the decision which is appealable.

The decision may be appealed in the Magistrates Court. There will be no compensation in relation to the refusal to renew a licence.

If the renewal is approved, with or without variations to the class, endorsements or conditions, the chief executive must issue a new licence within 30 business days from that date.

New section 983G - Reinstating expired water bore driller's licence

New section 983G provides an opportunity for the bore driller to renew the licence after expiry, if it is within 30 business days of the expiry date.

The bore driller must make an application, in the approved form, to the chief executive, accompanied by the prescribed fee.

The application is to be decided as per the renewal process under section 983F(4) to 983F(7).

New section 983H - Suspending water bore driller's licence

New section 983H provides that the chief executive may suspend a driller's licence for a particular period if the chief executive is satisfied or believes on reasonable grounds that any of the following have occurred:

- The licensee has been convicted of an offence against the Bill or a relevant interstate law.
- The licensee has carried out water bore drilling activities not permitted for that class of driller.
- The licensee has failed to comply with conditions or endorsements on the licence.
- The licensee has failed to keep suitable records in the approved form.

The chief executive must give the licensee a show cause notice.

After considering properly made submissions, the chief executive must make a decision within 30 business days and give the licensee an information notice regarding the decision. If the chief executive suspends the licence, the suspension is effective from the day the information notice is given to the licensee. The licensee may appeal against the suspension decision. Suspension of a licence does not give rise to compensation.

An 'interstate law' is defined in the Bill dictionary to mean a law of a State (including a law that has been repealed) regulating the taking or using of water or interfering with the underground water resource. Hence a drilling offence committed in another State will impact on the driller's Queensland licence.

New section 983I - Cancelling water bore driller's licence

New section 983I provides that the chief executive may cancel a driller's licence if the chief executive is satisfied or believes on reasonable grounds that any of the following have occurred:

- The licence was issued or renewed or amended in error or as a consequence of a false or misleading representation or declaration made in writing or verbally.
- The licensee has been convicted of an offence against the Water Act or a relevant interstate law.
- The licensee has carried out water bore drilling activities not permitted for the class of licence.
- The licensee has failed to comply with conditions on the licence.

The chief executive must give the licensee a show cause notice. After considering properly made submissions, the chief executive must make a decision and give the licensee a notice

regarding the decision. If the chief executive cancels the licence, the licence is cancelled as of the day that the notice is given. The licensee may appeal against the cancellation decision. Cancellation does not give rise to compensation.

New - Division 3 General

New section 983J - Production of licence to authorised officer

New section 983J provides that a licensed driller is required to produce his or her licence upon the request of an authorised officer in circumstances where the authorised officer has information about or reasonably suspects that the driller is carrying out, or has just carried out, a water bore drilling activity in an area. The authorised officer must warn the driller that it is an offence to fail to produce a licence unless the driller has a reasonable excuse.

The purpose of this 'on the spot production of a licence' provision is to assist authorised officers with enforcement of the regulations applicable to water bore drillers. Although the drilling community is quite familiar with one another, drillers may move to other areas and in some cases interstate drillers may seek to operate in Queensland. In order to carry out water bore drilling in Queensland, a driller must have a Queensland driller's licence.

To enable efficient processing of licence checks, particularly as the locations of many drilling activities are in remote areas, drillers are required to keep photographic water bore drilling licences on their person while engaging in activities or supervising activities for which a licence is required.

However individuals carrying out an activity authorised under the *Petroleum Act 1923* or the Mineral Resources Act, if that activity does not result in a functional water supply bore, are exempt from this provision. Such drillers are not required to hold a water bore driller's licence.

It is an offence to fail to produce a valid licence when requested, without a reasonable excuse. The maximum penalty for failing to produce a valid licence is 50 penalty units.

This section does not apply to activities carried out under the Mineral Resources Act that would not result in a functioning water bore or activities carried out under the Petroleum Act or the Petroleum and Gas Act.

New section 983K - Failure to return suspended, cancelled or expired licence

New section 983K provides that if a drilling licence is suspended, cancelled or expired, the licensee must return the licence to the chief executive within 15 business days of date of notice of suspension, cancellation or expiry. It is an offence to fail to return a suspended, cancelled or expired licence within the time period provided, without a reasonable excuse.

The chief executive must return a suspended licence to the licensee once the period of suspension ends.

New section 983L - Records of water bores drilled

New section 983L provides that information to be obtained and recorded by a water bore driller in relation to the activities the licensee carries out in Queensland will be prescribed by

regulation. Specific forms approved by the chief executive will also be made available to assist water bore drillers.

A water bore driller must keep information about a borehole as the hole is being drilled and then record the information in the approved form. It is not acceptable that information be written up when the licence holder returns to his or her office after drilling a number of bores.

Completed forms must be forwarded to the chief executive within 60 business days of commencement of drilling the borehole.

It is an offence to fail to comply with these record keeping requirements. The maximum penalty for failing to keep records of drilling activities is 50 penalty units.

New section 983M - Replacing lost or destroyed water bore driller's licence

New section 983M provides for the chief executive to issue a replacement licence if a driller's licence is lost or destroyed. Drillers must apply in writing for the replacement and the application must be accompanied by the prescribed fee.

Insertion of new ch 8, pt 3C, div 1, hdg

Clause 180 inserts a new division heading for the sections that recognise the continuation of the rights granted under the repealed Wild Rivers Act.

New heading - Division 1 Particular authority for Wenlock Basin

Amendment of s 992G (Definitions for pt 3C)

Clause 181 amends the heading of section 992G to replace reference to part 3C with division 1, omits obsolete definitions as a result of the repeal of the Wild Rivers Act and inserts a new definition for Wenlock Basin.

Amendment of s 992H (Application of pt 3C)

Clause 182 amends the heading to replace reference to part 3C with division 1 and amends section 992H to remove the reference to a wild river area.

Amendment of s 992I (Continuation of authority and grant of water licence to replace authority)

Clause 183 amends section 992I(7)(b) to ensure that any conditions of a water licence under chapter 8, part 3C, division 1 are not inconsistent with those things mentioned and also omits the term Wenlock Basin Wild River Area and replaces it with Wenlock Basin.

Amendment of s 992J (Amendment of water licence that replaces authority)

Clause 184 amends section 992J subsection (2)(b) to ensure that any conditions of a water licence amended under chapter 8, part 3C, division 1 is not inconsistent with those things mentioned and also omits the term Wenlock Basin Wild River Area and replace it with Wenlock Basin.

Insertion of new ch 8, pt 3C, divs 2 and 3

Clause 185 inserts a new chapter 8, part 3C, divisions 2 and 3.

Division 2 provisions allow the chief executive to grant a water licence to take or interfere with water that is consistent with the authority already recognised under the Alcan agreement act and Comalco agreement act without going through the full requirements of the licencing process.

Division 3 provisions provide a process to allow for transition into the Water Act, water rights currently held by a relevant company in a special agreement Act. One or more water entitlements granted under division 3 have the effect of partly or wholly replacing the special agreement Act water rights..

New - Division 2 Particular authority for Alcan agreement Act and Comalco agreement Act

New section 992K - Definitions for div 2

New section 992K defines the terms used in new part 3C, division 2.

New section 992L - Continuation of authority and grant of water licence

New section 992L provides that a right to take or interfere with water held by a company under a special agreement Act continues and is recognised as an authority under the Water Act. This section provides that within a timeframe of 2 years, a relevant company can request one or more water licences that reflect the company's take of, or interference with, water under the special agreement act. Any such request is required to include information that demonstrates to the chief executive, that the taking or interfering with the water is necessary to support the company's operations. An example of information that would fulfil this requirement is a recommendation by the Coordinator-General that a water licence be issued in connection with a coordinated project. If the company does not apply within the 2 year timeframe, the relevant company would need to seek a water licence through the new division 3 and the water entitlement granted under the Water Act will replace any right held under the special agreement Act. This section also includes the ability for the company to request amendments to one or more of the water licences.

New - Division 3 Other authorities

New section 992M - Definitions for div 3

New section 992M defines the terms used in new part 3C, division 3.

New section 992N - Application of div 3

New section 992N provides that chapter 8, part 3C, division 3 applies to a relevant company in that holds a right under a special agreement act, or if a water licence has been granted to the company under division 2, the water licences. This section clarifies that division 3 does not apply to the extent that division 1 applies.

New section 992O - Relevant company may request water entitlement

New section 992O only applies where the chief executive and a relevant company agree to replace all of part of the company's authority under a special agreement act with one or more water entitlements. This allows for the State and the company to negotiate and reach an agreement about the replacement of water rights before the company formally requests one or

more water entitlements under this section. The section provides that the company may request one or more water entitlements to replace the company authority under a special agreement Act and may make more than one request. This is to allow for the company to replace their authority incrementally in a number of stages. Information provided to support the request should be consistent with any agreement reached between the State and the company. Within 30 business of receiving the request the chief executive must grant the water entitlement or water entitlements, which may include conditions. This section also provides for the granting of the water entitlement or entitlements' without the need for the water licensing process under the chapter 2, part 3, division 2, subdivision 2 applying to the request.

New section 992P - Effect of grant of water entitlement on existing authority to take or interfere with water under the special agreement

New section 992P provides for the continuation of a company's authority under a special agreement act until one or more water entitlements are granted by the chief executive under section 992O to wholly replace the authority. This section also clarifies that where one or more water entitlements are granted to only partly replace a company's authority, then the authority under the special agreement act only operates to the extent that it has not been replaced by the granted water entitlement or entitlements. After the chief executive and company have agreed to wholly replace the company's authority, this section determines that after the grant of the water entitlement or entitlements the company may only take or interfere with water in accordance with the water entitlement and that any specified conditions which relate to the taking or interfering with water in the special agreement act cease to have effect.

Omission of ss 1004 and 1004A

Clause 186 omits provisions for referral panels. However provisions for new referral panels have been relocated to new sections 241 and 242 of chapter 2 in the Bill.

Amendment of s 1006 (Declarations about watercourses)

Clause 187 amends section 1006 to remove the provisions that related to the declaration of upstream and downstream limits of watercourses. Downstream limits will now be identified on the watercourse identification map established under new section 5AA rather than being declared by regulation. Further, as the watercourse identification map can determine the longitudinal extent of a watercourse, there is no longer a need to provide for the declaration of an upstream limit of a watercourse.

Replacement of s 1009 (Public inspection and purchase of documents)

Clause 188 replaces section 1009 with a new section 1009.

New section 1009 - Public inspection and purchase of documents

Replacement section 1009 provides for which documents are publicly available for inspection and purchase.

Insertion of new s 1009A

Clause 189 inserts a new section 1009A.

New section 1009A - Publishing under this Act

New section 1009A provides flexibility when publishing public notices.

The Water Act stipulates circumstances where public notification is required to inform interested parties and the wider community about water planning and management activities. This typically involves publishing a notice in a newspaper, publishing a gazette notice, or in some instances, placing information online or making radio announcements.

The type of notification required in a particular circumstance is specified in the definition of 'publish' in schedule 4 of the Water Act. This definition, and the associated provisions requiring public notification, was included in the Water Act at a time when newspaper publication was still the most effective method of informing relevant parties within a district. With the decline in newspaper readership, increasing uptake of alternative information sources and the fact that 'owners' of land do not necessarily reside on that land, or even in the State, concerns have arisen with respect to whether newspaper publication is still the most effective medium.

Since the inclusion of the publishing requirements, newer electronic communication methodologies have been adopted into common usage by the Department of Natural Resources and Mines, Department of Energy and Water Supply and the Department of Environment and Heritage Protection (the departments) and the community at large.

Examples include the use of the internet, SMS and email. These methodologies provide the benefit of allowing timely communication and transfer of information to specific, affected parties, whilst web publishing provides a single point of reference for interested parties.

The Bill amends the definition of 'publish' to provide the flexibility to tailor the notification method to the intended audience. Providing this flexibility will also ease the regulatory burden on the departments and clients by enabling innovative, effective and cost effective methods of publication to be used.

Insertion of new s 1013AA

Clause 190 inserts a new section 1013AA.

New section 1013AA - Acceptance of particular requests and applications not in the approved form

New section 1013AA enables the chief executive to accept an application that may not be in the approved form, provided the chief executive is satisfied that the application is clear enough and includes enough information to allow the chief executive to act on the application.

Insertion of new ss 1013C and 1013CA

Clause 191 inserts sections 1013C and 1013CA to prescribe specific payment methods and evidence and timing of payment.

New section 1013C - Fees—payment methods

New section 1013C provides that specific payment methods may be prescribed under regulation, or stated by an approved form, for payment of fees under the Water Act. Either of these methods is stated to be an 'approved payment method' for the Water Act.

New section 1013CA - Fees—evidence and timing of payment

New section 1013CA provides acknowledgement that a copy of payment (e.g. a receipt for an electronic funds transfer), presented with the document, (following the approved payment methods), is confirmation of payment at the time of lodgement. This allows for quicker assessment of the application.

Amendment of s 1013E (Advice to Petroleum Act Minister about commission of particular offences)

Clause 192 amends section 1013E to reflect the expansion of the chapter to the mineral resources sector. This provision now allows the administering Minister to be notified of particular Water Act offences.

This clause replaces subsection (3) of section 1013E with a definition for the section for administering Minister. If in relation to a person who is the holder of a mining tenure, the Minister administering the Mineral Resources Act is to be notified. The Minister administering the Petroleum Act and the Petroleum and Gas Act is to be notified if the offence is committed by a person who is the holder of a petroleum tenure.

Amendment of s 1014 (Regulation-making power)

Clause 193 amends section 1014 to remove from the regulation, the ability to declare under the Planning Act , an area to be a drainage and embankment area; and the works within the area that are to be assessable or self-assessable development. This regulation-making power is no longer required as these areas are now regulated under the levee provisions, introduced in the Water Act by the *Land Water and Other Legislation Amendment Act 2013.*

This section now provides that the Governor in Council may make regulations under the Water Act. Without limiting the scope of the subject material for regulations, the section details matters for which a regulation may be made.

Amendment of s 1046 (Declared subartesian areas)

Clause 194 amends section 1046 by replacing the term subartesian area with underground water area. Declared underground water areas are similar to the old subartesian areas, but will apply to artesian as well as subartesian water. An underground water area will regulate the taking of, or interfering with, underground water within the area in aquifers not dealt with in a water plan, as well as the associated construction of works.

Omission of s 1117A (When conditions of supply contract do not apply)

Clause 195 omits this transitional provision which afforded a benefit to a small number of entities that met very specific criteria. The provision was always intended to apply to a point in time and not have on going effect.

Omission of ch 9, pt 5, div 8 (Transitional provisions for Statutory Bodies Legislation Amendment Act 2007)

Clause 196 omits division 8 under chapter 9 part 5 of the Water Act. This division was originally inserted to return employees of certain statutory bodies affected by the federal Work Choices legislation to the State industrial system. That legislation has since been repealed; the division has had its effect and is no longer required.

Omission of ch 9, pt 5, div 10 (Transitional provisions for Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007)

Clause 197 omits division 10 under chapter 9 part 5 of the Water Act. These transitional provisions validated existing service providers to support the implementation of the local government reform. The division took effect from changeover day (2008) and has no further effect. That is, on and from changeover day the new local government was taken to be the service provider for the service and has the same functions and obligations of the existing local government in relation to its operation as a service provider.

Omission of s 1166 (Codes for assessment under the Sustainable Planning Act 2009)

Clause 198 omits section 1166, a transitional provision that ensured that chapter 8, part 2 of the Water Act as in force before the commencement of this section continued to apply to a development application made but not decided under the *Integrated Planning Act 1997* prior to the commencement of this section. Since then all codes under 1014 have been updated to reflect the change from Integrated Planning Act to Sustainable Planning Act. This section has had its effect and is no longer required.

Omission of ch 9, pt 5, div 15 (Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010)

Clause 199 omits division 15 which detailed transitional provisions to ensure the transition of compliance and enforcement of water efficiency management plans from council as water service providers to commission management post 1 July 2010.

All of the sections within division 15 have been superseded by other provisions.

Omission of ch 9, pt 5, div 18 (Transitional provision for Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012)

Clause 200 omits section 1209 of the Water Act (the only section under chapter 9, part 5, division 18) which provided that an existing temporary full supply level, declared under section 34A of the Water Act and in force immediately before commencement, continues in force until it ceases to have effect or the declaration is revoked.

Although the transitional provision existed, no temporary full supply level was in effect under section 34A and, therefore, the transitional provision was not used. Since then, the Water Supply Act provisions (chapter 4, part 3) have been used to declare a temporary full supply level.

Amendment of ch 9 (Transitional provisions and repeals)

Clause 201 inserts a new part 8 dealing with transitional and saving provisions for the Bill.

New - Part 8 Transitional and saving provisions for Water Reform and Other Legislation Amendment Act 2014

New section 1250 - Definitions for pt 8

New section 1250 provides definitions for new part 8.

New section 1251 - Existing authorisations continue to have effect

New section 1251 provides that any authorisation to take or interfere with water either granted by the chief executive or given in some other way under chapter 2 of the unamended Act continues in force as an authorisation of the equivalent type under the amended Act. For example, a water licence issued under the unamended Act continues in force as a water licence under the amended Act.

New section 1252 - Limitations and prohibitions relating to water in force before commencement

New section 1252 provides that any notice published or regulation made under the unamended Act to limit or prohibit the taking or interfering with water continues in force as if the Water Act had not been amended.

New section 1253 - Continuation under the amended Act of notices or documents published by Minister or chief executive

New section 1253 provides that if the Minister or chief executive has published a notice or other document under the unamended Act, then after the commencement of the amended Act, the notice or document is taken to be published under the corresponding provisions of the amended Act and may continue to have effect under the amended Act. This section excludes a notice that relates to limitations and prohibitions relating to water under section 1252.

New section 1254 - Request or notice by chief executive under unamended Act

New section 1254 provides that if the chief executive has issued a request or notice, such as a notice of works, under the unamended Act to a person, entity or constructing authority to give information, to comply with conditions or any other matter, and the notice or request has not been complied with, then the notice or request is taken to be published under the corresponding provisions of the amended Act and continues in effect under the amended Act. This section excludes a notice that relates to a request to water infrastructure operators to provide proposed arrangements for management of water under section 1267.

New section 1255 - Submissions made to Minister under unamended Act

New section 1255 provides a transitional power to allow a submission made to the Minister prior to the commencement to continue to be properly made. For example this will allow a submission made on a draft water resource plan prior to commencement to be considered by the Minister where the decision to finalise the water resource plan is made after commencement.

New section 1256 - Water resource plans taken to be water plans

New section 1256 provides for a water resource plan in force at the time of commencement, to be the water plan for the relevant area under the amended Act from the date of commencement. The provision recognises that certain water resource plans are going through consultation processes, and these water resource plans are not transitioned at the time of commencement, but on the completion of the consultation process, to provide transparency in the way that public submissions have been considered in the making of the final plan.

A 'consultation process' for this provision is defined as a process where a notice about the release of the draft water resource plan or draft resource operations plan has been published. The consultation process is considered to be completed when the draft water resource plan or draft resource operations plan is finalised.

New section 1257 - References to water resource plans taken to be references to water plans

New section 1257 provides a transitional power for water resource plans to be deemed water plans.

New section 1258 - Notices given, or submissions made, to chief executive under unamended Act

New section 1258 provides a transitional power for notices given, or submissions made to the chief executive prior to the commencement to continue to be properly made after commencement. For example, this will allow a submission made on a draft resource operations plan prior to commencement, to be considered by the chief executive where the decision to finalise the resource operations plan is made after commencement.

New section 1259 - Stated provisions of a resource operations plan are taken to be, or are included in, other documents

New section 1259 provides for the provisions of a resource operations plan that is in force at the time of commencement, to be taken to be a number of other documents under the amended Act including:

- a resource operations licence
- the operations manual made under a resource operations licence
- a distribution operations licence
- a water licence
- a water plan
- or if not addressed specifically in the provisions identified here, to be taken to be a water management protocol.

The provision recognises that certain resource operations plans are going through consultation processes, and these resource operations plans are not transitioned at the time of commencement, but on the completion of the consultation process, to provide transparency in the way that public submissions have been considered in the making of the final plan.

A 'consultation process' for this provision is defined as process where the water resource plan or relevant resource operations plan has been released as a draft for consultation. The

consultation process is considered to be completed when the draft water resource plan or resource operations plan is finalised.

This section also provides for the chief executive to prepare or amend any of the documents mentioned in this section (except a water plan) to give effect to this section.

New section 1260 - Provisions of resource operations plan taken to be included in a resource operations licence

New section 1260 provides for the following to be taken to be included in the resource operations licence for the relevant water supply scheme:

- monitoring and reporting arrangement
- infrastructure detail including the full supply level for particular infrastructure
- the authority to use watercourses that pertain to a particular water supply scheme
- matters relating to the implementation and compliance for the water supply scheme.

New section 1261 - Provisions of a resource operations plan taken to be an operations manual

New section 1261 provides for the operating rules (excluding the authority to use watercourses to distribute water), environmental management rules and water sharing rules, that pertain to a particular water supply scheme to be taken to be an operations manual for the relevant water supply scheme.

New section 1262 - Provisions of resource operations plan taken to be included in a distribution operations licence

New section 1262 provides for the provisions that state the responsibilities of the distribution operations licence holder for a particular water supply scheme to be taken to be included on the distributions operations licence for the relevant water supply scheme.

New section 1263 - Provisions of resource operations plan taken to be included in a water licence

New section 1263 provides for the monitoring and reporting requirements and the infrastructure details, including the full supply level for particular infrastructure, that pertain to a particular water licence to interfere with the flow of water to be taken to be included on the water licence.

New section 1264 - Provisions of resource operations plan taken to be included in a water plan

New section 1264 provides for the resource operations plan zones, catchment areas, subcatchment areas and subartesian areas, criteria and process for dealing with water licences, and the volumes stated for unallocated water reserves in a resource operations plan to be taken to be part of the water plan which replaces the water resource plan under which the resource operations plan was made.

New section 1265 - Provisions of Burnett water resource plan taken to be included in operations manual

New section 1265 provides for certain provisions of the Burnett Basin resource operations plan that are taken to be an operations manual from commencement, to be deemed to be replaced by provisions of the Burnett Basin water resource plan, in force at the time of commencement.

Note that the effect of this provision is that the provisions in the water resource plan relating to the environmental management rules and infrastructure operating rules for the Barker Barambah, Bundaberg and Upper Burnett Water Supply Schemes are taken to replace the equivalent provisions in the resource operations plan that are taken to be the relevant operations manuals for the particular schemes from commencement.

The provisions in the water resource plan relating to the water sharing rules for the Barker Barambah, and Upper Burnett Water Supply Schemes are taken to replace the equivalent provisions in the resource operations plan that are taken to be the relevant operations manuals for the particular schemes from commencement. The water sharing rules for the Burnett Water Supply Scheme in the water resource plan are taken to replace the water sharing rules in the operations manual that have been transitioned from the resource operations plan from 1 July 2015.

New section 1266 - References to resource operations plans

New section 1266 provides a transitional power for resource operations plans to be deemed to be any of the following instruments.

- A resource operations licence
- An operations manual
- A distribution operations licence
- A water licence
- A water plan
- A water management protocol.

New section 1267 - Request to water infrastructure operators to provide proposed arrangements for management of water

New section 1267 provides for a submission made by the water infrastructure operator as part of the development of a draft resource operations plan under section 97 of the unamended Act, to be taken to be an operations manual submitted to the chief executive (where no operations manual exists), or an amendment of the operations manual, or an application for an amendment to a resource operations licence, to the extent that the provisions proposed in the submission relate to the relevant document.

New section 1268 - Applications made but not decided before commencement

New section 1268 provides that if the Minister or the chief executive has received an application under chapter 2 of the unamended Act and the application has not been decided, if the amended Act includes an equivalent application, then the application is taken to have been made under the corresponding provisions of the amended Act.

New section 1269 - Applications decided but not given effect before commencement

New section 1269 provides that if the chief executive has decided an application under the unamended Act but the process following the decision has not been completed, then the process is to be completed under the unamended Act. Where an authorisation is issued under the unamended Act out of that process, this section also provides that the authorisation issued continues in force as the equivalent authorisation under the amended Act including any terms and conditions for the authorisation.

New section 1270 - Certificates or notices about water allocations continue under the amended Act

New section 1270 provides that if a certificate or notice that relates to an application for a dealing with a water allocation is in force under the unamended Act before the commencement, for example certificate issues that relate to the amalgamation of water allocations, then the certificate or notice continues to be in force after the commencement of the amended Act.

New section 1271 - Interim resource operations licences and interim water allocations

New section 1271 provides that if there are interim allocation and management arrangements in place under the unamended Act, such as interim resource operations licences and interim water allocations, which have not been converted or replaced upon commencement, then these interim arrangements continue under the unamended Act until such time the interim resource operations licences and interim water allocations have been converted or replaced by water allocations or resource operations licences.

New section 1272 - Applications about a water licence under unamended Act if required notice has not been published

New section 1272 provides that where an application for a water licence has been made under the unamended Act and the requirement to publish a notice about the application applies but the notice has not yet been published, then the application can be dealt with in two ways under the amended Act. The application must be dealt with as if it were a new application under the amended Act if it would increase the amount of water that may be taken under the licence; increase the daily rate or maximum rate per second at which water may be taken under the licence; change the location of the taking of or interference with water under the licence, unless the dealing is permitted under a regulation or water management protocol; or increase or change the interference with water under the licence. Otherwise the applications can be dealt with as an applications for a dealing with a water licence under the amended Act, removing the need for the publication of a notice.

New section 1273 - Notices published about an application under unamended Act

New section 1273 provides that where a person has published a notice about an application for a water licence under the unamended Act and the process for the application is not completed before commencement and where there are corresponding provisions for dealing with the notice under the amended Act, then the notice is taken to be published under the amended Act and the application completed under the amended Act as if it were an application for a new water licence.

New section 1274 - Show cause process started before commencement

New section 1274 provides that where a shows cause process for a matter was started under the unamended Act, for example a show cause process for the cancellation of water licences, and not completed before commencement of the amended Act then the process must be continued to completion under the unamended Act.

New section 1275 - Referral panels continued under amended Act

New section 1275 allows for the chief executive's resource operation plan referral panel and the Minister's moratorium referral panel to be continued after commencement as a single referral panel. The section then provides the single referral panel continues to operate as if it was established under section 241 of the amended Act after the commencement. The single referral panel will continue to be paid fees and allowances consistent with fees and allowances decided by the Governor in Council under section 1004 of the unamended Act, subject to any changes made to the panel's remuneration by the Governor in Council under section 214 of the amended Act. The section determines that the term of a member of the single referral panel ends on 30 March 2017 (which was the later end date of the two panels before commencement) or earlier if the Governor in Council terminates a member's appointment to the panel. The section also provides that where matters have been referred to the panels under the unamended Act before commencement, then the single referral panel is to consider the matters under the unamended Act.

New section 1276 - Unallocated water release process started before commencement

New Section 1276 provides that where a process to release unallocated water is underway under the unamended Act and the process has not been completed, then the process is to be completed under the unamended Act. The resulting water entitlement granted under this process continues in force as an authorisation of the equivalent type under the amended Act.

New section 1277 - Special provision for particular petroleum tenure holders

New section 1277 provides a special process for requesting and granting water authorities for petroleum tenure holders during the transitional period established by new section 186 of the Petroleum and Gas Act. This process is to ensure that the tenure holders' existing investment and development commitments are recognised, by requiring that their existing and committed demands for non-associated water are considered in issuing a licence or permit for the take. This special ability to request an authorisation outside of the usual water licencing and water permitting process is to recognise the removal by the Bill of the statutory right provided to a petroleum tenure holder under the Petroleum and Gas Act to take underground water, other than associated water. This recognition provides a streamlined transition process and provides certainty that an authorisation will be issued for any reasonably demonstrated existing water use, and any reasonably estimated water demand for planned development.

The section enables a petroleum tenure holder to request the chief executive to grant an authority under the Water Act to authorise the take of water, other than associated water. This section requires that historical take of non-associated water and any take that would be reasonably required for the holder to carry out their future activities and development commitments, is recognised and considered by the chief executive, in addition to the other relevant considerations for deciding whether to grant a water licence or permit.

This section will apply alongside any regulation that is made under new section 101 to exempt minor or incidental take associated with petroleum and gas operations.

This provision will operate only in relation to a request to take or interfere with underground water in the area of the tenure for use in the carrying out of an activity for the tenure (i.e. non-associated water). It does not apply to any associated water take, i.e. take that happens during the course of, or results from, the activities of the holder, as this water take will continue to be authorised under the relevant resource Acts.

This section applies only to the holder of a petroleum tenure in existence on commencement of the provision, a petroleum tenure granted after commencement if the application for the tenure was made before commencement, or a petroleum tenure under the Petroleum Act. Further, the ability to make a request under this provision is available only within a transitional period. This period is 2 years from the date of commencement of this section, except where the tenure is within the Surat cumulative management area, in which case the period is 5 years from the date of commencement of this section. This aligns with the timeframes for removal of the non-associated water rights under new section 186 inserted in the Petroleum and Gas Act by the Bill.

The section provides that chapter 2 part 3 does not apply to the grant of a water licence or permit, except for the specific matters to be considered in considering a request that are identified in subsection (4)(d) and (e) and subsection (5)(e) and (f). Other matters pertaining to licences and permits established in chapter 2 part 3 (such as the duration and content of each type of authority, and processes for further dealings with them) continue to apply.

It is intended that after the transitional period, further requests for a water authority by petroleum tenure holders will be made through the normal application process. By this time the relevant water planning instruments will be reviewed to ensure they address the future short and long term water requirements of this sector, including the identification of additional unallocated water reserves.

The planning process will also enable more general risk-based exemptions from the requirement for a licence or a permit, for instance based on volumetric thresholds, to be applied for the taking of underground water from, for example, deeper Great Artesian Basin aquifers that are not used by other users.

In making a request under this section, the holder of the relevant petroleum tenure must include sufficient information to support the chief executive's consideration of the request. If the tenure holder demonstrates the need for an authority for take of non-associated water, the chief executive must grant one or more licences or permits for the take, and may grant the licence(s) or permit(s) with or without conditions. The take of non-associated water under a licence or permit granted through this process is not subject to the underground water obligations. This is made clear by new section 186 of the Petroleum and Gas Act. It is not intended that the right temporarily continued during the transition period under section 186 of the Petroleum and Gas Act would hinder the ability of a holder to demonstrate the need for an authority under this section, as this is intended to replace the temporary right.

This provision operates in relation to 1923 Act petroleum tenures, despite such tenures not previously having the statutory right to take non-associated water similar to tenure holders

under the Petroleum and Gas Act. Transitional provision is made in relation to the 1923 Act tenures, to support the intent of the Bill that all take of non-associated underground water be preferentially managed and authorised under the Water Act. As such, this provides that the holder of a 1923 Act tenure may make a request under the Water Act rather than the Petroleum Act, section 86, in relation to non-associated water take, whether or not they already hold an authorisation for the take of the water under the Petroleum Act.

New section 1278 - Provision for old s 365 (Declaring cumulative management areas)

New section 1278 provides for the continued effect of the existing cumulative management area. Under the old section 365, a declaration was made for the Surat cumulative management area. This section ensures the continuing validity of the Surat cumulative management area and ensures the declaration continues to have the same effect that it has had since it was made. This includes clarifying that the Surat cumulative management area applies to each holder of a petroleum tenure within (or partly within) its area, and has applied to them since it was declared or the tenure was granted (whichever came last), and will apply to petroleum tenures that are made in future within (or partly within) its area. It also includes clarifying that the Surat cumulative management area does not apply to a holder of a mining tenure within its area, and has not applied to them since it was made.

New section 1279 - Provision for existing agreements between mining tenure holders and bore owners

New section 1279 relates to agreements in existence between mining tenure holders and the owner of a water bore at commencement. Agreements about a water bore affected or likely to be affected by the taking or interference with underground water by a tenure holder may be in existence at the time of commencement. This provision provides that such agreements are recognised as make good agreements under chapter 3 part 5. This is to enable the provisions for negotiation of variations and for dispute resolution to apply to such agreements, and for the agreements to be binding on the parties, their successors and assigns.

Because the undertaking of a bore assessment under chapter 3, part 5, division 2 triggers the requirement to enter into a make good agreement, the existence of a make good agreement on commencement is taken to have already complied with the obligation to conduct a bore assessment, as otherwise this obligation would lead to a requirement to negotiate another agreement.

New section 1280 - Continuation of effect of ss 812A and 812B

New section 1280 deals with continuation of effect of sections 812A and 812B.

On date of assent of the Bill, sections 812A and 812B of the Water Act will be omitted. This section deals with liability for particular contraventions in that if there is evidence that a condition of a water allocation, interim water allocation, water licence, seasonal water assignment notice or water permit has been contravened or water has been taken or supplied in contravention of section 808(1) then the authorisation holder is deemed to have committed the offence.

Section 812B which deals with notifying the authorisation holder in writing attached to a notice or complaint and summons detailing the provisions of section 812A will also be repealed on the date of assent.

The continuation of effect is in place to remove any confusion that if section 812A or 812B were to be utilised in the proceeding of an offence against section 808(1) or section 812 before date of commencement of *clause 172* of the Bill that omits sections 812A and 812B, then sections 812A and 812B would still be in force and able to be utilised as the offence was committed prior to the Water Act being amended.

New section 1281 - Transitional regulation-making power

New section 1281 allows for a transitional regulation to be made which will expire 1 year after commencement.

Amendment of sch 4 (Dictionary)

Clause 202 replaces various definitions in schedule 4 (Dictionary) of the Water Act.

Part 9 Amendments relating to mining safety

Division 1 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 203 states that this division amends the *Coal Mining Safety and Health Act 1999*.

Amendment of s 41 (Obligations of coal mine operators)

Clause 204 amends section 41(1)(c) to delete the reference to the standard under the Petroleum and Gas Act. This corrects an error, as the reference should be to the standard under the Coal Mining Safety and Health Act, as this section and Act applies to coal operators and coal mines.

Amendment of s 62A (Additional requirement for coal mining operation for incidental coal seam gas)

Clause 205 amends section 62A which applies if coal mining operations include activities related to mining incidental coal seam gas.

Subsection (1A) requires that the single safety and health management system must include a plan to achieve an acceptable level of risk in relation to the mining of the incidental coal seam gas.

Due to the hazards and risks associated with the mining of incidental coal seam gas, it is essential that the site senior executive is in control and implements the plan within the single safety and health management system, to achieve an acceptable level of risk. This requirement applies to the routine mining of incidental coal seam gas to ensure a safe working environment for coal mining, and also if the coal mining of incidental coal seam gas is occurring in the context of overlapping resource authorities (for example, an overlapping mining lease and a petroleum lease).

Subsection (2) changes the reference to safety management plan under the Petroleum and Gas Act to the new name of safety management system under the Petroleum and Gas Act.

Subsection (3) updates the notes according to current drafting practice and includes consequential amendments to the section reference numbers in note 1. The relevant sections under the Petroleum and Gas Act are sections 675 and 705C when having regard to requirements for a safety management system under the Petroleum and Gas Act.

Insertion of new pt 4, div 3A

Clause 206 inserts new part 4, division 3A.

New - Division 3A Joint interaction management plans for overlapping resource authorities

New part 4, division 3A provides for joint interaction management plans for overlapping resource authorities as the requirements apply to coal obligation holders. A similar part has been inserted in the Petroleum and Gas Act for coal seam gas petroleum obligation holders.

New section 64C - Application of div 3A

New section 64C provides that division 3A applies to a coal mine if coal mining operations at the coal mine are carried out in or are to be carried out in an overlapping area. This will include exploration as the definition of a coal mine refers to 'on site activities' which includes 'exploring for'. The definition of coal mining operations also includes activities associated with exploration. A definition of overlapping area is added to the dictionary through *clause 212* (Amendment of sch 3 (Dictionary)). The definition refers to the definition in section 104 of the Common Provisions Act and is intended to cover all overlapping tenures identified in any table in chapter 4 of the Common Provisions Act, that is regardless of order of granting of the resource authority and regardless of whether the overlapping resource authorities are granted at a similar time. This is intended to ensure that if there are overlapping resource authorities of any combination, the respective industry obligation holders must make a joint interaction management plan before overlapping activities are carried out. Subsection (4) of section 104 of the Common Provisions Act also confirms that even if the other subsections of section 104 of the Common Provisions Act do not apply to make land an overlapping area, land is an overlapping area if it is subject to both a coal resource authority and a petroleum resource authority.

Subsection (2) helps to clarify transitional arrangements by confirming that new division 3A does not apply to existing coal leases in overlapping areas that are already subject to the Mineral Resources Regulation, chapter 2, part 4, division 4. Amendments to the Mineral Resources Regulation cover the transitional requirements for existing coal leases overlapping with existing petroleum leases before these amendments. Subsection (2) states that division 3A does not apply if the Mineral Resources Regulation chapter 2, part 4, division 4 applies. Division 3A is intended to otherwise apply to all other combinations of overlapping tenures, except those that remain subject to the Mineral Resources Regulation. This avoids any duplication, as a coal tenure in an overlapping area will be either subject to the Mineral Resources Regulation chapter 2, part 4, division 4 or the Coal Mining Safety and Health Act, division 3A, but will not be subject to both.

The overall policy objective of the new division 3A is to ensure that safety and health outcomes are not compromised by the less restricted, overlapping tenure operating arrangements where both coal and coal seam gas obligation holders are operating over the

same piece of ground. Obligation holders are to operate under the same safety procedures to achieve an acceptable level of risk, as the procedures apply to their respective overlapping activities, under their agreed joint interaction management plan. The joint interaction management plan is part of each party's respective safety and health management system or safety management system.

The agreed joint interaction management plan or the arbitration outcome to reach an agreed joint interaction management plan must comply with legislative and regulatory requirements and are still subject to Inspectorate directives or other compliance actions by the Inspectorate. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

Existing safety and health provisions have been amended accordingly, wherever possible, and there has been further harmonisation of some key terms (for example, petroleum and gas's safety management plan becoming a safety management system and joint interaction management plan) and provisions to reduce potential confusion from varying terminology and provisions. Both coal and coal seam gas industries are to safely manage their interactions across overlapping coal and coal seam gas tenures under the respective industry applicable provisions of the Coal Mining Safety and Health Act or Mineral Resources Regulation or Petroleum and Gas Act.

New section 64D - Definitions for div 3A

New section 64D provides definitions for the division. The definition for arbitration refers to arbitration of the dispute under the Common Provisions Act, chapter 4, part 6, division 4. Definitions are also provided for authorised activities operating plant, operating plant and operator by reference to their meaning under sections of the Petroleum and Gas Act. A definition of joint interaction management plan is provided by reference to new section 64E(1)(a).

New section 64E - Requirement for joint interaction management plan

New section 64E sets out the requirement for a joint interaction management plan which must be made before the carrying out of coal mining operations in the overlapping area. The site senior executive for the coal mine must through consultation or if agreement is difficult to reach, ultimately through arbitration with the operator for each authorised activities operating plant in the overlapping area make a joint interaction management plan that complies with new section 64F. It is intended that the operator of the authorised activities operating plant (i.e. the principal petroleum and gas operator) will consult with all operators of any other operating plant working within the petroleum authority in the overlap area and coordinate their input into the joint interaction management plan in regard to the petroleum and gas activities. This will ensure all hazards arising from all petroleum activities in the overlapping area are identified, in order to reach agreement with the site senior executive. This is also part of compliance requirements for the content for the joint interaction management plan i.e. identifying the hazards and risks to be controlled.

Once the joint interaction management plan has been agreed the site senior executive must ensure compliance with the joint interaction management plan which will be part of the mine's single safety and health management system.

Should there be a dispute about the content of the joint interaction management plan, this can be referred to arbitration at any time, so that the site senior executive and authorised activities operating plant operators reach an agreement which is final, as it applies to them. Reasonable attempts must be made to consult and if agreement cannot be reached within three months of receiving a copy of the proposed joint interaction management plan, the site senior executive must apply for arbitration of the dispute. Either party can however, apply for arbitration of the dispute at any time. An agreed or arbitrated outcome will not affect the ability of the inspectorate to regulate should there be concerns about any safety and health issues. Any final agreements reached through arbitration will not limit the inspectorate's ability to regulate. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

New section 64F - Content of joint interaction management plan

New section 64F sets out requirements for the joint interaction management plan. The joint interaction management plan is to be part of the safety and health management system that is required under the Coal Mining Safety and Health Act. Under section 64F, the joint interaction management plan must be stored and kept together with the other parts of the safety and health management system for the mine. As part of the safety and health management system which must be an auditable documented system under section 62 of the Coal Mining Safety and Health Act, the joint interaction management plan must also be documented in a way that makes it capable of being audited. The joint interaction management plan must also identify each IMA, RMA and SOZ, if any, in the overlapping area. 'If any' is a drafting technique used to indicate something may or may not exist. For example, through any bespoke arrangements, the parties may or may not have identified an IMA, RMA and SOZ. Under section 103 of the Common Provisions Act, an agreed joint development plan includes 'bespoke agreements'. There will only be a requirement for the joint interaction management plan to include the initial mining area, rolling mining area, future mining area, and simultaneous operations zone, if these areas have been identified.

Other requirements for the joint interaction management plan relate to identifying hazards and risks to be controlled and triggers or material changes which must be monitored and which will require the plan to be reviewed. Response procedures and times and reporting procedures are also included in the joint interaction management plan. Proposed or likely interactions with other persons in the overlapping area and associated risks from the interactions are also included, together with the safety responsibilities of each person including stating the names of key safety persons responsible for operating plant in the overlapping area.

The joint interaction management plan also includes a description of the way the joint interaction management plan will be reviewed and revised including through ongoing consultation with persons in the overlapping area and must also describe the way in which the details of any new site senior executive or other senior person in the management structure for the mine will be communicated to all operators. Further requirements for the content of the joint interaction management plan may be provided for in the regulations.

Subsections (2) and (3) note that the potential hazard guide in the Coal Mining Safety and Health Regulation, schedule 1A is a non-exhaustive list of potential hazards that may be created by coal mining operations in relation to exploring for or producing coal seam gas or

petroleum and must be used as a guide to assist in identifying and assessing risks and hazards.

Subsection (4) is intended to remove any doubt that a joint interaction management plan may apply to more than one overlapping area.

New section 64G - Notification of making of joint interaction management plan

New section 64G provides that as soon as practicable after making a joint interaction management plan and before carrying out coal mining operations in the overlapping area, the site senior executive must notify the chief inspector that the joint interaction management plan has been made. This provision is to ensure that the chief inspector is notified before any overlapping activities occur, and that the joint interaction management plan has been agreed with coal seam gas safety and health obligation holders.

New section 64H - Review

New section 64H sets out the requirement for the site senior executive to review the joint interaction management plan and for changes to be agreed with each operator in the overlapping area. It is intended that the operator for an authorised activities operating plant (i.e. the principal petroleum gas operator) will consult with operators of any other operating plant in the overlapping area and co-ordinate their input and agreement to the changes to the joint interaction management plan that affect their operations. The joint interaction management plan must be reviewed and revised, if it is proposed to change a joint interaction management plan, or a change at a coal mine is likely to give rise to a new risk in the overlapping area, or if an additional risk is identified, or consultation with coal mine workers indicates a review is necessary, or a risk control measure did not control the risk it was implemented to control to an acceptable level. The change at the mine could relate to a change to the coal mine environment or a change to a system of work, process or procedure. The site senior executive must review the joint interaction management plan in consultation with the operator of each authorised activities operating plant in the overlapping area and coal mine workers to the extent they are affected by the matters under review.

Subsection (5) sets out when the review must take place. Subsection (6) provides that a revision of the joint interaction management plan must be recorded on the joint interaction management plan.

Subsection (7) confirms that if the site senior executive and an operator for an authorised activities operating plant cannot agree on the content of the revision of the joint interaction management plan, either party may apply for arbitration of the dispute.

New section 64I - Availability of joint interaction management plan

New section 64I sets out the requirements for site senior executives to make the joint interaction management plan available for inspection by persons in the overlapping area and who must be given be given a copy of the joint interaction management plan if their work is affected, including contractors who employ person's whose work is affected.

Amendment of s 67 (Plans of coal mine workings)

Clause 207 amends section 67(1) about requirements for a site senior executive to keep plans of coal mine workings at the mine, so that requirements also include, if part 4, division 3A

applies for the overlapping area, plans showing the initial mining area, rolling mining area, future mining area, and simultaneous operations zone. The initial mining area, rolling mining area, future mining area, and simultaneous operations zone are as defined under the Common Provisions Act and identified in an agreed joint development plan, for the overlapping area.

The new subsection (8) provides a definition of agreed joint development plan which is from section 103 of the Common Provisions Act. Under section 103 of the Common Provisions Act, an agreed joint development plan includes 'bespoke agreements'. There will only be a requirement for plans of coal mine workings to include the initial mining area, rolling mining area, future mining area, and simultaneous operations zone, if these areas have been identified in the agreed joint development plan.

Replacement of s 73B (Qualifications for appointment)

Clause 208 replaces section 73B with a new section 73B.

New section 73B - Qualifications for appointment

New section 73B provides requirements for appointment as Commissioner for Mine Safety and Health. In particular two additional categories of qualification for eligibility for appointment have been inserted.

A person with a qualification in law with professional experience in advocacy for improvements in mine safety and health may be eligible for appointment as Commissioner.

Additionally, a person with ten years' experience in a senior position (e.g. mine manager, site senior executive, or first line manager) relating to operational mine safety management and improving mine safety may be eligible for appointment as Commissioner. Examples of professional experience in mine safety may also include experience in the conduct of mine safety research or advocacy for improvements in mine safety and health.

The amendments will continue to ensure that a person appointed Commissioner has the appropriate qualifications and experience to undertake the role.

Amendment of s 255 (Proceedings for offences)

Clause 209 amends section 255 to also enable the chief executive, or other appropriately qualified person, with the written authorisation of the chief executive, either generally or in a particular case to take proceedings for an offence against the Coal Mining Safety and Health Act. The names of positions in which there would be other appropriately qualified persons are not specified (for example, the position of Deputy Director-General or chief inspector) because position names can change and this approach avoids cumbersome definitions. This extends the persons beyond just the commissioner who can undertake this function. This is necessary because the function and role of the commissioner may vary i.e. be more advisory or part time in nature. This amended approach is similar to the approach in other safety jurisdictions where more than one person can also take proceedings for an offence. New subsection (5A) provides that the chief executive's authorisation is sufficient to authorise an inspector or other appropriately qualified person to continue proceedings in a case where the court amends the charge, warrant or summons.

Insertion of new pt 20, div 4

Clause 210 inserts a new part 20, division 4.

New - Division 4 Transitional provision for Water Reform and Other Legislation Amendment Act 2014

New section 303 - Application of joint interaction management plan provisions

New section 303 provides transitional provisions for the application of the joint interaction management plan provisions in part 4, division 3A of the Coal Mining Safety and Health Act inserted by the Bill. Section 64C sets out the application from commencement to a coal mine if coal mining operations are carried out or are to be carried out in an overlapping area, but part 4, division 3A will not apply to a coal mine under a coal mining lease to which the Mineral Resources Regulation, chapter 2, part 4, division 4 applies.

Subsection (1) confirms that the pre-amended Coal Mining Safety and Health Act continues to apply in relation to a relevant coal mining lease granted before the commencement to which the Mineral Resources provision applies that is in an overlapping area with a petroleum lease, as if the joint interaction management plan provisions in the Coal Mining Safety and Health Act had not commenced. Subsection (1) states that the joint interaction management plan provisions do not apply to a coal mining lease mentioned in the Mineral Resources Regulation, section 23(1). The Mineral Resources Regulation will continue to apply instead to these relevant coal mining leases in an overlapping area with a petroleum lease. However, these relevant leases will have to transition to the requirements for joint interaction management plans under the amendments to the Mineral Resources Regulation and will be subject to chapter 2, part 4, division 4 of the Mineral Resources Regulation, as in force from time to time. This is because the Mineral Resources Regulation which contains requirements for existing relevant coal lease interactions with overlapping petroleum leases, will also be transitioned through amendments and made more consistent with the requirements for the joint interaction management plan under part 4, division 3A of the Coal Mining Safety and Health Act, over a transitional period of six months and also provided with recourse to arbitration for resolving disputes.

Subsection (2) confirms that the pre-amended Coal Mining Safety and Health Act continues to apply in relation to other overlap combinations involving exploration tenures, for a period of six months, to provide time for transitioning to compliance with the new joint interaction management plan provisions in the Coal Mining Safety and Health Act. Subsection (2) explains this by stating that the joint interaction management plan provisions do not apply in relation to the following overlapping activities for a period of six months, with the six months starting to run on the commencement date. The overlapping activities identified are coal mining operations carried out in an overlapping area the subject of an exploration permit (coal) or mineral development licence (coal), if an activity under an authority to prospect (coal seam gas) or petroleum lease (coal seam gas) is also carried out in the overlapping area. The definitions of the tenures are the definitions of the tenures in the Common Provisions Act. The respective tenures will have been granted under the Mineral Resources Act or the Petroleum and Gas Act.

The joint interaction management plan provisions otherwise will apply from commencement to coal tenures (mining lease, exploration permit, or mineral development licence, that

become overlapping with petroleum (coal seam gas) tenures (petroleum lease or authority to prospect) after commencement.

Subsection (3) provides definitions for joint interaction management plan provisions, Mineral Resources provision, petroleum lease, pre-amended Act, and relevant coal mining lease.

Amendment of sch 2 (Subject matter for regulations)

Clause 211 amends schedule 2 (subject matter for regulations) to replace the reference to 'principal hazard management plan' in item 32 with 'joint interaction management plan'. This amendment accords with the amendment of division 5, subdivision 1 of the Petroleum and Gas Act which replaces references to a principal hazard management plan with references to a joint interaction management plan, as a principal hazard management plan under the Petroleum and Gas Act has essentially been about operating plant affecting the safe operation of overlapping or adjacent coal mining operations. Under section 705B of the Petroleum Gas Act principal hazard management plan has had a different meaning to principal hazard management plan under the Coal Mining Safety and Health Act. The meaning of principal hazard management plan under the Coal Mining Safety and Health Act has not changed, and the Petroleum and Gas Act will no longer include the term principal hazard management plan as it has been replaced with the term joint interaction management plan.

The clause also amends the subject matter for regulations to include the responsibilities and obligations of site senior executives in an overlapping area including in relation to joint interaction management plan.

Amendment of sch 3 (Dictionary)

Clause 212 adds definitions for arbitration, authorised activities operating plant, Common Provisions Act, IMA, joint interaction management plan operating plant, operator, overlapping area, RMA and SOZ to the schedule 3 dictionary and amends the meaning of safety and health management system to not only include requirements under section 62 and if it applies, section 62A but also requirements under part 4, division 3A, for joint interaction management plans or under chapter 2, part 4, division 4 of the Mineral Resources Regulation, if it applies.

Division 2 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 213 states that this division amends the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 10 (What is a resource authority)

Clause 214 amend section 10 to ensure the a water monitoring authorities under the Mineral Resource Act 1989 are considered resource tenures for the purpose of the Mineral and Energy Resources (Common Provisions) Act 2014.

Amendment of s 175 (Application of div 4)

Clause 215 amends section 175 so that chapter 4 part 4 division 4 providing for a dispute resolution process between resource authority holders also applies to a dispute mentioned in the Coal Mining Safety and Health Act, section 64E(3) or 64E(4) or 64H(7); a dispute mentioned in the Petroleum and Gas Act, section 705B(3), 705B(4) or 705CB(7); or a dispute mentioned in the Mineral Resources Regulation, section 25(3), 25(4) or 28(7).

Division 3 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended

Clause 216 states that this part amends the *Mining and Quarrying Safety and Health Act 1999.*

Amendment of s 234 (Proceedings for offences)

Clause 217 amends section 234 to also enable the chief executive, or other appropriately qualified person, with the written authorisation of the chief executive, either generally or in a particular case to take proceedings for an offence against the Mining and Quarrying Safety and Health Act. The names of positions in which there would be other appropriately qualified persons are not specified (for example, the position of Deputy Director-General or chief inspector) because the name of positions can change and this approach avoids cumbersome definitions. This extends the persons beyond just the commissioner who can undertake this function. This is necessary because the function and role of the commissioner may vary i.e. be more advisory or part time in nature. This amended approach is similar to the approach in other safety jurisdictions where more than one person can take proceedings for an offence.

New subsection (6) provides that the chief executive's authorisation is sufficient to authorise an inspector or other appropriately qualified person to continue proceedings in a case where the court amends the charge, warrant or summons.

Division 4 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 218 provides that this division amends the Petroleum and Gas Act. A note draws attention to minor amendments in schedule 3 which change the name 'safety management plan' throughout the Petroleum and Gas Act to 'safety management system'.

Replacement of ss 386 - 389

Clause 219 replaces sections 386 to 389 with new section 386.

New section 386 - Requirement for joint interaction management plan

New section 386 subsection (1) of new section 386 sets out the application of the section and retains application to a person (the operator) who proposes to be an operator of operating plant in the area of a petroleum tenure and the activities carried out or proposed to be carried out may affect the safe mining of coal in the area of a coal or oil shale mining tenement.

Subsection (2) of new section 386 provides that chapter 9, part 4, division 5, subdivision 1 applies to the operator, as if the operator, coal or oil shale mining tenement, and site senior executive for the coal or oil shale mining tenement mentioned in subsection (1) as if they are referred to in chapter 9, part 4, division 5, subdivision 1 as an operator of an authorised activities operation plant, overlapping area, and site senior executive.

The new section 386 applies the requirements for a joint interaction management plan to any petroleum tenures overlapping with a coal or oil shale mining tenement prior to the commencement of the Common Provisions Act.

Amendment of s 392BO (Application of provisions for resolving disputes about reasonableness of proposed provision)

Clause 220 is a consequential amendment to section 392BO due to the replacement of sections 386 to 389 with new section 386.

Amendment of s 669 (Making safety requirement)

Clause 221 adds responsibilities and obligations of operators and site safety managers in an overlapping area including in relation to joint interaction management plans to safety requirements that can be made under a regulation.

Amendment of s 674 (Requirement to have safety management plan)

Clause 222 amends section 674 to change the references to safety management plan to safety management system and the reference to principal hazard management plan to joint interaction management plan. The change of word from plan to system better reflects the existing requirement which by definition in the dictionary and by its content nature in section 675 and section 678A is a dynamic system rather than a single document as might be inferred from the word plan. The change ensures that there is no confusion between the overlapping tenure parties when discussing and utilising the coal mine safety and health system and the petroleum operating plant safety management system.

Amendment of s 675 (Content requirements for safety management plans)

Clause 223 amends section 675(1) to change references from safety management plan to systems and to require the safety management system to include details of the site safety manager. As the system is a dynamic document this ensures there is always a point of truth of who the site safety manager is at a plant.

It also amends subsection (1)(t) to update requirements for the content of the safety management system if the operating plant is a major hazard facility. The reference to the superseded National Occupational Health and Safety Commission standard providing a definition of and classification of a major hazard facility is omitted in subsection (1)(t) and in the definition subsection (5). The amended subsections instead refer to the Work Health and Safety Regulation 2011 and its relevant schedules 16, 17 or 18 which have replaced the superseded National Occupational Health and Safety Commission standard for the regulation of major hazard facilities.

Amendment of s 675A (Generic safety management plans)

Clause 224 amends section 675A to change references from safety management plan to safety management system.

Amendment of s 678A (Requirement to have resulting records for safety management plan)

Clause 225 amends section 678A to add records about the details of the operator mentioned in section 675(1)(c) and the site safety manager mentioned in section new section 675(1)(cb) to resulting records.

Amendment of s 688 (Executive safety manager's general obligations)

Clause 226 amends section 688 to replace the reference to 'employees' with 'workers' so that the consultation that is conducted at the plant before the safety management system is made not only includes employees of the holder of the authority or tenure but also persons contracted to carry out work. 'Worker' in schedule 2 is more broadly defined than employee, as it is defined to mean a person who is employed or contracted to carry out work.

Amendment of ch 9, pt 4, div 5 hdg (Additional obligations of operator of operating plant on coal or oil shale mining lease)

Clause 227 amends the chapter 9, part 4, division 5 heading, so that the requirements of the division placing obligations of operating plant on coal or oil shale mining leases, no longer apply only to leases but to all coal resource authorities in addition to leases.

Replacement of ch 9, pt 4, div 5, sdiv 1 (Principal hazard management plans)

Clause 228 replaces chapter 9, part 4, division 5, subdivision 1 with the requirements for joint interaction management plans. Prior to this amendment the equivalent plan was termed a principal hazard management plan. This term has a particular meaning under the Coal Mining Safety and Health Act but when used in this pre-amended Petroleum and Gas Act it essentially covered interaction management where there is overlapping operations with coal. It has consequently been renamed a joint interaction management plan to harmonise with the new equivalent term under the Coal Mining Safety and Health Act.

These amendments improve the current framework for overlapping activities by requiring agreed joint interaction management plans and provide for arbitration, an alternative dispute resolution process. Disputes between the industry parties will be able to be resolved in a fast, final (as between the industry parties) and fair manner through this process but this will not limit the Petroleum and Gas inspectorate's ability to regulate safety and health.

As part of the amendments, there is harmonisation of some key terminology (joint interaction management plan and safety management system) across both industries, to clarify the approach and language to safely managing interactions across overlapping coal and coal seam gas tenures under the Coal Mining Safety and Health Act and Mineral Resources Regulation and Petroleum and Gas Act.

New - Subdivision 1 Joint interaction management plans

New section 705 - Application of sdiv 1

New section 705 is amended so that the subdivision also applies if an operating plant other than a coal mining-coal seam gas operating plant is operated in the area of a coal resource authority. Coal resource authority is defined in the Common Provisions Act. The section is amended to refer to this new inclusion and also the existing overlapping arrangements under the pre-amended section 386 and section 705 as each being an overlapping area. This also assists in transitioning existing overlapping arrangements to the joint interaction management plan requirements and arbitration option if there are any disputes.

The application of subdivision 1 through section 705(a) covers operating plant being operated in any of the overlapping areas identified in the section, so whenever section 705(a) applies other sections such as section 676 will also apply. For example, in the case of section 676, the operator of an operating plant will need to keep a copy of the safety management system including the joint interaction management plan if there are operations in an overlapping area, open for inspection.

The overall policy objective of the new subdivision is to ensure that safety outcomes are not compromised by the less restricted overlapping tenure operating arrangements where both coal and coal seam gas obligation holders are operating safely through joint interaction management plans with an acceptable level of risk, over the same piece of ground. Obligation holders are to operate under the same safety procedures as the procedures apply to their respective activities under their agreed joint interaction management plan which is part of their respective safety management system.

Agreed joint interaction management plans or arbitration outcomes to reach an agreed joint interaction management plan must comply with legislative and regulatory requirements and are subject to Inspectorate directions or other compliance actions by the Inspectorate. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

Existing safety provisions have been amended accordingly wherever possible and there has been further harmonisation of some key terms (joint interaction management plan and safety management system) across both industries. This is to minimise potential confusion from varying terminology relevant to both industries safely managing interactions across overlapping coal and coal seam gas tenures under the Coal Mining Safety and Health Act and regulation, the Petroleum and Gas Act and Regulation and Mineral Resources Regulation.

New section 705A - Definitions for sdiv 1

New section 705A provides definitions for the subdivision which derive from the definition in the Common Provisions Act for coal resource authority and definitions are also provided for authorised activities operating plant, joint interaction management plan, overlapping area and site senior executive.

New section 705B - Requirement for joint interaction management plan

New section 705B sets out the requirement for a joint interaction management plan which must be made by the operator of the authorised activities operating plant before the carrying

out activities in the overlapping area. The plan will apply to all operators of operating plants in the overlapping area. It is intended that the operator of the authorised activities operating plant (i.e. the principal petroleum and gas operator) will consult with all operators of any other operating plant working within the petroleum authority in the overlap area and coordinate their input into the joint interaction management plan in regard to the petroleum and gas activities. This will ensure all hazards arising from all petroleum activities in the overlapping area are identified, and in order to reach agreement with the site senior executive. The joint interaction management plan will apply to all operators and their activities in the overlapping area, and not only the principal petroleum and gas operator. This consultation and inclusion of all operators is also part of compliance requirements for the content for the joint interaction management plan i.e. identifying the hazards and risks to be controlled in the overlapping area.

The operator of an authorised activities operating plant must through consultation or arbitration with the site senior executive make a joint interaction management plan that complies with new section 705C. Once the joint interaction management plan has been agreed the operator or operators, if there is more than one, must ensure compliance with the joint interaction management plan which will be part of the safety management system.

Should there be a dispute about key issues including the content of the joint interaction management plan, this can be referred to arbitration, so that the operator and site senior executive reach an agreement which is final, as it applies to them. Reasonable attempts must be made to consult and if agreement cannot be reached within three months of receiving a copy of the joint interaction management plan, the operator must apply for arbitration of the dispute. Either party can however, apply for arbitration of the dispute at any time. An agreed or arbitrated outcome will not affect the ability of the inspectorate to regulate should there be concerns about any safety issues. Any final agreements reached through arbitration by the parties will not limit either inspectorate's ability to regulate under the respective Acts. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

New section 705C - Content of joint interaction management plan

New section 705C sets out requirements for the joint interaction management plan. The joint interaction management plan is to be part of the safety management system that is required under the Petroleum and Gas Act. Under section 705C, the joint interaction management plan must be stored and kept with the other parts of the safety management system which must be an auditable documented system under the definition of safety management system in the Petroleum and Gas Act. The joint interaction management plan must also identify each IMA, RMA and SOZ, if any, in the overlapping area. 'If any' is a drafting technique used to indicate something may or may not exist. Through any bespoke arrangements, the parties may or may not have identified an IMA, RMA and SOZ.

Under section 103 of the Common Provisions Act, an agreed joint development plan includes 'bespoke agreements'. There will only be a requirement for the joint interaction management plan to include the IMA, RMA, FMA, and SOZ, if these areas have been identified.

Other requirements for the joint interaction management plan relate to identifying hazards and risks to be controlled and triggers or material changes which must be monitored and which will require the plan to be reviewed. Response procedures and times and reporting

procedures are also included in the joint interaction management plan. Proposed or likely interactions with other persons in the overlapping area and associated risks from the interactions are also included in the joint interaction management plan, together with the safety responsibilities of each person including stating the names of key safety persons responsible for the coal mining operations in the overlapping area.

The joint interaction management plan also includes a description of the way it will be reviewed and revised including through ongoing consultation with persons in the overlapping area, and it must also describe the way in which the details of any new operator or site safety manager will be communicated to the site senior executive. It is important the parties have a defined way of communicating changes in details of the key persons responsible for the joint interaction management plan.

Further requirements for the content of the joint interaction management plan may be provided for in the regulations. Subsections (2) and (3) note that the potential hazard guide in the Coal Mining Safety and Health Regulation, schedule 1A is a non-exhaustive list of potential hazards that may be created by coal mining operations in relation to exploring for or producing coal seam gas or petroleum and must be used as a guide to assist in identifying and assessing risks and hazards.

Subsection (4) is intended to remove any doubt that a joint interaction management plan may apply to more than one overlapping area.

New section 705CA - Notification of making of joint interaction management plan

New section 705CA provides that as soon as practicable after making a joint interaction management plan and before the carrying out of activities in the overlapping area, the operator of the authorised activities operating plant must notify the chief inspector that the joint interaction management plan has been made. This provision is to ensure that the chief inspector is notified before any overlapping activities occur, and that the joint interaction management plan has been agreed with coal site senior executive.

New section 705CB - Review

New section 705CB sets out the requirements for operators to review and if necessary revise the joint interaction management plan and for changes by the operator of the authorised activities operating plant to be agreed with the site senior executive in the overlapping area. Again the operator of authorised activities operating plant (i.e. the principal petroleum and gas operator) will consult with operators of any other operating plant working within the petroleum authority in the overlap area and coordinate their input into the review. The joint interaction management plan must be reviewed and revised, if it is proposed to change a joint interaction management plan, or a change in the overlapping area or at an operating plant is likely to give rise to a new risk at the operating plant or in the overlapping area, or if an additional risk is identified, or consultation with workers indicates a review is necessary, or a risk control measure did not control the risk it was implemented to control to an acceptable level. The change in the overlapping area or at an operating plant could relate to a change to the operating plant itself or any aspect of the overlapping area or a change to a system of work, process or procedure at the operating plant or in the operating area. The operator of an authorised activities operating plant must review the joint interaction management plan in consultation with all other operators in the overlapping area and the site senior executive in

the overlapping area and any other workers to the extent they are affected by the matters under review.

Subsection (3) states that the operator of the authorised activities operating plant must review and if necessary, revise the joint interaction management plan. Subsection (4) states that the review must take place in consultation with the operators of each operating plant in the overlapping area, the site senior executive of the coal mine and any other workers to the extent they are affected by the matters under review.

Subsection (5) sets out when the review must take place. Subsection (6) provides that a revision of the joint interaction management plan must be recorded on the joint interaction management plan.

Subsection (7) confirms that if the operator of the authorised activities operating plant and the site senior executive cannot agree on the content of the revision of the joint interaction management plan, either party may apply for arbitration of the dispute.

Amendment of s 728B (Interim licence or authorisation)

Clause 229 amends section 728B to clarify the section by substituting the word 'experience' for 'skills', as both competencies and experience are related to holding a gas work licence under section 675. The amendment extends the period of time for which the interim authority can be granted from one year to three years. This will mean fewer applications need to be made by an interim licence holder.

Insertion of new ss 731A and 731B

Clause 230 inserts two new sections based on comparable provisions in the Coal Mining Safety and Health Act to address a gap in the Petroleum and Gas Act compared to other safety and health legislation. Similar provisions are also in the *Work Health and Safety Act 2011*.

New section 731A - Person may owe obligations in more than 1 capacity

New section 731A confirms that a person on whom an obligation is imposed may be subject to more than one safety and health obligation. For example, this may arise because a person may be in more than one category of obligation holder.

New section 731B - Person not relieved of obligations

New section 731B confirms that nothing in the Petroleum and Gas Act that imposes an obligation on a person relieves another person of the person's obligations under the Petroleum and Gas Act. For example, several persons may hold the same obligations and each must comply with the obligations.

Amendment of s 736 (Functions)

Clause 231 amends section 736 covering the functions of inspectors and authorised officers to add a function related to emergencies to harmonise with the function of coal inspectors and inspection officers related to emergencies. The new function for petroleum and gas inspectors and authorised officers extends the existing emergency functions to provide advice and help that may be required from time to time during emergencies at operating plants that may affect

the safety and health of persons. Adding the additional function has triggered the renumbering of some other subsections.

Amendment of s 834 (Other evidentiary aids)

Clause 232 amends section 834 to confirm that a certificate may be signed not only by the chief executive, but also alternatively by the commissioner, the chief inspector, an inspector or an authorised officer.

Amendment of s 837 (Offences under Act are summary)

Clause 233 amends section 837 so that all offences are taken in a summary way under the *Justices Act 1886* and moves proceedings entirely away from the industrial jurisdiction to the mainstream court system. This amendment overcomes the previous problem of the possible splitting of proceedings across both the Magistrates and Industrial Magistrates Courts (identified in The Crown v Tredinnick, Justin Smith, Lammas and David Springer (11 May 2012)) by ensuring that all proceedings for an offence against the Petroleum and Gas Act are taken in a summary way under the Justices Act through the mainstream Magistrates Court. By moving all proceedings to the mainstream court system this also ensures that there are rights of appeal from the magistrates, to District Court, and on to the Court of Appeal and High Court.

Section 837 is also amended to also enable the chief executive, or other appropriately qualified person, with the written authorisation of the chief executive, either generally or in a particular case to take proceedings for an offence against the Petroleum and Gas Act. The names of positions in which there would be other appropriately qualified persons are not specified (for example, the position of Deputy Director-General or chief inspector) because position names can change and this approach avoids cumbersome definitions. This extends the persons beyond just the commissioner who can undertake this function. This is necessary because the function and role of the commissioner may vary i.e. be more advisory or part time in nature. This amended approach is similar to the approach in other safety jurisdictions where more than one person can take proceedings for an offence.

Subsection (6) provides that the chief executive's authorisation is sufficient to authorise an inspector or other appropriately qualified person to continue proceedings in a case where the court amends the charge, warrant or summons.

Insertion of new ch 15, pt 19

Clause 233 inserts a new part 19 into chapter 15.

New - Part 19 Transitional provision for Water Reform and Other Legislation Amendment Act 2014

New section 990 - Application of joint interaction management plan provisions

New part 19, section 990 sets out the transitional arrangement for joint interaction management plans mentioned in section 705(a) or 386(1)(a) of Petroleum and Gas Act. The pre-amended Act continues to apply in relation to an operating plant and the tenure overlaps mentioned in the pre-amended Act (i.e. the Petroleum and Gas Act), section 705(a) or 386(1)(a), for a period of 6 months only after the commencement, as if the joint interaction

management plan provisions had not commenced. There is also a six month transitional period for overlaps involving a petroleum authority to prospect (coal seam gas). After six months from commencement of the amendments, compliance will be required with the amended joint interaction management plan provisions.

However, a principal hazard management plan made under the pre-amended Petroleum and Gas Act, section 705A is to be known as a joint interaction management plan for the date of commencement.

Subsection (3) provides definitions for joint interaction management plan provisions and pre-amended Act.

Amendment of sch 1 (Reviews and appeals)

Clause 235 amends schedule 1, table 1 to omit the entry for the dispute process in sections 387 and 705C as this dispute process has been omitted from the Petroleum and Gas Act and replaced with an arbitration process. The amendment adds a reference in schedule 1, table 1 to section 392BO decisions that are subject to review.

Amendment of sch 2 (Dictionary)

Clause 236 amends the schedule 2 (Dictionary) to add definitions for arbitration, authorised activities operating plant, coal resource authority, joint interaction management plan, overlapping area, safety management system, and site senior executive. The definition of safety management plan is amended to instead be a safety management system through this *clause 8 to 25* in the schedule 3 of the Bill. The definition for safety management system includes a note that if chapter 9, part 4, division 5, subdivision 1 applies for an operating plant, the safety management system under section 674 must include a joint interaction management plan. This would be the joint interaction management plan as in force from time to time.

Division 5 Amendment of Mineral Resources Regulation 2013

Regulation amended

Clause 237 states that this division amends the Mineral Resources Regulation 2013.

Replacement of ch 2, pt 4, div 4 (Conditions applying to particular coal mining leases)

Clause 238 replaces chapter 2, part 4, division 4 of the Mineral Resources Regulation.

New - Division 4 Joint interaction management plans

New section 23 - Application of div 4

New section 23 details the application of division 4 to a coal mining lease granted before the commencement of new section 23, if the coal mining operation is carried out or is to be carried out, in any specified overlapping area. The meaning of petroleum lease in section 23 indicates that these amended regulations will only apply to coal production leases overlapping with a petroleum lease granted before the commencement that was subject to the pre-amended Mineral Resources Regulation.

The overall policy objective of the amended regulations is to ensure that safety and health outcomes are not compromised by the overlapping tenure operating arrangements where both coal and coal seam gas obligation holders are operating over the same piece of ground. Obligation holders are to operate under the same safety procedures to achieve an acceptable level of risk, as the procedures apply to their respective overlapping activities, under their agreed joint interaction management plans. The joint interaction management plan is part of each party's respective safety and health management system or safety management system.

The agreed joint interaction management plans or the arbitration outcome to reach an agreed joint interaction management plans must comply with legislative and regulatory requirements and are still subject to Inspectorate directives or other compliance actions by the Inspectorate. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

Existing safety and health provisions have been amended accordingly, wherever possible, and there has been further harmonisation of some key terms (for example, joint interaction management plans) and provisions, to reduce potential confusion from varying terminology and provisions. Both coal and coal seam gas industries are to safely manage their interactions across overlapping coal and coal seam gas tenures under the respective industry applicable provisions of the Coal Mining Safety and Health Act or Mineral Resources Regulation or Petroleum and Gas Act.

New section 24 - Definitions for div 4

New section 24 provides definitions for the division. The definition for arbitration refers to arbitration of the dispute under the Common Provisions Act, chapter 4, part 6, division 4. Definitions are also provided for authorised activities operating plant and operator by reference to their meaning under sections of the Petroleum and Gas Act. A definition of joint interaction management plan is provided by reference to new section 25(1)(a). Definitions are also provided for coal mine, coal mining operations, holder, overlapping area and petroleum lease.

New section 25 - Requirement for joint interaction management plan

New section 25 sets out the requirement for a joint interaction management plan which must be made before carrying out coal mining operations in the overlapping area. The holder for the coal mine must through consultation or if agreement is difficult to reach, ultimately through arbitration with the operator for each authorised activities operating plant in the overlapping area make a joint interaction management plan that complies with new section 26. It is intended that the operator of the authorised activities operating plant (i.e. the principal petroleum and gas operator) will consult with all operators of any other operating plant working within the petroleum authority in the overlap area and coordinate their input in regard to the petroleum and gas activities. This will ensure all hazards arising from all petroleum activities in the overlapping area are identified, in order to reach agreement with the holder. This is also part of compliance requirements for the content for the joint interaction management plan i.e. identifying the hazards and risks to be controlled.

Once the joint interaction management plan has been agreed the holder must ensure compliance with the joint interaction management plan which will be part of the mine's single safety and health management system.

Should there be a dispute about the content of the joint interaction management plan, this can be referred to arbitration at any time, so that the holder and authorised activities operating plant operators reach an agreement which is final, as it applies to them. Reasonable attempts must be made to consult and if agreement cannot be reached within three months of receiving a copy of the proposed joint interaction management plan, the holder must apply for arbitration of the dispute. Either party can however, apply for arbitration of the dispute at any time. An agreed or arbitrated outcome will not affect the ability of the inspectorate to regulate should there be concerns about any safety and health issues. Any final agreements reached through arbitration will not limit the inspectorate's ability to regulate. This is provided for under chapter 4, part 6, division 4 of the Common Provisions Act, in relation to arbitration outcomes.

New section 26 - Content of joint interaction management plan

New section 26 sets out requirements for the joint interaction management plan. The joint interaction management plan is to be part of the safety and health management system required under the Coal Mining Safety and Health Act. Under section 26, the joint interaction management plan must be stored and kept together with the other parts of the safety and health management system for the mine. As part of the safety and health management system which must be an auditable documented system under section 62 of the Coal Mining Safety and Health Act, the joint interaction management plan must also be documented in a way that makes it capable of being audited.

Other requirements for the joint interaction management plan relate to identifying hazards and risks to be controlled and triggers or material changes which must be monitored and which will require the plan to be reviewed. Response procedures and times and reporting procedures are also included in the joint interaction management plan. Proposed or likely interactions with other persons in the overlapping area and associated risks from the interactions are also included in the joint interaction management plan, together with the safety responsibilities of each person including stating the names of key safety persons responsible for operating plant in the overlapping area.

The joint interaction management plan also includes a description of the way the joint interaction management plan will be reviewed and revised including through ongoing consultation with persons in the overlapping area and must also describe the way in which the details of any new site senior executive or other senior person in the management structure for the mine will be communicated to all operators. Further requirements for the content of the joint interaction management plan may be provided for in the regulations.

Subsections (2) and (3) note that the potential hazard guide in the Coal Mining Safety and Health Regulation, schedule 1A is a non-exhaustive list of potential hazards that may be created by coal mining operations in relation to exploring for or producing coal seam gas or petroleum and must be used as a guide to assist in identifying and assessing risks and hazards.

Subsection (4) is intended to remove any doubt that a joint interaction management plan may apply to more than one overlapping area.

New section 27 - Notification of making of joint interaction management plan

New section 27 provides that as soon as practicable after making a joint interaction management plan and before the carrying out of coal mining operations in the overlapping area, the site senior executive must notify the chief inspector that the joint interaction management plan has been made. This provision is to ensure that the chief inspector is notified before any overlapping activities occur, and that the joint interaction management plan has been agreed with coal seam gas safety and health obligation holders.

New section 28 - Review

New section 28 sets out the requirement for the holder to review the joint interaction management plan and for changes to be agreed with the operator for each authorised activities operating plant in the overlapping area. Again the operator of authorised activities operating plant (i.e. the principal petroleum and gas operator) will consult with operators of any other operating plant working within the petroleum authority in the overlap area and coordinate their input into the review. The joint interaction management plan must be reviewed and revised, if it is proposed to change a joint interaction management plan, or a change at the coal mine is likely to give rise to an additional risk in the overlapping area, or if an additional risk is identified, or consultation with coal mine workers indicates a review is necessary, or a risk control measure did not control the risk it was implemented to control to an acceptable level. The change at the mine could relate to a change to the coal mine environment or a change to a system of work, process or procedure at the mine. The site senior executive must review the joint interaction management plan in consultation with the operator of each operating plant in the overlapping area and coal mine workers to the extent they are affected by the matters under review.

Subsection (5) sets out when the review must take place. Subsection (6) provides that a revision of the joint interaction management plan must be recorded on the joint interaction management plan.

Subsection (7) confirms that if the holder and an authorised activities operating plant operator cannot agree on the content of the revision of the joint interaction management plan, either party may apply for arbitration of the dispute.

New section 29 - Holder must stop coal mining operations in particular circumstances

New section 29 retains the right of way approach in the pre-amended regulation.

Amendment of s 94 (Prescribed way for making applications etc. – Act, s 386O)

Clause 239 amends section 94 as a consequential amendment following the amendment of section 28.

Insertion of new ch 4, pt 10

Clause 240 provides the transitional provision for plans under the pre-amended Mineral Resources Regulation.

New - Part 10 Transitional provision for Water Reform and Other Legislation Amendment Act 2014

New section 111 - Application of joint interaction management plan provisions

New section 111 deals with the transitional application of joint interaction management plan provisions. The pre-amended regulation continues to apply to coal mining operations carried out under a coal mining lease at a coal mine in an overlapping area for a period of 6 months only after commencement. After then these coal mining operations will have to comply with the amended, new provisions in chapter 4, part 4, division 4 of the Mineral Resources Regulation. However, a plan made under the pre-amended regulation will be known as a joint interaction management plan from commencement.

Amendment of sch 6 (Dictionary)

Clause 241 amends the dictionary definitions for arbitration, authorised activities operating plant, coal mine, coal mining operations, holder, joint interaction management plan, operator, overlapping area, petroleum lease.

Part 10 Amendment of particular statutory instruments

Division 1 Amendment of Environmental Offsets Regulation 2014

Regulation amended

Clause 242 provides that this division amends the Environmental Offsets Regulation 2014.

Amendment of sch 2 (Prescribed environmental matters—matters of State environmental significance)

Clause 243 amends the definitions of relevant watercourse and vegetation management watercourse map in the Environmental Offsets Regulation to reflect changes by the Bill to the Vegetation Management Act in relation to renaming the vegetation management watercourse map to the vegetation management watercourse and drainage feature map.

Division 2 Amendment of Sustainable Planning Regulation 2009

Regulation amended

Clause 244 provides that this division amends the Sustainable Planning Regulation 2009.

Amendment of sch 3 (Assessable development, self-assessable development and type of assessment)

Clause 245 amends schedule 3 of the Sustainable Planning Regulation to remove references to drainage and embankment areas, which are being omitted in the Bill.

Amendment of sch 5 (Applicable codes, laws, policies and prescribed matters for particular development)

Clause 246 amends schedule 5 of the Sustainable Planning Regulation to remove references to drainage and embankment areas, which are being omitted in the Bill.

Amendment of sch 7 (Referral agencies and their jurisdictions)

Clause 247 amends schedule 7 of the Sustainable Planning Regulation to remove references to drainage and embankment areas, which are being omitted in the Bill.

Amendment of sch 26 (Dictionary)

Clause 248 amends schedule 26 of the Sustainable Planning Regulation to amend paragraph 2 of the definition of a watercourse as it applies to schedule 24 of the regulation, to mean the definition of watercourse for the Vegetation Management Act instead of the general definition of watercourse which refers to a watercourse under the Water Act. Reference to bed and banks is being removed as a consequence of the change in definition of watercourse for schedule 24 of the Sustainable Planning Regulation.

Division 3 Amendment of Water Resource (Great Artesian Basin) Plan 2006

Plan amended

Clause 249 states that this division amends the Water Resource (Great Artesian Basin) Plan 2006.

Replacement of s 1 (Short title)

Clause 250 replaces section 1 of the Water Resource (Great Artesian Basin) Plan 2006

New section 1 - Short title

New section 1 replaces the existing section 1 to rename from the Water Resource (Great Artesian Basin) Plan 2006 to the Water Plan (Great Artesian Basin) 2006 in order to establish the plan under the new planning framework.

Amendment of s 10 (Decisions about taking water)

Clause 251 amends section 10 of the Water Resource (Great Artesian Basin) Plan 2006 to allow for the grant of a water licence to Toowoomba Regional Council of up to 2000 megalitres for town water supply purposes. This will establish long term water access arrangements to replace the existing short term access arrangements for the Council. During the 2000's drought, government funded the construction of two Great Artesian Basin bores for Toowoomba at a time when its water security was at risk. The access arrangements established then are proposed to be continued for the long term. These arrangements mean that access to the Great Artesian Basin will be dependent on water levels in Toowoomba's dams. This allows access to the Great Artesian Basin in periods of water shortage.

Replacement of s 11 (Limitation on taking or interfering with water—Act, s 20(2))

Clause 252 replaces section 11 with a new section.

New section 11 - Limitation on taking or interfering with water—Act, s 101

New section 11 clarifies the intent of the section with respect to water authorisations held before the commencement of the plan, and with respect to the grant of certain water

authorisations mentioned in section 10(3) of the Water Resource (Great Artesian Basin) Plan 2006.

While section 10 of the plan identifies the grant of certain water authorisations as being consistent with achieving the plan outcomes for the sustainable management of water (part 3 of the plan), the amendment of section 11 will provide clarity about the interconnection of section 10 and 11. This clause amends section 11 of the plan to more clearly identify the intent of the plan with respect to the mentioned water authorisations.

New section 11 also more clearly specifies that the water entitlements that were in existence at the commencement of the water resource plan are recognised. This clarifies the intent of the plan.

Replacement of s 26 (Limitation on volume of unallocated water granted)

Clause 253 replaces section 26 with a new section.

New section 26 - Limitation of volume of unallocated water granted

New section 26 replaces section 26 of the Water Resource (Great Artesian Basin) Plan 2006 to change the unallocated water state reserve volumes in that plan. This will enable the future release of 9800 megalitres of unallocated water in the Cape management area. This will help drive economic development in western Cape York, and is supported by a peer reviewed assessment of the Great Artesian Basin resource in the Cape York area, which identified that artesian water could be used to support two new mining projects in the area, with manageable and minor effects on existing water users, the resource, or springs. The assessment took account of the cumulative impact of other existing water users and access arrangements. The unallocated water state reserve volume identified for all other management areas (other than Cape) remains at 10 000 megalitres.

Part 11 Other amendments

Acts amended

Clause 254 states that the Acts mentioned in schedule 1 are amended in accordance with schedule 1.

Plans amended

Clause 255 states that schedule 2 amends the water resource plans included in the schedule in accordance with the schedule.

Mining safety legislation amended

Clause 256 states that the Acts mentioned in schedule 3 are amended in accordance with schedule 3.

Schedule 1 Minor or consequential amendments of particular legislation

Schedule 1 details the minor or consequential amendments to the:

- *Cape York Peninsula Heritage Act 2007*
- *Coastal Protection and Management Act 1995*
- Environmental Protection (Water) Policy 2009
- *Land Valuation Act 2010*
- *State Development and Public Works Organisation Act 1971*
- Sustainable Planning Regulation 2009
- *Water Act 2000*
- *Water Supply (Safety and Reliability) Act 2008*.

Schedule 2 Amendment of Water Resource Plans

Schedule 2 renames 'water resource plans' to 'water plans' to reflect the terminology used in the new chapter 2 of the Water Act inserted under *clause 68*.

Schedule 3 Minor or consequential amendments of particular legislation relating to mining safety

Coal Mining Safety and Health Regulation 2001

Clause 1 replaces the reference in section 6A(2) to plan with joint interaction management plan.

Clause 2 omits the words 'and efficient' from section 6A(3)(b).

Clause 3 replaces the references in section 12B(1) and (2) to plan with joint interaction management plan.

Clause 4 updates section 12B(1) with the correct cross-reference to the relevant section in the amended Mineral Resources Regulation.

Clause 5 updates section 12B(2) with the correct cross-reference to the relevant section in the amended Mineral Resources Regulation.

Clause 6 omits an error in section 100AD(3) as the correct reference is to the standard under the Coal Mining Safety and Health Act and not to the standard under the Petroleum and Gas Act.

Clause 7 corrects an error by replacing a reference to a section with the correct section number.

Petroleum and Gas (Production and Safety) Act 2004

The minor and consequential amendments replace the term 'safety management plan' with the term 'safety and health management system' to harmonise with the terminology used in the Coal Mining Safety and Health Act.

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