

South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Stephen Robertson, Minister for Energy and Water Utilities

Short title

The short title of the Bill is the *South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011* (the Bill).

Objectives of the amendments

The objectives of the Bill are primarily to provide for the dissolution of Allconnex Water, (the Southern distributor-retailer which was created under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*) to provide water and wastewater services to an area covered by the Gold Coast, Logan and Redland City Councils. Allconnex is to cease providing water and wastewater services from 30 June 2012. The newly re-established water businesses of the Gold Coast, Logan and Redland City Councils will provide these services and undertake these functions from 1 July 2012.

Amendments to the Bill that are proposed to be moved during consideration in detail and are outlined in these Explanatory Notes, relate to the dissolution of Allconnex and are minor amendments that arise from:

- the report of the Environment, Agriculture, Resources and Energy Committee (EAREC) on the Bill; and
- technical issues or omissions raised during consultation on the Bill subsequent to its introduction.

The objectives of the amendments arising from the EAREC's report are to provide for necessary actions by Allconnex and the councils in the lead up to the de-merger of Allconnex Water, that is, actions taken after the Bill's introduction but prior to its passage. The amendments also provide protection for the parties in respect of such actions. These provisions are needed to allow Allconnex and the councils to undertake lawful and necessary actions before the Bill is passed, to prepare for the transition date of 1 July 2012 when all assets, instruments, employees and liabilities need to transfer from Allconnex to one or more of the councils.

The objectives of the other amendments are to provide for the earlier commencement of a provision (that is, on assent), allow for recovery of withdrawal costs incurred before the passage of the Bill, and remove the requirement of Allconnex to publish charges for 2012-13, when it will no longer be providing or charging for water and wastewater services.

Achievement of policy objectives

These amendments are to allow for necessary actions to progress the transfer of Allconnex Water's functions to the water businesses of the Gold Coast, Logan and Redland City Councils by 1 July 2012.

The amendments are in response to:

- the report of the EAREC on the Bill (with recommendations which arise either from matters raised by stakeholders with EAREC or matters raised by EAREC of its own volition); and
- matters raised by stakeholders with the Queensland Water Commission during consultation on implementation issues, since the introduction of the Bill in October 2011.

These amendments essentially provide clarification of existing provisions; provide reasonable protection to parties for actions necessary to progress the transfer of Allconnex functions, assets, liabilities and employees; or address minor technical errors or omissions in the drafting. These amendments remain within the scope of the Bill and are effective and proportional responses to the issues raised by EAREC or directly by stakeholders.

Alternative ways of achieving policy objectives

There are no viable alternatives that would achieve these policy objectives other than the proposed amendments to the Bill. Without amendment, the

Bill would not otherwise permit the necessary actions or protect parties taking such actions to implement the transfer of Allconnex Water's functions to the withdrawn councils.

Where it was possible to address EAREC or stakeholder concerns in a non-regulatory manner, that is, without legislative amendment, this was the approach taken.

Examples of non-regulatory approaches have been to provide explanatory material or guidelines on how to undertake certain actions required under the Bill, or to run workshops to ensure stakeholders understood and could implement the existing provisions of the Bill. This approach was effective in providing practical assistance to Allconnex and the withdrawn councils in dealing with withdrawal costs and preparing the retransfer scheme.

Estimated cost for government implementation

These amendments do not impose any additional administrative costs for the government to administer the Bill.

Consistency with fundamental legislative principles

These amendments do not increase or affect the matters addressed in the original Explanatory Notes for the Bill in terms of consistency with fundamental legal principles.

Consultation

As noted above, the amendments for consideration in detail arose from extensive consultation with stakeholders either by EAREC or the Queensland Water Commission, and are in response to stakeholder concerns.

Notes on provisions for amendments during consideration in detail

Clause 1 amends **Clause 2 (Commencement)** of the Bill by omitting subsection (2) which otherwise provides that section 77, to the extent that it inserts section 123, commences on proclamation. This will have the effect of section 123 (which provides for a transitional regulation-making power), commencing on assent.

Clause 2 amends **Clause 2 (Commencement)** of the Bill by renumbering subsection (3) to reflect the omission of subsection (2).

Clause 3 amends **Clause 18 (Replacement of s 51 (Local government directions relevant to duty))** of the Bill to clarify that, where a distributor-retailer is given a direction by one or more of its participating local governments, the distributor-retailer's board is not obliged to comply with the direction if this would be unlawful or constitute an offence against this Act or another Act.

Clause 4 amends **Clause 23 (Insertion of new ch 3A)** of the Bill to add to section 92AZ (Content requirements), a new requirement that a certification statement given by Allconnex and the withdrawn councils, must certify that the retransfer scheme complies with the requirements of the Act. Therefore, the content of a certification statement will align with the requirements for a retransfer scheme.

Clause 5 amends **Clause 23 (Insertion of new ch 3A)** of the Bill, to amend section 92BW (What are withdrawal costs) to ensure that withdrawal costs include relevant costs that were incurred by Allconnex or a withdrawn council in the period before the Bill is assented to.

Clause 6 amends **Clause 23 (Insertion of new ch 3A)** of the Bill, to amend section 92BW (What are withdrawal costs) in a similar way to clause 5, to include relevant costs that were incurred by Allconnex or a withdrawn council in the period before the Bill is assented to.

Clause 7 amends **Clause 23 (Insertion of new ch 3A)** of the Bill, to amend section 92CM (Effect on legal relationships) to clarify that an action under Chapter 3A does not constitute a breach of a confidence or duty.

Clause 8 amends **Clause 23 (Insertion of new ch 3A)** of the Bill, to amend section 92CM (Effect on legal relationships) to clarify what constitutes a thing done under chapter 3A or doing something under chapter 3A, by providing a range of examples.

Clause 9 amends **Clause 77 (Insertion of new ch 6, pt 6)** of the Bill, to insert a new transitional provision in the form of section 120A (Authorised exchange of information). Section 120A applies section 92BS (Authorised exchange of information) to a party to the retransfer exchanging information with another party from the period starting at the beginning of 11 October 2011 and ending on the date of assent. This ensures that any exchange of information between any party to the retransfer, if that exchange of information is necessary and desirable for any withdrawn

council's service provider functions, does not require the consent of a customer or anyone else.

Clause 10 amends **Clause 77 (Insertion of new ch 6, pt 6)** of the Bill, to insert a new transitional provision in the form of section 121A (Application of s 99ATA to withdrawn councils and Allconnex). Section 121A provides that a withdrawn council must publish its charges for water services and wastewater services for 2012-2013 on its website by 1 July 2012. Also, the requirements that would otherwise apply to Allconnex to publish its draft prices and final prices for 2012-2013 are removed.

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