Laid before the Legislative Assembly on 17 November 2011

Record of Proceedings (Hansard 17 November 2011)

Water and Other Legislation Amendment Bill 2011

Erratum to Explanatory Notes

Title of the Bill

Water and Other Legislation Amendment Bill 2011

Reason for Erratum

The Erratum is necessary to correct errors in the 'Achievement of policy objectives' and 'Consistency with fundamental legislative principles' parts of the Explanatory Notes to the Bill to ensure they are correct and properly reflect the content of the Bill.

Achievement of policy objectives

The Explanatory Notes state that amendments to the *Water Act 2000* (Water Act) will:

"provide for the South East Queensland Water Grid Manager and the Commonwealth Environmental Water Holder to apply for a water licence not attached to land and to engage in dealings with water licences, for example, enabling a water licence already attached to land to be transferred to these entities. This amendment is intended to provide the flexibility necessary for these entities to achieve the significant water reform activities for which they were originally established"

This is incorrect and misleading as, while the Bill allows a water licence attached to land to be transferred to the Commonwealth Environmental

Water Holder, this does not extend to the South East Queensland Water Grid Manager.

On page 20, the first dot point is omitted, and replaced by the following –

- 'correct an oversight by providing for the South East Queensland Water Grid Manager, already an entity able to hold a water licence not attached to land, to apply for a water licence not attached to land under section 206 of the *Water Act 2000*. This is necessary as a number of other provisions for dealing with water licences, for example amending a water licence, operate through section 206;

- 'provide for the Commonwealth Environmental Water Holder to hold water licences not attached to land, and provide a process through which a water licence already attached to land may be transferred to the Commonwealth Environmental Water Holder. This amendment is intended to provide the flexibility necessary for the Commonwealth Environmental Water Holder to acquire water licences in the Murray-Darling Basin, under Commonwealth buy-back programs, without being required to purchase land'.

Consistency with fundamental legislative principles

The Supreme Court case *William Alfred Schwennesen v Minister for Environment and Resource Management* [2010] QCA 340 established that the *Judicial Review Act 1991* does not apply to a decision to make or amend a resource operations plan. This is because the decision to make or amend is legislative not administrative in character. Given the Schwennesen decision, the justification provided for clause 90, is not correct.

Page 26, the following is omitted –

'Clause 90 of the Bill (Gulf Resource Operations Plan amended) effectively amends the Gulf resource operations plan to provide for Indigenous water reserves of unallocated water in the plan area. Under usual processes that apply under the Water Act, any decision to amend the resource operations plan would be subject to judicial review. Amending the resource operations plan by legislation therefore potentially adversely affects an aggrieved person's rights to have the decision reviewed.

The provision is justified because the amendments are beneficial to indigenous people in the plan area and the water allocated in the

indigenous reserve of unallocated water would not be available to any other person for any other purpose.

The existing Gulf water resource plan set unallocated water reserve volumes that support the potential demands identified for the 10-year life of the plan. The unallocated water volumes, with the volumes held under existing water entitlements, amount to less than 1.5% of the Gulf river systems' average annual freshwater discharge into the Gulf of Carpentaria. This means that the Gulf plan area is not viewed as being fully allocated and the additional Indigenous reserves can be made available without impacting on existing water users, or compromising the ecological outcomes of the water resource plan or the purposes of the wild river declarations. These reserves are in addition to existing reserves of unallocated water and are not being sourced from unallocated water that has already been set aside in strategic and general reserves of the existing Gulf water resource plan and resource operations plan.'

Page 26, after 'natural ecosystems and the rights of water entitlement holders.' insert –

'Clause 90 of the Bill (Gulf Resource Operations Plan amended) amends the Gulf Resource Operations Plan to provide for Indigenous water reserves of unallocated water in the plan area. This potentially makes rights and liberties, or obligations, dependent on administrative power where the power is not subject to appropriate review.

However, the Supreme Court case *William Alfred Schwennesen v Minister for Environment and Resource* Management [2010] QCA 340 established that the *Judicial Review Act* 1991 does not apply to a decision to make or amend a resource operations plan. This is because the decision to make or amend is legislative not administrative in character. Given the Schwennesen decision, the applicant is not being denied appeal rights by amending the resource operations plan by the Bill because no appeal rights would have been available in any case had the resource operations plan been amended using the usual process.

The provision is justified because the amendments are beneficial to indigenous people in the plan area and the water allocated in the indigenous reserve of unallocated water would not be available to any other person for any other purpose.'