

SOUTH EAST QUEENSLAND WATER BOARD (REFORM FACILITATION) BILL

EXPLANATORY NOTES

1. GENERAL OUTLINE

Short title

The Act will be known as the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

Objectives of the Bill

The primary policy objectives of the Bill are to:

- enable the South East Queensland Water Board ('the board'), subject to Ministerial powers of direction, to transfer the whole of its undertaking to a company incorporated under the *Corporations Law* that will be wholly owned by the State and the twelve local Governments within the current operational area of the board ('the local Governments');
- amend the *Water Resources Act 1989* to adopt some regulatory powers currently found in the *South East Queensland Water Board Act 1979*. This will be transitional pending enactment of the generic water industry regulatory regime; and
- provide for the winding up of the board and repeal of the *South East Queensland Water Board Act 1979*.

The objectives are based on the State's obligations under the *Competition Principles Agreement* to examine reform options for entities such as the board, particularly those that will give the entity a more commercial mandate. Apart from these obligations, it is important that key publicly owned enterprises are re-assessed from time to time in terms of whether their structure remains relevant to the environment in which they operate.

Reasons for the Bill

The board is currently a statutory authority under the nominal ownership of the State. However, the State receives no financial benefits from the board's operations and has very limited influence over the board, as the majority of the members of the board are local Government nominees, with the State having power only to nominate the chair of the board and rescind certain decisions of the board.

It was therefore proposed to convert the board into a company in which both the State and the local Governments could have shareholding ownership. For tax reasons, it was considered that the most appropriate way to achieve the conversion would be by the transfer, on commercial terms, of the board's undertaking (that is, its entire business and assets and liabilities) to the new company. This company would be incorporated under the *Corporations Law* and be jointly owned by the State and the local Governments.

However, at present the board does not have power under the *South East Queensland Water Board Act 1979* to transfer its entire undertaking.

The reason for this Bill is primarily to enable the transfer of the board's undertaking to the company and ultimately provide for the winding up of the board upon completion of the transfer. As matters incidental to the proposed transfer, the Bill will also provide for the continuation, on a transitional basis, of certain matters necessary for the company to assume the board's operations.

Way in which policy objective is to be achieved

The Bill gives the board power to transfer its undertaking to the company, with the approval of the Minister for Natural Resources and subject to any written directions about the transfer given by the Minister.

As the State and the local Governments will be the shareholders of the company the transfer to the company will enable the State to obtain some financial return in respect of the undertaking previously carried on by the board and to share ownership of that undertaking with the local Governments.

Alternative ways of achieving objective

One of the major challenges that reform of the board has presented (which has not existed for any of the other State businesses previously reformed) is the substantial local Government involvement in the operations of the board, both now and in the past. The State and the local Governments have agreed to a joint State/local government ownership of the board into the future. Under commercialisation or corporatisation models, whilst formal local Government ownership was not possible, the State had already indicated a willingness to share certain ownership benefits with the councils (including the possibility of the local Governments maintaining their board memberships). However, this still did not meet the needs of the local Governments, hence the proposal to transfer the board's undertaking to the joint State/local Government owned company.

Administrative cost to government of implementation

Any costs associated with the implementation of the Bill will be recovered from either the State's competition payments from the Commonwealth Government or the State's and local Governments' agreed share of the transfer proceeds. In addition to the transfer proceeds, the State will be entitled to annual dividends from the company in the future. The company will also be liable to pay State taxes for which the board is currently exempt (for example land tax).

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*, except in the following respects:

- Clause 10 of the Act provides that at the end of the settlement day described in the Act, the board is dissolved and its members go out of office. There is no provision for compensation to be payable to the board members because there is no contract to pay the board members for a specified period of time. The removal of the members of the board without compensation may be regarded as being inconsistent with the fundamental legislative principle contained in section 4(2)(a) of the *Legislative Standards Act 1992*. However, with the exception of the chair, all members

of the board are nominated by local governments and are councillors. As the majority of the board members are therefore acting on a part time basis, dissolution of the board and removal from office will not have significant effects on their livelihood. Further, they are not appointed to the board in their individual capacity but as representatives of the interests of the local Governments.

- Clause 13 inserts a new clause 215R in the *Water Resources Act 1989*, giving an authorised officer of the company power to enter land at all reasonable times after giving the occupier 14 days notice of the entry or without notice in an emergency. Entry to land without a warrant is not consistent with the fundamental legislative principle contained in section 4(3)(e) of the *Legislative Standards Act 1992*. The power is necessary because it is imperative for the company, which will for the time being be the major bulk water supplier in South East Queensland, to be able to gain access to its infrastructure or equipment in order to ensure continuity of an essential service to a large proportion of the population of Queensland and to ensure the availability of dam, river, rainfall and water quality data at all times in the interests of public health and safety.
- Clause 18 contains a transitional regulation-making power to facilitate the doing of anything to achieve the purposes of the Act. The Act enables the board (which presently comprise four nominees representing the local Governments and a chair nominated by the State) to transfer its undertaking to the company (in which the State and the local Governments will be the shareholders). It is reasonable in the circumstances to include a supplementary power in the Act to facilitate the completion of the intended transfer in a manner consistent with the proposed joint State/local Government owned company model.

Consultation

A public consultation document *Converting the South East Queensland Water Board into a joint State/local Government owned company* was circulated to key stakeholder groups in July 1999, including existing and potential new customers, employees and unions, lessees, irrigators, existing

contractors, environmental groups, recreation and community groups, local Governments (both within the proposed shareholding group and councils bordering the board's current operational area), business and consumer peak bodies and industry regulators. The public consultation document was also forwarded across departments and to agencies with interests in public accountability matters and the board. Detailed staff and union consultation has also taken place. The public consultation document addressed the need for this legislation to be enacted.

2. ANALYSIS OF THE BILL

PART 1—PRELIMINARY

Short title

Clause 1 provides that the short title for the Act is the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

Commencement

Clause 2 provides that parts 1 to 3, sections 14, 16 and 18 and schedule 2 of the Act will commence on assent and that the remaining provisions of the Act will commence on the settlement day.

Purposes of Act

Clause 3 sets out the purposes of the Act, which are to enable the board to transfer its undertaking to the company and to give the Minister powers of direction over the transfer process.

Definitions

Clause 4 provides for a dictionary of defined words and phrases, contained in schedule 2.

PART 2—TRANSFER OF BOARD’S UNDERTAKING

Board’s power to transfer its undertaking

Clause 5 gives the board power to transfer its undertaking to the company. This express power is necessary because, although the board has power under the *South East Queensland Water Board Act 1979*, amongst other things, to enter into contracts and dispose of property, those powers can only be used in furtherance of the functions set out in section 22 and for that reason would not extend to the transfer of the board’s entire undertaking.

The new power is subject to Ministerial approval and direction. This is necessary to enable the State to maintain control over the terms and conditions of the transfer, especially as it has limited, if any, other capacity to ensure the transfer occurs in accordance with the proposed joint State/local Government owned company model. A transfer by the board which is not in accordance with clause 5(2) will be of no effect.

The new power includes power to do all things incidental to the exercise of the power to transfer the undertaking and there is validation of any incidental powers which may have been exercised by the board before the commencement of the clause.

Minister’s approval to transfer

Clause 6 provides that the board must obtain the Minister’s approval for the exercise of the board’s power under section 5(1). The Minister may only approve the exercise of the power if the State has secured an indemnity in respect of certain liabilities mentioned in clause 10(2) and clause 15 and if the Minister is satisfied that the officers and employees of the board (other than the actual board members) will be offered employment with the company on their existing, or equivalent, terms and conditions.

Minister’s directions about transfer

Clause 7 sets out (without limiting the Minister’s power to give directions) the types of matters about which the Minister may direct the board. Any direction given by the Minister must be made public by being gazetted as soon as practicable and also tabled in Parliament within 14 sitting days.

Settlement day

Clause 8 provides that the Minister is to fix the day which will be the settlement day.

Board to ensure transfer proceeds are paid to State

Clause 9 requires the board to ensure that the transfer proceeds are paid to the State on the settlement day.

Dissolution of board

Clause 10 provides that at the end of the settlement day, the board is dissolved and its members go out of office. On dissolution of the board, the State stands in the place of the board for the purposes of the transfer contract.

PART 3—MISCELLANEOUS**Protection from liability**

Clause 11 provides that the Minister or a member of the board will not incur civil liability for an act done or omission made honestly and without negligence. In such case, the liability attaches instead to the State.

**PART 4—AMENDMENT OF WATER RESOURCES
ACT 1989****Act amended in pt 4**

Clause 12 provides that part 4 amends the *Water Resources Act 1989*.

Insertion of new pt 10A

Clause 13 inserts a new part 10A in the *Water Resources Act 1989*.

PART 10A—BULK WATER SUPPLY IN SOUTH-EAST QUEENSLAND***Division 1—Preliminary*****Definitions for pt 10A**

Clause 215A provides for definitions of certain words and phrases for the purposes of part 10A.

Application of pt 10A

Clause 215B provides that part 10A applies if the board transfers its undertaking to the company.

Division 2—Flood mitigation**Establishment of technical advisory committee**

Clause 215C gives the Minister discretionary power to establish a technical advisory committee.

Functions of committee

Clause 215D provides that the functions of the technical advisory committee are to advise and make recommendations to the Minister (either on its own initiative or as requested by the Minister) and to prepare a flood mitigation manual of operational procedures for flood mitigation for each of the company's reservoirs.

Committee meetings

Clause 215E provides that the technical advisory committee can meet at times and places decided by it.

Minister's approval of flood mitigation manual

Clause 215F provides that the technical advisory committee must give the Minister a copy of each flood mitigation manual that it prepares, and any proposed amendment, and that the Minister may approve the manual or amendment.

Protection from liability

Clause 215G provides that the Minister or a member of the technical advisory committee will not be civilly liable for an act done or omission made honestly and without negligence under this division. It also provides that a company official (which includes a director, employee or agent of the company) who observes the operational procedures contained in a flood mitigation manual approved by the Minister, will not be civilly liable for an act done or omission made honestly and without negligence in observing the operational procedures. In both cases, the liability attaches to the State instead.

Division 3—Protection of water quality**Purpose of div 3**

Clause 215H provides that the purpose of division 3 is to protect the quality of water in a company reservoir. This division continues a regulation-making power previously contained in the *South East Queensland Water Board Act 1979*. Ultimately this and existing provisions in the *Water Resources Act 1989* that deal with land use will need to be amended as part of the implementation of the *Integrated Planning Act 1997* through consequential amendments to other Acts.

Regulation of land use in catchment area

Clause 215I provides that a regulation can be made to regulate the use of land in a catchment area of a company reservoir or the erection and use of buildings on that land. To the extent that a planning scheme or development approval under the *Integrated Planning Act 1997* is inconsistent with such a regulation, the planning scheme or development approval is ineffective.

Effect of regulation

Clause 215J provides that a regulation made under clause 215I does not affect a power under this Act or any other Act to take action to protect the quality of water in a company reservoir.

Division 4—Protection of existing water allocations**Purpose of div 4**

Clause 215K provides that the purpose of division 4 is to protect existing entitlements to water from a reservoir transferred by the board to the company.

Existing entitlements to water continue

Clause 215L provides that an entitlement to water under the *Water Resources Act 1989* (for example, a licence to take water issued under that Act) or the *South East Queensland Water Board Act 1979* (for example, the provisions for water supply for Esk, Lowood and Glamorgan Vale Water Supply Area appearing in sections 45, 46 and 47 of that Act) which was in existence immediately prior to the settlement day, is unaffected by a transfer of the board's undertaking to the company. These allocations will be specified in a regulation to be made under clause 14.

Division 5—Company’s power to access and maintain its facilities**Definition for div 5**

Clause 215M provides for a definition of “authorised person” for this division.

Appointment of authorised persons

Clause 215N provides that a company may appoint a person to be an authorised person only if it is satisfied that the person has the necessary expertise or experience to be an authorised person or if the person has satisfactorily completed training approved by the company.

Identity card for company’s authorised persons

Clause 215O provides that the company must give each of its authorised persons an identity card, containing a photograph, signature and expiry date, to identify the person as an authorised person.

Failure to return identity card

Clause 215P provides that when a person ceases to be an authorised person, the person must return the identity card to the company within 7 days, unless there is a reasonable excuse. A penalty of 10 penalty units applies for non-compliance.

Display of authorised person’s identity card

Clause 215Q requires an authorised person to produce the identity card when exercising the powers of an authorised person and to keep the identity card clearly visible.

Power to enter places

Clause 215R provides that an authorised person may enter a place in order to inspect, operate, change, maintain, remove, repair or replace a company facility at the place. The power of entry may be exercised at any

reasonable time but only if the company has given the occupier at least 14 days prior notice of the proposed entry and advised the purpose of the proposed entry or the company needs to take urgent action in relation to its facility at the place, in the interest of public health or safety. The clause contains a definition of “facility” for the purpose of the clause.

Power to carry out activities

Clause 215S provides that when entering a place, the authorised person can only carry out the activity that is the purpose of the entry.

Compensation

Clause 215T provides that a person can claim compensation from the company for loss or expense incurred because of the exercise or purported exercise of a power of entry. A court of competent jurisdiction can award compensation if it is satisfied that it is just to do so.

Company to give notice of damage

Clause 215U provides that if, in exercising or purporting to exercise a power of entry under this subdivision, an authorised person damages anything, the authorised person must immediately give written notice of the damage to the owner of the thing, or the person in control of it. If it is not practicable to do that, the authorised person must leave the written notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

Division 6—Information request

Chief executive’s power to require information from the company

Clause 215V provides that the company must give the chief executive of the Department of Natural Resources any information which the chief executive reasonably requires to be able to perform the chief executive’s functions (those functions are set out in section 8(2) of the *Water Resources Act 1989*). The company must provide the information within a reasonable time after a request. The company is not required to give information which

might tend to incriminate it. A penalty of 200 penalty units applies for non-compliance with this clause.

Commercially sensitive information

Clause 215W provides that the chief executive must not disclose to any person any commercially sensitive information received from the company under clause 215V.

Division 7—General provisions about the company

Application of Financial Administration and Audit Act 1977

Clause 215X removes from doubt that the *Financial Administration and Audit Act 1977* does not apply to the company.

Division 8—Transitional

Existing approved manual of operational procedures for flood mitigation

Clause 215Y provides that, until the Minister approves a flood mitigation manual under division 3, the flood mitigation manual previously approved under the *South East Queensland Water Board Act 1979* for the North Pine Dam and the flood mitigation manual previously approved under the *South East Queensland Water Board Act 1979* for the Wivenhoe and Somerset Dams are taken to be the relevant flood mitigation manual approved by the Minister under division 3.

Amendment of s 250A (Regulation-making power)

Clause 14 provides for the insertion of a new subsection (4) into section 250A of the *Water Resources Act 1989*. The new subsection (4) provides that a regulation may fix a water allocation for an entity and impose conditions on that water allocation. Such conditions may include volumes and the term of the allocation. This will enable a regulation to be made under the *Water Resources Act 1989* to give the company, the entitlement holders referred to in clause 215L and other persons a water allocation.

PART 5—TRANSITIONAL PROVISIONS, REPEAL AND MINOR AMENDMENTS

State undertakes non-transferable civil liability

Clause 15 applies to any act or omission in relation to the board's undertaking that occurs before the settlement day and gives rise to a civil liability that cannot, at law, be transferred to the company and provides that the State stands in the place of the board in relation to that act or omission. Civil liability in this clause includes statutory liability but not criminal liability.

Constructing authority for particular land acquired under the Acquisition of Land Act 1967

Clause 16 applies to land which the board has acquired as a constructing authority under the *Acquisition of Land Act 1967*. Section 41 of the *Acquisition of Land Act* provides that if, within 7 years after acquiring land under the *Acquisition of Land Act*, a constructing authority no longer requires the land, it must offer the land to the former owner. Clause 16 of this Act provides that if any such acquired land is acquired by the State from the board prior to the settlement day, or is transferred to the company as part of the board's undertaking, the State or the company as the transferee as the case may be is taken to be the constructing authority for the purpose of section 41 of the *Acquisition of Land Act*. This would mean that if the land were no longer needed for the purpose for which it was originally acquired, either the State or the company would have to offer the land for sale back to the former owner in accordance with section 41.

South East Queensland Water Board By-law 1991 to continue in force

Clause 17 continues the *South East Queensland Water Board By-law 1991* in force for a transitional period of two years (unless sooner repealed). An authorised officer appointed under the by-law is taken to be an authorised officer of the company.

Transitional regulations

Clause 18 provides for the making of transitional regulations to facilitate the doing of anything to achieve the purposes of the Act. A transitional regulation may only be made within 1 year after the commencement of the clause and any such transitional regulation made will expire 1 year after the regulation commences.

Repeal of SEQWB Act

Clause 19 provides that the *South East Queensland Water Board Act 1979* is repealed at the end of the settlement day.

Act amended

Clause 20 provides that schedule 1 amends the Acts mentioned in it.

PART 6—EXPIRY**Expiry**

Clause 21 provides that the Act expires 2 years after the settlement day.

SCHEDULE 1**ACT AMENDED****QUEENSLAND COMPETITION AUTHORITY ACT
1997****Schedule, definition “water board”, paragraph (b)**

Clause 1 provides that paragraph (b) of the definition of “water board” in the *Queensland Competition Authority Act* is omitted. The effect of this is that the South East Queensland Water Board will no longer be included in the definition of “water board” for the purposes of the *Queensland Competition Authority Act*.

Schedule, definition “water board”, paragraphs (c) and (d)

Clause 2 provides that paragraphs (c) and (d) of the definition of “water board” in the *Queensland Competition Authority Act* will be renumbered to paragraphs (b) and (c).

SCHEDULE 2**DICTIONARY**

This schedule provides the dictionary, defining particular words and phrases used in the Act, as referred to in clause 4.