

Water Amendment and Other Legislation Amendment Bill 2005

Explanatory Notes

Title of the Bill

Water Amendment and Other Legislation Amendment Bill 2005

Objectives of the Bill

There are two objectives contained within the Water and Other Legislation Amendment Bill ('the Bill'). The first objective is to allow for a range of amendments to the *Water Act 2000* ('the Water Act') and the second objective is to allow for specific amendments to the *Integrated Planning Act 1997* (IPA) and the *Lake Eyre Basin Agreement Act 2001* (Lake Eyre Basin Agreement Act) and the *Land Protection (Pest and Stock Route Management) Act 2002* (Land Protection Act).

The need for the amendments to the Water Act have been identified as a result of ongoing implementation of the Water Act, to facilitate the progression of the new infrastructure in the Burnett Basin and to address issues raised in the National Water Initiative and Queensland Water Efficiency Task Force about the management of droughts and minimise leakage loss from a service provider's distribution system.

The major implementation issues to date have been those associated with the separation of land and water through the creation of tradeable water allocations. This occurs through a two stage process. First, the strategic decisions about consumptive and non consumptive balance are decided through water resource plans (WRPs). Second, the WRPs are implemented through resource operations plans (ROPs). The grant of tradeable water allocations are an outcome of the implementation of ROPs.

Water resource plans have been completed in parts of the State including the Fitzroy, Burnett, Barron and Pioneer catchments. Implementation of the WRPs in the Fitzroy and Burnett basins has commenced with the release of approved ROPs, resulting in the first grants of the new tradeable water allocations. There have been further public releases of draft ROPs for other areas, including the Barron and Pioneer basins. Consultation on the

implementation of approved ROPs and the development of water allocation trading has identified the need for amendments to the Water Act.

As a result of the ongoing implementation of the Water Act, certain limitations have been identified within the existing framework of the Water Act, and accordingly a number of amendments are proposed to give greater flexibility to the processes under the Water Act.

In particular, amendments are necessary to allow for the following:

Water Act

- To streamline the process for dealing with financial interests at the time land is separated from water on the grant of water allocations.
- To provide for licensing arrangements for multiple water service providers in a water supply scheme.
- To manage the risks associated with water trading away from authority areas.
- To grant resource operations licences and water allocations for the Burnett Basin infrastructure.
- To allow the chief executive to accept industry developed farm management systems as land and water management plans.
- To streamline the process for making amendments to a water resource plan and resource operations plan.
- To remove the provision that allows recipients of information notices to appeal non-discretionary decisions made in accordance with a water resource plan or resource operations plan where the appeal right is illusory.
- To meet commitments arising out of the arising from the National Water Initiative and the Queensland Water Efficiency Taskforce to identify and address significant leakage from water supply systems, which is recognised as one of the most cost effective strategies to achieve water conservation and to ensure that water service providers (including local governments) prepare for and respond to water shortages during periods of drought, to minimise the impacts on communities and industry.
- To clarify and improve existing enforcement provisions in relation to offence provisions.

The need for amendments to the IPA, Lake Eyre Basin Agreement Act and Land Protection Act are as follows:

IPA

- To prescribe an assessment manager for development, for which both the chief executive administering the Water Act and chief executive administering the *Environmental Protection Act 1994*, have a role in assessing.

Lake Eyre Basin Agreement Act

- To give effect to recent intergovernmental negotiations that require changes to the Lake Eyre Basin Agreement.

Land Protection Act

- To extend the termination date, due for 1 July 2005, for stock route water agreements until 1 July 2007 to enable the development of suitable alternative arrangements.

Achievement of the objectives

The Bill achieves the policy objectives as follows.

The amendments provide for streamlining the process for financial interests to be protected at the time of the separation of land and water when the new water allocations are created and to facilitate the transfer of existing mortgage interests from land to a water allocation.

Under the Bill, a moratorium may be put in place for overland flow water and subartesian water as part of the amendment process of a water resource plan currently regulating this water. The extent of the moratorium would only be on future works beyond what is currently allowed under the WRP.

The amendments provide for new licensing arrangements for operators of infrastructure involved in distributing water within a water supply scheme. In addition to a resource operations licence that may be granted to the headworks operator, a distributions licence will be granted to the operator of a distribution network.

The Bill includes amendments for the streamlining of the process for amending water resource plans and resource operations plans where public

consultation is being conducted. This will provide for a more flexible planning approach.

The Bill includes changes to the appeal process by clarifying the nature and extent of appeals currently provided for under the Act. The Act currently limits the appeal rights for non discretionary decisions made by the chief executive and made in accordance with resource operations plans. Whilst limiting the appeal the Act however requires the giving of an information notice for these decisions, which allows the recipient to commence an appeal where in fact there is no appeal right. The amendments remove the requirement for an information notice to be given in these circumstances. This is extended to non discretionary decisions made under a water resource plan. A water resource plan is subordinate legislation and may direct the chief executive to make a decision.

The amendments provide measures to be taken by water service providers to deal with leaks in their distribution systems and to better plan for droughts. Water service providers will be required to prepare system leakage management plans and drought management plans.

The Bill includes other changes to ensure the effective administration and implementation of the Act, including improving existing enforcement provisions in relation to offences.

The Bill amends IPA to prescribe the chief executive administering the Act as an assessment manager for development for carrying out quarry extraction for which an allocation notice is required under the Act and that also includes carrying out prescribed environmentally relevant activities.

The Bill amends the Lake Eyre Agreement Act to give effect to recent amendments to the agreement including the States and Territories to be bound or not bound by the agreement and changes to the boundary of the Lake Eyre Agreement area.

The Bill amends the Land Protection Act to defer the termination date, due for 1 July 2005, of stock route water agreements until 1 July 2007 to enable the development of suitable alternative arrangements.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than by the Bill.

Estimated cost for government implementation

The Bill will not alter the cost to the government of implementing the Act. In fact it is hoped that simplifying certain administrative procedures may reduce the cost to the government of administering the Act.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in the section 4 of the *Legislative Standards Act 1992*.

Aspects of the Bill that raise possible breaches of fundamental legislative principles are outlined below:

Failure to produce document or information

It is arguable this provision may constitute a breach of the fundamental legislative principles with regard to protection against self-incrimination. The existing provisions in the Water Act currently provide for the power to require information and the power to require a document to be produced. However they provide an excuse for failure to provide the information or the document on the basis that it might incriminate the individual. The amendment removes this excuse.

The amendment is required to avoid the situation where an employee of a company can decline to provide information or produce a document thereby making it extremely difficult to obtain sufficient information against the corporate entity regarding an alleged offence. In effect, a corporation can currently affectively choose to accept a lesser penalty rather than risk prosecution for an offence.

A safeguard is provided in that the information or document may not then be used to prosecute the individual required to provide it. Consequently the individual is protected against the consequences of self-incrimination. A similar provision is provided under the *Vegetation Management Act 1999* and the *Fair Trading Act 1989*. In addition it should be noted that the High Court has determined that a corporate entity is not entitled to protect itself against self-incrimination.

Power to obtain criminal history

This provision that enables delegated officers access to advice about a person's criminal history may be considered a breach of the right to privacy. However this right must be balanced against an officer's right to a safe and secure working environment, and the obligation of the State to provide such an environment to its employees. Authorised officers are unarmed, and may work in remote areas with sometimes little assistance should they be confronted with a violent or dangerous situation.

The provision gives delegated officers the ability to obtain advice as to whether a person has a history of offences involving violence or firearms, before entering a place where the person is likely to be present. This provides an opportunity for the authorised officer to request to be accompanied by a police officer if it is considered that unaccompanied entry to a place would create an unacceptable level of risk to the authorised officer's safety.

The proposed amendments provide stringent safeguards regarding use, communication and confidentiality of criminal history information provided.

A similar provision is provided under the *Vegetation Management Act 1999*.

Clarifying appeals against certain decisions

Currently section 851(2) of the Act limits the extent to which an appeal is available for decisions made under a resource operations plan. A decision may only be appealed to the extent that the decision is inconsistent with the plan or to the extent a different decision, consistent with the plan, could have been made. In cases where the chief executive makes a decision consistent with the plan and where a different decision, consistent with the plan, could not have been made, the chief executive is not making a discretionary decision. In this case, the giving of an information notice, essentially is giving an illusory appeal right under the terms of section 851(2).

These circumstances apply equally to decisions made under a water resource plan. A water resource plan is subordinate legislation and the chief executive is bound to follow the requirements of the water resource plan. If the chief executive makes a decision consistent with the plan and where a different decision, consistent with the plan, could not have been made, the chief executive again is not making a discretionary decision.

Water resource plans and resource operations plans are publicly released as draft plans before being finalised and approved. Submissions received are considered as part of the preparation of the final plan.

The amendment provides that in these cases the chief executive need only give a written notice stating reasons for the decision. A recipient of this notice in any event is still afforded rights of review of this decision under the *Judicial Review Act 1991*. In all other cases, an information notice is given for all discretionary decisions made by the chief executive in accordance with a water resource plan or resource operations plan.

Consultation

Government Departments and Agencies affected by the changes have been consulted in respect of the Bill.

AgForce, Queensland Farmers Federation, Queensland Conservation Council, CANEGROWERS, Queensland Cotton, Environmental Defenders Office, the World Wide Fund for Nature, Local Government Association of Queensland, SunWater and Australian Bankers Association have been consulted on the Bill.

Particular amendments to streamline the processes for dealing with financial interests when land title is separated from water, on the grant of new water allocations, have been negotiated with, and have the support of, the Queensland Farmers Federation and the Australian Bankers Association.

Notes on Provisions of the Bill

Part 1 Preliminary

Short title

Clause 1 provides the short title to the Bill as the *Water and Other Legislation Amendment Act 2005*.

Commencement

Clause 2 provides for when the Bill commences.

Part 2 Amendment Of Water Act 2000

Act amended in pt 2

Clause 3 provides that the Bill amends the *Water Act 2000* (Water Act).

Amendment of s 20 (Authorised taking of water without water entitlement)

Clause 4 amends section 20 of the Water Act to clarify how the Act regulates overland flow water under subclause (1) and to correct minor errors under subclauses (2) and (3). In relation to overland flow water, the amendment deletes the reference to 'interfere with'. Section 20 of the Water Act provides for the authorised taking of water without a water entitlement under the Act. In this context section 20 provides for how water under the Act is allocated. The taking of overland flow water is an allocation of water. However the interfering with overland flow water is not strictly a take or allocation of water. The way in which interfering with overland flow water is managed is through the regulation of works associated with the interfering with the water. These works constitute development within the meaning of IPA. Therefore it is more appropriate that interfering with overland flow water is managed through the IDAS process. Related amendments under the Bill include removing the offence of interfering with overland flow water from the Act. The relevant offence for interfering with overland flow water will be a development offence under IPA where interfering with overland flow water is regulated as development under the integrated development assessment system (IDAS) and IPA.

Amendment of s 25 (Limiting water taken under water licence or permit)

Clause 5 extends the chief executive's power to limit, in times of a shortage of water, the taking of water under a water allocation that is not managed by a resource operations licence, that is, a water allocation in relation to unsupplemented water.

Amendment of s 26 (Moratorium notice)

Clause 6 allows a moratorium, in relation to works, to apply to overland flow water and subartesian water that may be currently regulated under a water resource plan (WRP). There may be a need for a moratorium in circumstances when the WRP requires an amendment in relation to how the overland flow water or subartesian water is to be regulated in the future. The extent of the moratorium would only be on future works beyond what is currently allowed under the WRP. In addition, the amendment clarifies the offence in subsection (6) extends to a moratorium notice the effect of which has been amended or continued under a WRP.

Amendment of s 36 (Obtaining water information)

Clause 7 allows the chief executive to give a notice, for the purpose of obtaining information, to a person who is authorised, or has an entitlement, to take or interfere with water, under the Water Act. Currently, such a notice is limited to a person authorised only under Chapter 2 of the Act. The amendment allows the chief executive to request information from all persons or entities authorised under the Act, for example, water authorities and certain authorisations that have been transitioned under chapter 9 of the Act from previous authorisations granted under the *Water Resources Act 1989*. In addition, a new subsection (e) is added to allow a request for information about the taking or delivering of water by the person under the person's authority. This allows the chief executive to obtain necessary and relevant information for water planning and water monitoring purposes.

Amendment of s 37 (Notice of works)

Clause 8 renames the heading to section 37 to refer to both works and water use, consistent with the terms of the provision.

Amendment of s 38 (Minister may prepare water resource plan)

Clause 9 removes the reference to 'interfering with' in relation to overland flow water. This is consistent with the earlier amendment to section 20 of the Water Act removing interfering with overland flow water as part of the allocation of water framework under the Act.

Amendment of s 46 (Content draft of water resource plan)

Clause 10 removes the reference to ‘interfering with’ in relation to overland flow water. This is consistent with the earlier amendment to section 20 of the Water Act removing interfering with overland flow water as part of the allocation of water framework under the Act. The amendment allows the water resource plan to identify the types of works for interfering with overland flow water that are intended to be assessable or self-assessable for the purpose of IPA. This establishes the framework for how interfering with overland flow water is to be regulated by managing works that interfere with overland flow water as development through IDAS under IPA.

In addition, an offence is included for the contravention of a continuing moratorium under the water resource plan provided for under section 46(3). Currently the Act only provides for an offence for the contravention of a moratorium notice.

Amendment of s 55 (When water resource plans may be amended or replaced)

Clause 11 amends the basis on which the Minister must amend or replace a water resource plan for consistency with an earlier amendment to section 54. Under section 54, the Minister’s report on a plan should include an assessment of the plan’s effectiveness of the implementation of the plan in achieving its outcomes rather than objectives.

Amendment of s 56 (Preparing amending or new draft water resource plan)

Clause 12 provides for an alternative process for amending a water resource plan (WRP) where the amendment constitutes a change of substance. Currently a draft amendment WRP that deals with a change of substance must be prepared and approved in accordance with section 56. This means that a notice of intention about the draft amendment WRP must first be published followed by the later public release of the draft amendment WRP. The amendment allows the Minister to proceed straight to the public release of the draft amendment WRP (for an amendment that constitutes a change of substance), otherwise than under section 56 or 57 if the:

- Minister is satisfied that sufficient public notice of, and opportunity to make submissions on the proposed amendment, is achieved without the need to first give notice of an intention to amend the plan; or
- The WRP itself has identified this type of stated amendment that may be amended under this process.

Amendment of s 74 (Applying for approval of land and water management plans)

Clause 13 amends section 74 so a person may apply for the approval of a farm management system as a land and water management plan. A person may make an application of this type where the person holds a certificate from an organisation that has been approved to provide an accredited farm management system program. The certificate will state that the person's farm management system satisfies the requirements of the farm management system program. An application of this type must include the certificate.

This amendment and the amendments to section 76 and 77 are linked to amendments to section 1014 (Regulation-making power) that are also contained in the Bill.

Amendment of s 76 (Criteria for deciding application for approval of land and water management plan)

Clause 14 amends this section to recognise changes made to section 74 about applications for approval of a person's farm management system as a land and water management system. In this case, an application of this type will be considered under the criteria provided under section 78 excluding subsection (1)(a) as this aspect of the provision is not relevant.

Amendment of s 77 (Deciding application for approval of land and water management plan)

Clause 15 amends this section to deal with decisions about applications under the amended section 74. In this case where the chief executive decides to grant an application for approval of a person's farm management system as a land and water management system subsection (4) will not apply, as it is not relevant. Additionally this section states that the farm management system that is approved under this section is taken to be an approved land and water management plan under the Water Act.

This means the sections 78 and 78A, about amending a land and water management plan, and the relevant offence provision, section 810, about complying with an approved land and water management plan, apply to the approved farm management system.

Amendment of s 101 (Additional requirements for notices for draft resource operations plans that establish water allocations)

Clause 16 amends section 101 in a number of ways. New subclause (1)(c), together with an amendment made to section 150 under the Bill, provides for an additional process under the Act for an entity, with an existing interest in a water entitlement to be converted to a water allocation, to have its existing interest recorded against the water allocation when it is granted on commencement of resource operations plan. For this process, a new notice under subclause (1)(c) may be given by an existing interest holder, in addition to the existing section 101(b) notice (which will become a 101(1)(b) notice with these amendments).

The amendment allows 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, to give notice 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. If this notice is given to the chief executive, the registrar of the water allocations register is then required to record the clause 101(1)(c) consent against the water allocation on the day it is granted. An amendment to section 150 details how the registrar records the 101(1)(c) notice and what the effect is of recording the notice against the water allocation.

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

New section (2) declares a specified entity to be an existing interest holder and its existing interest to be an interest for the purposes of subsection (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. 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 owner of the land if the licensee ceases to hold the licence, afford a mortgagee certain rights over the land and the attached water entitlement. It is necessary to ensure 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.

Amendment of s 105 (Amending resource operations plan)

Clause 17 provides for an alternative process for preparing a draft amendment resource operations plan (draft amendment ROP) where the amendment constitutes a change of substance. Currently a draft amendment ROP that deals with a change of substance must be prepared and approved in accordance with section 105(3). This means that a notice of intention about the draft amendment ROP must first be published followed by the later public release of the draft amendment ROP. The amendment allows the chief executive to proceed straight to the public release of the draft amendment ROP (for an amendment that constitutes a change of substance) if the:

- Chief executive is satisfied that sufficient public notice of, and opportunity to make submissions on the proposed amendment, is achieved without the need to first give notice of an intention to amend the plan; or
- The ROP itself has identified this type of stated amendment that may be amended under this process.

Replacement of ch 2, pt 4, div 3 hdg

Division 3 Resource operations licences and distribution operations licences

Clause 18 makes a change to recognise that this division will now apply to both resource operations licences and the new distribution operations licences.

Replacement of ch 2, pt 4, div 3 sdiv 1, hdg

Subdivision 1 Granting resource operations licences and distribution operations licences

Clause 19 makes a change to recognise that this subdivision will now apply to both a resource operations licence and the new distribution operations licence.

Amendment of s 107 (Effect of resource operations plan)

Clause 20 includes a reference to a new type of licence, the distributions operations licence.

Amendment of s 107A

Clause 21 makes provision for a new type of authority to take or interfere with water— a distributions operations licence (DOL). This licence is an authority to take water or interfere with the flow of water necessary to operate water infrastructure for the purposes of distributing water allocations. For example, an owner of infrastructure that diverts water from a watercourse and distributes that water through its distribution network, for example, off stream channels, will be granted a DOL.

The section also specifies that a resource operations licence (ROL) or a DOL may be held only by:

- the owner of the water infrastructure to which the licence applies; or
- if the owner of the water infrastructure to which the licence applies is a subsidiary company, the parent company of the subsidiary company.

Amendment of s 108 (Granting resource operations licences)

Clause 22 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Insertion of new ch2, pt 4, div 3, sdiv 1A,

**Subdivision 1A Granting distribution operations
licences other than under a resource
operations plan**

Clause 23 inserts three sections about applying for, making a decision about an application for and granting a distributions operations licence (DOL).

Most DOLs will be granted under a process specified in a particular resource operations plan. Sections 108A to 108C are intended to accommodate the following scenarios:

1. existing distribution activities operating without a DOL in areas that already have a resource operations plan, or proposed distribution activities in catchment that already a resource operations plan; and
2. the relevant resource operations plan has not specified a process for granting a DOL.

An application for a DOL can be made under section 108A. Under section 108B the chief executive may request further information from the applicant about the application. The chief executive makes a decision about the application considering the application and any additional information under section 108C.

Where the chief executive decides to grant the application, the amended sections 109 and 110 apply, respectively, for specifying aspects of the content of the licence; and detailing the types of conditions that apply to, or may be included as part of, a DOL.

Amendment of ch2, pt 4, div 3, sdiv 2, hdg

Clause 24 changes the heading of this subdivision to recognise that the associated provisions that deal with content and conditions of licences apply to both resource operations licences and distribution operations licences.

Amendment of s109, (Content of resource operations licence)

Clause 25 changes the heading and content of this section so that this provision specifies the content of a distribution operations licence and a resource operations licence.

Amendment of s110 (Conditions of resource operations licence)

Clause 26 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

The section is also amended to make it clear that a condition of a licence can include the requirement to install a meter to measure the taking of, or interfering with, water infrastructure to which the licence applies.

Amendment of ch2, pt 4, div 3, sdiv 3, hdg

Clause 27 changes the heading of this subdivision to recognise that the associated provisions about amending a licence apply to resource operations licences and distribution operations licences.

Amendment of s 111 (Amending a resource operations licence for consistency with a resource operations plan)

Clause 28 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 111A (Amending a resource operations licence under a resource operations plan)

Clause 29 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 112 (Other amendments chief executive may make to a resource operations licence)

Clause 30 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 113 (Minor or stated amendments of resource operations licence)

Clause 31 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of ch2, pt 4, div 3, sdiv 4, hdg

Clause 32 changes the heading of this subdivision to recognise that the associated provisions about transferring and amalgamating a licence applies to resource operations licences and distribution operations licences.

Amendment of s 114 (Applying for a transfer of resource operations licence)

Clause 33 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 115 (Additional information may be required)

Clause 34 amends this section so that, where the chief executive requests additional information about an application to transfer either a resource operations licence or a distribution operations licence, the application lapses if the applicant fails, without a reasonable excuse, to provide the information within the reasonable time stated in the requirement.

Amendment of s 116 (Deciding application to transfer resource operations licence)

Clause 35 amends the heading of this section to recognise that this provision applies to resource operations licences and distribution operations licences.

Amendment of s 117 (Approving application to transfer resource operations licence)

Clause 36 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 118 (Refusing application to transfer resource operations licence)

Clause 37 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 118A (Amalgamating resource operations licences)

Clause 38 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of ch2, pt 4, div 3, sdiv 5, hdg

Clause 39 changes the heading of this subdivision to recognise that the associated provisions about cancellation apply to resource operations licences and distribution operations licences.

Amendment of s 119 (Cancelling resource operations licences)

Clause 40 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Amendment of s 120 (Procedure for cancelling resource operations licences)

Clause 41 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences. The section is also renumbered to become section 119A.

Amendment of s 120A (Cancelling resource operations licences no longer required)

Clause 42 amends the heading and content of this section so this provision applies to resource operations licences and distribution operations licences.

Insertion of new ch2, pt 4, div 3, sdiv 6

Subdivision 6 Audit reports

Clause 43 inserts a new subdivision, and associated provisions, about audit reports prepared by the chief executive. The new section 119C makes provision for the chief executive to 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. The new section 119D provides for access to the licence holder's infrastructure and records for the purpose of conducting an audit.

Amendment of s 121 (Converting water entitlements)

Clause 44 provides that for a water allocation managed under a resource operations licence (ROL) there must be a supply contract between the allocation holder and the licence holder. Together with amendments made to section 122A under the Bill, there will be a supply contract in place on the day the water allocations are granted, either a supply contract as agreed between the ROL holder and allocation holder, or by default, the standard supply contract prepared by the chief executive. In this way, all water allocations will be recorded on the water allocations register on the day of grant without any delay. In addition, the exemption from requiring a supply contract between the water allocation holder and ROL holder is extended to include a situation where the ROL holder and the water allocation holder are related parties being where the ROL holder is the parent company of a subsidiary company that is the water allocation holder.

Amendment of s 122 (Granting water allocations)

Clause 45 amends section 122 consistent with the amendments made to section 121 under the Bill. The amendment provides that for a water allocation managed under a resource operations licence (ROL) there must be a supply contract between the allocation holder and the ROL holder. In addition, the exemption from requiring a supply contract between the water allocation holder and ROL holder is extended to include a situation if the ROL holder does not object to the granting of the proposed allocation. The amendment also replaces an information notice with a notice as the type of notice given by the chief executive making decisions under this part. The

decisions made about granting water allocations are not discretionary, as the chief executive must grant the water allocations in accordance with the requirements under the resource operations plan (ROP). (Submissions have already been previously made and considered about water allocations to be granted during the public consultation on the draft ROP for preparing the final ROP). As the decision is not discretionary and the chief executive could make no other decision than one in accordance with the ROP, the giving of an information notice, which gives the recipient a right of review and appeal, serves no functional purpose.

Amendment of s 122A (Chief executive may approve standard supply contracts)

Clause 46 facilitates the recording, on the water allocations register, of water allocations on the day the allocations are granted by the chief executive. The amendment provides that from the day a water allocation is granted, if the allocation holder and the holder of the resource operations licence (ROL) do not have a supply contract, the standard supply contract approved by the chief executive will apply to the allocation. However this is subject to two exceptions – where the circumstances in sections 121(3) and 122(5) apply. That is, if the ROL holder and allocation holder are the same person or related entities being where the ROL holder is the parent company of a subsidiary company that is the water allocation holder.

Currently water allocations managed under a ROL require evidence of a supply contract with the ROL holder before the registrar of the water allocations register can record the allocation after it is granted by the chief executive. To date some difficulties have been experienced by the ROL holder in being able to give the requisite evidence of a supply contract being in place for all water allocations on the day the water allocation is granted. For example, if there is a transfer of land, to which an identified interim water allocation is attached, immediately prior to the conversion of the interim water allocation to a water allocation, the ROL holder may not have had an opportunity to negotiate a new supply contract with the new land owner/interim water allocation holder before the conversion.

Replacement of s 123 (Relationship between resource operations licence and water allocation)

123 Relationship between resource operations licence and water allocation

Clause 47 provides that a water allocation is also subject to the requirements of a water resource plan, in addition to a resource operations plan.

Amendment of s 125 (Amending for water allocations)

Clause 48 replaces an information notice with a written notice to be given by the chief executive making decisions under this part. The decisions made about granting water allocations are not discretionary as the chief executive must grant the water allocation specifically in accordance with the requirements under the resource operations plan. As the decision is not discretionary and the chief executive could make no other decision, the giving of an information notice, which gives the recipient a right of review and appeal, serves no functional purpose.

Amendment of s 127 (Registration details for water allocations)

Clause 49 provides that an additional detail of a water allocation not managed under a resource operations licence is a reference to the water management area in which the water allocation is located. The details of the water management area are set out in the relevant resource operations plan to which the allocation relates.

Insertion of new ss 127B and 127C

Clause 50 provides a means for managing certain risks associated with the trade of water allocations in particular areas.

In supplemented systems that have entities other than the Resource Operations Licence (ROL) holder distributing water to irrigators (e.g. water authorities), there is the risk that the trade of water allocations may tend to move allocations away from that entities distribution area.

This could lead to a reduction in the number of customers in a distribution area (a reduced customer base), which in turn would 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” – where there are not enough users to maintain the viability of the distribution scheme.

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

127B Water allocations to which a distribution operations licence applies

127B(1) establishes that the section applies to water allocations granted at the time the resource operations plan commenced, where the DOL holder may have distributed the water under the allocation.

For example, irrigators in a particular area are distributed water by a particular entity other than the ROL holder. When a ROP commences in that catchment, this provision applies to those allocations that, when converted or created, are/were located in that area.

127B(2) requires the chief executive to give the Registrar a notice that the allocation is one to which a distribution operations licence (DOL) applies. The aim here is to include a note 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 DOL holder can require a charge of holders of the allocation under 127C.

127C Preservation of obligation in particular circumstances

127C(3) preserves an obligation on holder of an allocation, mentioned in 127B(1), to pay the DOL holder a charge. The charge is in relation to the DOL holder’s distribution works. It is reflected in the licence holder’s distribution arrangements with the allocation holder.

The section provides that the obligation continues to attach to the allocation even where:

- the location of the allocation is changed – in which case water under the allocation may not actually be distributed by the licence holder; or
- the allocation is subdivided; or
- 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 ownership of the allocation.

The obligation continues until the DOL holder agrees that the obligation has been satisfied (127C(2)).

Current thinking about water trading has suggested that a one-off buy-out or 'exit' fee could be used to account for the loss of certain revenue for a particular area where an allocation is traded away from that area. An exit fee represents a capitalised amount based on distribution works maintenance costs.

Another alternative is to require an annual charge, based on distribution works maintenance costs, from the landholders who have the option of being distributed water by an entity such as the DOL holder.

In practice, how this obligation will be satisfied is a matter for the DOL holder and water allocation holders. These are pricing issues associated with the water trading market and the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* provides oversight of these pricing aspects.

Another aspect of this provision relates to the removal of an administrative advice included on the allocation under 127B(2).

Where the DOL holder agrees that the obligation under this section, for a particular allocation, has been satisfied (127C(2)), the licence holder must give the chief executive a notice about this fact (127C(3)). Upon receiving this notice, the chief executive is then obliged to give the registrar notice of this fact (127C(4)).

Amendments to section 1007 enables the Registrar to act in accordance with the notices provided by the chief executive under clause 127C(4).

Amendment of s 128A (Amalgamation or subdivision of water allocations)

Clause 51 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. Subclause (1) renumbers sections accordingly.

Insertion of new s 128B

128B Transfer of water allocations

Clause 52 requires a holder of a water allocation that is not managed under a resource operations licence, to give notice of a proposed transfer of the allocation to the chief executive. The giving of the notice serves to inform the chief executive of the proposed transfer rather than seek the approval of the chief executive. This will allow the chief executive to administratively deal with changes in ownership of the allocation. The chief executive must give the holder a certificate acknowledging the receipt of the notice. The certificate must be given to the registrar of the water allocations register at the time of lodging the necessary transfer documents. The registrar must not record the transfer of the water allocation until the registrar receives this certificate under a related amendment to section 150 under the Bill.

Amendment of s 134 (Deciding application to change water allocation)

Clause 53 provides for a change to the process for approving a change to a water allocation where the chief executive has imposed conditions on the approval. Where the chief executive has imposed conditions requiring the applicant to take certain action and that action must be completed before the change to the water allocation is given effect, the chief executive will give the certificate approving the change when the applicant has carried out the necessary action to the satisfaction of the chief executive.

Amendment of s 138 (Water allocations may be forfeited)

Clause 54 includes in the priority listing for distribution of proceeds of sale from a forfeited water allocation and includes on this list, any liability due to the holder of the distributions operations licence.

Amendment of s 140 (Priority for applying proceeds of sale of water allocation under a power of sale)

Clause 55 creates the ability for the distribution operations licence holder to sell a water allocation where the distribution arrangements provide for this.

Replacement of s 142 (Applying for a seasonal water assignment)

Clause 56 is one of a number of amendments to the process for applying for a seasonal water assignment. The intention of the amendments is to allow for any unused part of the water seasonally assigned to be reassigned during the remainder of the water year. A seasonal water assignment notice will replace the current water permit as the approval for the taking of the assigned water. Subclause (1) allow for a holder of a seasonal water assignment notice to also apply for a seasonal water assignment. Subclause (2) requires details of the proposed assignee to be included as part of the application.

Amendment of s 144 (Deciding application for seasonal water assignment)

Clause 57 amends how the chief executive gives the approval for a seasonal water assignment to the assignee. A new notice – a seasonal water assignment notice will be given instead of the current water permit. The notice approves the assignment. If the assignee already holds a water allocation in the area in which the benefit of the assignment is to be taken, the chief executive will still give a seasonal water assignment notice. However in this case, the effect of the notice is to increase the volume of water authorised to be taken under the holder’s water allocation to the extent of the approved assignment. In this way, the holder may, as a holder of a water allocation apply for a further seasonal assignment under section 142 for any unused portion of the assigned benefit.

Amendment of s 145 (Conditions of seasonal water assignment)

Clause 58 replaces the reference to water permit with a seasonal water assignment notice.

Replacement of s 146 (Application of s 243)

Clause 59 provides for the application of section 243, regarding the surrender of water permits, to apply to a seasonal water assignment notice.

Replacement of s 146B (Arrangements for seasonal water assignments)

146B Arrangements for seasonal water assignments

Clause 60 includes as part of the requirements for a seasonal water assignment for a water allocation, the consent of the holder of the distributions operations licence (DOL), where the water allocation is one that is distributed to the holder by the holder of the DOL. The seasonal assignment rules in the resource operations plan will detail when the consent of either licence holder, or both, is required for the assignment.

Replacement of s 150 (Interests and dealings that may be registered)

Clause 61 replaces section 150 with a number of new sections.

Section 150 applies to how interests and dealings may be registered on the water allocations register. This section retains the current subsections (1), (2), (4) and (5). An additional subclause (4) is added. This subclause relates to the associated amendment inserting a new clause 128B. The registrar is required not to transfer of a water allocation not managed under a resource operations licence without the certificate given by the chief executive under clause 128B.

Section 150A deals with the effect of priority notices given under section 101(1)(b). The section retains the current subsections (3A) and (3B) with an extension of 40 business days to 60 business days. In addition, the section extends the effect of the giving of a section 101(1)(b) notice. Currently the notice has the effect of evidencing the intention of an existing interest holder to take action to have the holder's interest recorded against the granted water allocation. It does not currently create an interest. The amendment provides that if the notice is given, the notice has the effect of continuing the existing interest of the holder for a prescribed period. 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 121, despite the expiry of the existing water entitlement. 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 60 business days after the water allocation is recorded on the WAR or record the interest stated in the notice.

The new section 150B, together with associated amendments made under the Bill in relation to section 101, provides for an additional procedure for an entity, with an existing interest in a water entitlement that is 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 (WAR). The earlier amendment to section 101 allows for a new notice, a section 101(1)(c) notice to be given by an existing interest holder. The amendment allows 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, to give notice 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. The amendment provides that if a section 101(1)(c) notice is given, the registrar must record the notice against the water allocation, with the same priority as the interest had on the land registry 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. In addition the section states the recording of the notice has the effect of then being taken to be a mortgage for the purposes of the *Land Title Act 1994*. For example, the provisions of the *Land Title Act 1994* dealing with release of a mortgage would apply. Also the recording of this notice does not attract registry fees or duty.

Amendment of s 167A (Authority to interfere with water)

Clause 62 clarifies that it is an owner of infrastructure (rather than an operator) who is entitled to hold an interim resource operations licence. The owner is the preferred holder of such a licence as the owner is the entity in control of the infrastructure. The amendment specifies that an interim resource operations licence may only be held by certain entities.

Amendment of s 168 (Who must apply for an interim resource operations licence)

Clause 63 rewords this section for consistency with the amendment made to section 167A about an owner of infrastructure being the holder of the licence.

Amendment of s 169 (Applying for interim resource operations licence)

Clause 64 makes a number of minor amendments to include a reference to ‘authorisations under this Act’ and to clarify that information is required about all water stored or released by the applicant and information is required about all water taken by customers of the applicant rather than by all entities.

Amendment of s 170 (Additional information may be required)

Clause 65 provides that if the applicant does not comply with the request for additional information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for information. This is consistent with other similar provisions about applications and requests for information under the Act.

Amendment of s 178 (Conditions of interim resource operations licence)

Clause 66 provides that a condition of an interim resource operations licence can require a meter to be installed in relation to the licence holder’s water infrastructure.

Amendment of s 184 (Amending interim resource operations licence on notice)

Clause 67 provides a process for the chief executive to amend an interim resource operations licence (IROL) in the circumstances where the proposed amendment would not have one or more of the effects mentioned in subsection (2). If the chief executive is satisfied an amendment is necessary in these circumstances the chief executive must give notice of the proposed amendment to the IROL holder and any other entity the chief executive considers appropriate, for example any holders of interim water allocations, the water for which is managed under the IROL. Submissions may be made about the proposed amendment and if the chief executive decides to amend the licence, an information notice must be given to the IROL holder and any person who gave a properly made submission.

The current process for amending an IROL in circumstances where the proposed amendment would not have one or more of the effects mentioned in subsection (2) remains unchanged.

Insertion of new ch 2, pt 5, div 2, sdiv 5A

Subdivision 5A Other amendments of interim resource operations licence

185A Amending interim resource operations licences

Clause 68 provides for an amendment of an interim resource operations licence (IROL) by the chief executive in specified circumstances without the need to follow the process in section 184. The ability for an IROL to be amended in these circumstances is necessary to allow for the efficient operation of the water supply scheme. The amendment to the licence results from the chief executive amending the details of the water sharing rules. The chief executive may amend the water sharing rules in a licence, for a water year if:

- The licence holder requests an amendment where the holder's licence allows the request to be made; or
- The chief executive is satisfied the rules should be amended because of seasonal conditions. For example a change in seasonal conditions that could lead to a shortage of water.

If the chief executive approves the amendment to the water sharing rules, the IROL is amended for that part of the water year and to the extent of the amendment. In these circumstances, the IROL is temporarily amended or varied to the extent of the amendment.

Insertion of new ch 2, pt 5, div 2, sdiv 7

Subdivision 7 Audit reports

186A Preparing regular audit reports

Clause 69 inserts a new subdivision, and associated provisions, about audit reports. Consistent with the amendment under clause 120AA about audit reports for resource operations licences, new clause 186A makes provision for the chief executive to prepare an audit report about a interim resource 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.

186B Access for conducting audit reports

In addition the amendment provides for access to the holder's infrastructure and records for the purpose of conducting an audit.

Amendment of s 187 (Granting interim water allocations)

Clause 70 corrects an error in the reference to the subdivision.

Amendment of s 191 (Conditions of interim water allocation)

Clause 71 expands the category of persons who may be affected by the granting of the interim water allocation to include all persons authorised under the Water Act to take water. The current reference to water entitlement is unnecessarily limiting as it only refers to water allocation and interim water allocation holders and water licence holders.

Amendment of s 194 (Deciding application to transfer by interim resource operations licence holder)

Clause 72 makes a minor amendment to clarify the application mentioned is an application made under section 193.

Amendment of s 197 (Surrendering an interim water allocation)

Clause 73 requires the chief executive to give notice of a surrender of the interim water allocation to the holder of the resource operations licence that manages the allocation.

Replacement of s 198 (Effect of disposal of part of land to which interim water allocation attaches)

Clause 74 provides for an amendment to section 198 and an insertion of a new clause 198A.

The amendment replaces section 198 to provide for changes to how the disposal of part of land to which an interim water allocation (IWA) affects the relevant IWA. Currently if land to which an IWA is attached is disposed, the IWA is automatically surrendered to the State. Despite this surrender the owners of the land may apply for a replacement IWA within a

prescribed time. A number of problems have been identified with the automatic surrender of the IWA as a consequence of disposal. For example, a subdivision of land, with an IWA attached, results in the IWA being now attached to new lots created by the subdivision. However this change in land details is not always known by the department in order for the IWA's new land details to be amended in the department's water entitlement database. A later disposal of the subdivided land may not then be identified by the department as a disposal of land affecting IWA. In addition, the effect of the disposal of part of the land, to which an IWA attaches, may not be readily actioned by the owners of the land in applying for a replacement IWA in the requisite time period.

To address these issues, the amendment provides a more flexible approach to dealing with this issue. The effect of a disposal does not create an automatic surrender of the IWA, rather the IWA is taken to be jointly held by all owners of the land to which the IWA related before the disposal until a replacement IWA is granted. The replacement IWA can be granted in the first instance to 1 or more of the owners of the land, who may apply for a replacement IWA, together with the consent of all owners. If this application is made within 60 business days after the disposal, the chief executive must grant the IWA accordingly. If an application is not made within the requisite time, it is open then to the chief executive to give notice to the owners about a proposed replacement IWA. The owners may make a submission about the proposed replacement IWA.

198A (Effect of acquisition of land to which interim water allocation attaches)

The amendment inserts a new clause 198A 'Effect of acquisition of land to which interim water allocation attaches'. In the case of interim water allocation, attached to land, if part of the land is acquired – and the acquisition includes the acquisition of the allocation, section 222 applies for transferring the allocation to the entity that acquired the land – or if the acquisition does not include the acquisition of the allocation, the following sections 199 to 198B apply.

This new provision deals with how an acquisition of part of the land to which an interim water allocation (IWA) attaches is affected by the acquisition. If the acquisition includes an acquisition of the IWA, section 222 applies to transfer the IWA to the entity that acquired the land. If the acquisition does not include the acquisition of the IWA, sections 199 to 199B apply.

Amendment of s 199 (Effect of acquisition of part of land to which interim water allocation attaches)

Clause 75 amends section 199 section consistently with the changes made to section 198 to the effect the IWA is not surrendered to the State because of disposal. Where part of the land to which an IWA is attached is compulsorily acquired, and the remaining land continues to adjoin the watercourse, lake or spring, the IWA may be amended to attach to the remaining land. Otherwise the IWA is taken to be surrendered and the chief executive must deal with the allocation under section 197(3) unless the holder of the IWA can satisfy the chief executive of having access to the land in accordance with the types of access mentioned in section 206(3)(b) and if so, the IWA can be amended so it attaches to the remaining land.

Insertion of new s 199A and 199B

199A Effect of acquisition of part of land above an aquifer

199B Effect of acquisition of part of other land

Clause 76 inserts two new provisions for dealing with the effect of acquisition of land to which an interim water allocation (IWA) attaches consistent with the changes made to section 199. This amendment provides for the situation where the IWA is taking water from an aquifer or otherwise.

Amendment of section 203 (Definitions for pt 6)

Clause 77 includes a trustee of a reserve over land or the holder of a permit to occupy the land under the *Land Act 1994* as an owner of land.

Amendment of section 205 (Decisions to be in accordance with plans)

Clause 78 outlines when the chief executive is required to give either an information notice or written notice for decisions made under this part. Currently section 851(2) of the Act limits the extent to which an appeal is available for decisions made under a resource operations plan (ROP). A decision may only be appealed to the extent that the decision is inconsistent with the plan or to the extent a different decision, consistent with the plan, could have been made. In cases where the chief executive makes a decision

consistent with the plan and where a different decision, consistent with the plan, could not have been made, the chief executive is not making a discretionary decision. In this case, the giving of an information notice, essentially is giving an illusory appeal right under the terms of section 851(2).

These circumstances apply equally to decisions made under a water resource plan (WRP). A WRP is subordinate legislation and the chief executive is required to follow the requirements of the water resource plan. If the chief executive makes a decision consistent with the plan and where a different decision, consistent with the plan, could not have been made, the chief executive again is not making a discretionary decision.

The amendment provides that in these cases the chief executive need only give a written notice stating reasons for the decision. A recipient of this notice in any event is still afforded rights of review of this decision under the *Judicial Review Act 1991*.

Amendment of s 206 (Applying for a water licence)

Clause 79 expands the requirement for an applicant for a water licence to have the appropriate access rights over intervening land between the applicant's land and where the water is proposed to be taken. Currently the section only applies to land that is freehold. The amendment provides for the relevant type of consent or permit that is required where the land is other than freehold.

Amendment of s 208 (Public notice of application for water licence)

Clause 80 makes a minor amendment to require as a mandatory detail in the public notice the details of the applicant's land to which the water licence is proposed to be attached.

Amendment of s 210 (Criteria for deciding application for water licence)

Clause 81 includes additional criteria to be considered by the chief executive that is considered relevant to a water licence application.

Amendment of s 211 A (Effect of disposal of part of land to which application for water licence relates)

Clause 82 corrects an error by replacing the term ‘expire’ with ‘lapse’, as applications strictly lapse and not expire.

Amendment of s 214 (Conditions of water licence)

Clause 83 recognises that a condition of a water licence may also require the licensee to provide and maintain access to alternative water supplies to any person authorised to take water under the Act.

Amendment of s 215 (Where water under certain licences must be used)

Clause 84 removes the requirement for water authorised under a water licence, although attached to land, to only be used on that land in two new circumstances.

Insertion of new s 216A

216A Amending water licence without public notice

Clause 85 provides a modification of the water licence amendment process to deal with an amendment for the purpose of adding or removing land to which the licence relates. Rather than having to give notice to the public in general, the applicant must relevantly give notice of the proposed amendment to those entities that have an interest in the land currently the subject of the licence. These entities are entitled to make a submission on the application and the chief executive

Amendment of s 222 (Transferring water licence to another person)

Clause 86 allows for a transfer of a water licence by an entity identified in section 206(4) in a number of new circumstances. Subclauses (2A) and (2B) allows an entity listed in section 206(4) that is entitled to hold a water licence, without necessarily having to be an owner of land, to transfer its water licence to a person other than another entity listed in section 206(4) where the licence was a licence formerly attached to the land that will be owned by the transferee. Subclause (3A) allows the State to transfer its water licence to a person who is currently being supplied with water under

the licence and where that person falls within the meaning of an owner of land under section 203 in relation to the land to which the water, under the licence, is taken from. The new licence that is given following a transfer in these circumstances attaches to the land, to which the water under the licence is taken from, and for which the transferee is an owner of that land within the meaning of section 203.

Amendment of s 229 (Effect of disposal of part of land to which the water licence to take water attaches)

Clause 87 allows the chief executive to extend the time in which the owners of land to which the expired licence related may apply for a replacement licence. This is to recognise that a licensee may not always be aware that the consequence of a disposal of land has the effect of expiring the licence attached to that land. This allows the chief executive to extend the time for applying for a replacement licence in these circumstances.

Amendment of s 231 (Applying for seasonal water assignment)

Clause 88 is one of a number of amendments to the process for applying for a seasonal water assignment. The intention of the amendments is to allow for any unused part of the water seasonally assigned to be reassigned during the remainder of the water year. A seasonal water assignment notice will replace the current water permit as the approval for the taking of the assigned water. Subclause (1) allow for a holder of a seasonal water assignment notice to also apply for a seasonal water assignment. Subclause (2) requires details of the proposed assignee to be included as part of the application.

Amendment of s 233 (Deciding application for seasonal water assignment)

Clause 89 amends how the chief executive gives the approval for a seasonal water assignment to the assignee. A new notice – a seasonal water assignment notice will be given instead of the current water permit. The notice approves the assignment. If the assignee already holds a water licence in the area in which the benefit of the assignment is to be taken, the chief executive will still give a seasonal water assignment notice. However in this case, the effect of the notice is to increase the volume of water authorised to be taken under the holder's water licence to the extent of the approved assignment. In this way, the holder may, as a holder of a water

licence apply for a further seasonal assignment under section 142 for any unused portion of the assigned benefit.

Amendment of s 235 (Conditions of seasonal water assignment)

Clause 90 replaces the reference to water permit with a seasonal water assignment notice.

Amendment of s 236 (Application of ss25, 243 and 244 to water permit)

Clause 91 provides for the application of section 25 about limiting water taken under a water licence or permit, section 243, regarding the surrender of water permits and section 244 about cancelling a water permit, to apply to a seasonal water assignment notice.

Amendment of s 266 (Applying for permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring)

Clause 92 recognises that the rights given to a holder of a mineral development licence or mining lease over the land, the subject of the tenure right, effectively gives the holder the same rights as the registered owner.

Amendment of s 267 (Additional information may be required)

Clause 93 provides that if the applicant does not comply with the request for additional information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for information. This is consistent with other similar provisions about applications and requests for information under the Water Act.

Amendment of s 273 (Notice to owner of land to remove vegetation etc.)

Clause 94 expands the requirement for an owner of land to remove vegetation in a watercourse or lake adjoining, or on, the owner's land.

Amendment of s 300 (Additional information may be required)

Clause 95 provides that if the applicant does not comply with the request for additional information, the application lapses. This is to ensure that applications do not remain in limbo indefinitely as a result of the failure of an applicant to respond to requests for information. This is consistent with other similar provisions about applications and requests for information under the Water Act.

Amendment of s 370 (Who must apply for registration as a service provider)

Clause 96 allows for an entity that is a related entity being a parent company of a subsidiary that is the owner of infrastructure to be nominated in a regulation as the legal owner of the infrastructure for subparagraph (1). If an entity is nominated, the nominated entity can be registered as the service provider.

Insertion of new s 376B

376B Applying for cancellation of registration as service provider

Clause 97 provides a process for a registered service provider to apply for the cancellation of their registration as a service provider in certain circumstances.

Omission of ch 3, pt 3, div 1, sdivs 1 and 2, hdgs

Clause 98 omits the current subdivision headings to be replaced with new headings under the following clause.

Amendment of s 412 (Refusing strategic asset management plan)

Clause 99 provides for a penalty for non-compliance with subsection (4) in relation to revising the plan as required.

Amendment of s 414 (Complying with approved strategic asset management plan)

Clause 100 provides for a penalty for non-compliance with an approved plan.

Insertion of new ch 3, pt 3, divs 1A and 1B

Clause 101 inserts new division about system leakage management plans.

Division 1A System leakage management plans

Subdivision 1 Preliminary

Section 414A states this division requires water service providers (except those that only supply drainage services) to develop and implement a system leakage management plan for the purpose of minimising water losses due to leakage from the provider's distribution system providing it is cost-effective for the service provider. Addressing water conservation through reduced system leakage has been identified as one of the most effective cost-effective measures to contribute to water conservation.

Subdivision 2 Preparing and submitting plan

414B Preparing system leakage management plan

Section 414B provides that each water service provider must have a system leakage management plan that is approved by the regulator. The plan must identify the services and infrastructure to which it applies, and report on system leakage and how the leakage rate was worked out. The plan must specify system leakage, identify measures to reduce losses, outline cost-benefit analyses of the implementation of these measures, and for those measures where implementation is cost effective, detail a plan to implement such measures. The plan must be prepared in accordance with any guidelines issued by the regulator.

414C Certifying system leakage management plan

Section 414C requires the plan to be certified by a registered professional engineer. This is to ensure the plan is validated by a qualified person for the service provider's infrastructure and services.

414D Submitting system leakage management plan

Section 414D sets out the requirement for a service provider to submit its plan within 2 years after the provider is registered.

Subdivision 3 Exemption from preparing plan

414E Application for exemption

Section 414E provides a process and requirements for a water service provider to apply for an exemption from preparing a system leakage management plan.

414F Deciding the application

Section 414F sets out the matters to be considered by the regulator when deciding an application for an exemption from preparing a plan.

A service provider may apply for and be granted an exemption by the regulator for matters including:

- If the distribution system is considered relatively new by the regulator;
- The water supply is sourced from bores in the Great Artesian Basin primarily for stock and domestic purposes;
- The distribution system provides groundwater recharge i.e. is designed to leak;
- The current water leakage from the distribution system is determined under the guidelines to be low;
- The service provider does not have the financial capacity to undertake a cost-benefit analysis of measures to reduce system leakage although there may be high system losses (this is anticipated to primarily apply to small service providers who have low revenue);
- The outlay of the cost-benefit analysis exceeds the savings from water that could be recovered;

- The cost-benefit analysis determines that measures would be more expensive to implement than savings generated through loss reduction.

414G Conditions of exemption

Section 414G states that an exemption applies only for the specified period. Some exemptions are granted subject to the specified conditions and only remain valid if the service provider complies with the specified conditions.

414H Cancelling or amending an exemption

section 414H requires a service provider to give immediate notice to the regulator of a change of circumstances under which an exemption is given. The regulator may amend or cancel the exemption in response to the notice or otherwise when the regulator becomes aware of a change in circumstances.

Subdivision 4 Approving or refusing to approve plan

414I Approving system leakage management plan

Section 414I states the regulator must approve the plan within 3 months unless the plan was certified by a person who did not have the necessary qualifications or experience, or the plan does not contain all relevant or critical information. When the regulator approves the plan, the regulator must tell the service provider the intervals at which regular reviews and audits of the plan must be conducted.

414J Refusing to approve system leakage management plan

Section 414J sets out the process to be followed by the regulator, including the reasons of refusal where the regulator does not approve the plan.

414K Regulator may seek further information

Section 414K provides that the regulator may request additional information, and if it is not provided within the timeframe, the plan will not be approved.

Subdivision 5 Miscellaneous

414L Changing system leakage management plan

Section 414L provides for a service provider to make changes to its plan with the agreement of the regulator.

414M Complying with approved system leakage management plan

Section 414M places an obligation on a service provider to comply with its plan when supplying services to its customers.

Division 1B Audit reports and reviews

414N Application of div 1B

Section 414N states this division applies to strategic asset management plans, system leakage management plans and drought management plans.

Amendment of s 415 (Reviewing strategic asset management plan)

Clause 102 replaces the current section heading with ‘Reviewing plans’. The amendment provides a service provider must review its strategic asset management plan (SAMP) and system leakage management plan in accordance with the relevant notice given by the regulator. It is an offence for a service provider to not comply with the requirement.

Amendment of s 416 (Changing strategic asset management plan)

Clause 103 replaces the current section heading with “Changing plans following review”. The amendment provides that if a review of the plans indicates they should be changed, the service provider must make the relevant modifications. The approval processes under section 409, 411 and 412 will then apply.

Amendment of s 417 (Providing regular audit reports)

Clause 104 amends the section to include a system leakage management plan to align the auditing requirements for system leakage plans to those currently required for SAMPS. The amended section applies to a service provider if, as part of the approval notice for a plan, the regulator requires a service provider to arrange for regular audits of the plan.

Amendment of s 419 (Spot audits of strategic asset management plans)

Clause 105 amends the heading to the section to refer to ‘plan’ so that it applies to a system leakage management plan as well as a SAMP.

Insertion of new ch 3, pt 3, div 2A Drought management plans

Clause 106 inserts a new division about drought management plans.

429A Purpose of div 2A

Section 429A requires the mandatory submission of drought management plans by water service providers to ensure they are well prepared for periods of drought, thus minimising the risk of interrupted water supplies and “crisis management”.

429B Application of div 2A

Section 429B provides that this division does not apply to water service providers who only supply drainage services or to water service providers where they supply water services to a customer which holds a water entitlement (eg water allocation). For example, if the only service being provided is transferring water through a pipeline, and the water is owned by another entitlement holder, a drought management plan is not required to be submitted by the service provider. Another example is when a service provider providing bulk water services, is only supplying water to other water entitlement holders. In this circumstance, the service provider will not be required to prepare a drought management plan, as all water entitlement holders will be bound by the water sharing rules associated with a resource operations plan, or interim plans.

429C Preparing drought management plans

Section 429C requires a water service provider to have a drought management plan for each area it services. For example, if it services a number of communities, the plan must address each community within the service area.

To prepare the plan, a water service provider is obliged to consult with its customers and the holder of a resource operations licence if the water is managed under an interim resource operations licence. During plan preparation consideration must be given to a number of matters – the needs of classes of customers, likely future requirements of customers for water, the contractual rights of customers and classes of customers and availability and proposed use of water from various sources.

The water service provider must also ensure the plan is consistent with any requirements about drought or critical water supply arrangements under a resource operations plan, or interim resource operations plan for the area or in a plan developed for an interim resource operations licence in the area. These other arrangements set out water sharing rules for allocation holders when supplies are critical and water service providers will have to operate within these rules.

The drought management plan must identify the services and infrastructure to which it applies, and:

- State details of situations in which the provider intends to exercise powers to restrict water supply or take other measures to minimise impact of water shortages; and
- State details of the actions intended to be taken to restrict water supply or other measures intended to be taken.

The plan must be prepared in accordance with any guidelines issued by the regulator.

429D Certifying drought management plan

Section 429D requires the plan to be certified by the provider's chief executive officer (or equivalent) as being the plan for the provider.

429E Submitting drought management plan for registration

Section 429E requires the service provider to prepare a plan within 1 year after the day the service provider is registered and give a copy to the regulator for registration.

429F Exemption from preparing drought management plan

Section 429F provides a process and requirements for a service provider to seek an exemption from the regulator for preparing a plan. A service provider may apply for and be granted an exemption by the regulator for service providers who can demonstrate that their supply cannot be affected by drought. For example, water obtained from the Great Artesian Basin or water obtained through the desalination of seawater.

429G Cancelling or amending an exemption from preparing drought management plan

Section 429G requires a service provider to give immediate notice to the regulator of a change of circumstances under which an exemption is given. The regulator may amend or cancel the exemption in response to the notice or otherwise when the regulator becomes aware of a change in circumstances.

429H Registering a drought management plan

Section 429H requires the regulator to register a plan when the regulator is satisfied the it complies with the registration criteria specified in any relevant guidelines issued by the regulator. The regulator must tell the service provider of the intervals at which regular reviews of the plan must be conducted. Drought management plans require registration only. There is no approval process for these plans.

429I Changing a drought management plan

Section 429I provides that a service provider may make changes to its plan after it is registered. Following such changes the service provider must have the plan re-certified and then resubmit it for registration it with the regulator.

429J Complying with drought management plan

Section 429J requires that the service provider must comply with its plan.

429K Tabling in Legislative Assembly

Section 429K requires the Minister to provide to the Legislative Assembly a list of services providers who do not have registered plans (except those granted an exemption). This must be done after January 1 each year.

Amendment of s 430 (Service provider to report annually)

Clause 107 amends this section to include system leakage management plans in service providers' annual reports.

Amendment of s 434 (Small service providers may apply for exemption from divs 1-3)

Clause 108 amends the section to exclude system leakage management plans and drought management plans in such applications.

Amendment of s 435 (Deciding application for exemption)

Clause 109 amends the section to exclude system leakage management plans and drought management plans in such decisions by the regulator.

Amendment of s 487 (Accepting, rejecting or reviewing failure impact assessment)

Clause 110 provides that the chief executive may require the owner of the dam to have certain information or reports prepared by a registered professional engineer as part of the information request by the chief executive.

Amendment of s 491 (Safety conditions for existing referable dams)

Clause 111 provides that the chief executive may require the owner of the dam to have certain information or reports prepared by a registered professional engineer as part of the information request by the chief executive.

Amendment of s 492 (Changing conditions)

Clause 112 omits the reference to 'interests of dam safety' as it serves no additional purpose. The amendment also makes provision for the chief executive to request information from the dam owner, including requiring

the owner of the dam to have certain information or reports prepared by a registered professional engineer as part of the information request by the chief executive.

Replacement of s 494 (Emergency powers)

Clause 113 makes a number of changes to the exercise of the emergency powers by the chief executive.

Subclause (1) allows the chief executive to give notice in relation to a dam for which no failure impact assessment has been carried out but the chief executive reasonably believes that if an assessment were carried out, the dam would have a category 1 or 2 failure impact rating. For example, an owner of a dam may have failed to carry out a failure impact assessment. If the assessment was in fact carried out, the dam may have a category 1 or 2 rating and therefore be referable.

In recognition that the land on which the dam is situated may be owned by different owners and the emergency action required to be taken may only affect part of the dam only, the chief executive may give the emergency action notice to an owner of the land where the action is to be carried out. The chief executive may also give the notice to the operator.

Currently in the event the emergency action is carried out by the chief executive because the owner failed to do so, the costs of carrying out the action is a debt and a charge on the owner's land. The amendment provides that the charge is to be registered as an encumbrance.

The amendment also deals with the circumstances where there is imminent danger and immediate action is required – under these circumstances the chief executive may give the emergency action notice verbally, for example, by telephoning the owner or operator or by leaving the notice on the land. In these circumstances only, it is also sufficient for the chief executive to give the emergency action notice to an employee or agent of the owner or operator. This is in recognition of the urgency in which the action must be taken.

Amendment of s 498 (Amending flood mitigation manual)

Clause 114 amends this section to make it clear what actions the chief executive must take, where an owner complies with the chief executive's request under 498(1).

Amendment of s 500 (Protection from liability for complying with flood mitigation manual)

Clause 115 includes in the meaning of owner, the operator of the dam for consistency with the section.

Amendment of s 569 (Main function of water authority)

Clause 116 corrects an error by replacing ‘it’s’ with ‘its’.

Amendment of s 580 (Notice of proposed significant action)

Clause 117 requires the water authority to, as soon as practicable after deciding to do a proposed significant action, give notice to the Minister rather than simply before doing the action. This gives the Minister early notice of the proposed action. In addition, a category 2 water authority is no longer able to give this notice as part of its annual report as this often meant the Minister was in fact not being advised of the action before it occurred but rather after.

Amendment of ch 4, pt7 hdg

Clause 118 amends the heading for this section by omitting the reference to water authorities.

Amendment of ch 4, pt 7, div 1, hdg

Clause 119 amends the heading for this division to include a reference to authority areas.

Amendment of s 690 (Amalgamating water authorities and authority areas)

Clause 120 amends the section that provides for the amalgamation, by regulation, of water authorities to form a new authority. The regulation that dissolves the former water authority to form the new authority must also dissolve any authority area for the former water authorities. Subclause (2) provides that 2 or more former water areas, continued under section 1083(2) of the Act and for which the chief executive performs the functions of a water authority, may also be amalgamated by regulation. The regulation must also identify the new area and dissolve the former areas.

Amendment of s 691 (Dissolution of water authority and authority area)

Clause 121 amends the section to allow a former water area, continued under section 1083(2) and for which the chief executive performs the functions of a water authority to be dissolved by regulation. A regulation may also dissolve the authority area for a water authority dissolved under s 691(1)(d). The regulation must also identify the new area and dissolve the former areas.

Amendment of s 692 (Public notice of proposed amalgamation or dissolution)

Clause 122 makes a number of changes to how public notice is to be given for amalgamation or dissolution of water authorities and areas. Subclause (1) includes a reference to an authority area consistent with the proposed change to section 690. Subclause (2) sets out separately the public notification requirements (by newspaper) for the amalgamation or dissolution of a water authority or an authority area. Subclause (3) provides an exception in relation to the amalgamation or dissolution of a former water area, continued under section 1083(2) or authority area whose water authority area was dissolved under section 691(1)(d) all of which areas the chief executive administers the area. Notice is not required to be given by newspaper rather the chief executive may give written notice to all the landholders affected.

Amendment of s 693 (Content of notice of proposed amalgamation or dissolution)

Clause 123 makes changes to the section to include a reference to water authorities and authority areas and to state the notice contents requirements for dissolution of an authority area under section 691(3).

Amendment of s 694 (Considering submissions on proposed amalgamation or dissolution)

Clause 124 makes a minor amendment to the section to include a reference to authority area.

Amendment of s 695 (Water authority may request its dissolution)

Clause 125 provides that a special ballot will be passed by at least two thirds of the board's ratepayers rather than majority. This provides consistency with the way in which the special resolution by the board is passed. In addition, it is a requirement for the water authority to give each ratepayer details of the possible consequences to the ratepayer of the proposed conversion. This ensures a ratepayer is fully informed of the nature, and consequences, of the proposed conversion, to then make a decision about the water authority making the request to the chief executive. The amendment also allows the chief executive to require further particulars about the request from the water authority.

Amendment of s 740 (Functions and powers of authorised officers)

Clause 126 clarifies that the functions and powers of authorised officers also include matters relating to development under IPA for which the chief executive is either the assessment manager or concurrence agency.

Amendment of s 747 (Power to enter land to collect information)

Clause 127 changes the title of this section to "Power to enter land in relation to information collection", allows an authorised officer to enter land to retrieve or decommission monitoring equipment previously constructed on the land and removes the definition of "monitoring equipment". This definition is now located in schedule 4 of the Act.

Amendment of s 752 (Issue of warrant)

Clause 128 has been broadened to allow a warrant to be broadened so a warrant may be issued to ensure that a warrant may be issued for evidence about and *Integrated Planning Act 1997* offence – a new term included in schedule 4 that covers particular offences against that Act which relate to the take of, or interfering with, water.

The section also now allows a warrant to be issued to any authorised officer. This change is consistent with provisions in the *Vegetation Management Act 1999* and provides reasonable flexibility in the scope of whom a warrant may be issued to.

Amendment of s 754 (Warrants – procedures before entry)

Clause 129 amends this section to recognise, and operate in accordance with, the change made to section 752 that allows a warrant to be issued to either a particular authorised officer or any authorised officer.

Insertion of new ch 5, pt 1, div 4A

Division 4A Power to seize evidence

Clause 130 inserts a new division 4A about seizing evidence. The accompanying sections provide the Water Act with a set of contemporary seizure powers for authorised officers associated with investigation and enforcement.

The provisions are modelled on sections 39 to 48 of the *Vegetation Management Act 1999* and are consistent with the approach adopted in the *Police Powers and Responsibilities Act 2000* - representing accepted practice in seizing evidence and dealing with seized evidence. These provisions will also allow the department to deal consistently with evidence across natural resource management jurisdictions.

757A Seizing evidence

This section specifies when and on what grounds evidence may be seized.

757B Securing seized things

This section defines what an authorised officer may do as part of seizing ‘a thing’. This includes moving, leaving and restricting access to, or, if the thing is equipment, making inoperable, the seized thing.

757C Tampering with seized things

This section makes it an offence for a person to tamper, or attempt to tamper with a seized thing or something restricting access to the thing; or equipment which the authorised officer has made inoperable; without an authorised officer’s approval.

757D Powers to support seizure

This section specifies the requirements an authorised officer may make of a person who is in control of a thing that is to be seized or a thing that has been seized; how the authorised officer may make a requirement; and the effect of a failure of a person to comply with such a requirement.

757E Receipt for seized things

This section requires an authorised officer to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, if for some reason this proves impractical, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

757F Forfeiture by authorised officer

This section establishes when a thing that has been seized is forfeited to the State.

757G Forfeiture on conviction

This section allows the court to order that a thing seized under this division is forfeited to the State.

757H Dealing with forfeited things

When a thing is forfeited, this section establishes that the thing becomes the property of the state and that the chief executive may destroy or dispose of the forfeited thing.

757I Return of seized things

This section establishes when seized things must be returned.

757J Access to seized things

This section requires that, where it is not impractical, an authorised officer must allow the owner of a seized thing to inspect it and, if the seized thing is a document, copy it.

Amendment of s 760 (Power to require production of documents)

Clause 131 allows an authorised officer to require a document relating to the taking of, or interfering with, water. It has been the Department's experience that the current provision is too limited in the scope of documents that can be required and inconsistent with the approach taken in other natural resource management jurisdictions – such as vegetation management.

Amendment of s 762 (Failure to produce document)

Clause 132 has been amended for consistency with the *Vegetation Management Act 1999* and to assist employees of companies provide documents in certain situations.

An equivalent provision is provided under the *Vegetation Management Act 1999* and similar provision is provided under the *Fair Trading Act 1989*. The approach taken here is consistent with High Court determinations that a corporate entity is not entitled to protect itself against self-incrimination.

The amendment removes that ability for an employee of a company to decline to provide information or produce a document thereby. The current construction of this section makes it extremely difficult to obtain sufficient evidence against the corporate entity regarding an alleged offence. In effect, a corporation can currently affectively choose to accept a smaller penalty (failure to provide information or failure to produce a document) rather than risk prosecution for the original offence of under the Water Act

Amendment of s 763 (Power to require information)

Clause 133 has been amended for consistency with the *Vegetation Management Act 1999* and to assist employees of companies provide documents in certain situations.

This amendment is based on the grounds described above about the amendment of section 762.

Insertion of new ch 5, pt 1, div 7

Division 7 Obtaining criminal history reports

Clause 134 inserts a new division.

766 Purpose of div 7

The purpose of this division is to assist authorised officers in deciding whether or not the unaccompanied entry of land or premises would create an unacceptable risk to their safety.

767 Chief executive's power to obtain criminal history report

This section authorises the chief executive to obtain advice from the commissioner of the police service as to the criminal history of a person that the authorised person suspects may be at a place. The chief executive may pass on information concerning violence or firearms offences to the authorised officer. This information will assist the authorised officer in determining if unaccompanied entry to a place is an unacceptable risk.

Amendment of 768 (Criminal history is confidential document)

This section provides that the report, or any information in the report, obtained under the preceding clause is confidential, subject to certain qualification. The report and any information contained in the report must be as soon as practicable after the authorised officer considered the risk to safety mentioned in 766. Disclosure of the report or any information in the report may incur a penalty.

Amendment of s 778 (When regulator may give a show cause notice)

Clause 135 provides for a show cause notice to be given by the regulator in relation to a system leakage management plan.

Amendment of s 783 (Chief executive or regulator may take action and recover costs)

Clause 136 provides for interest, at a rate stated in the regulation, to be payable on a debt created under section 783(4).

Amendment of s 808 Unauthorised taking, supplying or interfering with water

Clause 137 makes a number of amendments to this section. In line with the amendments made to section 20 under clause 4 about how the Act deals with interfering with overland flow water, it is necessary to remove an offence in relation to interfering with overland flow water from the Act. This is because, with the changes made to section 20, it will not be an offence to interfere with overland flow water under the Act as the regulation of overland flow water interference is to be managed by the regulation of works under IPA. Any interference with overland flow water that is contrary to the extent that works interfering with overland flow water are regulated will be an offence under IPA.

To facilitate any future trading of water across interstate boundaries, provision is made to recognise an authorisation to take or interfere with water given under another State or Territory Act as authorised for the purposes of the Act.

To facilitate the implementation of the new metering installation process detailed in the *Water Regulation 2002*, it will be an offence for the holder of a metered entitlement to take or interfere with water under the entitlement other than through works that have an approved meter attached. If a person is required to install a meter in accordance with the process detailed in the *Water Regulation 2002*, the meter installed under that process is defined to an approved meter.

Amendment of s 810 (Using water contrary to approved land and water management plan)

Clause 138 clarifies that an approved land and water management plan applies to the use of water on that land.

Amendment of s 811 (Tampering with devices)

Clause 139 increases the penalties for this offence consistent with the penalties for all offences in this division. The increased penalty is

necessary to act as a realistic deterrent to ensure a meter is not tampered with. The accurate measuring of the volume of water taken is fundamental to carrying out compliance. In addition, the meaning of tamper is expanded to cover circumstances where a device is actually removed from its usual place.

Replacement of s 812 (Contravening condition of a water allocation, interim water allocation, water licence or permit)

Clause 140 replaces this section so the new section creates the same requirements as the section it replaces and includes the requirement that the holder of a seasonal water assignment notice must not contravene the conditions of the notice.

Amendment of s 812A (Liability for unauthorised taking of water)

Clause 141 amends consistent with the replacement of section 812 by clause 140 so that this section includes a seasonal water assignment notice as a matter relevant to section 812A.

Amendment of s 813 (Contravening condition of resource operations licence, interim resource operations licence or operations licence)

Clause 142 includes a reference to the new distributions operations licence so it is also an offence, to contravene a condition of this new licence.

Amendment of s 814 (Destroying vegetation, excavating or placing fill without permit)

Clause 143 amends several incorrect section references in relation to the *Integrated Planning Act 1997*.

Amendment of s 825 (False or misleading statements)

Clause 144 expands this provision so that it is an offence under this section to provide false or misleading statements to the chief executive.

Amendment of s 826 (False or misleading documents)

Clause 145 expands this provision so that it is an offence under this section to provide false or misleading documents to the chief executive.

Amendment of s 851 (Who is an interesting person)

Clause 146 amends the section to make it consistent with proposed amendments under clause 79 (clarifying when an information notice is required to be given for decisions made in accordance with a water resource plan or resource operations plan). Appeals against decisions made in relation to a water resource plan or resource operations plan may only be appealed to the extent a different decision, consistent with the plan, could have been made.

Amendment of s 864 (Review decision)

Clause 147 clarifies the requirement for a review notice to state how to appeal. It was considered ambiguous as to the intended meaning of 'how to appeal'. The intention was for the review notice to inform the recipient of the appeal provisions under the Act rather than give fuller details about the process of appealing. The amendment provides that a copy of the relevant appeal or arbitration provisions of the Act must be given with each review notice or copy of review notice.

Subclause (2) allows the chief executive to extend the time period for making a review decision, once only, if the chief executive gives written notice to the applicant prior to the expiry of the initial 20 business day time period.

Amendment of s 878 (Starting an appeal)

Clause 148 requires that a copy of the notice of appeal be served on the chief executive. Currently the relevant rules of court do not expressly include this provision.

Amendment of s 955 (Governor in Council may appoint administrator to operate infrastructure)

Clause 149 includes a reference to distributions operations licence.

Amendment of s 967 (IPA approval for development is subject to approval under this Act)

Clause 150 expands the circumstances for when this section applies to also include other authorisations under the Act, for example rights to take water under section 20 which do not necessarily need a water entitlement. For example, a person may take overland flow water under section 20 but does not need a water entitlement.

Amendment of s 968 (Chief executive may direct works to be modified or removed)

Clause 151 clarifies that the notice given by the chief executive under this section is taken to be a compliance notice. This means the notice, once given, applies as a compliance notice under the Act.

Amendment of s 969 (Development applications for the removal of quarry)

Clause 152 removes the need for the applicant to necessarily hold the allocation notice as the allocation notice is granted to the owner of the land. The applicant for the development application may not always be the owner of the land.

Amendment of s 972 (When an applicant may appeal to the Land and Resources Tribunal)

Clause 153 amends incorrect section references to the *Integrated Planning Act 1997*.

Amendment of s 977 (Power to enter places for stated purposes)

Clause 154 allows a metering contractor to clear vegetation or any other thing adversely affecting access to a meter. A metering contractor must only exercise this power where there is such an impediment to access a meter that has been installed under the meter installation process set out in the *Water Regulation 2002* and where the installed meter is one owned by the State.

Replacement of s 1000-1003

Part 4A Private Water Supply Agreements

Clause 155 inserts a new part 4A dealing with private water supply agreements. This part will provide a framework to allow registered owners of land being supplied with water from a former water bore supply area (taken now to be an authority area without a board under the Act and administered by the chief executive) to take on self-management of the supply of the water in circumstances where the area is to be dissolved.

1000 Entering private water supply agreements

This section provides for registered owners of land being supplied with water from a former water area, taken under section 1083(2) to be an authority area and for which the chief executive continues to perform the functions of a water authority, to enter into an agreement about supplying the water to their land. The agreement must include the matters detailed in subclause (2), including how the agreement may be terminated but only with the consent of all parties.

1001 Registration of particular agreements

This section requires the parties to an agreement to as soon as practicable to give notice of the agreement, together with a copy, to the chief executive. The chief executive must give notice to the registrar of titles of the agreement and the registrar must record the notice of the agreement on the owner's land. If the agreement is cancelled, the parties must also give notice to the chief executive of the cancellation and the chief executive must give notice to the registrar and the registrar must remove the particulars of the agreement from the owner's land. The agreement attaches to the owner's land and binds successors in title.

1002 When agreement has effect

This section provides that an agreement only takes effect when the former water area, in which the parties to the agreement are supplied water, is dissolved under the Act.

1003 Amending a private water supply agreement

This section states an agreement may only be amended once by the parties to the agreement and only in circumstances where the works under the agreement are being capped and piped or have been capped and piped. Under these circumstances, the agreement may also be amended to include other land and, if necessary, the registered owner of the added land as a party if the owner is not already a party to the agreement. The parties must give notice to the chief executive of the amending agreement. The notification requirements to the registrar and action taken by the registrar for an original agreement apply for an amending agreement.

1003A Chief executive may approve standard agreement

This section provides for the chief executive to approve and gazette a standard private water supply agreement. If on the day a former water area is dissolved, the registered owners of the land in the former water area are being supplied water and have not entered into a private water supply agreement, the standard agreement will now apply to the supply of water to the registered owner's land. The standard agreement applies as if it were an agreement entered into by the owners under clause 1000 until the parties replace the agreement by entering into a new agreement. As the standard agreement is taken to be an agreement under clause 1000, the chief executive will still give notice to the registrar of the agreement so that notice of the agreement can be recorded on the owner's land.

Amendment of s 1006 (Declarations about watercourses)

Clause 156 provides that a water resource plan may also be the means by which water in an aquifer under a watercourse, or under land adjacent to a watercourse, is declared water in a watercourse.

Amendment of s 1007 (Records to be kept in registries)

Clause 157 provides for a number of amendments to this section to provide for additional notification of certain actions taken by the chief executive to be made to the registrar of titles.

The chief executive must give notice to the registrar of a grant of a water licence or interim water allocation, being entitlements that attach to land, and the land to which the licence or allocation attaches. The registrar must record an administrative notice on the land to which a licence or allocation

attaches. This serves to alert a purchaser of land of the attached water entitlement.

For notices given under section 494 for emergency action in relation to a referable dam –

- If the chief executive is satisfied the notice given has been complied with or is no longer required, the chief executive must ask the registrar of titles to remove the notice.
- The registrar of titles must comply with a notice given by the chief executive in relation to registering the charge made under section 494(8)(b) as an encumbrance or varying or releasing the charge as requested.

For notices given under section 127B(2) in relation to a water allocation to which a distributions licence applies the registrar of water allocations must record an administrative notice on the water allocation to show that it is an allocation to which section 127C applies.

For notices given by the chief executive to the registrar under section 127C(4) – in relation to the distribution operations licence holder agreeing that the obligation under 127C(2) has been satisfied – the registrar must record this notice so that a search of the register relating to the water allocation reflects the fact that section 127C no longer applies to the allocation.

Amendment of s 1009 (Public inspection and purchase of documents)

Clause 158 includes further relevant documents or instruments made or given under the Act that must be made publicly available.

Amendment of s 1013A (Fee and charges payable to the chief executive)

Clause 159 replaces interest accruing on an amount of fee or charge remaining unpaid after it is due with a late fee. The option of a late fee facilitates a more streamlined accounting system.

Amendment of s 1013B (Non-payment of fees or charges)

Clause 160 replaces the reference to ‘interest’ with ‘late fee’ consistent with clause 162 providing for a late fee to replace the accrual of interest on payment of a fee or charge that is outstanding.

Amendment of s 1014 (Regulation making power)

Clause 161 includes the power for a regulation to be made that prescribes:

- organisations approved to provide accredited farm management systems programs; and
- accredited farm management system programs.

These provisions accompany amendments in the Bill to sections 74, 76 and 77 contained. Changes to these sections accommodate an application for the approval of a person’s farm management system as a land and water management plan.

The regulation making powers created by this clause support the policy to recognise particular farm management system programs and the organisation that are approved to provide these programs.

Subclause (2) gives a regulation making power to state a process for converting existing authorities to an interim water allocation. In addition a process for granting interim water allocations may be made by regulation to give effect to an earlier agreement entered into in 1997 with a certain category of licence holders within the specified area. To date, the agreements have not been fully put into effect. The intention of this provision is to now give effect to the agreements.

Subclause (3) corrects a reference to the *Integrated Planning Act 1997*.

Amendment of s 1037 (Local government authorities)

Clause 162 provides for a number of amendments to section 1037. The chief executive may replace an existing authorisation with a water licence without the need to obtain the consent of the authority holder. The current requirement of always needing the authority holder’s consent to replace the existing authority limited the chief executive from replacing the authority with a water licence that more appropriately regulated the taking or interfering with water under the existing authority. The chief executive may grant a replacement water licence without the need for an application to be

made under section 206 in all circumstances and is not limited to where the licence is granted on the same conditions.

Insertion of new s 1037A

1037A Other continuing authorities

Clause 163 provides that if the specified entities were taking or interfering with water, on commencement of this section, the entities are taken to hold an authority under the Act to take or interfere with water, and the authority continues until it is replaced. The intention of this clause is to continue the authority held by these entities for which there are currently no instrument (such as a licence or other entitlement under the Water Act) in existence.

Insertion of new ss 1057 and 1058

Clause 164 inserts new provisions dealing with reinstating water licences.

1057 Reinstating particular expired licences

This section allows the chief executive to reinstate a specified class of water licences that has expired. The reinstated licence can be granted without the need for an application to be made. The reinstated licence will be granted on the same conditions as water may be taken or interfered with under the expired licence.

This is to provide a transitional framework for reinstating a number of licences that may have inadvertently expired at the time of the creation of interim water allocations, where it was necessary to unbundle existing water licences in preparation for a conversion in part to an interim water allocation and in part to a water licence under the Water Act.

1058 Reinstating particular expired licences in former water areas

This section allows the chief executive to reinstate a specified class of water licences that have expired and without an application being made under section 221 of the Act. The reinstated licence will be granted on the same conditions as water may be taken or interfered with under the expired licence.

This is to provide a transitional framework for reinstating a number of licences that have expired in former water areas that were continued in

existence under section 1083(2) and where water has continued to be supplied to the registered owners of the land in the area despite the expiry of the licence.

Amendment of s 1089 (Existing authorities to take, or interfere with water)

Clause 165 provides for a number of amendments to section 1089. The chief executive may replace an existing authorisation with a water licence without the need to obtain the consent of the authority holder. The current requirement of always needing the authority holder's consent to replace the existing authority limited the chief executive from replacing the authority with a water licence that more appropriately regulated the taking or interfering with water under the existing authority. The chief executive may grant a replacement water licence without the need for an application to be made under section 206 in all circumstances and is not limited to where the licence is granted on the same conditions. In addition, the authorities mentioned in subclauses (2) and (3) are also taken to authorities under the Water Act to take and interfere with water. The types of replacement authorisations, apart from a water licence, is extended to include all types of authorities that may relevantly replace the existing authorisation.

Insertion of new s 1089A

1089A Conversion of existing authorities to take water

Clause 166 inserts a new provision to provide a framework to convert certain authorities belonging to the customers of four water boards into interim water allocations (IWAs). Section 1089 provides that if a water authority or its customers were authorised under the *Water Resources Act 1989* (now repealed) to take or interfere with water, the authority continues under the earlier Act until later replaced with a water entitlement under this Act. This provision will operate to replace certain authorities.

The regulations associated with the four boards to which this section applies attach specific property allocations to each property that is supplied with water by the Board. For such Boards, the current framework does not provide clear certainty as to how a customer's authority is affected by transfers or changes to the land to which the authority relates.

The provision will convert the existing authorities to IWAs. The owner or owners of the land to which the existing authority relates will ordinarily

hold the IWA. However, the amendment recognises that, historically, some occupiers also held authorities under the *Water Resources Act 1989* (now repealed). An occupier of land will be able to hold the IWA where the occupier:

1. was listed as having an interest in the authority from which the IWA is to be created; and
2. has maintained a continued connection to the land to which the authority relates.

The Act contains provisions that expressly deal with how transfers and changes to land, to which an IWA is attached, affect the IWA and who holds the IWA. These provisions will now apply to these IWAs such that any future transfers and changes to the land will enable both the holder and the department to accurately record details of the IWA and who holds the IWA.

Subclauses (2), (3) & (4) deal with existing authorities to take water by persons supplied water by the following boards – Avondale Water Board, Kelsey Creek Water Board and Six Mile Creek Water Supply Board. The provisions will establish the customer’s authorities as IWA in accordance with the instrument mentioned for each Board in the *Water Resources (Areas and Boards) Regulation 2000*. The ownership of the each IWA will be as per the instrument mentioned unless the land has been transferred or changed, in which case the IWA will be held by the owner (or owners) of the land to which the IWA relates.

Subclause (5), (6) & (7) deal with existing authorities to take water by a person supplied water by the Pioneer Valley Water Board. In the case of this Board, the customer’s authorities will be established as IWA in accordance with the arrangements publicly advertised in the draft Pioneer Valley Resource Operations Plan. The ownership of the each IWA also will be as per the draft Pioneer Valley Resource Operations Plan unless the land has been transferred or changed, in which case the IWA will be held by the owner (or owners) of the land to which the IWA attaches.

Subclause (8) continues the effect of the aspects of the instruments for each of the four Boards that deal with the delivery of water, particularly the contractual arrangements under which the Boards supply water to their customers.

Subclause (9) provides definitions for specific terms used in the Section.

Amendment of s 1116 (Minster must approve standard supply contract)

Clause 167 corrects an omission in this section of not referring to ‘order in council’. The operation of section 1116 and section 1117 applied a supply contract to interim water allocations (IWA’s) granted by the chief executive under this part – either the standard supply contract approved by the Minister under section 1116 or the provisions of an agreement or order in council, other than those about the allocation of water, under section 1117. It was intended the standard supply contract under section 1116 would not apply to those IWA’s related to an agreement or order in council referred to in section 1117. The amendment reflects this original intention to make section 1116 consistent with how the two sections were intended to operate. The amendment does not adversely affect an IWA or IWA holder.

Insertion of new s 1117A

1117A When conditions of supply contract do not apply

Clause 168 makes provision for conditions about payment for the supply and storage of water for specified interim water allocations to not apply in specified circumstances. By way of background, this provision will apply where an entity was authorised to take water under earlier legislation and constructed infrastructure for that purpose. At a later point in time, the entity’s infrastructure became incorporated into a water supply scheme however the entity continued to take water under its continuing authority. The amendment provides a process by which an identified IWA and its identified holder will not be subject to a condition in the supply contract between the IWA holder and interim resource allocations holder about payment for the storage and supply of water. The entity and the IWA can only be nominated in the regulation if the following circumstances are met:

- The IWA holder, prior to the grant of the IWA under section 1113 at the time of establishment of the corporatised entity, SunWater, was authorised to take water under an earlier Order in Council or agreement;
- The water taken by the entity was from a weir that had been constructed by the entity and remains in the ownership of the entity.

The benefit afforded to the entity under this provision only continues for as long as the weir is maintained and remains in existence.

Insertion of new ch 9, pt 5, div 1,hdg

Clause 169 inserts a new division heading ‘Division 1 Miscellaneous’.

Insertion of new s 1135A

1135A Validation of particular decisions

Clause 170 provides that certain decisions made under the Act are taken to be, and always have been, valid. By way of background, it has been identified that the chief executive’s decisions made under Chapters 2 and 9 of the Water and the giving of compliance notices under Chapter 5 had not been delegated beyond Deputy Director-General prior to 20 October 2003. Up until this time, experienced departmental officers had reasonably, albeit incorrectly, considered that the departmental officers undertaking internal review of these original decisions were in fact validly exercising the review powers under sections 863 and 864. As a consequence decisions extending time for making a review application and making a review decision are potentially not lawful.

A delegation has now been put in place for specified departmental officers, effective from 20 October 2003. An amendment is necessary to validate those previous review decisions made since 1 October 2000 up to 20 October 2003 by departmental officers exercising the review powers without the necessary delegation.

Insertion of new ch 9, pt 5, div 3, hdg

Clause 171 inserts a new division heading for division 3 of this part.

Insertion of new ch 9, pt 5, div 4

Division 4 Transitional provisions for Water and Other Legislation Amendment Act 2005

Clause 172 inserts transitional provisions for the Bill.

1136B Notices given under s 101(b) and (1)(c)

This section provides for how an existing section 101(b) notice lodged with the chief executive in relation to a draft resource operations plan (ROP) will be transitioned at the commencement of this section. On

commencement of this clause, a section 101(b) notice that has been lodged in relation to a draft ROP that, at the commencement of this section has not yet been approved by the Governor in Council, will be a notice to which new clause 61 applies. This means an existing section 101(b) notice will give to the interest holder who lodged the notice the benefit that their existing interest in the expired water entitlement or other authority to take water will continue as an equivalent interest, despite the expiry of the entitlement or authority, until whichever of the matters detailed in the new section 150A(1) happens first.

In addition, an interest holder who lodged a section 101(b) notice, may lodge the new section 101(1)(c) notice within 60 business days after the water allocation is recorded on the register. If a new section 101(1)(c) notice is lodged, section 150B(1) as in force after commencement applies. The registrar will be required to record the consent in accordance with the requirements of section 101(1)(c).

1136C Effect of disposal of part of land to which interim water allocation attaches

This section provides for transitional arrangements for how existing disposals of land to which an interim water allocation (IWA) was attached will be dealt with. If before the commencement of this section, land, to which an IWA was attached, was disposed of and the owners of the land had failed to make an application for a new IWA within the requisite time period of 60 business days under section 198(3) – the IWA is not taken to have been surrendered but held jointly by all owners of the land to which the IWA related prior to the disposal. An owner may then apply, with the necessary consent of all owners, within 60 business days of the commencement of this section for a replacement IWA. If the owners do not apply, the provisions of the new clause 75 will apply allowing the chief executive to make a proposed decision on the replacement IWA.

1136D Effect of acquisition of part of land to which interim water allocation attaches

This section transitionally provides for the effect of an acquisition of part of land, to which an interim water allocation (IWA) attached and where an application for a replacement IWA was not previously made under section 198(3). Where the remaining part of the land after the acquisition no longer adjoins the watercourse, lake or spring, the IWA is taken to have been surrendered and the chief executive must deal with allocation under section

197(3), unless the holder of the allocation can satisfy the chief executive within 60 business days after the commencement of this section the holder has the necessary access rights over the intervening land to the extent necessary to enable water to be accessed. Section 206(3)(b) sets out the nature of access rights in relation to the various types of intervening land.

1136E Condition about measuring device not effective

This section deals with how a water licence, which may include a condition requiring installation of a meter, is to be treated under the new framework for meter installation by the chief executive under the *Water Regulation 2002* (Water Regulation). The Water Regulation implements a new process for the installation of a meter for the taking or interfering with water. The meter is owned by the State and a metering service charge is payable by the water user. However water licences previously issued by the chief executive may have included a condition requiring the water licence holder to install a meter at the direction of the chief executive. In cases where a licence holder has not yet received such a direction, it is necessary for the current condition of the licence to no longer have effect. This is because any future direction given by the chief executive about meter installation will be through the meter installation process detailed in the Water Regulation. This amendment is necessary to avoid any inconsistency in the process for meter installation.

1136F Submitting system leakage management plan for registration

This section provides that an existing registered water service provider must give a copy of the provider's system leakage management plan to the regulator for approval as follows:

- For a small service provider – within 3 years of the commencement date (1 October 2005).
- For a medium or large service provider – within 2 years of the commencement date (1 October 2005).

1136G Submitting drought management strategy for registration

This section provides that an existing registered water service provider must give a copy of the provider's drought management strategy to the regulator for approval as follows:

- For a large service provider – within 1 year of the commencement date (1 October 2005).
- For other service providers – within 2 years of the commencement date (1 October 2005).

1136H Interest payable under section 1013A

This section deals with how interest payable on an outstanding fee or charge will be dealt with at the commencement of the new clause 162, providing for a late fee as an alternative to the payment of interest on outstanding fees and charges. The amount of interest payable on an outstanding fee or charge, on commencement of this clause, is taken to be the late fee.

Amendment of sch 4 (Dictionary)

Clause 173 makes amendments to, and omits, a number of defined terms in the dictionary in schedule 4 of the Act.

Some of the more significant amendments are outlined below:

- ‘holder of a water allocation’ – the holder of a water allocation is the name of the holder entered on the water allocations register. A water allocation in its entirety can be leased but not in part. Where a water allocation is leased, it is the whole of the allocation that is leased, and effectively the lessee is then responsible for the water allocation and complying with all conditions of the allocation and not the holder.
- ‘information notice’ – the definition has been amended to clarify the requirements to be included about appeal rights. In addition, the notice must include the names and addresses of any other person who was given the information notice. These details need to be made available to the recipient of the information notice to allow the recipient to comply with the requirement in section 863(3) for making an application for internal review. Section 863(3) requires an applicant for internal review of a decision to inform any other person, who was given an information notice about the original decision, about the making of an application for internal review.
- ‘registered proprietor’ – the amendment provides this term has the meaning given under the *Land Title Act 1994*.

PART 3 AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 174 provides that the Bill amends the *Integrated Planning Act 1997*.

Amendment of sch 8A (Assessment manager for development applications)

Clause 175 includes ERA 22 as an additional ERA to which item 3 applies. In circumstances where development includes one of the combinations of the described environmentally relevant activities together with the removal of quarry material for which an allocation notice is required under the Water Act, the chief executive administering the Water Act will be the assessment manager.

PART 4 AMENDMENT LAKE EYRE BASIS AGREEMENT ACT 2001

Act amended in pt 4

Clause 176 provides that the Bill amends the *Lake Eyre Basin Agreement Act 2001*. The amendments give effect to intergovernmental agreement changes arising from the Ministerial Forum 10 June 2004. The amendments include the Northern Territory as party to the agreement and remove New South Wales as a party to the agreement and alter Lake Eyre Basin boundary covered by agreement.

Replacement of ss 2 and 3

Clause 177 replaces the definition section and approval and ratification of agreements section. A definition is provided for both the original agreement, first amending agreement and agreement.

Amendment of schedule (Lake Eyre Basin Intergovernmental Agreement)

Clause 178 renames schedule 1 to refer to the original agreement, the Lake Eyre Basin Intergovernmental Agreement.

Insertion of new sch 2

Clause 179 inserts a new schedule 2 to include the first amending agreement.

PART 5 AMENDMENT LAND PROTECTION (PEST AND STOCK ROUTE MANAGEMENT) ACT 2002

Act amended in pt 5

Clause 180 provides that the Bill amends the *Land Protection (Pest and Stock Route Management) Act 2002*.

Amendment of s 325 (Existing Agreement about facilities)

Clause 181 extends the expiry date for stock route water agreements for a further 2 years.