

# **Water Amendment Bill 2006**

## **Explanatory Notes**

### **Short Title**

The short title of the Bill is the *Water Amendment Bill 2006*

### **Policy Objectives of the Legislation**

The objective of the *Water Amendment Bill 2006* (“the Bill”) is to amend the *Water Act 2000* (“the Act”) to establish a transparent decision-making and implementation framework for the management of water supply and demand in Queensland through the creation of the Queensland Water Commission (“the Commission”).

### **Reasons Why the Proposed Legislation is Necessary**

The SEQ Regional Plan highlighted the need for a review of institutional arrangements for water supply in SEQ. While population pressures are a key driver, the drought has highlighted many problems with the existing arrangements.

In response, the State initiated a review of institutional arrangements for urban and related rural water supply in SEQ in partnership with local governments. The review is examining a “package” of reforms relating to:

- planning for water security (both supply and demand);
- water sharing and entitlements;
- cost sharing, pricing and economic regulation; and
- asset ownership and integration.

Because these four elements are related, work on each is being progressed simultaneously. However, priority needs to be given to fixing the planning model.

There are a number of problems with the current planning model including the fact that there is no entity that is clearly responsible for ensuring regional water supply security. Further, lengthy sectoral negotiations fail to

deliver outcomes and result in uncertainty as to who is responsible for future augmentations.

In response to the problems with the current planning model, in early March the Premier, the Chair of the Council of Mayors (SEQ) and other local government representatives from SEQ announced the agreed approach of establishing a Commission.

### **Means of Achieving Objectives**

The Bill establishes an independent expertise based Queensland Water Commission.

The Commission will consist of at least three members. Appointments may be full or part-time and will be made on the basis of expertise and knowledge in relevant areas.

The Commission will have four main roles –

- Undertake regional assessments of options for water supply sources and demand management measures, from which it will develop water security options. The options will address supply options (including pipelines) and demand management measures and will be forwarded to the Minister to consider when making a regional water security program.
- Facilitate and implement regional water security programs approved and published by the Minister.
- Ensure relevant parties comply with a regional water security program approved and published by the Minister.
- Set restrictions on usage in circumstances where the Commission considers it necessary in the interests of ensuring security of water supply.

The Commission will carry out its regional assessment of water supply and demand management options in response to referrals from the Minister. Each referral will designate the region to which it applies. Referrals may be limited by time or be standing referrals.

In addition to the above explicit functions, the Minister may refer other matters to the Commission for advice. These matters may be specific to a particular region or about water supply and demand management generally. The general roles of the State government and the Commission are:

- (a) Planning for water security

- The role of the Commission for the SEQ region is established in this Bill. The Minister may also make a referral to the Commission to address water security issues in other regions of the State.
  - The Commission will investigate options and provide advice to the Minister regarding how to achieve a sustainable water supply in the region. The advice will be on matters such as:
    - levels of service to be achieved, for example, maximum duration and severity of water restrictions;
    - infrastructure and sources of supply (for example, the site and timing of new dams, recycling, desalination or other sources);
    - the way water should be moved around and shared within the region;
    - demand management measures including improving efficiency of infrastructure, improving the efficiency of water usage and recycling; and
    - cost sharing and pricing.
  - The Commission may conduct such consultation as it considers appropriate in developing the options.
  - The Minister will consider the advice and prepare a 'regional water security program'. The program will be a comprehensive package of both supply and demand management actions and will set out the responsibilities of the State, water service providers and other relevant entities. The Minister will publish the program.
- (b) Facilitating infrastructure development
- The implementation of the Minister's program, so far as it relates to the provision of major infrastructure will be facilitated by the application of the provisions of the *State Development and Public Works Organisation Act 1972*.
- (c) Ensuring compliance with a regional water security program
- To ensure compliance with a published regional water security program, the Commission will prepare, implement and enforce a 'system operating plan'. The plan will set out how water is to be shared and moved around the region, and what demand management measures need to be operationalised to deliver on the levels of service objectives specified in the regional water security program.

- The Commission will be able to require water providers to publish reports on how they are performing against a system operating plan and /or conduct spot audits of a provider's performance.

### **Estimated Cost of Implementation for Government**

The State will meet the establishment costs for the Commission. This is estimated at \$2 million to \$2.5 million for the first year of the Commission's operations. Thereafter the functions of the Commission will be funded through charges on water service providers.

### **Consistency with Fundamental Legislative Principles**

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

- The new section 341 provides a definition of the SEQ region and provides for amendment of that definition by gazette. The jurisdiction of the Commission can also be extended beyond SEQ (to other regions of the state) by gazette. This is consistent with other bodies for which terms of reference can be set by methods other than by primary legislation, for example by referral or Ministerial direction. The SEQ region has been specified in the Bill to provide greater clarity about the original focus of the Bill. This provides for greater transparency than if the SEQ region was designated through transitional provisions.
- The new section 360ZB gives the Commission the power to require a water service provider to publish a notice about the extent to which it has complied with a system operating plan. This power is limited by the requirement that the notice issued by the Commission clearly specify the publication requirement. The new section 360ZC also provides that information derived as a result of the publication requirement is not admissible in evidence in proceedings other than for an offence for which the falsity or misleading nature of the information is relevant.
- The new section 360ZA imposes a maximum penalty of 1665 penalty units if a water service provider fails to comply with a system operating plan. Because a system operating plan is about ensuring efficient water use, it is considered that a failure to comply with the plan is analogous to the offences regarding the illegal taking of water. For this reason the quantum of the penalty is commensurate with the penalties for those offences. Further, although the details of the system operating plan do not appear in the primary legislation, the Bill clearly

constrains the scope of the matter to be contained in the system operating plan and the entities that are subject to it.

- Section 360ZG provides for a maximum penalty of 1665 penalty units where a water service provider fails to give a notice about, or to monitor and enforce compliance with, a commission water restriction, where the Commission has delegated that function to the water service provider. Again, because water restrictions are about the efficient use of water, it is considered that an offence under this provision is analogous to the offences regarding the illegal taking of water.

## **Consultation**

Government departments and agencies affected by the changes have been consulted in developing the Bill.

The Local Government Association of Queensland the South East Queensland Water Corporation (SEQWater), the Council of Mayors (SEQ) and SunWater have also been consulted in developing the Bill.

The review of institutional arrangements is being led by the State, in partnership with local governments and other water suppliers. The review is being overseen by a Steering Committee that is chaired jointly by the Coordinator-General and the Director-General of the Department of Natural Resources, Mines and Water. The Steering Committee considered the issues around the planning model for some months, documenting problems with current arrangements and considering options, culminating in the preparation of a draft position paper that was the subject of more detailed consultation with SEQ local governments and water industry stakeholders. The position paper was considered by all those represented on the Steering Committee, and was also provided to the Queensland Competition Authority, and the National Water Commission.

## **Regard for aboriginal and islander custom**

The Bill contains no provisions that will affect aboriginal or islander custom.

## **Notes on Provisions**

### **Clause 1 Short title**

Clause 1 sets out the short title of the Bill as the *Water Amendment Act 2006*.

### **Clause 2 Act amended in pt 2**

Clause 2 provides that the Bill amends the *Water Act 2000*.

### **Clause 3 Amendment of s 25M (Appointment of person to carry out measures or achieve outcomes)**

Clause 3 amends section 25M(5) of the Act to clarify that the section refers to service provider water restrictions and not Commission water restrictions. This distinction is necessary because the Bill gives the Commission the power to impose water restrictions (“Commission water restrictions”) in certain circumstances (see section 360ZD(2)), which means that a distinction must be drawn between Commission water restrictions and restrictions imposed by a water service provider (“service provider water restrictions”) under section 388 of the Act.

### **Clause 4 Amendment of s 25S (When compensation is not payable)**

Clause 4 amends section 25S(1)(a) of the Act to clarify that the section refers to service provider water restrictions and not Commission water restrictions.

### **Clause 5 Amendment of s 99 (Matters the chief executive must consider when preparing draft resource operations plan)**

Clause 5 amends section 99 of the Act to require the chief executive to take into account any system operating plan for a region when preparing a draft resource operations plan that will apply to that region.

### **Clause 6 Amendment of s 105 (Amending resource operations plan)**

Clause 6 amends section 105(4) of the Act to enable the chief executive to amend a resource operations plan to achieve greater consistency with a system operating plan for a region.

### **Clause 7 Amendment of s110 (Conditions of a resource operations licence or distribution operations licence)**

Clause 7 amends section 110 of the Act to recognise that a resource operations licence holder or a distribution operations licence holder must,

as a condition of the holder's licence comply with a system operating plan, to the extent it applies to the provider.

**Clause 8 Amendment of s 178 (Conditions of interim resource operations licence)**

Clause 8 amends section 178 of the Act to provide that it is a condition of an interim resource operations licence that the licence holder must comply with a system operating plan to the extent it applies to the provider.

**Clause 9 Insertion of new chapter 2A**

Clause 9 inserts a new chapter 2A in the Act which deals with water supply and demand management.

Section 340 provides that the main purpose of the new chapter 2A is to ensure the delivery of sustainable and secure water supply and demand management for the SEQ region and other designated regions. This will mainly be achieved by:

- The making and implementation of regional water security programs; and
- The establishment of a Commission to:
  - advise the Minister on matters relating to water supply and demand management and the delivery of desired levels of service objectives for water supplied to regions;
  - facilitate and implement regional water security programs;
  - ensure compliance with regional water security programs;
  - in appropriate cases, impose restrictions on water supply; and
  - monitor and enforce compliance with Commission water restrictions.

From its establishment the Commission will operate in the SEQ region. Section 341 defines the SEQ region as the local government areas, and Queensland waters adjacent to the following local government areas:

- Beaudesert Shire Council;
- Boonah Shire Council;
- Brisbane City Council;
- Caboolture Shire Council;
- Caloundra City Council;

- Esk Shire Council;
- Gatton Shire Council;
- Gold Coast City Council;
- Ipswich City Council;
- Kilcoy Shire Council;
- Laidley Shire Council;
- Logan City Council;
- Maroochy Shire Council;
- Noosa Shire Council;
- Pine Rivers Shire Council;
- Redcliffe City Council; and
- Redland Shire Council.

The section also provides for any local government area, or any part of a local government area, which is adjacent to one of the above local government areas to be designated by gazette notice. This will allow the Commission to consider connectivity between parts of the region, as well as sources outside specific local government areas. This flexibility is needed because often local government water supplies (or potential supplies) are sourced from outside the relevant local government area. It is also consistent with the theme underpinning the Bill generally about regional solutions to water supply issues that transcend local government boundaries.

The reference to “Queensland waters adjacent” is a recognition that desalination options will be matters considered by the Commission.

Section 342 establishes the Queensland Water Commission.

Section 343 provides that the Commission represents the State and has the status, privileges and immunities of the State.

Section 344 provides that the Commission is:

- a unit of public administration (as defined in section 20 of the *Crime and Misconduct Act 2001*);
- a statutory body under the *Financial Administration and Audit Act 1977*; and



- a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

Section 345 provides that the Commission has the following key functions:

- advise the Minister on matters relating to water supply and demand management, and the delivery of desired levels of service objectives for water supplied to the SEQ region and other designated regions;
- facilitate and implement regional water security programs; and
- ensure compliance with regional water security programs and with commission water restrictions.

Section 346 provides that in performing its functions the Commission must have regard to the general principle that water is to be managed on a sustainable and integrated basis to provide secure and reliable supplies of acceptable quality for all uses (including domestic, commercial, industrial and agricultural uses).

In addition to this general principle, the Commission must also have regard to the following specific principles:

- (a) For water sharing - water is a scarce resource that is to be shared across the region. This principle recognises the fact that water does not respect local government boundaries, and planning for water supply and demand management must be conducted from a regional perspective;
- (b) For water sources - the health of water catchments and their ecosystems should be considered to ensure the protection of water quality;
- (c) For water supply operations - arrangements should maximise efficient and cost-effective service delivery and efficient use of water, including for example, appropriate connectivity between supply sources. Section 10(3) of the Act provides that the term “efficient use of water”:
  - incorporates demand management measures that achieve permanent and reliable reductions in the demand for water; and
  - promotes water conservation and appropriate water quality objectives for intended use of water; and
  - promotes water recycling, including, for example, water reuse within a particular enterprise to gain the maximum benefit from available supply; and

- takes into consideration the volume and quality of water leaving a particular application or destination to ensure it is appropriate for the next application or destination, including, for example, release into the environment.
- (d) For cost sharing and pricing - the costs of water sources should be shared among users who benefit (either directly or indirectly) from the water source; and pricing should be consistent with government commitments under intergovernmental agreements (for example paragraphs 64-68 of the National Water Initiative, a copy of which can be found at [http://www.nwc.gov.au/NWI/docs/iga\\_national\\_water\\_initiative.pdf](http://www.nwc.gov.au/NWI/docs/iga_national_water_initiative.pdf));
- (e) For planning - assessments should apply the principles of least cost planning to ensure the proper economic comparison of all supply-side and demand-side options. Least cost planning is planning which attempts to deliver a stated goal in a stated timeframe at the lowest 'real' cost to the community and not simply the lowest financial cost. It is planning which takes into account the quantifiable costs and benefits to the community for the full life-cycle of the program, as well as attempting to include non-quantifiable costs as far as possible. It aims to identify the lowest cost means of providing customers with the water-related services rather than the water itself;
- (f) For commission water restrictions - the principle that they should reflect existing available water, projected demand and climatic outlook.

Section 347 gives the Commission the powers necessary or convenient to perform its functions or to help achieve the purpose of chapter 2A. The powers include the power to enter into contracts or appoint agents.

Section 348 provides that the Commission will consist of a minimum of three commissioners, one of which will be the chairperson. The commissioners are to be appointed by the Governor-in-Council on a full-time or part-time basis.

Section 349 provides that to be eligible for appointment as a commissioner a person must have a high level of knowledge and understanding of all or any of the following:

- sustainable water demand and supply management
- natural resource management
- the water industry
- the interests of customers of water service providers

- economics, finance or business

These criteria will ensure that the Commission is an expertise based body. To avoid conflicts of interest (both real and perceived), a person will not be eligible for appointment if the person is:

- a related entity (as that term is defined in the Corporations Act) of a water service provider; or
- an employee of a water service provider; or
- a member of Parliament or a councillor of local government.

Section 350 provides that a commissioner holds office for the term stated in the commissioner's instrument, but cannot hold office for longer than 3 years. A commissioner can be reappointed at the expiry of their term.

Section 351 provides that the commissioners are to be paid the remuneration and allowances decided by the Governor-in-Council, and that they hold office on the terms and conditions decided by the Governor-in-Council in addition to those provided for in the Act.

Section 352 provides that a commissioner may resign by giving written notification to the Minister.

Section 353 provides that the Governor-in-Council may end a commissioner's appointment if the commissioner –

- is convicted of an indictable offence, whether in Queensland or elsewhere; or
- is or becomes an insolvent under administration under section 9 of the Corporations Act; or
- does not without reasonable excuse comply with section 354 (disclosure of interests).

If the commissioner is a full-time commissioner, the Governor-in-Council may end his or her appointment if:

- the commissioner is absent from the State, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year; or
- engages in paid employment outside the duties of office without the Minister's approval.

Section 354 provides that commissioners are required to disclose any direct or indirect pecuniary interests which may conflict with the proper

consideration by the commissioner of matters arising at a meeting of the Commission.

If a commissioner makes such a disclosure, the commissioner must not participate in the Commission's consideration of the matter unless the other commissioners agree. The disclosure and the commissioners' decision in relation to the disclosure must be recorded in the minutes.

Section 355 provides that the Commission may conduct its business, including its meetings, in the way it considers appropriate.

Section 356 states that Commission meetings are to be held at the times and places the chairperson decides, although the chairperson must call a meeting if asked in writing to do so by at least 2 commissioners, and must call a meeting at least once in each quarter.

Section 357 states that a quorum for a Commission meeting is more than half of the commissioners.

Section 358 provides that the chairperson is to preside at all Commission meetings at which the chairperson is present. Where the chairperson is not present the commissioners may choose a commissioner to preside.

Section 359 provides for the Commission to hold meetings or allow commissioners to take part in meetings using technology such as telephone or video conferencing. It also states that a decision at a Commission meeting must be a majority decision of the commissioners present.

Section 360 states that a decision of the Commission, other than a decision at a Commission meeting, may be made only with the written agreement of all commissioners.

Section 360A states that the Commission must keep minutes of its meetings and a record of any decision under section 360 (decisions outside meetings).

Section 360B provides that the Commission may employ the staff it considers appropriate to perform its functions, including for example, a chief executive officer. The staff will be employed under the *Public Service Act 1996*. The Commission may also utilise the services (for example through secondments) of officers or employees of State government departments, local governments or other units of public administration (as that term is defined in section 20 of the *Crime and Misconduct Act 2001*).

Section 360C provides that the Commission may establish advisory bodies it considers appropriate to give the Commission advice on the performance

of its functions. These advisory bodies will not have any decision-making role.

Section 360D provides that the Minister may publish a notice in the gazette designating a region for which the Commission is to perform its functions. In deciding what is a region, the Minister must have regard to the geography, society and economy of proposed regions, as well as water users and potential users within them.

In the case of the SEQ region no designation is required and the Commission may commence operations in the region immediately following the commencement of the Bill and appointment of the commissioners.

Where the Commission has already provided regional water security options to the government, clause 360D(1)(b) provides that the Minister may publish a gazette notice requiring the Commission to update or revise the options, having regard to the implementation of the relevant regional water security program.

A gazette notice issued pursuant to section 360D may also identify the period within which the Commission must give regional water security options, or updated or revised options, for the region.

Section 360E provides that the Minister may direct the Commission to provide advice to the Minister on any matter relating to water supply and demand management in a region, as well as on any matter relating to water supply and demand management generally. This provision enables the Minister to seek advice from the Commission on a broad range of matters where the Minister believes the Commission's expertise and independence will be beneficial.

Section 360F provides for an annual levy to be imposed on each water service provider for the purpose of funding the Commission's functions. The amount of the levy and the time and way in which the levy is to be paid will be prescribed by regulation. If a water service provider fails to pay the levy as required, the State may recover the amount of the levy as a debt.

Section 360G provides that the purpose of Part 3 is to provide for the Commission's planning functions and its relationship with the Minister in assessing and recommending options to achieve water security in a region.

Section 360H clarifies that in addition to applying to the Commission generally, Chapter 2A, Part 3, Division 2 also applies to the Commission in circumstances where the Minister has (pursuant to section 360D(1)(b) of

the Act) required the Commission to update or revise its options for a region.

Section 360H also clarifies that a reference in Chapter 2A, Part 3, Division 2 to the options includes a reference to any updated or revised options.

Section 360I requires that the Commission give advice to the Minister about regional water security options for ensuring regional water supply security. The options may contain a number of measures including new infrastructure and demand management measures such as retrofit programs or water restriction regimes. It also requires the Commission, if asked by the Minister, to provide advice about revised options for a region. A report under this section must be given to the Minister within any period specified in a gazette notice issued pursuant to section 360D of the Act (standing references).

Section 360J provides that the advice provided by the Commission must address each of the following:

- Water service providers for water supply works in the region who should have desired levels of service objectives;
- What are desired levels of service objectives for each of the water service providers;
- Demand management for water in the region (the Bill inserts a new definition of demand management. Essentially demand management involves measures to change the patterns of water use by water users where the desired outcome is to reduce overall water use);
- The extent to which implementation of the levels of service objectives would involve modifying existing water supply works or building new water supply works;
- The likely cost of the modifications or building; and
- The preferred ways of sharing the costs taking into account the extent to which end-users of water benefit (either directly or indirectly) from the modifications or building.

The advice may cover other matters not included in this list. The advice may also include one or a number of options, and may include a recommendation on which option the Commission considers should be adopted by the government.

Section 360K provides that the Commission may engage in any consultation it considers appropriate prior to giving its advice report to the Minister.

Section 360M requires the Minister to publish a report outlining the Minister's response to the Commission's advice within four months of receiving it. The report will outline the Minister's response to the Commission's advice.

The Minister must also publish a regional water security program which addresses:

- Water service providers for water supply works in the region who should have desired levels of service objectives;
- What are desired levels of service objectives for each of the water service providers;
- Demand management for water in the region (the Bill inserts a new definition of demand management. Essentially demand management involves measures to change the patterns of water use by water users where the desired outcome is to reduce overall water use);
- The extent to which implementation of the levels would involve modifying existing water supply works or building new water supply works;
- The likely cost of the modifications or building; and
- The preferred ways of sharing the costs taking into account the extent to which end-users of water benefit (either directly or indirectly) from the modifications or building.

The program will necessarily deal with implementation issues. Some of the actions set out in the program will be implemented via the Chapter 2A, Part 4 provisions in respect of infrastructure development (through the *State Development and Public Works Organisation Act 1971*) and others through the more detailed Chapter 2A, Part 5 operational arrangements.

Section 360N sets out the interrelationship between a program and the *Integrated Planning Act 1997* to ensure the program is given effect through the operation of the *Integrated Planning Act 1997*. The program is taken to be an applicable code for development relating to water supply works. This will ensure any of the requirements for the water supply works set out in the program will be given effect in the making of a decision about the development. The program cannot be changed by a local planning instrument or local law. Furthermore, the program will override, to the extent of any inconsistency, any plan, policy or code under the *Integrated Planning Act 1997*. The program is taken to be a condition of any development approval for the water supply works to ensure the water supply works are constructed and operated consistent with any

requirements under the program. The program, as a condition of the development approval, overrides, to the extent of any inconsistency, any other condition of the approval.

Section 360O outlines the application of Chapter 2A, Part 4 about the facilitation of regional water security programs.

Section 360P provides that water supply works or proposed water supply works, the subject of a regional water security program are taken to be an infrastructure facility mentioned in section 125(1)(f) of the *State Development and Public Works Organisation Act 1971*. This establishes a link with the powers given under Part 6, Divisions 6 and 7 of the *State Development and Public Works Organisation Act 1971*. For example, the power of the Coordinator-General to take land in relation to an infrastructure facility now applies to water supply works and the powers to investigate land sites for suitability for infrastructure facilities now applies to water supply works.

Section 360Q allows the Coordinator-General, under the *State Development and Public Works Organisation Act 1971*, to designate a preferred entity for the purpose of constructing or carrying out the water supply works or proposed water supply works, the subject of a regional water security program, provided the entity has agreed to being designated. The designated entity is then taken to be a service provider for the water supply works. In addition, the water supply works are taken to be works for the purposes of the *State Development and Public Works Organisation Act 1971*. This establishes a link with the powers and functions under the *State Development and Public Works Organisation Act 1971* in relation to works and provides for those powers and functions to be applied to the water supply works.

Section 360R provides that the Commission must ensure that departments, other units of public administration and water service providers all comply with the key actions and responsibilities under each regional water security program and system operating plan, in so far as the key actions and responsibilities apply to them.

Section 360S provides that the Commission must, whenever it considers appropriate, review the implementation of each regional water security program and give the Minister a report about the implementation of and level of compliance with the system operating plan for a program.

Section 360T gives the Commission a power to require a water service provider to provide it with information to perform its functions under Chapter 2A. If a water service provider does not comply with the notice



and does not have a reasonable excuse for not complying with it, the water service provider will be liable for a penalty of up to 200 penalty units. In addition to this statutory power, the Commission will be able to access data held by the department that is necessary for it to perform its functions.

Section 360U states that Chapter 2A, Part 5, Division 2, Subdivision 1 applies if there is a regional water security program in place for a region.

Section 360V provides that the Commission must make a system operating plan for existing water supply works the subject of the program and other measures provided for under the program.

Section 360W sets out what must be in a system operating plan and provides that the plan must be consistent with any water resource plan applying to the same region. A system operating plan will operationalise many aspects of a regional water security program, and may apply to both existing and proposed water supply works that are provided for in the program. In particular, the system operating plan will provide a set of system operating rules for the region's water supply system that must be complied with to ensure that the levels of service objectives set out in the regional water security program can be achieved.

The system plan must state:

- the area to which the system operating plan applies;
- the water supply works in the area;
- the water service providers for the water supply works;
- the share of water available under the plan to each of the water service providers; and
- the desired levels of service objectives and other obligations, requirements and other regulatory provisions imposed on water service providers under the plan.

Section 360W in no way limits what may be included in a plan.

Section 360X places an obligation on the Commission to use its reasonable endeavours to consult with each proposed water service provider for the area covered by the system operating plan. However, a failure to consult will not invalidate or otherwise affect the plan. This reflects the fact that it may not always be possible for the Commission to undertake consultation with every proposed water service provider prior to making a system operating plan.

Section 360Y requires the Commission to, as soon as practicable after making a system operating plan, publish the plan and give a copy to each

water service provider for water supply works in the area covered by the plan. A system operating plan does not have effect until it is published. However, the Commission may decide not to publish or allow inspection of any part of the plan that the Commission is reasonably satisfied contains sensitive security information.

Section 360Z provides for the amendment of a system operating plan. The Commission must amend a system operating plan if:

- a water resource plan is made or amended and the water resource plan applies to the area covered by the system operating plan; or
- under section 360Q (designation of preferred entity for works) a preferred entity is designated for proposed water supply works in the area covered by the system operating plan; or
- water supply works in the area covered by the system operating plan which are not the subject of the existing system operating plan are commissioned.

The Commission may also amend the plan to provide for proposed water supply works in the area covered by the system operating plan.

Section 360ZA provides that each water service provider for water supply works in the area covered by a system operating plan must ensure the plan is complied with to the extent it applies to the provider. Failure to comply with this provision attracts a maximum penalty of 1665 penalty units.

Section 360ZB gives the Commission a power to issue a notice to a water service provider requiring them to publish a notice about the extent to which the provider has complied with a system operating plan. Failure to comply with this provision attracts a maximum penalty of 1665 penalty units.

Section 360ZC states that a water service provider cannot fail to comply with a publication order on the ground that compliance with the order might tend to incriminate the person. However, if the water service provider is an individual, evidence derived as a result of compliance with the publication order is not admissible in a civil or criminal proceeding against the individual, other than a proceeding for an offence for which the falsity or misleading nature of the information is relevant.

Section 360ZD provides for the Commission to impose a restriction in a region where it has jurisdiction if, because of climatic conditions or the need to conserve water, it considers a restriction on the use of water is necessary. This means that irrespective of any water restrictions set out in a regional water security program, the Commission has the power under this

section to impose a restriction providing it has jurisdiction in the region. However, the Commission can only impose restrictions if:

- there is an urgent need for it; or
- the available water supply has fallen to a level at which unrestricted use of the water is not in the public interest; or
- the restriction is essential to ensure the aims of a relevant regional water security program or system operating plan are met; or
- the Minister has published a notice under section 22 of the Act (limiting or prohibiting the taking of or interfering with water during an emergency); or
- a regulation has been made under section 23 of the Act (limiting the taking of or interfering with water in response to a shortage of water or a thing in harmful quantities in water).

The restriction may restrict the amount of water that may be taken by or supplied to a customer or group of customers of a service provider, the hours when water may be used on premises for certain purposes and the way in which in water may be used on premises.

The Commission may apply the restriction to water that is taken from a rainwater tank if the tank is connected to a water service provider's reticulated water supply.

A restriction may be imposed by the Commission even if a service provider water restriction about the same matter already applies.

Section 360ZE requires the Commission to notify anyone affected by the Commission water restriction about the restriction. The Commission can make the notification in whatever manner it considers appropriate, having regard for the circumstances under which the restriction is being imposed.

If a service provider water restriction will not apply while a commission water restriction is in place, the notice must specify this fact.

The commission water restriction does not take effect until the day after the notice is given.

A person must not contravene a commission water restriction. The maximum penalty for a contravention is 200 penalty units.

Section 360ZF addresses the potential for overlap between commission water restrictions and service provider water restrictions. It provides that a commission water restriction about a matter does not of itself, negate or invalidate a service provider water restriction that is about the same matter,

unless the commission water restriction specifically indicates that the service provider water restriction will not apply while the commission water restriction is in place.

Section 360ZG provides for the Commission to delegate its functions of giving notices about, and monitoring and enforcing compliance with commission water restrictions. These functions may only be delegated to a relevant water service provider, which is defined as a service provider for water supply works for the supply of the water that is the subject of the restrictions.

As restrictions may be expected to apply to the end-users of water, it is considered appropriate for the relevant water service provider to monitor and enforce compliance with the restrictions.

A water service provider to whom a function is delegated must make all reasonable efforts to ensure the function is performed. This section provides a maximum penalty of 1665 penalty units for non-compliance.

#### **Clause 10 Amendment of s 388 (Restricting water supply)**

Clause 10 provides for restrictions imposed by water service providers to be identified as service provider water restrictions, in order to allow differentiation between a service provider water restriction that is the subject of this clause, and a commission water restriction, that is not the subject of this clause.

#### **Clause 11 Amendment of s 389 (Notice of Water restriction must be given)**

Clause 11 provides for a notice of a water restriction to be identified as a notice of a service provider water restriction, to allow differentiation between a service provider water restriction notice that is the subject of this clause, and a commission water restriction notice, that is not the subject of this clause.

#### **Clause 12 Amendment of s 408 (Preparing strategic asset management plans)**

Clause 12 provides for the service provider to include in a strategic asset management plan, the details of the way in which the provider will comply with any system operating plan that applies to the service provider.

#### **Clause 13 Amendment of s 414 (Complying with approved strategic asset management plan)**

Clause 13 provides for the maximum penalty that can be applied to a service provider for not complying with the approved strategic asset

management plan to be increased from 500 penalty units to 1665 penalty units. The new penalty matches that applying to the obligation to comply with the system operating plan under the new section 360ZA and is commensurate to that applying in respect of other offences under the Act.

**Clause 14 Replacement of s 414N (Application of div 1B)**

Clause 14 facilitates the introduction of the new Chapter 3, Part 3, Division 1B, Subdivision 2 (“system operating plans”) by differentiating service provider plan provisions (now subdivision 1) from provisions pertaining to system operating plans (the new subdivision 2).

**Clause 15 Amendment of section 417 (Providing regular audit reports)**

Clause 15 removes the reference to the auditor, as a definition of auditor is now provided in the dictionary. The requirements associated with the auditor in terms of professional registration and relationship to the service provider continue.

**Clause 16 Amendment of section 419 (Spot audits of plans)**

Clause 16 removes the reference to the auditor, as a definition of auditor is now provided in the dictionary. The requirements for the audit to be prepared by a registered professional engineer remains.

**Clause 17 Insertion of new chapter 3, pt 3, div 1B, sdiv 2 and sdiv 3, hdg**

Clause 17 inserts the new Chapter 3, Part 3, Division 1B, Subdivision 2 for system operating plans.

Section 420A provides for spot audits by the Commission. In this section a water service provider includes a person who operates water supply works in an area covered by a system operating plan.

The section provides for the Commission to give a water service provider to whom a system operating plan applies, a show cause notice and arrange for a spot audit report to be prepared, if the Commission considers that the service provider has not complied with the elements of the plan that apply to the water service provider.

The spot audit report must be to be prepared by a person who is appropriately qualified to carry out the audit.

The Commission must give the water service provider a copy of the report within 30 business days after its completion.

Section 420B provides for the Commission to give an information notice to a water service provider, if a spot audit report under section 420A states

that the service provider has not complied with the system operating plan to the extent that the plan applies to the service provider. The information notice will require the service provider to remedy the non-compliance within a reasonable period of time, and that time period must be stated in the notice. The service provider must comply with the notice, unless the provider has a reasonable excuse. This section provides for a maximum penalty of 500 penalty units for a failure to comply with the requirement.

The Commission may recover the cost of completing the spot audit report from the service provider.

Clause 17 also inserts a new hearing “Subdivision 3 Miscellaneous provision” immediately before section 421 of the Act.

**Clause 18 Amendment of section 430 (Service provider to report annually)**

Clause 18 makes a change to service provider annual reporting requirements to provide for service providers to prepare annual reports for each financial year after a system operating plan applying to the service provider has been made.

This section makes a change to allow differentiation between the matters that must be addressed in a report in relation to a strategic asset management plan or system leakage management plan, and the matters that must be addressed in relation to a system operating plan, to the extent the system operating plan applies to the service provider.

This section provides that a report in relation to the application of the system operating plan to the service provider must measure the service provider’s performance with the desired level of service objective and other obligations and requirements that apply to the provider under the system operating plan.

**Clause 19 Amendment of section 457 (Restricting domestic water supply in certain circumstances)**

Clause 19 differentiates between service provider water restrictions and commission water restrictions with regard to the ability to restrict domestic water supply under certain circumstances. The ability to restrict domestic water supply under section 457 of the Act is only applicable with regard to service provider water restrictions.

**Clause 20 Amendment of section 932 (Proceedings for offences)**

Clause 20 provides that an offence against section 360ZE(4) (notice of commission water restriction must be given) must be brought by the

Commission, or by the service provider to whom the Commission has delegated the function of bringing the proceeding. This clause also provides that any other offence against Chapter 2A (that is an offence against a section other than section 360ZE(4)) may only be brought by the Commission.

### **Clause 21 Insertion of new chapter 9 pt 5, div 6**

Clause 21 inserts a new Chapter 9, Part 5, Division 6 which deals with transitional arrangements.

There are currently three regional water supply strategies underway, each of which is at a different stage of development. Accordingly, the transitional arrangements are intended to facilitate the transitioning of these strategies to fit within the new Chapter 2A arrangements at an appropriate point in time.

Section 1140 provides for the definition of “amending Act” and “commencement” for the purpose of the transitional provisions.

Section 1141 provides for the Minister to make a report and a regional water security program that adopts a relevant existing strategy (in whole or in part). Where this occurs, the Commission cannot provide options for the relevant region, unless the Minister directs the Commission to prepare updated or revised options.

Section 1142 provides for the amendments to section 110 of the Act made under the Bill to apply to a resource operations licence holder, or a distribution operations licence holder regardless of whether the licence was granted before or after the commencement of the Bill. Similarly, this section also provides for the amendments to section 178 of the Act made under the Bill to apply to an interim resource operations licence holder regardless of whether their licence was granted before or after the commencement of the Bill.

Section 1143 clarifies that the condition under section 360N(5) (that the carrying out of the development under the approval must comply with a regional water security program) does not apply to a development approval granted before the commencement of the Bill.

### **Clause 22 Amendment of schedule 4 (Dictionary)**

Clause 22 amends the dictionary to the Act by including definitions for auditor, chairperson, commission, commission water restriction, commissioner, demand management, designated region, desired levels of service objectives, regional water security options and regional water security program, SEQ region, service provider water restriction, system

operating plan, unit of public administration, water security and water supply works. It also changes the definitions in the dictionary to the Act for water, water restriction and water service provider. This clause also extends the definition of publish for the purpose of Chapter 2A.