

South East Queensland Water (Restructuring) Bill 2007

Explanatory Notes

General Outline

Policy Objectives

The purpose of the Bill is to facilitate the restructure of the water industry in South East Queensland (SEQ) to deliver significant benefits to the community including:

- improved regional coordination and management of water;
- more efficient delivery of water services in South East Queensland;
- enhanced customer service for consumers across the region; and
- a clearer accountability framework for water supply security.

The Bill also amends:

- some provisions of the *Superannuation (State Public Sector) Act 1990* (QSuper Act) to ensure an application can be made for the State Public Sector Superannuation Scheme (QSuper) to become subject to Commonwealth regulation;
- the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to include an authority for the Minister to delegate the power to sign a critical infrastructure easement and any transfer or amendment of such an easement; and
- the *Transport Infrastructure Act 1994* (TI Act) to provide that development proposed to be carried out in relation to a franchise road or a toll road in a registered place is intended to be development by the State for the purposes of Section 45 of the *Queensland Heritage Act 1992* (QH Act).

Reasons for the Bill

Currently, in SEQ, bulk water source, transport and treatment assets are owned by 25 different entities, servicing 17 retail businesses based on local government boundaries. This fragmented and parochial industry structure has resulted in a number of deficiencies in the delivery of water services in SEQ.

There are a number of opportunities to improve economic and service delivery outcomes through structural and regulatory reform. This Bill provides a mechanism to implement the structural reform by establishing new statutory bodies to participate in water supply arrangements in SEQ, and by providing a structured mechanism for transferring bulk water businesses from the existing owners to the new entities.

Further, the Commonwealth Regulator has required that some changes be made to the QSuper Act prior to the QSuper Board of Trustees proceeding with an application for QSuper to become subject to Commonwealth regulation.

The SDPWO Act does not authorise the Minister to delegate the powers to deal with critical infrastructure easements. This type of authorisation already exists in a range of legislation and is consistent with good decision making practice across Government. Accordingly, an amendment is proposed to the SDPWO Act to include such an authorisation.

The amendment of the TI Act will confirm that development in relation to a franchise road or a toll road under the TI Act is development proposed to be carried out by the State for purposes of section 45 of the QH Act.

Achievement of the Objectives

The Bill achieves the policy objectives set out above by:

- establishing a bulk water supply entity to own and operate bulk water supply infrastructure in the SEQ region;
- establishing a manufactured bulk water supply entity to own and operate the Western Corridor Recycled Water Scheme and the SEQ (Gold Coast) Desalination Plant;
- establishing a bulk water transport entity to own and operate major pipelines in the SEQ region;

- establishing a Water Grid Manager to buy water services from the above entities and sell water to the retail businesses and SEQ power stations;
- establishing a process by which the Treasurer may vest ownership of bulk water businesses from the existing owners to the new entities;
- conferring on the Treasurer authority to give directions to a water entity requiring the entity to do something the Treasurer considers necessary or convenient for effectively carrying out the restructuring project;
- establishing a process to deal with transitional issues relating to regulatory authorities (eg the transfer of water licences) under the Water Act 2000; and
- amending the QSuper Act to:
 - reflect that the investment control of defined benefit assets held in QSuper lies with the QSuper Board, as required by the Commonwealth Regulator;
 - reflect that the privileges and immunities of the State no longer apply to the QSuper Board; as this may hinder the appropriate exercise of the Commonwealth Regulator over actions of the QSuper Board; and
 - insert a power of delegation, providing that the Under Treasurer can transfer staff from the Treasury Department to QSuper Limited, a wholly owned subsidiary of the QSuper Board.
- inserting a new provision in the SDPWO Act that allows the Minister to delegate the functions to sign a critical infrastructure easement or any amendment or transfer of such easements;
- amending the TI Act to confirm the process which applies to the assessment of a franchise road or a toll road on a registered place is the process set out in section 45 of the QH Act.

Alternatives to the Bill

The policy objectives can only be implemented through primary legislation.

Estimated Cost for Government Implementation

Funding for two years has been approved in relation to the implementation of the project.

The amendments to the SDPWO Act and the TI Act will not have any new or additional cost implications for Government.

Consistency with Fundamental Legislative Principles

The purpose of the Bill is to facilitate the implementation of the SEQ urban water supply reforms (including structural reform of the existing bulk water business in the SEQ region). This Bill establishes new statutory bodies which will be transferred the control of bulk water infrastructure from the existing water business. For this project, chapter 3 of the Bill confers a number of extensive powers on the Treasurer and includes other facilitating provisions. The most significant of these provisions are similar to provisions included for other particular State government projects in the *Energy Assets (Restructuring and Disposal) Act 2006*. The entities directly affected by the relevant provisions are ‘water entities’, which include the new water entities created by the Bill, particular local governments and companies (owned by local government or the State).

The Bill establishes the new water entities and facilitates a structured and responsible vesting of the bulk water businesses from local governments (and other entities) to the new water entities. The restructuring of the existing water entities will be a complex commercial and legislative process due to the historical development of local governments’ ownership of water supply infrastructure in the SEQ region, as they store, treat, and supply water and provide retail water services. The Bill provides flexibility to the State in establishing a number of stand-alone businesses in a manner which will ensure the businesses are appropriately structured to provide water services to the SEQ community.

The key objective of the Bill is to facilitate the restructure of bulk water businesses by 1 July 2008. The Bill facilitates major structural reform, and the local governments and new statutory bodies require certainty in order to effect a smooth business transition and ensure the continuity of the provision of water services to the SEQ community. It is necessary to limit the ability of third parties to unreasonably delay the implementation of this project. However, the Bill does not override the substance of third parties’ rights or enhance any rights being conferred on the new statutory bodies. The purpose of the Bill is to ensure that the status quo is maintained and that there is a smooth business transition from the existing businesses to the

new statutory bodies. In so far as this Bill affects local governments and other water entities, those organisations will be fairly compensated.

The Bill's provisions relating to the SDPWO Act and the TI Act have been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The Bill raises the following fundamental legislative principles

Whether a Bill has sufficient regard to the institution of Parliament—LSA s 4(4)—power to make a gazette notice overriding other laws and instruments

Clause 67 of the Bill empowers the Minister to take a range of actions, for the project, by gazette notice (a **transfer notice**). A transfer notice has effect despite any other law or instrument. A transfer notice is the quickest and simplest method of transferring progressively the assets and liabilities of the existing water entities to the new water entities.

Clause 85 protects the State and other relevant entities from liability for things done under chapter 3 of the Act.

Whether legislation has sufficient regard to rights and liberties of individuals—LSA, s 4(3)—disclosure of confidential information

Clause 87 provides for the disclosure of information in the possession or control of a water entity. A disclosure could have an adverse effect on a third party who has had dealings with a water entity, by disclosing information relevant to their commercial affairs. However, this clause is subject to the limitation that the disclosure or use of the information is only for the purposes of the project and only to particular classes of persons involved in the project. Clause 85 overrides any condition contained in an agreement between a third party and a water entity that certain information (including the terms of the relevant agreement) cannot be disclosed to any person without that third party's consent. The purpose of clauses 85 and 87 is to facilitate the disclosure of information and provide comfort to affected entities and their employees involved in the project for the purposes of the State being able to make informed decisions about the separation and integration of the water businesses. Further, the information is necessary to complete the transfer notices which will transfer the assets and liabilities to the new water entities and, thus, ensure that there is a smooth business transition from the existing water entities to the new water entities.

Whether legislation makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review—LSA, s 4(3)(a)

Clause 84 provides that decisions under chapter 3 are not reviewable. It is essential that there is a smooth business transition from the existing business to the new water entities. Any review of a decision made or action taken under chapter 3 of the Bill may have financial implications for the State and local governments and delay the project. The Minister's decisions are limited to the purposes of the project, exercisable for a prescribed timeframe and directed solely at facilitating the restructure and transfer of the water businesses.

Consultation

The Queensland Government has announced its intentions to implement structural and regulatory reform in relation to the South East Queensland (SEQ) urban water supply industry. The Bill implements Stage 1 of the reforms measures as recommended in the final report to the Queensland Government from the Queensland Water Commission ("QWC") titled "Urban Water Supply Arrangements in South East Queensland – May 2007".

After consultation with key stakeholders, on 4 September 2007, the Queensland Government announced the new model for the SEQ urban water supply industry.

On key transitional issues arising from the reforms, Treasury Department has also consulted with –

- Queensland Water Commission;
- Department of Natural Resources and Water ("DNRW") about the particular issues relating to the transfer of land under the *Land Act 1994* and *Land Titles Act 1994* and transitional issues relating to the *Water Act 2000*;
- Environmental Protection Authority (EPA) about the transfer of approvals under the *Environmental Protection Act 1994*; and
- Department of Transport, Employment and Industrial Relations about the transition of staff to the new water entities and the non-corporate model.

In relation to the SDPWO Act and the TI Act, the Department of Infrastructure and Planning has undertaken consultation with the

Department of the Premier and Cabinet, Treasury Department, Department of Transport, Department of Main Roads, Department of Natural Resources and Water and the Environmental Protection Agency.

Notes on Provisions

Chapter 1 Preliminary

Clause 1 provides the short title of the Bill.

Clause 2 provides that section 6(1)(c) to (d) (Establishment of new water entities) and Schedule 2 (amendment of the *Queensland Competition Authority Act 1997*) commence on a day to be fixed by proclamation. The remainder of the Bill will commence on assent.

Clause 3 sets out the purpose of the Act.

Clause 4 provides for the extraterritorial application of the Act.

Clause 5 provides that the dictionary in schedule 3 of the Bill defines particular words used in the Bill.

Chapter 2 New Water Entities

Part 1 Establishment, powers and functions

Clause 6 provides that the new water entities are established, and states that the entities are not bodies corporate and do not represent the State. As the

new water entities are not bodies corporate, they will not be subject to the *Workplace Relations Act 1996* (Cth).

Clause 7 provides that the new entities have all the powers of an individual and sets out examples of specific powers.

Clause 8 provides for the process by which the new entities authenticate documents.

Clause 9 sets out the functions of a new water entity other than the water grid manager.

Clause 10 sets out the functions of the water grid manager. These functions reflect the anticipated role of the entity as the single purchaser and seller of bulk urban and industrial water supplies in SEQ.

Clause 11 sets out how the functions of the water grid manager and other water entities are to be carried out. The distinction between the water grid manager and other entities reflects the fact that the water grid manager will not be profit-seeking and will not operate as a commercial enterprise.

Clause 12 provides that a new water entity can exercise its powers and functions inside or outside Queensland.

Clause 13 provides for delegations by a new water entity.

Part 2 Boards

Division 1 Establishment, membership and related matters

Clauses 14 - 19 deal with the establishment and role of boards, and board members' appointments, including the appointment of a chairperson and deputy chairperson.

Division 2 Business

Clauses 20 - 26 deal with the conduct of business, meeting procedures and disclosure of interests.

Part 3 Senior employees

Division 1 Chief executive officer

Clauses 27 – 32 deal with the appointment and responsibilities of the chief executive officer.

Division 2 Senior executives

Clause 33 provides for the appointment of senior executives.

Part 4 Reporting and accountability

Division 1 Application of other Acts

Clause 34 provides that a new water entity is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 35 provides that a new water entity is a unit of public administration under the *Crime and Misconduct Act 2001*.

Division 2 Reporting Generally

Clauses 36 - 39 deals with the reporting requirements for the new water entities.

Division 3 Annual reports

Clause 40 defines the term “annual report”.

Clause 41 provides for the deletion of commercially sensitive matters from the annual report.

Clause 42 provides that an annual report of a new water entity may include a summary of a matter rather than a full statement.

Clause 43 states what must be included in an annual report.

Division 4 Strategic and operational plans

Clause 44 deals with the interaction with the *Financial Administration and Audit Act 1977*.

Clauses 45- 51 deal with the preparation, approval, compliance, modification and content of the strategic and operational plans.

Part 5 Annual returns

Clause 52 provides that Part 5 does not apply to the water grid manager.

Clauses 53 and 54 provide for the payment of an annual return by the new water entity to the State.

Part 6 Community Service Obligations

Clause 55 provides that Part 6 does not apply to the water grid manager.

Clause 56 defines the term 'community service obligations'.

Clause 57 provides that the new water entity's community service obligations are to be stated in its operational plan.

Part 7 Acquisition and disposal of assets and subsidiaries

Clause 58 provides that the responsible Ministers may give a written direction requiring the entity, not to dispose of a stated asset.

Clause 59 provides that a new water entity may dispose of its main undertakings only with prior written approval of the responsible Ministers.

Clause 60 provides that a new water entity may not, without prior written approval from the responsible Ministers, form or participate in the formation of a company that will become a subsidiary, or acquire shares or participate in any other transaction that will result in a body corporate becoming or ceasing to be a subsidiary.

Part 8 Other government direction

Clause 61 provides that the responsible Ministers may give written directions to a new water entity's board in the public interest.

Clause 62 provides that the responsible Ministers may issue a tax equivalents manual about the amount of tax equivalents to be paid by a new water entity to the responsible Ministers.

Clause 63 provides that a new water entity and its board are not subject to direction by or on behalf of the government, except as otherwise provided by this or another Act.

Part 9 Expiry of new water entities

Clause 64 provides that a new water entity expires at the end of 99 years after it is established and that the State will become the successor.

Chapter 3 The project

Part 1 Preliminary

Clause 65 defines the term “water entity”.

Clause 66 defines the term “project”.

Part 2 Particular Ministerial powers

Clause 67 provides for the making by the Minister of a ‘transfer notice’ to facilitate implementation of the project.

Clause 68 provides that the Treasurer may give a direction to a water entity requiring it to do something that the Treasurer considers necessary or convenient for effectively carrying out the project.

Part 3 Matters relating to the Water Act

Division 1 Preliminary

Clause 69 defines the terms “Water Act” and “Water Regulation”.

Clause 70 provides that words defined in the Water Act and used in this part have the same meanings as they have in the Water Act.

Division 2 Matters relating to new water entities

Clause 71 provides that this division does not apply to the water grid manager.

Clause 72 provides that each new water entity is a water service provider.

Clause 73 provides for the entry of the new water entity into the service provider register.

Clause 74 provides for the submission of plans by the new water entity to the regulator.

Clause 75 provides that where a customer of SunWater becomes a customer of the new entity, the *Rural Water Pricing Direction Notice (No.1) 2006* applies to a new entity in relation to the price of water taken by the customer, as if the reference in the direction to SunWater is a reference to the new water entity.

Division 3 Matters relating to water entities

Clause 76 provides that where water supply works are transferred under a transfer notice any *Water Act* instrument relating to the water supply works is also transferred to the transferee, subject to any provisions in the transfer notice.

Clause 77 provides that where an authority held by SEQ Water which is continued under section 1037A of the *Water Act* and mentioned in section 387A of the *Water Act* is transferred to another water entity, references to SEQ Water in chapter 3, Part 2, division 2A of the *Water Act* (SEQ Water), and in any supply contract in force under that division, are taken to be a reference to the entity that received the transferred authority.

Clause 78 provides what is to happen where ownership of a water entity's infrastructure for a registered service changes under a transfer notice.

Part 4 Application of other laws and instruments

Clause 79 deals with implications under the *Acquisition of Land Act 1967* for transferred land.

Clause 80 deals with implications under the *Integrated Planning Act 1997* for transferred development infrastructure.

Clause 81 provides that a water entity is not liable to pay a State tax in relation to a transfer notice or the transfer of an instrument under Chapter 3, Part 3.

Part 5 Other matters

Clause 82 provides that the Minister may not perform a function under this chapter more than 3 years after the commencement of this chapter.

Clause 83 provides that a thing may be done under Chapter 3 of the Bill despite any other law or instrument. This clause has been included in the Bill to ensure that multiple steps are not required to be taken under different pieces of legislation.

Clause 84 provides that decisions under Chapter 3 (The project) are not reviewable. The exclusion of review processes reflects the timeframes associated with the Project and the need for certainty for local governments, the new water entities and consumers to ensure the ongoing provision of water services to the SEQ community.

Clause 85 provides for the effect on various legal relationships of things done under Chapter 3 (including something done by, or in compliance with, a transfer notice or project direction).

Clause 86 provides that anything done by the Minister under part 2 is an excluded matter for the Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter), in relation to the Corporations Act, chapter 2D. The practical effect of this clause is that the Minister, in exercising a power under Chapter 3, in particular the power to issue a direction, is not a director of a company for the purposes of the Corporations Act.

Clause 87 deals with disclosure and use of information for the purposes of the project.

Clause 88 provides for the registering or recording of assets, liabilities or instruments transferred under a transfer notice.

Clause 89 deals with access to land where, after the asset transfer, the land and water asset are owned by different water entities.

Clause 90 deals with the preservation of employees' rights and entitlements. This clause provides that transferred employees are

employed on the same terms and conditions and ensures that they may enforce their rights under the *Industrial Relations Act 1999*.

Clause 91 prohibits a water entity ending a transferred employee's employment because of the project.

Chapter 4 Other matters

Part 1 Miscellaneous

Clause 92 provides for the making of a staff support framework in relation to the project.

Clause 93 deals with things done by, or given to, responsible Ministers.

Clause 94 provides that the Minister may delegate the Minister's functions under this Bill to the chief executive, with the exception of section 67 (Transfer Notice) or any functions as a responsible Minister.

Clause 95 deals with evidentiary aids.

Clause 96 provides that the Governor in Council may make regulations under the Act.

Part 2 Transitional provisions

Clause 97 provides that despite section 27(2) (Appointment of chief executive officer), the responsible Ministers may appoint a new water entity's first chief executive.

Clause 98 deals with the appointment of board members before a new water entity's first strategic and operational plans have been agreed to.

Clause 99-100 deals with a new water entity's first strategic and operational plans and quarterly reporting.

Clause 101 deals with a new water entity's first plans (other than the strategic and operational plans) that a new water entity is required to prepare and submit under the *Financial Administration and Audit Act 1977*.

Clause 102 provides that no annual return is payable by a new water entity for the financial year in which the entity is established.

Clause 103 provides that the amendment of the *Statutory Bodies Financial Arrangements Regulation 2007* or the *Water Regulation 2002* by the Act does not affect the power of the Governor in Council to further amend the relevant regulation or to repeal it.

Part 3 Amendments

Division 1 Amendment of the Superannuation (State Public Sector) Act 1990

Clause 104 provides that the Bill amends the QSuper Act.

Clause 105 amends section 2 by removing the definition of "defined benefit asset" and "defined benefit member", which are consequential amendments due to the proposed omission of section 11A.

Clause 106 omits section 3(5) providing that the QSuper Board no longer explicitly enjoys the privileges and immunities of the State.

Clause 107 omits section 6F(3) which is a consequential amendment due to the proposed omission of section 11A.

Clauses 108 and 109 amend sections 11 and omit section 11A to provide the QSuper Board with the power to appoint or remove investment managers in respect of defined benefit assets held in QSuper. The Board also assumes the power for setting investment objectives, strategies or policies in respect of these assets.

Clause 110 amends section 31A by including a provision that the Minister may delegate to the Chief Executive the power to transfer Treasury Department employees to QSuper Limited, a wholly owned subsidiary of the QSuper Board.

Clause 111 omits section 43 (3) and amends section 43(4), which are consequential amendments due to the proposed omission of section 11A.

Division 2 Amendment of State Development and Public Works Organisation Act 1971

Clause 112 provides that the Bill amends the State Development and Public Works Organisation Act 1971.

Clause 113 inserts a new section 153J in the State Development and Public Works Organisation Act 1971 that provides an authority for the Minister to delegate the power to sign critical infrastructure easements and any transfer or amendment of such an easement.

Division 3 Amendment of Transport Infrastructure Act 1994

Clause 114 provides that the Bill amends the Transport Infrastructure Act 1994.

Clause 115 and 116 insert new sections 85B and 93A into the Transport Infrastructure Act 1994 that confirm that development in a registered place in relation to a franchise road or a toll road is development to be carried out by the State for the purposes of section 45 of the Queensland Heritage Act 1992.

Division 4 Amendment of Other Laws

Clause 117 provides that Schedule 2 amends the laws mentioned in it.

Schedule 1 Local governments that are water entities

Schedule 1 contains a list of local governments that are water entities under the Act, both before and after the local government amalgamations.

Schedule 2 Amendment of laws

Local Government Act 1993

Chapter 17, part 4 in the *Local Government Act 1993* is amended by inserting a new section 1193AA which deals with local government employees transferred to new water entities.

Queensland Competition Authority Act 1997

The definition of ‘water supplier’ in the *Queensland Competition Authority Act 1997* is amended to omit a reference to SEQWater.

Statutory Bodies Financial Arrangements Regulation 2007

Schedule amends -

- schedule 2 of the *Statutory Bodies Financial Arrangements Regulation 2007* to insert ‘a new water entity in the *South East Queensland Water (Restructuring) Act 2007*’ as a statutory body that may borrow under part 5 of the *Statutory Bodies Financial Arrangements Act 1982*.
- schedule 5 of the *Statutory Bodies Financial Arrangements Regulation 2007* to insert ‘a new water entity in the *South East Queensland Water (Restructuring) Act 2007*’ as a statutory body that is allocated category 3 investment power under Section 6(4) of the *Statutory Bodies Financial Arrangements Act 1982*.
- schedule 8 of the *Statutory Bodies Financial Arrangements Regulation 2007* to insert ‘a new water entity in the *South East Queensland Water (Restructuring) Act 2007*’ as a statutory body that may enter into derivative transactions under Section 11 of the *Statutory Bodies Financial Arrangements Act 1982*.

Water Act 2000

This Schedule inserts a new section 1013D in the *Water Act 2000* which gives the Minister and the Treasurer the power to give a written joint direction to a new water entity, if they are satisfied it is necessary to give effect to this Act, to facilitate water industry reform in the State or to ensure a financially viable water industry in the State. The direction must be published in the gazette within 21 days after it is given. The new water entity must comply with the direction.

Water Regulation 2002

This Schedule inserts a new water entity under this Act as a service provider in schedule 10A of the Water Regulation.

Schedule 3

Schedule 3 contains a dictionary which defines words used in the Bill.