South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Policy Objectives

The objectives of the Bill are to:

- provide for the regulatory framework including operational powers, to enable the three new council owned distributor-retailers to deliver, from 1 July 2010, water and wastewater services to customers within South East Queensland (SEQ);
- provide for the making of Grid contracts and enable the Queensland Competition Authority (QCA) to undertake certain regulatory functions in accordance with amendments to the SEQ Water Market Rules;
- enable the continued and effective management of water restrictions and associated water efficiency programs;
- amend the *Environmental Protection Act 1994* (EPAct) to introduce a regulatory regime to improve the environmental management of water produced while exploring or extracting coal seam gas;
- amend the *Water Act 2000* (Water Act) to:
    - facilitate the first stage of implementation of the Government's response to the report "Brokering balance: A public interest map for Queensland Government bodies – An independent review of Queensland Government boards, committees and statutory authorities – Part B report" (Webbe-Weller review) outcomes the Bill includes amendments to streamline the process for category 2 water authorities to transfer to an alternative form. These

include amendments to the Water Act to remove the mandatory requirement for public notice of a proposed dissolution or amalgamation of a water authority, and amendments to provide relief from transfer duty under the *Duties Act 2001* (Duties Act) and administrative fees under the Water Act, *Land Act 1994* (Land Act) and *Land Title Act 1994* (Land Title Act); and

- provide for the continued operation of a resource operations plan after the release of a new water resource plan after the 10 year review; and

- amend the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) to:
  - enhance the regulation of drinking water and recycled water, in particular clarifying the reporting obligations of drinking water and recycled water providers; and
  - make changes to the dam safety regulatory framework to improve safety, reduce regulatory burden and improve the effectiveness of compliance and enforcement actions.

Reason for the Policy Objectives

The South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (SEQ Water D&R Act) provided for the establishment of three separate commercially-focused, vertically integrated distributor-retailer businesses. These entities will be council-owned.

This Bill operationalises the three distributor-retailers and seeks to achieve the policy objectives endorsed by the Government in late 2007, including improved region-wide service delivery to customers, economic regulation ensuring least cost services, asset regulation ensuring high quality service, efficiency gains through economies of scale and commercially focussed entities accountable to Council owners, ratepayers and customers.

Currently all ten SEQ local governments continue to run their own water and wastewater distribution assets and their water and wastewater distribution and retail functions. The level of investment in these businesses varies significantly across the various SEQ local governments. This fragmented nature has restricted the development of economies of scale, leading to variable levels of financial performance. The fragmented structure has also resulted in a number of deficiencies in the delivery of water services in SEQ, such as limited SEQ regional focus and variable

customer service such as network maintenance response times and complaints processes.

Environmental Protection Act 1994

Coal seam gas (CSG) is primarily methane, which is absorbed and maintained in the coal seam. To produce CSG, the water contained in the coal seam must be removed to create a pressure void into which the gas migrates. As a result, a significant amount of saline water is produced. The quantity and quality of CSG water can vary considerably between wells and regions.

In 2007–08, approximately 13.5 gigalitres (GL) of CSG water was produced in Queensland. It is estimated that production of gas for domestic consumption in the Surat Basin will produce an annual average of 25 GL of CSG water for the next 25 years. With the potential growth of the CSG/LNG industry, it is possible that the CSG water production may be in the order of:

- 126 GL/year for a 10 Mtpa industry
- 196 GL/year for a 28 Mtpa industry
- 281 GL/year for a 40 Mtpa industry.

In addition to CSG water containing concentrations of salts, it may also contain other contaminants that have the potential to cause environmental harm if released to land or water through inappropriate management. There are also ecological risks associated with the disposal of CSG water and, without proper treatment, the use for CSG water is limited.

In 2009, the Queensland Government released the Blueprint for Queensland's LNG Industry. The Blueprint contains the following policy statements about managing the potential environmental risks of CSG water:

- CSG producers are responsible for the treatment and disposal of the CSG water they create.
- CSG producers must treat CSG water to a standard defined by the Department of Environment and Resource Management (DERM) before disposal or supply to other users.
- Evaporation ponds are to be discontinued as the primary means of disposal and transitional arrangements are to be developed in consultation with industry.

- Remediation action for existing ponds is to occur within three years.
- Ponds, necessary for aggregation or brine storage, are to be lined to a standard defined by DERM.
- At the approval stage, CSG producers will need to advise how they intend to manage water on their operations through the preparation of a CSG Water Management Plan.
- Water which is in excess to that which can be directly injected or beneficially used is to be aggregated for disposal.

The Blueprint also announced that the government will introduce an adaptive environmental management regime, by appropriate conditioning of new environmental authorities. Amendments to the Environmental Protection Act are required to implement some aspects of these policy statements.

Water Act 2000

The amendments to the Water Act to facilitate the first stage of implementation of the Webbe-Weller review outcomes are necessary to provide for a streamlined transfer process for those category 2 water authorities transferring to an alternative form as a result of the Webbe-Weller review.

The Water Act provides for a new water resource plan (second generation water resource plan) to be prepared to replace an existing water resource plan. After the 10 year review this new water resource plan may address different matters or matters not addressed in the resource operations plan for the area.

Following the release of a second generation water resource plan it is necessary to ensure the resource operations plan that implements the water resource plan for the area continues to have effect despite any inconsistencies and subject to the water resource plan specifically addressing inconsistencies.

This will enable seamless continuation of the resource operations plan.

Water Supply (Safety and Reliability) Act 2008

New regulatory frameworks for recycled water and drinking water were established in 2008 under the Water Supply Act. The amendments to the Water Supply Act have a number of drivers to:

(a) enhance and clarify reporting obligations of recycled water and drinking water providers concerning water quality;

(b) reduce regulatory burden by transitioning responsibility for regulation of large greywater treatment facilities to the *Plumbing and Drainage Act 2002* (Plumbing Act);

(c) enhance regulation of high risk recycled water schemes such as dual reticulation schemes; and

(d) make necessary operational amendments.

The current dam safety regulatory framework was established under the Water Act as part of major water sector reforms to ensure that owners of large water dams are responsible for protecting the community from the risk of dam failure. In 2008, the dam safety regulatory framework was relocated to the Water Supply Act as part of establishing that Act.

Implementation of the dam safety regulatory framework since 2000 has identified a range of amendments to improve dam safety and increase the effectiveness of compliance and enforcement actions and reduce regulatory burden on dam owners.

Amendments are needed to achieve greater water service provider compliance with requirements to prepare and submit to the regulator drought management plans. It will be an offence for the relevant providers to not comply with these requirements, instead of the current practice of naming non-compliant providers in Parliament each year.

How the Policy Objectives will be achieved

It is expected this reform of water distribution and retailing will:

(a) improve regional coordination and management of water supplies due to the reduced number of entities;

(b) establish a more regional, rather than localised, basis for water and wastewater service provision thereby refocussing the industry on more consistent customer service;

(c) create significant economies of scale;

(d) provide for efficiency in service provision at the distribution and retail level;

(e) enhance customer service and improve employee skills through the amalgamation of technical skill sets in clearly focussed entities; and

(f) improve asset management and service delivery objectives through the establishment of stand-alone entities with responsibility for clearly identified elements of the supply chain.

Environmental Protection Act 1994

The policy objectives are achieved by amending the Environmental Protection Act to:

- Enhance the requirements for environmental management plans in relation to CSG water;
- Establish criteria and an evaluation process for the assessing the effectiveness of the management of CSG water; and
- Prohibiting the use of evaporation dams except where there is no other feasible alternatives.

These amendments will be complemented by guidelines on preparing an environmental management plan for CSG water, approving CSG water for beneficial use and model conditions for environmental authorities.

Water Act 2000

The policy objectives are achieved by amending the Water Act to:

- remove the mandatory requirement to publish a notice about a proposed dissolution or amalgamation of a category 2 water authority in certain circumstances;
- provide relief for category 2 water authorities from certain fees, charges or duties arising as a result of actions taken in response to the Webbe-Weller review. The amendment will provide relief from transfer duty under the Duties Act and administrative fees under the Land Act, Land Title Act and Water Act; and
- allow for the seamless continuation of a resource operations plan after the release of a second generation water resource plan.

Water Supply (Safety and Reliability) Act 2008

The policy objectives in relation to recycled water and drinking water regulation are achieved by amending the Water Supply Act to:

- enhance and clarify reporting obligations of recycled water and drinking water providers concerning water quality;
- reduce regulatory burden by transitioning the regulation of large greywater treatment facilities to the Plumbing Act;

- prohibit dual reticulation schemes from applying for an exemption from preparing a recycled water management plan;
- enable a guideline made by the regulator (and called up under a regulation) to specify who is a related entity of a recycled water provider;
- clarify that proposed infrastructure can be included in a critical scheme declaration;
- remove doubt that critical and non-critical uses of water can be covered under a single recycled water management plan and clarify audit and review frequencies for such schemes; and
- make other necessary technical and operational amendments.

There are also amendments relating to the dam safety regulatory framework under the Water Supply Act that will:

- vary the frequency of failure impact assessments for dams in remote locations with low population growth;
- capture dams that incrementally increase in size above trigger criteria for failure impact assessment;
- clarify the meaning of hazardous waste dams not regulated under the Water Supply Act;
- give the chief executive power to issue emergency notices in relation to both referable and non-referable dams;
- authorise the sharing of information about dam owners and dam locations with other regulatory agencies;
- improve the effectiveness of compliance and enforcement actions; and
- make a number of clarifying and technical amendments.

An amendment will also be made to attach penalty units for non-compliance with preparing a drought management plan, rather than naming the non-compliant entity in Parliament.

Alternatives to the Bill

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Where possible, the policy objectives of the produced water components of the Blueprint for Queensland's LNG Industry have been met through administrative and practice change. However, some legislative amendments were required to support the policy objectives, particularly to introduce an adaptive management regime and prevent the use of evaporation dams into the future. Accordingly, there are no other viable alternatives that would achieve the policy objectives other than the bill.

Estimated administrative cost to the Government for implementation

There will be no new or additional costs to Government due to the operationalisation of the three new council-owned distributor-retailer entities.

The amendments to the Environmental Protection Act have been drafted to have as little impact as possible by building on existing requirements in the Act, such as the environmental management plan and annual return process. Industry was already required to consider the management and disposal of CSG water in these processes but the new requirements require more thorough consideration of the issue. The requirements will be supported by guidance materials to assist industry in meeting their expanded obligations. Accordingly, while administrative costs for industry will increase with these expanded requirements, the costs are not expected to be excessive.

In terms of implementing alternative methods for treating CSG water, the costs will depend on the individual project. The application and approval process considers whether the proposed management of the water is in accordance with best practice environmental management as defined in section 21 of the Environmental Protection Act 1994. This includes consideration of the cost effectiveness of the measures. In many instances, alternative methods of treating CSG water are comparable to building a large evaporation dam consistent with modern standards.

As the increased requirements expand on existing processes in the Environmental Protection Act, implementation of the amendments will be absorbed within existing departmental budgets. During the 12 month transitional period, there will be minor additional resources required by the government to consider the revised environmental management plans and, where appropriate, condition environmental authorities. These will also be absorbed within existing departmental budgets.

The amendments to the Water Act to facilitate the first stage of implementation of the Webbe-Weller review outcomes has some implications. The amendment will provide an exemption from duty under the Duties Act which, if all 52 current water authorities' assets are transferred as a result of actions taken in response to the Webbe-Weller review, would ordinarily have attracted an estimated total duty of approximately $3.5 million. The other administrative fees and charges the State will forgo as a result of this amendment would amount to approximately $7000.

Other operational amendments to the Water Act are not expected to have any direct financial implications for Government. Any additional costs arising from the implementation of the proposed amendments will be met from within existing Departmental resources.

The amendments to the Water Supply Act are not expected to impose appreciable costs on the government in implementing the provisions.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The Bill provides for the appointment of an authorised officer as a trade waste officer. A trade waste officer is to help the distributor-retailer consider and decide trade waste approval applications, monitor and enforce compliance and take trade waste compliance action where necessary.

The Board of a distributor-retailer may approve an inspection program which will allow a trade waste officer to inspect all places or places of a particular type within the distributor-retailer's geographic area. The inspection program can not be more than 6 months or another period prescribed under a regulation. Public notice of the inspection program is to be provided in a relevant newspaper and on the distributor-retailer's website.

To perform their functions, a trade waste officer may in some instances enter a place without the occupier's consent and without a warrant. However, these powers of entry do not apply to a residential dwelling. Trade waste officers

will also be able to require a person to give their name and address. These powers largely reflect the existing powers of local governments that perform similar functions and will only be exercised in circumstances where a trade waste officer reasonably believes a person may be committing a trade waste offence. The usual safeguards such as display of identity cards, requirements to give notice to and to warn an occupier and rights of compensation for any damage caused will apply.

Whether the legislation has sufficient regard to the rights and liberties of individuals

Provisions amending the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* have been included that will change a large number of infrastructure agreements that contain provisions requiring the construction of water infrastructure in the distributor-retailers' geographic areas. These provisions have the effect of statutorily novating infrastructure agreements that only deal with water infrastructure, to the distributor-retailer.

Other provisions also deal with infrastructure agreements that concern water infrastructure and other types of infrastructure. In respect of these types of infrastructure agreements which are called "bundled infrastructure agreements" the provisions enable the distributor-retailer to assume the rights and liabilities of the participating local governments in respect of some terms of the infrastructure agreements where these relate solely to water infrastructure or works.. Provision is also made for mixed rights and liabilities (where a specific part of a right or liability is not attributable to water infrastructure) to be only enforceable, by or against a participating local government. Where this occurs the distributor-retailers and local governments are required to negotiate in good faith about how they share rights and liabilities, and associated costs.

These provisions are necessary because of the large volume of infrastructure agreements involved and the difficulty that would be entailed in trying to address the complexity of "splitting" rights and liabilities arising under bundled infrastructure agreements, in a transfer scheme. A specific provision is included that makes clear that these provisions do not create a greater right or impose any greater liability upon other parties to the agreement, that is, those parties other than a distributor-retailer or a SEQ local government, for example a developer or bank.

Section 661 of the Environmental Protection Act is a transitional provision preventing holders of an environmental authority with an existing approval

to build an evaporation dam from constructing that dam until they submit a revised environmental management plan that shows that there is no feasible alternative. This raises the fundamental legislative principle of abrogating a statutory right. This is justified on the grounds that the action is necessary to address the adverse environmental impacts using evaporation dams and there is no other reasonable alternative. Failure to act could adversely affect the rights of others, including the underlying tenure holder, particularly due to the large amounts of salt and other contaminants that are left after the water is evaporated. Where there is no feasible alternative to manage CSG water, the environmental authority holder may provide evidence to the Department of Environmental and Resource Management to retain their existing rights. Affected parties will still retain their primary right of access to the gas resource. Accordingly, the impacts of this provision are limited to requiring operators to propose an alternative form of water treatment, such as onsite water treatment, which would allow the produced water to be used for other purposes.

The Bill amends existing provisions of the Water Supply Act (sections 102 and 270 and inserts new section 102A and 271) to clarify and expand obligations on drinking water service providers and recycled water providers, scheme manager and other declared entities to notify the regulator of water quality breaches. This notification is where a prescribed incident occurs that might affect water quality and includes advice of actions taken or to be taken to address these matters. Under the amended provisions and new provisions, it is not a reasonable excuse for an entity to fail to notify the regulator that giving the information might tend to incriminate the entity. However, if the entity is an individual, evidence of, or evidence directly or indirectly derived from, the information is not admissible in evidence against the entity in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information. Legislation may offend fundamental legislative principles if it does not provide sufficient protection against self-incrimination. Water quality breaches and other incidents can lead to serious adverse effects on public health. Given the serious nature of the effects on public health by failure to notify and/or take appropriate action it is considered the partial removal of rights against self-incrimination are justified. The provisions seek to balance the need to protect public health and protect the interests of individuals.

The Bill inserts new powers for the dam safety regulator under the Water Supply Act (section 359A) to take direct action or authorise an authorised officer to take steps to address a risk of a dam failing if the circumstances

warrant and to recover any reasonable costs incurred in taking the steps. Under the new provisions, the regulator or authorised officer may enter premises without a warrant and exercise existing powers of an authorised officer under the Act, for example, search and seize documents. Legislation may offend fundamental legislative principles if it does not have sufficient regard to the rights and liberties of individuals; this can depend on whether the legislation confers powers to enter premises, and search and seize documents or other property, only with a warrant. However, the power to enter premises does not include any part of premises that is used as a residence. The provisions are considered justified in the circumstances in order to protect individuals and the general public from the consequences of a dam failing or to minimise the impacts of a failure if it occurs. The provisions seek to balance the need to protect public health and protect the interests of individuals.

The Bill inserts a new power for the dam safety regulator under the Water Supply Act (section 357A) to engage a person to obtain information (for example, a report by a registered profession engineer on the design and operation of the dam) from a dam owner for the purpose of determining relevant safety conditions to be applied to the management of the dam, but only where the owner has not complied with a request to provide the information in the first instance; any reasonable costs incurred by the regulator may be recovered. Legislation may offend fundamental legislative principles if it does not have sufficient regard to the rights and liberties of individuals; this can depend on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The new provisions are intended to improve safety by improving the effectiveness of compliance with the regulatory framework. The information requested by the dam safety regulator is critical to being able to determine an appropriate safety management regime for a particular dam. While there may be considerable expense imposed on dam owners by the exercise of this discretionary power, the Act has always contained the power to require dam owners to commission the preparation of comprehensive reports about the construction and operation of a dam and its state of repair.

The Bill inserts a number of new offence provisions. These are as follows:

- Under new section 102A, a drinking water service provider must notify the regulator of a "prescribed incident" that may affect water quality. Similarly, under new section 271 replaced by the Bill, a

scheme manager, recycled water provider, or other declared entity must notify the regulator of a "prescribed incident". It is an offence to not comply without a reasonable excuse; a maximum penalty of 1665 penalty units has been prescribed. This penalty is considered appropriate given the potential for adverse impacts on public health from failure of an entity to notify the regulator and/or take appropriate action. The penalty is also consistent with existing offences for non-compliance with reporting of water quality breaches.

- Under section 125 it is now an offence for a relevant water service provider to not comply with the requirement to prepare a drought management plan; this replaces the current practice of naming non-compliant service providers in Parliament. A maximum penalty of 200 penalty units has been prescribed. This penalty is comparable to other offence provisions in the Water Supply Act of a similar nature, such as non-compliance with requirements for system leakage management plans.
- Under new section 333, a scheme manager for a multiple entity recycled water scheme may by notice require a recycled water provider or other declared entity to provide information the scheme manager needs to perform its functions under the Water Supply Act. An offence applies for non-compliance without a reasonable excuse with a maximum penalty of 200 penalty units. This penalty is comparable to other offence provisions in the Water Supply Act of a similar nature requiring particular entities to give information to the regulator.
- Under amendments to section 343, owners of dams who propose to incrementally increase the size of the dam above threshold criteria must ensure a failure impact assessment is completed for the dam. An offence with a maximum penalty of 1665 penalty units is prescribed. This penalty is comparable to the existing penalty for non-compliance with failure impact assessment requirements under section 343.

All other provisions are consistent with fundamental legislative principles.

Consultation

South East Queensland Water (Distribution and Retail)

Community and industry stakeholders

Consultation has occurred throughout the development of the SEQ water reform aspects of this Bill with SEQ Councils and the three distributor-retailers. The development industry has been consulted and supports the planning and development assessment proposals. The development industry has expressed a strong desire to be closely involved in the development of the utility model. The QWC has agreed to this request. The broader community has not been consulted.

Government

Consultation on the SEQ water reforms has occurred with relevant agencies, including the Department of the Premier and Cabinet, the Department of Environment and Resource Management, the Department of Main Roads and Queensland Treasury.

Environmental Protection Act

Community and industry stakeholders

The Australian Petroleum Production and Exploration Association as the peak industry body for the CSG industry was consulted during the development of the Blueprint for Queensland's LNG Industry and the development of the legislation.

Government

All Queensland government departments were consulted during the Cabinet process.

Water Act 2000

Government

Representatives from the following Departments were consulted in relation to the Bill.

The Department of the Premier and Cabinet and Queensland Treasury have been consulted throughout the development of the Bill. Queensland Treasury and the Office of State Revenue were consulted on the amendments to provide for relief from transfer duty under the Duties Act and administrative fees under the Land Act, the Land Title Act and the Water Act.

Water Supply (Safety and Reliability) Act 2008

Community and industry stakeholders

Representatives from the following industry bodies and water entities were consulted in relation to the amendments to the Water Supply Act contained in the Bill: Local Government Association of Queensland, Queensland Water Directorate, Queensland Farmers Federation, Commerce Queensland, AgForce, Australian Industry Group, SunWater, WaterSecure, SEQ Water Grid Manager, Seqwater, Linkwater and Veolia Water.

Government

Representatives from the following Departments were consulted in relation to the amendments to the Water Supply Act contained in the Bill: Department of the Premier and Cabinet, Queensland Treasury, Department of Employment, Economic Development and Innovation, Department of Infrastructure and Planning, Department of Justice and Attorney General, Queensland Health and Department of Community Safety.

Results of consultation

Community and industry stakeholders

Environmental Protection Act 1994

APPEA raised an issue with the extent of the power to amend an environmental authority under the Environmental Protection Act. This has been addressed by restricting the power to amend to conditions relating to changes to the environmental management plan. No other issues with the content of the amendments to the Environmental Protection Act were raised.

Water Supply (Safety and Reliability) Act 2008

Representatives of industry bodies and water entities were generally supportive of the amendments to the Water Supply Act contained in the Bill.

Government

The State agencies consulted support the Bill.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title provides that the Act may be cited as the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010.*

Clause 2 Commencement provides for the commencement of the various sections of this Bill.

Part 2 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 3 Act amended provides that Part 2 amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water D&R Act).

Clause 4 Amendment of s 4 (Achievement of purposes) provides that the purposes of the SEQ Water D&R Act are achieved by deeming the distributor-retailers to be service providers on 1 July 2010 and by including particular provisions about the performance of the functions of the distributor-retailers as service providers. From 1 July 2010, the SEQ local governments will cease to be service providers and the distributor-retailers will take over the service provider functions previously undertaken by the councils.

Clause 5 Amendment of s 11 (Functions) provides for additional functions pertaining to the delivery of water and wastewater services to be undertaken by the distributor-retailers within their geographic area. These include:

- undertaking trade waste functions as a sewerage service provider under chapter 2, part 6 of the Water Supply Act;

- planning to ensure networks are able to meet customers' current needs and planned future demands;
- contributing to the making of planning instruments and undertaking development assessment functions to manage new or changed demand on these networks under this Act and the *Sustainable Planning Act 2009* (SPA);
- anything else likely to complement or enhance the primary functions.

Clause 6 Insertion of new s 17A Information Privacy Act inserts a new provision whereby a distributor-retailer is taken to be an agency under the *Information Privacy Act 2009* (IPP). This provision is consistent with Section 17 of the SEQ Water D&R Act which applies the *Right to Information Act 2009* (RTI Act) to a distributor-retailer. The RTI Act provides for proactive disclosure of information, ensuring open and transparent governance. The IPP correspondingly recognises the importance of protecting the personal information of individuals. This is particularly relevant for a distributor-retailer, which will hold information about an individual's concessions and credit history. The IPP provides rules for how agencies may and must handle personal information.

Clause 7 Insertion of new s 18A Penalties and Sentences Act 1992 provides that a distributor-retailer is taken to be a corporation for the *Penalties and Sentences Act 1992*. As a distributor-retailer is not a body corporate (s9 of the SEQ Water D&R Act), the insertion of the new provision is required to ensure that the provisions of the *Penalties and Sentences Act 1992* can also be applied to the distributor-retailer as they would be applied to a body corporate. Examples of the provisions of the *Penalties and Sentences Act 1992* which need to be applied to the distributor-retailers include (but are not limited to) those in Part 11 of that Act which allow the court to impose a maximum fine of an amount equal to five times the maximum fine for an individual (the individual fine applying if no express penalty is provided for a body corporate). The insertion of the new provisions is not to infer that a distributor-retailer is a body corporate for any other purpose, except where expressly provided for.

Clause 8 Amendment of s 53 (Delegation) provides for delegation of specified functions by the distributor-retailer (including functions delegated to the chief executive officer of the distributor-retailer) to participating local governments. Under section 27A(3) of the *Acts Interpretation Act 1954*, any such delegation must be in writing.

Section 53(6) will enable the participating local governments to sub-delegate any of the delegated functions to appropriately qualified officers or employees of the participating local government. Note, the manner in which sub-delegations are made would be subject to the relevant provisions of the *City of Brisbane Act 1924*, the *Local Government Act 1993*, or the *Local Government Act 2009* (when it comes into effect).

Section 53(5)(a) provides for the participating local governments, under delegation and direction from the distributor-retailers to assess the water and wastewater aspects of development applications and undertake compliance assessment. This delegation ends on 30 June 2013. This delegation under section 53(5)(a) cannot be revoked either in part or whole (under subsection 53(7)) or undertaken by a distributor-retailer (subsection 53(8).

Subsection 53(5)(b) enables the distributor-retailer to choose to delegate the imposition of infrastructure charges to participating local governments.

Under section 53(5)(c), a distributor-retailer will also be able to choose to delegate its powers as a service provider under the Water Supply Act to approve the connection, disconnection or alteration of connection to its water infrastructure. These powers can be delegated to a participating local government. Note "water infrastructure" is defined in this Bill as encompassing both water and wastewater infrastructure.

Local governments assess and approve plumbing and drainage plans and works under the Plumbing Act. After 1 July 2010 local governments will not be able to issue a compliance permit for plans or a compliance certificate for works unless they have received advice of approval by or on behalf of the distributor-retailer to allow connection, disconnection or alteration of the connection to the distributor-retailer's water infrastructure.

Section 53(5)(c) will enable a local government to issue a plumbing approval together with an approval on behalf of the distributor-retailer to connect to water infrastructure.

With all delegated functions, the local government would exercise the function, but may obtain advice on the matter from the distributor-retailer.

Definitions of "concurrence agency" and "relevant participating local government" are also inserted in section 53(11).

Clause 9 Insertion of new Ch 2A-2C inserts new chapters 2A – 2C.

Chapter 2A General provisions for distributor-retailers as service providers

This new chapter inserts provisions enabling the distributor-retailers to become service providers for the purposes of the Water Supply Act . It includes transitional provisions that support the distributor-retailers in taking over the provision of water and wastewater services from SEQ local governments. The provisions also explain how:

- requirements for plans in the Water Supply Act will apply to the distributor-retailers;
- the distributor-retailers may deal with existing trade waste approvals;
- the distributor-retailers charge for water service and wastewater services; and
- the distributor-retailers may acquire land for any works, including proposed works.

Part 1 Provisions for distributor-retailers to become service providers

Division 1 General Provisions

Section 53AA Distributor-retailers become service providers states that on 1 July 2010, each of the distributor-retailers becomes a service provider for its geographic area.

Section 53AB Participating local governments cease being service providers provides that on 1 July 2010 each distributor-retailer's constituent local government will cease being a service provider under the Water Supply Act.

Section 53AC Notice to regulator not required for transfer under transition document provides that section 24 and 25 of the Water Supply Act do not apply where infrastructure is transferred under a transition document. The distributor-retailers do not have to give any notice of the transfer of ownership of infrastructure to the regulator, nor does the regulator have to give notice of the registration of the distributor-retailers as service providers or notice to the local governments that their registration has been cancelled.

Section 53AD Existing customers provides that anyone who was a customer of a distributor-retailer's participating local government before 1 July 2010 becomes a customer of the distributor-retailer.

Section 53AE Provision for market rules provides that on 1 July 2010 each of the distributor-retailers is a registered grid participant in the categories of grid customer and distribution service provider under the Market Rules for the SEQ Water Market.

Division 2 Existing trade waste approvals

Section 53AF Existing trade waste approvals deems trade waste approvals given by a distributor-retailer's participating local government to be trade waste approvals given by the distributor-retailer. Pursuant to sub section (2) where before 1 July 2010 a participating local government was given notice by the regulator (called a trade waste compliance notice at that time) requiring it to impose stated conditions on a trade waste approval, and it has not given a notice about this as required under section 185 (2) of the Water Supply Act, the distributor-retailer must give the notice to the approval holder, as soon as possible after it becomes aware that the notice is required.

Section 53AG Power to amend existing trade waste approvals for particular purposes empowers a distributor-retailer to amend a trade waste approval given by one of its participating local governments to ensure the consistency of trade waste approvals given in its geographic area. However, a distributor-retailer only has until 30 June 2012 to make these consistency amendments.

Section 53AH Requirements for making consistency amendment requires a distributor-retailer to give an approval holder a show cause notice about a proposed consistency amendment. The distributor-retailer must consider any properly made submissions responding to the show cause notice and provide the approval holder with a notice of its decision. If it has decided to make the consistency amendment it must provide the information notice within 30 days of making that decision. If the notice does not state the day on which the consistency amendment takes effect it will take effect on the day the information notice is received by the approval holder.

Division 3 Provision of information

Section 53AI Authorised exchange of information allows a distributor-retailer to exchange information with its participating local governments and vice versa and participating local government to exchange information with each other, if this exchange is necessary to enable a distributor-retailer to perform its geographic area functions. This exchange is only permissible up to 1 July 2013. This provision recognises that initially the distributor-retailers may be reliant on using existing local government systems and resources and that a particular local government may take the lead in providing access to these systems and the information they contain to the distributor-retailer.

Sub section (3) makes clear that while this exchange is authorised under the SEQ Water D&R Act it not a total exemption from the requirements upon local governments and the distributor-retailers that may arise under the IPP or RTI. For example a distributor-retailer which obtains personal information under this provision must still comply with the Information Privacy Principles in respect of how they store, use and disclose that information.

Part 2 Application of particular Water Supply Act provisions to distributor-retailers

Division 1 Preliminary

Section 53AJ Purpose of pt 2 The purpose of this part is explain how the requirements of the Water Supply Act that would have applied to the participating local governments will apply to the distributor-retailers.

Section 53AK Application of pt 2 makes clear that this part is not to limit or affect the application of the Water Supply Act to a distributor-retailer other than to the extent stated.

Division 2 Application of provisions

Section 53AL Provision about plans under the Water Supply Act—generally provides that sections 106 to 109 and chapter 2, part 4, division 6 (drought management plans) do not apply to a distributor-retailer. It also provides that once a distributor-retailer has a water netserv plan, chapter 2, part 4, divisions 1, 2 and 4 of the Water Supply Act do not apply to the distributor-retailer.

Section 53AM Provision about strategic asset management plan is a transitional arrangement enabling the existing approved strategic asset management plans of the participating local governments to be taken to be plans of the distributor-retailer, until the distributor-retailer has a water netserv plan. Also, until the distributor-retailer has a water netserv plan, sections 73 and 74 of the Water Supply Act do not apply to the distributor-retailer.

Section 53AN Provision about system leakage management plan is a transitional arrangement enabling the existing approved system leakage management plans of the participating local governments to be taken to be a plan of the distributor-retailer until the distributor-retailer has a water netserv plan. Also, until the distributor-retailer has a water netserv plan, sections 82 and 87 of the Water Supply Act do not apply to the distributor-retailer.

Section 53AO Provision about drinking water service is a transitional arrangement enabling the existing approved drinking water quality management plans of the participating local governments to be taken to be a plan of the distributor-retailer until the distributor-retailer has its own drinking water quality management plan. These transitioned local government drinking water quality plans will apply to a distributor-retailer until it has its own approved drinking water quality management plan or 1 July 2011 – whichever occurs earlier.

Section 53AP Provision about service areas—before water netserv plan is in effect applies the service areas of the participating local governments (as service providers under the Water Supply Act), to be the service areas of a distributor-retailer until it has a water netserv plan. A distributor-retailer may amend a service area, and where it does so, it must notify the amendment in a local newspaper.

Section 53AQ Provision about service areas—after water netserv plan is in effect provides that once the distributor-retailer has a water netserv plan which will define a connections area, any reference to a service area in chapter 2, part 5, divisions 3 to 5 is taken to refer to the distributor-retailer's connections area. However, chapter 2, part 5, division 2 of the Water Supply Act does not apply to the distributor-retailer.

Section 53AR Provision about recycled water management plan provides that the existing recycled water management plan of a participating local government at 1 July 2010 is taken to be a plan of the distributor-retailer.

Part 3 Charges for water services and wastewater services

Section 53AS Application of pt 3 applies this part where a distributor-retailer is owed certain charges or recoverable costs.

Section 53AT Interest allows a distributor-retailer to charge interest on overdue charges but the rate of interest can be no more than the rate that a local government can charge for a later payment of rates.

Section 53AU Overdue charge is owing by any owner of the premises provides that overdue charges are payable by anyone who owns the

premises to which the service were provided. It does not matter that the owner is not the person who receives or received the benefit of the services.

Section 53AV Charge on premises for overdue charge, CPI indexation and costs ordered provides that amounts owing, but not interest on the amounts owing, becomes a charge on the premises to which the services are provided. However, a charge on the premises does not enable the sale of the premises to recover the outstanding amounts.

Section 53AW Quarterly CPI indexation for distributor-retailer's charge provides that the amounts owing are taken to be CPI indexed for all quarters over which the amounts remained unpaid. Sub section (3) makes clear that any amounts paid are to be applied to reduction of the amount outstanding before any interest.

Section 53AX Registration of charge and effect of registration allows a distributor-retailer to register a charge over the premises to which the services were provided. A charge may be registered by lodging a request to the registrar in the appropriate form, along with a certification signed by the chief executive officer (CEO) of the distributor-retailer which states that a charge exists over the premises. A registered charge will have priority over any other encumbrances over the premises, but not one in favour of the State or a public entity. If the amounts outstanding that are secured by the charge are paid the distributor-retailer must lodge a request to release the charge, in the appropriate form, along with a certificate signed by the CEO that states the amount has been paid.

Part 4 Miscellaneous provisions

Section 53AY Authority to acquire land provides that the *Acquisition of Land Act 1967* applies to a distributor-retailer as if it were a constructing authority where the purposes for which land is to be taken relate to the provision of water and wastewater services to customers in the distributor-retailer's geographic area.

The provision also allows for a regulation to make provisions about these types of acquisition of land.

Section 53AZ Code supersedes customer service standards stops the application of the applicable customer service standards under the Water

Supply Act on the first making of the customer code or 30 June 2011, whichever is earlier.

Section 53BA Ownership of water infrastructure that becomes part of land clarifies that the law of fixtures does not apply, despite any water infrastructure owned by a distributor-retailer being permanently installed so that it becomes part of the land and despite the sale or other disposal of that land.

Chapter 2B Water infrastructure provisions for distributor-retailers

The new chapter will provide the distributor-retailers with powers to carry out works in publicly controlled places.

Part 1 Preliminary

Section 53BB What is water infrastructure and water infrastructure work defines "water infrastructure" and "water infrastructure work". Water infrastructure is defined as infrastructure for a water or wastewater service. This would include (but is not limited to) infrastructure such as pipes, meters, sewerage or water treatment plants (see the Water Supply Act and the Water Act a full definition). The term "water infrastructure work" includes all of the types of work that might be needed to ensure the delivery of the water and/or wastewater services.

Section 53BC What is a public entity defines a public entity as :

- a local government; or
- a government company or part of a government company;
- a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or

- a department or a division, branch or other part of a department; or
- a *Government Owned Corporations Act 1993* (GOC Act) entity; or
- an entity prescribed by regulation under the GOC Act section 4.

For example, the Department of Transport and Main Roads is a Government Entity as it is a State Government Department. Energex Limited is a Government Entity because it has been prescribed under the GOC Act as a government owned corporation. Works done by these entities which may affect water infrastructure are dealt with by the new Chapter 2A.

Section 53BD Publicly-controlled places and their public entities defines a publicly controlled place and which is the public entity responsible for that place. Examples of publicly controlled places include roads and footpaths. The main types of publicly controlled places that are relevant to carrying out water infrastructure work are State controlled roads, and streets which local governments are responsible for.

If a distributor-retailer is to carry out water infrastructure work on a local government controlled street or a State-controlled road, the works are regulated by the new Chapter 2A. They are not regulated by the *Transport Infrastructure Act 1994* (TIA). Water infrastructure works conducted on any busway land, light rail land, railway or rail corridor land under the TIA are not considered to be in a publicly controlled place for new Chapter 2A, and the relevant provisions of the TIA govern water infrastructure work in these types of places.

The relevant public entity which is taken to control the place is the public entity immediately and primarily responsible for the place.

Section 53BE What is a road and a State-controlled road defines a road and a State controlled road. A road is:

- An area of land dedicated to public use as a road;
- An area that is open to or used by the public and is developed for the driving or riding of motor vehicles;
- A bridge, culvert, ferry, for, tunnel or viaduct;
- A pedestrian or bicycle path.

It also include parts of the areas mentioned above such as a bridge, ferry, ford, tunnel, viaduct or path. A state controlled road is a road or land, or part of a road or land, declared to be such under the TIA section 24.

Section 53BF What are road works defines road works.

Section 53BG Meaning of location on a road defines the "location" of water infrastructure on a road as including the line, level and boundary of the water infrastructure on the road. This definition is necessary to adequately describe the water infrastructure in meeting its obligations under the new chapter, such as by giving notice of water infrastructure work being conducted on publicly controlled places and keeping records of the location of water infrastructure on roads.

Part 2 Carrying out water infrastructure work on publicly-controlled places

Division 1 When work may be carried out

Section 53BH Right to carry out work on publicly-controlled place provides that a distributor-retailer may carry out water infrastructure work on a publicly controlled place if it is relevant to the performance of its geographic area functions (that is, undertaking its water service activities). The right to undertake this type of work is subject to limitations in other provisions.

Section 53BI Requirements for carrying out work states the circumstances in which the distributor-retailer may carry out work. The clause requires that the distributor-retailer seek public entity approval, unless the work is necessary because of an emergency. Where the work is conducted without the requisite notice because of an emergency, the provision requires the distributor-retailer to give notice as soon as it is practicable.

Section 53BJ Obtaining public entity's approval allows the distributor-retailer to apply to the local council or public entity for approval of water infrastructure work. It provides a process for obtaining the public entity's consent to the work and for the public entity to be able to place conditions on an approval.. The provision sets out the requirements for applications, such as providing descriptions of the work. The public entity is required to decide the application within 21 business days of all

reasonably necessary information being provided. The public entity is obliged to grant the approval if it is reasonable, having regard to the fact that the approval may be appropriately conditioned under section 53BK. .

Section 53BK Conditions of approval allows the public entity to impose reasonable conditions on any approval of water infrastructure works which it gives. Conditions might relate to issues such as:

- the location of the water infrastructure on the publicly controlled place, including the alignment and depth of the water infrastructure;
- traffic control while the water infrastructure is being constructed, augmented, altered or maintained;
- the dates, times and locations of access to the publicly controlled place;
- construction where it is likely to adversely affect the publicly controlled place; or
- re-instatement of the publicly controlled place after the water infrastructure work has been constructed, augmented, altered or maintained.

When conditioning the approval, the public entity is required to ensure that any water works/road alignment conditions it imposes are located to ensure reasonable protection for the water infrastructure and where practicable, are located on a footpath or on a road-verge. This is designed to ensure that, as far as possible, future road works will not disturb any water infrastructure installed in the area.

Division 2 Obligations in carrying out work

Section 53BL (Application of sdiv 2) to **Section 53BQ (Maintenance)** set out the basic obligations a distributor-retailer must observe when carrying out the work. These obligations mainly relate to undertaking measures to ensure public safety (such as barricading) and providing signage in certain situations, such as where the road is broken up or disturbed. Section 53BL also require the distributor-retailer to carry out maintenance to ensure the place is kept in good repair. This may be required for three months after the restoration is finished, or if there is subsidence where the work was carried out, up to a year after the

restoration is finished if the subsidence is not remedied before the end of the year.

Section 53BM Guarding requires that where a distributor-retailer has opened or broken up a place, it must ensure the place is barricaded and guarded with sufficient lights to warn and safeguard the public.

Section 53BN Warning signs on roads provides that if work is carried out on a road, the distributor-retailer must set up lights and signs to safeguard the public in accordance with the *Transport Operations (Road Use Management) Act 1995*.

Section 53BO General obligations in carrying out work sets out general obligations for the distributor-retailer in carrying out work. These include completing the work as soon as practicable, restoring the place to its previous condition, removing rubbish and fixing any damage as soon as practicable.

Section 53BP Maintenance provides that if a distributor-retailer has broken up a place, the distributor-retailer must maintain the place in good repair for a period of three months after the restoration is completed.

Division 3 Work directions

Section 53BQ Power to give work direction allows the public entity to give the distributor-retailer a "work direction" notice to carry out stated work within a reasonable period. The purpose of the notice is to address non-compliance with a condition of the approval given under section 53BJ (Obtaining public entity's approval) or if the public entity believes that the distributor-retailer has not complied with its obligations under subdivision 2. The work direction must identify the relevant conditions or obligation and must include an information notice about the decision.

Section 53BR Compliance with work direction requires the distributor-retailer to comply with a work direction (in accordance with any relevant law) to the public entity's reasonable satisfaction. The provision also allows the public entity to carry out the relevant work if this obligation has not been complied with to its reasonable satisfaction.

Section 53BS Costs of carrying out directed work places the cost of the work referred to in Section 53BR (Compliance with work direction), on the

distributor-retailer. It allows the public entity to recover any costs it has incurred in having to undertake the work under that clause as a debt due.

Part 3 Public entity work

Section 53BT Application of pt 3 provides that the part applies if the public entity (rather than the distributor-retailer) proposes to do work on its infrastructure that is likely to affect the safety, location or operation of the distributor-retailers' water infrastructure.

Section 53BU Requirement to consult if water infrastructure affected mandates consultation by the public entity by requiring it to give notice of its proposed work to the distributor-retailer and allows the distributor-retailer to make written submissions (within 30 business days after being given a notice). The public entity must consider any written submissions before undertaking any work.

Section 53BV Power to require consequential work allows the public entity to give the distributor-retailer a notice requiring consequential work to be done to change the position of the water infrastructure or to carry out other related work if this is reasonably necessary to carry out the public entity work (for example road works). This power is predicated on the public entity having complied with the consultation requirement in section 53BU (Requirement to consult if water infrastructure affected).

Section 53BW Compliance with consequential work requirement places an obligation on the distributor-retailer to comply with the consequential work requirement to the public entity's reasonable satisfaction. It allows the public entity to carry out the work itself if the obligation is not complied with to its reasonable satisfaction.

Section 53BX Costs of carrying out required consequential work places the cost of the consequential work referred to in Section 53BW (Compliance with consequential work direction), on the public entity. It allows the distributor-retailer to recover its reasonable costs, of carrying out the work, from the public entity as a debt due.

Part 4 Water infrastructure interfering with publicly controlled place

Section 53BY Application of pt 4 provides that the division applies if water infrastructure on a publicly controlled place, such as a road, interferes with the public or the public entities' use of the place.

Section 53BZ Remedial action by public entity in emergency provides that a public entity may take whatever action is necessary in an emergency to ensure water infrastructure ceases to interfere with the use of the place. For example water may be spilling onto a state controlled road and endangering motorists. In this situation, the public entity might consider that it needs to conduct work to ensure that the spillage is stopped before it causes an accident.

Section 53CA Power to require remedial action provides that a public entity may, by notice, require a distributor-retailer to take remedial action in a reasonable period, if it is necessary to ensure the water infrastructure ceases to interfere with the use of the place.

Section 53CB Compliance with remedial action requirement states that a distributor-retailer must comply with a remedial action requirement to the reasonable satisfaction of the public entity that made the requirement. If the distributor-retailer does not comply with the requirement, the public entity may take the relevant remedial action. The public entity must comply with relevant laws when taking the remedial action (because the distributor-retailer would not).

Section 53CC Costs of taking required remedial action states that a distributor-retailer must bear the cost of remedial works. It allows the public entity to recover the cost of the remedial action as a debt due, if it has had to undertake this work because the distributor-retailer did not comply with the remedial action requirement as outlined in section 53CA.

Part 5 Water infrastructure work and roads

Section 53CD Application of pt 5 provides that the division applies for water infrastructure that a distributor-retailer has or constructs, augments, alters or maintains on a State-controlled road.

Section 53CE Record obligation requires the distributor retailer to prepare records defining the location of the water infrastructure on as stated part of a road.

Section 53CF Obligation to give public entity information obliges the distributor-retailer to comply with an information request made by the public entity in relation to the location of water infrastructure on a defined part of a road.

Section 53CG Exclusion of liability for particular damage by public entity to water infrastructure contains provisions which are designed, in part, to reflect those in the TIA. The clause provides that the public entity is not liable for damages to water infrastructure unless the public entity has agreed to liability (or partial liability) in the situation where an information request was made and the damage would not have occurred had the information request been complied with, within a reasonable time, or the information given had adequately defined the location of the water infrastructure.

Section 53CH Liability for additional public entity road work expenses allows a public entity to recover unexpected road works expenses associated with the location of water infrastructure in specified circumstances. The clause requires the distributor-retailer to pay the public entity any additional expense in carrying out road works (in relation to the location of the water infrastructure) where that expense arises because an information request was not responded to within a reasonable period of the road works being carried out, or because the information given did not adequately define the location of the water infrastructure.

Sub section (3) limits the right of the public entity to recover additional expenses it incurs from a distributor-retailer where:

- the public entity has itself approved the water infrastructure work and the distributor-retailer (refer to **section 108** ***Public entity approvals taken to be given for existing water infrastructure work***) has not

contravened a condition of the approval. In those instances the public entity should have been aware of the water infrastructure's location prior to commencing its road works; or

- the road works were not provided for in a plan given to the distributor-retailer relating to the public entities' works program, within a reasonable period before the road works were carried out.

Section 53CI Distributor-retailer and public entity may share costs allows the distributor-retailer and the public entity to have input into agreed solutions and to minimise their costs by allowing for cost sharing arrangements associated with the need to remove or relocate water infrastructure for future road works. The clause provides that the distributor-retailer and the public entity may arrange to share the costs and the preliminary costs of land acquisition and other types of construction costs of road works affected by water infrastructure or of the water infrastructure itself. The provision is reflective of provisions which apply under s 83 of the TIA.

Part 6 Miscellaneous provision

Section 53CJ Compensation provides for the circumstances in which compensation is payable by a distributor-retailer to a person for costs, loss or damage arising out of the exercise or purported exercise of a power under this part by a distributor-retailer.

Chapter 2C Trade waste provisions for distributor-retailers

This new Chapter includes provisions necessary to enable the distributor-retailers to carry out their functions relating to trade waste as sewerage service providers.

Part 1 General provisions about trade waste officers

As part of their new obligations as sewerage service providers, distributor-retailers will require powers to protect against the risk of damage to their infrastructure or breaching their environmental authorities (for disposal and re-use of treated effluent and bio-solids) due to inappropriate admission of substances into its sewerage system. The effect of Part 2 is to give the distributor-retailers the same types of powers which local governments have in relation to trade waste. These powers include the ability to appoint certain officers to deal with trade waste issues, to decide trade waste approvals, to make trade waste inspection programs and to provide for entry for monitoring and enforcing compliance.

Section 53CK Appointment and other provisions allows a distributor-retailer to appoint a person to be an authorised person if satisfied the person has the necessary expertise, experience or has finished satisfactory training. Authorised persons would generally be employees or agents of the distributor-retailer. The provision also provides safeguards by allowing a regulation to require additional qualifications or requirements for appointment of a trade waste officer.

The distributor-retailer must appoint trade waste officers and the trade waste officers must use their identity cards in the same manner as authorised persons under the Water Supply Act. However, this clause allows a single identity card to be issued for the dual appointment as both an authorised officer and a trade waste officer.

Section 53CL Functions provides that the trade waste officer's functions are to:

- assist the distributor-retailer to consider and decide trade waste approval applications;
- monitor and enforce compliance with Ch 2, part 6 (Trade Waste) of the Water Supply Act on the distributor-retailer's behalf; and
- take trade waste compliance action for the distributor-retailer.

Part 2 Powers of trade waste officers

Division 1 General powers for entering places

Section 53CM General powers of entry sets out a trade waste officer's general powers of entry and obligations associated with that power. The powers in these provisions are designed to ensure that trade waste officers are able to check whether the trade waste provisions, approvals and issued compliance notices are being observed. Entry for the purposes of taking compliance action for contraventions is made under Subdivision 2.

The general provisions place appropriate limitations around the situations in which entry is permitted. Entry must only be undertaken either with the consent of the occupier; where permitted by law, or in other situations stated in the bill relating to accessing public and open places.

The clause clarifies that a place of business does not include any part where a person resides. For example, if a take away shop contained a residence behind the shop front, the right of entry would exclude those places ordinarily used as a residence. The powers of entry given to a trade waste officer are in addition to any powers they might have as an authorised officer under the Water Supply Act.

Division 2 Entry to take trade waste compliance action

Section 53CN Power to enter outlines the powers which a trade waste officer has for entering a place which is the subject of a trade waste approval. The power is limited to situations where the distributor-retailer is able to take trade waste compliance action under section 53DM (Action distributor-retailer may take if trade waste compliance notice contravened). The entry must take place at a reasonable time to take the particular action. What is reasonable would be ascertained by reference to the particular breach and the circumstance under which the business premises operates. Entry to residential premises is prohibited.

Division 3 Approved inspection programs

Section 53CO Power to enter place subject to approved inspection program allows a trade waste officer to enter a place, other than a residential premises, under an approved inspection program. The entry must occur at a reasonable time of day or night.

Section 53CP Approving an inspection program gives the distributor-retailer's board the ability to approve an inspection program by a board resolution. The clause sets out the content required in the board's resolution. The approved program must be limited to places in the distributor-retailer's geographic area.

The clause makes provision for two types of inspection program: a systematic inspection program, which applies to all places; and a selective inspection program which applies to places that have been selected on an objective basis. For example, a selective program could target business that has high trade waste discharges or certain categories of discharge.

Other limitations apply to the program, including time limitations for the length of the program (no more than six months or another period prescribed under a regulation) and public notification provisions.

Section 53CQ Content of public notice and access requirements sets out the detail of the public notice for the inspection program. It also provides that a copy of the resolution approving the inspection program be available for public inspection and purchase.

Division 4 Obtaining warrants

Section 53CR Application for warrant enables a trade waste officer to make an application for a warrant. The application must be in writing, sworn and must provide all the relevant information. The magistrate may refuse to consider the application until the trade waste officer gives the magistrate all the information the magistrate requires.

Section 53CS Issue of warrant sets out how a warrant is issued and what it must contain.

Section 53CT Application by electronic communication and duplicate warrant provides that the application for a warrant may be made by

electronic communication if there are urgent or special circumstances (for example, fax, phone, email, radio, and videoconferencing). A special circumstance could be that the trade waste officer works in a remote location and electronic communication is the most viable and timely form of application.

Section 53CU Defect in relation to a warrant provides that a warrant is not invalidated by a defect unless the defect is material (that is, affects the substance of the warrant in a material way).

Division 5 Procedure for entries

Section 53CV Entry with consent sets out the process for a trade waste officer to gain consent to enter a place. If the consent is given, the trade waste officer may ask the occupier to sign an acknowledgment of the consent and must then provide a copy of this acknowledgement to the occupier.

Section 53CW Entry under warrant sets out the process for a trade waste officer to enter a place using a warrant. It sets out the obligations of an authorised officer who is named in a warrant and who intends to enter a place under a warrant. This section aims to safeguard a person's privacy and ensures that the person is given a clear explanation of the authorised officer's powers under the warrant.

Section 53CX Other entries sets out the process for a trade waste officer to enter a place without consent or a warrant. The trade waste officer must, if an occupier is present, produce his or her identity card and advise the occupier of the reasons for the entry and that the entry is permitted. If the entry is under an approved inspection program, the trade waste officer must give the occupier details of the program.

Division 6 Powers after entry

Section 53CY Application of div 6 sets out the powers of trade waste officers after entering a place

Section 53CZ General powers after entry sets out the general powers of a trade waste officer for monitoring or enforcing compliance after entering

a place. For example, a trade waste officer may search, inspect, test, take a sample, copy or take a document, and may bring another person to assist in this process. This clause only applies if consent is given to enter a place or entry is otherwise authorised.

Section 53DA Failure to help trade waste officer creates an offence where a person fails to give reasonable help to a trade waste officer. However, if the person is an individual, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

Division 7 Power to require name and address in connection with trade waste

Section 53DB Application of div 7 This division applies if a trade waste officer finds a person committing a trade waste offence or they suspect on reasonable grounds that a person has just committed a trade waste offence.

Section 53DC Power to require name and address allows a trade water officer to require a person to give that person's name and address. The trade waste officer must warn the person that it is an offence for them to fail to do so, without a reasonable excuse.

Section 53DD Power to require evidence of name or address allows the trade waste officer to require a person to give evidence of the person's name and address if they reasonably suspect that the person has given false details.

Section 53DE Exception if trade waste offence not proved provides that a person will not commit an offence against this division if it is not proved that they have committed a trade waste offence.

Division 8 Safeguards

Section 53DF Duty to avoid damage states the duty to avoid damage. A trade waste officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as practicable.

Section 53DG Notice of damage sets out the circumstances in which a trade waste officer (including a person acting under the direction of a trade

waste officer) must provide notice of damage. A notice is not required if the trade waste officer reasonably believes that the damage is trivial.

Section 53DH Content of notice of damage sets out the matters to be contained in the notice. The notice must state that the occupier may claim compensation from the distributor-retailer.

Section 53DI Compensation from distributor-retailer to owner or occupier states the circumstances in which compensation from a distributor-retailer to an owner or occupier is payable. Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

Part 3 Trade waste compliance notices

Section 53DJ Who may give a trade waste compliance notice provides for a trade waste officer to give a compliance notice to a trade waste approval holder if they reasonably believe the approval holder is contravening the approval or has contravened the approval, where the contravention is likely to be repeating. In either case, the officer must reasonably believe that the matter is capable of rectification and that it is appropriate to give the holder an opportunity to rectify the matter.

Section 53DK Requirements for trade waste compliance notice sets out the requirements for giving trade waste compliance notices, including certain requirements under the *Queensland Civil Appeals Tribunal Act 2009*. Show cause notices and information notices under the Water Supply Act can be given with a compliance notice.

Section 53DL Offence to contravene trade waste compliance notice makes it an offence to fail to comply with a trade waste notice, and describes actions which the distributor-retailer can take in relation to the offence.

Section 53DM Action distributor-retailer may take if trade waste compliance notice contravened deals with the power a distributor-retailer has to take action if a trade waste approval holder has been given a compliance notice requiring them to take certain action and has failed to do so. The power only applies if the distributor-retailer believes the action is

reasonably necessary to minimise or prevent the impact of the contravention.

Section 53DN Recovery of costs of trade waste compliance action allows a distributor-retailer to recover reasonable expenses of taking trade waste compliance action in certain circumstances. The costs are only recoverable if the requisite notice is given. The expenses are recoverable as a debt due.

Clause 10 Omission of s 55 (Period of transfer schemes) omits s55.

Clause 11 Amendment of s 56 (Particular matters scheme may provide for) inserts a new sub section (1)(e) enabling a transfer scheme to make provision about, or for the transfer of an instrument, as to whether:

- a distributor retailer holds or is a party to an instrument;
- an instrument or benefit or right provided by an instrument is taken to have been given to, by or in favour of a distributor-retailer;
- a reference to an entity in an instrument is a reference to the distributor-retailer;
- under an instrument an amount is or may become payable to or by a distributor-retailer or whether other property is to be or may be transferred to a distributor and
- a right or entitlement under an instrument is held by a distributor-retailer.

This provision enables the participating SEQ local governments scope to deal with an instrument that may become applicable to the distributor-retailer as a result of it becoming the owner of water and wastewater infrastructure on 1 July 2010. For example, a transfer scheme could make provision for a distributor-retailer to exercise a right conferred under an agreement, upon a participating local government.

Clause 12 Insertion of new s 56A

Section 56A Period of transfer schemes disallows a transfer scheme from taking effect after 30 September 2010, unless it relates to the transfer of employees to a distributor-retailer and the employees' work entitlements and conditions of employment.

Clause 13 Amendment of s 58 (Requirements for certification statement) inserts an additional requirement for local government certification of transfer schemes. A participating local government must

certify that they have published in a newspaper circulating in the SEQ region a notice that states:

- the local governments and the distributor-retailers intend to ask the Minister for approval of the transfer scheme to allow the distributor-retailer; and
- how third parties can obtain information (other than private or confidential information concerning others) about the transfer scheme from local government.

The purpose of the notice is to provide third parties who may have an interest in the transfer with information regarding the proposed transfer scheme.

Local government must also certify that since the publication they have made information available to third parties who have requested it.

Clause 14 Amendment of s 69 (Disclosure and use for transition of information) clarifies that protection afforded by section 69 extends to:

- disclosure or use of information where the use or disclosure occurs to enable the distributor-retailer to perform its geographic area functions; and
- to disclosures made by a participating local government to another participating local government

However it makes clear that the distributor-retailer or local government still has to comply with obligations that may apply by reason of the IPP or RTI to the way that it deals with that information once it receives it.

Clause 15 Amendment of s 73 (Acquisitions interrupted by transfer scheme or notice) amends s73 by replacing s73(1)(b) with a new subsection which clarifies that section applies if a participating local government has served a notice of intention to resume land as a constructing authority or entered into an agreement to take land and the purpose of the proposed resumption relates to the distributor-retailers' geographic area functions then the distributor-retailer may give notice to affected persons that it will continue the resumption or taking.

Clause 16 Replacement of ch 3, pt 3, div 2, sdiv 3 (Development approvals and infrastructure agreements)

Subdivision 3 Infrastructure agreements

Section 77 Application of sdiv 3 provides that this subdivision applies where a participating local government is a party to an infrastructure agreement and either a transition document transfers water infrastructure which is the subject of the infrastructure agreement to the distributor-retailer, or where the infrastructure agreement provides for water infrastructure in the distributor-retailer's geographic area.

Infrastructure agreements are a mechanism under the *Sustainable Planning Act 2009* (SPA) and former planning legislation, relating to the supply of infrastructure in association with an approval for development or an infrastructure charges notice. See definition of 'infrastructure agreements' in schedule 3 (dictionary). Agreements between the developer and the entity responsible for the supply of infrastructure (in this case the local government responsible for providing water infrastructure) provides for arrangements to be established about matters such as the nature and timing of infrastructure to be constructed, and the amount and timing of money to be paid as a contribution to, or share of, infrastructure services.

This subdivision recognises the transfer of responsibility for water infrastructure from local governments to distributor-retailers, and complements arrangements established for individual agreements through transfer documents. Accordingly, this subdivision does not prevent a transition document dealing with infrastructure agreements and does not override how a transition document may deal with an infrastructure agreement. The subdivision also recognises that some infrastructure agreements deal with water infrastructure only (referred to as an 'unbundled agreement'), and others relate to both water infrastructure and another type of infrastructure, such as stormwater or roads (referred to as a "bundled agreement").

The subdivision sets up rules for determining respective rights and liabilities attributable to the local government and distributor-retailer, recognising in some circumstances that some rights and liabilities are mixed and cannot be split. For example, a bond and bank guarantee mentioned in an agreement to cover the cost of construction and initial maintenance of infrastructure, may cover all infrastructure to be provided by the developer, not only water infrastructure. In these circumstances, only the local government may enforce a right, and the right may only be discharged by discharging of it to the local government.

Similarly, a liability of the local government, may only be discharged by the local government, and enforced only against the local government.

However, the local government and distributor-retailer are required to negotiate the extent to which mixed rights and liabilities, and any associated costs, damages or losses are to be shared between them. If necessary, the Minister may resolve any dispute arising from such negotiations.

The subdivision is therefore important, in the absence of specific arrangements for an individual agreement in a transfer document (or to deal with a matter not addressed for an agreement in the transfer document), for providing clarity for all relevant parties - the local government, distributor-retailer and developer - about how an agreement is to be settled following the transfer of responsibility for water infrastructure on 1 July 2010. It should also be noted that section 77G makes it clear that the subdivision does not impose any greater right, or impose any greater liability, on any party to the agreement other than the local government or distributor-retailer.

Section 77A Novation for unbundled agreements provides that where a infrastructure agreement only deals with water infrastructure and not any other type of infrastructure (a unbundled agreement) the distributor-retailer will be taken to be a party to the agreement instead of a local government and will:

- assume all rights and liabilities under the agreement; and
- be able to enforce the agreement.

Section 77B Bundled agreements—terms relating solely to water aspects provides that where the terms of a bundled agreement relate solely to water infrastructure or the carrying out of water infrastructure work, the distributor-retailer will assume the rights of the local government against another party and the liabilities of a local government to another party. A right that the distributor-retailer has assumed in this way may only be discharged to the distributor-retailer and may only be enforced by the distributor-retailer. An assumed liability may only be discharged by the distributor-retailer and may only be enforced against the distributor-retailer.

Section 77C Bundled agreement—mixed rights provides that where the terms of a bundled agreement gives a right to a local government and that right could apply to water infrastructure or the carrying out of water infrastructure work but also other types of infrastructure or works unrelated

to water or wastewater, then the right must be discharged to the local government. Only the local government may enforce such a right.

Any cost, damage or loss suffered by a distributor-retailer in respect of such rights is taken to have been suffered by the local government so that it can enforce these rights to the fullest extent possible.

However, a distributor-retailer may request the local government to enforce such a right, to the extent it relates to terms of the agreement that deal with water infrastructure or works, and the local government must comply with such a request.

Section 77D Bundled agreement—mixed liabilities provides that where the terms of a bundled infrastructure agreement impose a liability on a local government and the liability does or could apply to water infrastructure or the carrying out of water infrastructure works or another matter the liability must be discharged by the local government. Such a liability may only be enforced against the local government.

Section 77E Negotiation about mixed rights and liabilities requires a local government and a distributor-retailer to negotiate in good faith about the extent to which they are to share:

- the rights and liabilities referred to in 77C and 77D;
- costs incurred by a local government enforcing a right mentioned in 77C; and
- any costs, damage, liability or loss a local government incurs because of the enforcement against it of a liability mentioned in 77D.

Where such negotiations between a distributor-retailer and a participating local government break down and there is a dispute that cannot resolved by any other means, the dispute can be referred to the Minister for resolution. The Minister has complete discretion as to how to resolve the dispute, however he or she must afford natural justice to the parties to the dispute. The Minister's decision is final. The Minister can delegate this function to an appropriately qualified public service officer.

Section 77F Other necessary changes to be made for transition enables any necessary changes to an infrastructure agreement to reflect the transition of the provision of water and wastewater services and the new functions of the distributor-retailers.

Section 77G Other party's rights and liabilities not affected makes clear that no provision in the subdivision is intended to confer a greater right nor

to impose any greater liability on a party to an infrastructure agreement other than a local government or distributor-retailer.

Section 77H Provision for things done under agreement before the transfer makes clear and reflects the repealed section 77 subsections (1) and (2) that a transfer of water infrastructure under a transition document do not affect the validity of any:

- Infrastructure charge or cost levied by the local government under the Planning Act , chapter 8 part 1 or section 848 or the repealed *Integrated Planning Act 1997* chapter 5, part 1; or
- Condition imposed by the local government under the Planning Act , chapter 8 part 1 or the repealed *Integrated Planning Act 1997* chapter 5, part 1or section 6.1.31; or
- Any other decision, charge, condition, contribution or agreement made, levied or imposed by the local government under the Planning Act or repealed *Integrated Planning Act 1997*.

Subdivision 3A Other matters under Acts about planning

Section 77I Application of sdiv 3A provides for the subdivision to apply where because of a relevant action about water infrastructure, or a charge for the provision of a water service or wastewater service, has accrued to or may in the future accrue to a local government in SEQ. Relevant actions are defined and relate to:

- compliance permits or development approvals under SPA before 1 July 2010, i.e. existing permits and approvals at the date of transfer of water infrastructure (including those under former planning legislation recognised by SPA, section 801);
- any other existing decisions, charges, conditions or contributions decided, made, levied or imposed before 1 July 2010;
- compliance permits or development approvals made under SPA before 1 July 2010 but not decided until after that date, i.e. applications in progress at the date of transfer;
- subdivision plans under the most recently appealed planning legislation (as continued under SPA).

Similar to subdivision 3 (Infrastructure agreements), this subdivision provides that where:

- all of a liability or charge relates to water or wastewater, the liability is transferred from the local government to the distributor-retailer
- the liability is also for another type of infrastructure and the terms of the relevant action do not attribute a specific part of the liability to the water infrastructure, the local government and distributor-retailer are required to negotiate the extent to which the benefit of the liability is to be shared between them. If necessary, the Minister may resolve any dispute arising from such negotiations.

Section 77J Transfer of liability in particular circumstance provides that where all of the liability is for water infrastructure or for a charge for water services or wastewater services, the liability is taken to be a liability of the distributor-retailer rather than the local government.

Section 77K Provisions for sharing benefit of liability not solely for water infrastructure provides that where there is a liability for water infrastructure and for other infrastructure and the terms of the relevant action does not attribute a specific part of the liability to the water infrastructure, the local government and distributor-retailer must negotiate in good faith about the extent to which they are the share the benefit of the liability.

As for infrastructure agreements dealt with under the previous subdivision**,** where such negotiations between a distributor-retailer and a participating local government breaks down and there is a dispute that cannot resolved by any other means, the dispute can be referred to the Minister for resolution. The Minister has complete discretion as to how to resolve the dispute, however, he or she must afford natural justice to the parties to the dispute. The Minister's decision is final. The Minister can delegate this function to an appropriately qualified public service officer.

Section 77L Changes in references under relevant action enables references to a local government carrying out water infrastructure work in a relevant action to be changed to a reference to the distributor-retailer doing the work. It also enables a reference to water infrastructure work being done for a local government to become a reference to the work being done for the distributor-retailer. Other references may be changed as necessary to reflect that the distributor-retailer has taken over the provision of water and wastewater services from its participating local government.

Clause 17 Insertion of new ch 3, pt 3, sdiv 5

Subdivision 5 Planning schemes and declared master planned areas

Section 78A Application of planning schemes for development in SEQ region complements a regulation-making power mentioned in an amendment to section 102. A regulation may be prepared that identifies provisions in a planning scheme that do not apply for assessing development applications. Such a regulation may be needed after the commencement of the water netserv plan if a planning scheme retains provisions replaced by those in the water netserv plan. This will avoid any duplication of assessment as well as any confusion about the applicability of certain planning scheme provisions.

A note has also been added to SPA, section 120 (When planning scheme, temporary local planning instrument and amendments have effect) to alert the reader to this provision in the SEQ Water D&R Act.

Section 78B Distributor-retailer is participating agency provides that for each of the existing declared master plans in the SEQ Region the relevant distributor-retailer is a participating agency for the structure plan for that area. The same jurisdiction as applies for the concurrency agency powers is identified as the distributor-retailers' jurisdiction as a participating agency. This provision ensures that the distributor-retailer can participate in the master planning carried out by the local government to make a structure plan.

However, as the local government will have addressed water and wastewater infrastructure matters before this provisions takes effect, it is expected that the distributor-retailer will continue from where the local government has left off. There should be no delay or repeat of steps already completed in preparing a structure plan. The involvement of participating agencies is coordinated by the coordinating agency for the structure plan – the Department of Infrastructure and Planning.

For a master plan identified in a structure plan, a distributor-retailer has the opportunity to be identified as a participating agency during preparation of the structure plan and to state the jurisdiction appropriate for each master plan. This is clarified in subsection (4) which relates to SPA, section 141(2)(b)(iii). For assessing master plan applications, recognition has also been given in subsection (5) to a distributor-retailer's assessment instruments – the water netserv plan and SEQ design and construction code – and any relevant infrastructure agreements.

Until a structure plan takes effect, existing referral agency triggers continue to apply for land in a declared master plan area, including a distributor-retailer's concurrence agency powers that have been delegated to the relevant participating local government. However, under SPA, section 253, a referral agency role ceases to the extent an entity has exercised its participating agency's jurisdiction for the structure plan or master plan, unless a regulation states otherwise. The extent to which a jurisdiction has been exercised is a matter to be determined in the case of each plan.

Clause 18 Amendment of s 93 (Minister's power to make code) provides that the reference in section 93 to the customer water and wastewater code, is distinguished from references elsewhere in this Bill to the SEQ design and construction code.

Clause 19 Amendment of s 94 (Particular matters code may provide for) allows the code to set out the amount of compensation which may be sought for failure to comply with service standards, and how the compensation can be recovered. The previous provision allowed for the imposition of a civil penalty for failure to comply with service standards and limited it to a monetary amount of no more than 20 penalty units.

Clause 20 Insertion of new s 94A

Section 94A Obligation to comply with code removes the existing 20 penalty units for failing to comply with a service standard and replaces this with a maximum penalty of 1665 penalty units, which is a more appropriate reflection of a penalty for the breach. The provision also stipulates that a proceeding for the offence can still be started even if the code provides for the payment of compensation because of the contravention.

Clause 21 Insertion of new ch 4, pt 4 and new chs 4A and 4B

Part 4 Interim customer service provisions provides for a new part setting out the interim customer service provisions which will be in place until the making of the customer water and wastewater code (code) or 30 June 2011, whichever is later.

Under the Act, the Minister may make a code providing for the rights and obligations of the distributor-retailers and their customers. The Act sets out matters a code may provide for, including minimum content of a water and wastewater bill; minimum and guaranteed service standards; terms of supply contracts; and customer dispute resolution processes.

Existing customer service standards and billing cycles for the relevant council areas will continue to apply to the distributor retailers until the commencement of the Code. Division 1 puts in place these interim requirements and requires the distributor-retailers to comply with the relevant local council's existing customer service arrangements as they apply in the relevant council areas (for example, the Customer Service Standards made under the Water Supply Act. The division also contains other requirements designed to facilitate an easier transition to the future code.

Division 1 General provisions about standards of customer service

Section 99AA Application of pt 4 provides that this part applies until the later of the first making of the code or 30 June 2011, at which time the customer codes will apply.

Section 99AB Interim application of relevant service standards for each constituent area requires the distributor-retailer to comply with the relevant participant council's existing customer service standard (with any necessary modifications) for each constituent area. For example, the distributor-retailer for the central geographic region (which encompasses five local council areas) would be required to comply with:

- the customer service standard previously applied by Brisbane City Council for any transactions with water customers within the Brisbane City Council geographic area; and
- the Ipswich City Council's standards for customers in the Ipswich geographic area.

The obligation to comply with the relevant existing standards will still be subject to the new provisions in Part 4 of the Bill.

Section 99AC Application of complaints standard requires the distributor-retails to use the relevant Australian Standard for dispute handling in relation to any customer dispute. The Australian Standards will supplement any dispute resolution mechanism being applied under an existing customer service standard, but will override any inconsistent provision in an existing standard. The provision does not limit a customer's ability to progress a dispute to the Queensland Ombudsman.

Section 99AD Customer service charter provides that each distributor-retailer must make a plain-English customer service charter that summarises its rights and obligations under Part 4 (including a summary of the Customer Service Standards) and which details the entity's hardship and instalment payment policies.

Section 99AE Access to customer service charter requires the distributor-retailer to publish and provide the customer service charter in the way stated.

Section 99AF Obligation to comply with part creates an offence for failing to comply with a provision under Part 4, subject to reasonable excuse defences.

Division 2 Meters sets out requirements for the distributor-retailers' metering activities.

Subdivision 1 General provisions

Section 99AG Meters must be read annually establishes a minimum requirement for an annual meter read.

Section 99AH Methods of charging provides for certain charging methodologies to be adopted, including a meter-reading based account or an estimated account. The provision allows for charging based on estimated accounts to allow ordinary billing to continue to occur in situations where the distributor-retailer, despite its powers to access and read meters under the Water Supply Act, cannot reasonably access the meter. Examples of this include where the premises are inaccessible due to safety issues or where a dangerous animal is on the premises. In this case, the methodology for the estimate should be reasonable having regard to the circumstances of the supply to the particular customer.

Section 99AI Special meter readings deals with the need for interim meter readings in situations where the meter itself is not believed to be faulty. Examples include interim readings needed for settlement in property sales or where the customer believes the meter is not faulty, but has been misread. The provision allows a customer of a distributor-retailer to require the distributor-retailer to conduct a meter reading of water consumption on its premises, since the last meter reading. The right to the special reading is predicated on the customer having paid any fee required for the reading. This differs from meter readings taken under section 99AJ (Meters accuracy test at customer's request) which requires the payment of all outstanding amounts if requested.

Subdivision 2 Meter tests

Section 99AJ Meter accuracy test at customer's request allows the customer to seek a read of the meter on its premises for verification purposes (that is, to test the accuracy of the meter). The right to have the test carried out will depend on the customer having paid a fee for the test and any additional water charges or other outstanding amounts for the services. The provision requires the distributor-retailer to have notified the customer of when and where the test will be carried out.

The clause also clarifies that the customer or a nominee may be present during the test. The provision does limit the distributor-retailer's ability to conduct the test if the customer or their nominee is not available at the nominated time. In some cases, the meter installed at the premises may need to be taken off-site for verification, in which case the customer or a nominee would not be able to be present during the test unless otherwise agreed by the distributor-retailer or its nominee.

Section 99AK When meter taken to register accurately provides the circumstances in which a meter is taken to be inaccurately registering.

Section 99AL Extent of inaccuracy allows the distributor-retailer to disregard amounts outside of the prescribed margin of error. For example, if the prescribed margin of error is 5%, then on a 100kL supply, with a 4% over-read, the refund and adjustment in section 99AN (Refund and adjustment if inaccuracy) would not be required.

Section 99AM Notice of test results requires the giving of the verification test results to the customer who requested it. The notice must state the extent of any reading outside the prescribed margin (if any).

Section 99AN Refund and adjustment if inaccuracy requires the distributor-retailer to refund test fees and adjust previous accounts if the meter tested is registering incorrectly. The provision limits the adjustment so adjustments are not made for accounts issued over one year prior to the last account before the verification testing being undertaken.

Section 99AO Using testing instruments creates an obligation on a distributor-retailer or an independent tester to insure the appropriateness and accuracy of its testing instrument and to keep records of testing for at least two years

Division 3 Security and charges outlines securities and charges which distributor-retailers will be able to levy against customers in certain circumstances. Previously, local councils secured payment of water

service fees and charges against rateable land as part of the local council rates. With the separation of the distributor-retailer entities from their participant local councils, the distributor-retailer may require securities and charges in certain circumstances where the customer is unable to show appropriate credit ratings or credit history.

The provisions are designed to ensure the distributor-retailer can transition its financial requirements to future requirements under customer codes which will also contain security and charges requirements.

Subdivision 1 Restrictions on requesting security

Section 99AP Security may only be requested if subdivision complied with provides that a distributor-retailer can only request a security for payment of its accounts if the sub-division is complied with.

Section 99AQ Residential customers limits the circumstances in which a distributor-retailer can request a residential customer provide a security to situations where the customer has an unsatisfactory credit history.. Residential customers are defined so that the customer must live at the premises where the service is provided. This precludes the distributor-retailer from seeking a security from someone if an account is already being billed to another customer for that premises. Therefore, the distributor-retailer cannot require a security against an resident of a unit in a body corporate if the body corporate is the customer for the account.

Section 99AR Non-residential customers limits the circumstances in which a distributor-retailer can request a non-residential customer to provide a security to situations where the customer:

- has an unsatisfactory credit rating; or
- does not have a satisfactory water services payment history (being the non-payment for water services in the last year).

A non-residential customer is defined as a customer who is not a residential customer. The provision contains a limitation on the definition so that two sets of securities cannot be obtained against the one account where the bill is delivered to one entity but on-supplied to other entities.

Section 99AS Maximum security that may be requested provides for the maximum security that a distributor-retailer can request.

Subdivision 2 Restricting water supply

Section 99AT Restricting water supply for not paying charges or giving security allows the distributor-retailer to restrict water supply to a premises

where the customer has been given at least a month's notice to pay outstanding charges, or to provide a required security, but has failed to do so. Water supply may be restricted to the minimum level necessary for the health and sanitation purposes of a customer (including a non-residential customer). The distributor retailer is prohibited from completely shutting off water supply to the premises.

Division 4 Accounts

Section 99AU Application of div 4 provides that the division applies to any account from a distributor-retailer's account for the relevant services.

Section 99AV Matters required to be stated in account provides what a distributor-retailer's account must detail.

Section 99AW Requirements for accounts included in rates notice provides what must be included in a rates notice

Division 5 Miscellaneous provision

Section 99AX New owner's obligation to notify distributor-retailer requires a person who starts to receive a supply of water or the benefit of a wastewater service, to tell the distributor-retailer that the person is a customer as soon as possible.

Chapter 4A SEQ design and construction code

Part 1 General provisions about code

The new Chapter 4A provides for a SEQ design and construction code which will provide the technical standards for the construction of water and

wastewater infrastructure. The new code is to be in effect by 1 July 2013 at the latest. This is the same time as a distributor-retailer's new planning document, the water netserv plan. Amendments have been made in SPA to the code and impact assessment rules under Integrated Development Assessment System (IDAS) to provide for the SEQ design and construction code to be applied in development assessment if it should take effect before 1 July 2013 when the interim development assessment model will apply

The SEQ design and construction code will bring together and replace the varying standards currently made by the SEQ Councils in planning scheme policies, in support of their planning schemes. This rationalisation will apply common design, construction and maintenance standards for water infrastructure across the SEQ region, with potential savings in inventory and construction costs for both developers constructing infrastructure within their developments (such as a new housing estate) and the distributor-retailers constructing external infrastructure, servicing those developments.

Section 99AY What is the SEQ design and construction code requires the code to be made jointly by the three distributor-retailers, and requires that it provide the technical standards for the design and construction of water and wastewater infrastructure.

Section 99AZ Requirement to have code requires that the three distributor-retailers must, on and from July 2013, have a SEQ design and construction code.

Section 99BA Particular matters for code sets out the technical matters the code may provide for, including standards about meters and connections to infrastructure, gravity and pressure pipelines, demand and peaking factors for flow of water and wastewater, location of access chambers, reservoirs and pump stations including wastewater pump stations, water reticulation and distribution pipelines. wastewater pipelines, recycled water supply and other related matters.

Part 2 Process for making or amending code

Section 99BB Public notice about availability of draft code provides that the three distributor-retailers must undertake public consultation on the draft code before adopting it. The process involves the distributor-retailers preparing a draft code and undertaking public consultation including preparing a draft of the proposed code, notifying the community in a newspaper circulating in the SEQ region and giving each local government in the SEQ region a copy of the notice. The notice must state where copies of the code may be inspected or purchased and that written submissions are requested by a given date. The given date must not be earlier than 28 days after the day the notice is published.

Section 99BC Preparing final code requires the distributor-retailers to consider all valid submissions received about the draft code, ie all submissions received by the date for receiving submissions specified in the notice.

Section 99BD Adopting code provides that the code, once finalised, must be adopted by the Board of each distributor-retailer.

Section 99BE When code has effect provides that the code will have effect on and from the date of a gazette notice that notifies the adoption of the code by the three distributor-retailers. The Minister is to undertake the notification as soon as practicable after the SEQ design and construction code is adopted.

Section 99BF Amendment of code provides that, in general, the process for the distributor-retailers to make the code will be used to make amendments to the code. However, subsection (3) provides that this process is not necessary for amendments to correct minor errors or make changes that are not of substance, or to make a change of a type that the code states does not require the full amendment process.

Part 3 Minister's powers in relation to code

Section 99BG Power of Minister to direct distributor-retailer to take action about code provides that the Minister can, if satisfied it is necessary, give a direction to a distributor-retailer to take specified actions to ensure the code is adopted and that the code appropriately provides for design and construction standards for works in the SEQ region. A direction is to be in writing and to state the period within which the distributor-retailer must comply. A direction may be as general or specific as the Minister considers appropriate.

Section 99BH Power of Minister if distributor-retailer does not comply with direction provides that the Minister may act directly to take the action if a distributor-retailer does not comply with a direction from the Minister within the period stated. The Minister may recover from the distributor-retailer any expenses reasonably incurred when undertaking the action.

Part 4 Miscellaneous

Section 99BI Commission to keep copies of code available for inspection requires that the Queensland Water Commission keep copies of the code on its website and available for inspection free of charge at its head office.

A note to this section indicates each distributor-retailer must also keep the code available for inspection and purchase, as well as available on their websites.

Chapter 4B Water netserv plans

Part 1 General provisions

Chapter 4B provides for the new planning instrument for the distributor-retailers, the water netserv plan. Chapter 4B sets out the purpose, form and content of the plan and the matters to be taken into account in preparing it. It provides that a regulation will contain the detailed processes for a distributor-retailer to make and adopt its plan. It identifies the key matters that the regulation must deal with.

The water netserv plan will bring together or replace material currently made pursuant to the:

- Sustainable Planning Act (being local government planning schemes, priority infrastructure plans and planning scheme policies)
- Water Supply Act (being strategic asset management plans, system leakage management plans, drinking water quality management plans, customer service standard, water or sewerage service areas declared by a local government, recycled water management plans, outdoor water use conservation plans); and
- *Environmental Protection (Water) Policy 2009* (Water Policy) (being total water cycle management plans, sewage management plans and trade waste management plans).

Section 99BJ Requirement for distributor-retailer to have plan provides that each distributor-retailer must have a water netserv plan in place from 1 July 2013.

Section 99BK Plan to be consistent with SEQ regional plan and planning assumptions provides that each distributor-retailer must ensure its water netserv plan is consistent with the SEQ regional plan and the planning assumptions for the distributor-retailer's geographic area.

Planning assumptions would include assumptions about the type, scale, location and timing of future development and growth that are shown in the priority infrastructure plans for any participating local government for a distributor-retailer. However, where a proposed priority infrastructure plan is being prepared but not yet in force, which relies on updated planning

assumptions to those in the current priority infrastructure plan, the Minister (with Planning responsibilities) , distributor-retailer and the relevant local government can agree to use the more appropriate and up to date assumptions in the proposed priority infrastructure plan.

Section 99BL Requirement for distributor-retailer to review plan requires each distributor-retailer to review its water netserv plan on a five yearly basis to ensure it is consistent with the SEQ regional plan.

In addition to this five yearly review, subsection (1) provides a regulation may prescribe circumstances to trigger additional reviews to ensure the plan remains consistent with the SEQ regional plan and relevant planning assumptions, and achieves the purpose for a plan. If a review is triggered under subsection (1), the next review period is to be five years after the day the plan was reviewed under subsection (1).

A distributor-retailer must also review its connections areas annually.

Part 2 Purposes, form and content of plan

Section 99BM Purposes of plan provides that the purposes of the water netserv plan are to provide planning for:

- strategic business operations;
- delivering infrastructure within at least a 20 year time horizon;
- delivering a safe reliable and secure water and wastewater service;
- integrating land use planning by the State and local governments; and
- managing the water and wastewater services in a way that seeks to achieve ecological sustainability.

Section 99BN Form of plan provides that each water netserv plan is to have two parts, Part A and Part B. This is to provide for the differences between components of the plan in terms of scope, planning processes, requirements for endorsement or approval by other entities and for public access.

Part A of the Plan provides for the strategic direction and business planning for the distributor-retailer, underpins decisions on applications to connect

to water infrastructure and provides for a charging regime. Part B provides for the operational and technical details of how to deliver on those directions. Part B also brings together much of the content that a water service provider is currently required to provide in a range of separate plans under the Water Supply Act and the Water Policy.

Section 99BO Content of part A of plan prescribes the content of part A of the water netserv plan, which must include the following:

(a) the planning assumptions about the type, scale, location and timing of future development and future growth that underpin the water netserv plan;

(b) information about the current infrastructure networks and their capacity to service existing and proposed customers;

(c) information about the proposed extension of infrastructure networks, the areas into which it is intended to extend networks and the timing for doing so (with the areas to be consistent with the priority infrastructure areas defined within the priority infrastructure plans of its participating local governments);

(d) desired standard of service for water infrastructure (previously contained in the priority infrastructure plans of participating local governments);

(e) the strategy for demand management for water (such as, reducing demand for water or water use);

(f) the connections policy, which will provide the criteria to be applied by the distributor-retailer in considering applications to connect to, or alter the connection to, the distributor-retailer's water infrastructure;

(g) a schedule of charges that will provide details of charges to customers to connect to water and wastewater services, for usage of those services (previously charges as local government rates), and charges related to providing infrastructure for services (previously infrastructure charges and contributions under SPA); and

(h) an indication of how the distributor-retailer proposes to effectively provide for water and wastewater services both within its distributor-retailer area, and across the SEQ region as a whole.

Subsection (3) provides that subsection (1) does not limit the matters that part A of the water netserv plan may contain. Subsection (4) contains definitions of "demand management" and "priority infrastructure area".

Section 99BP Content of part B of plan prescribes the content of part B of the water netserv plan, which must include the following:

(a) information about the asset management of the distributor-retailer's current and proposed infrastructure networks. In particular, it will provide information about how the assets will be managed to meet asset performance targets and service standards relating to the operation, maintenance and replacement of existing infrastructure and provision of new infrastructure to meet expected future development and future growth;

(b) measures to minimise water losses caused by leakage from water infrastructure and sewerage overflows;

(c) drinking water quality management measures to protect public health;

(d) information about how the water netserv plan will provide for total water cycle management for water and wastewater in its area;

(e) information about how the distributor-retailer will seek to achieve ecological sustainability in undertaking its functions;

(f) information about trade waste management for the distributor-retailer's wastewater service;

(g) information about managing any recycled water; and

(h) include any other matters prescribed by a regulation to be dealt with in a water netserv plan, such as matters included in plans required for service providers under the Water Supply Act.

Subsection (2) provides that subsection (1) does not limit the matters the water netserv plan may contain. .

Part 3 Particular provisions about plans

Section 99BQ Matters distributor-retailer must have regard to in making plan requires a distributor-retailer, in making its water netserv plan, to have regard to relevant water and wastewater planning documents for the SEQ region. These documents are relevant where the chief executive officer has advised the distributor-retailer to consider them. The section provides examples of such documents including the SEQ water

strategy, SEQ infrastructure plan and program, SEQ regional water security program and any sub-regional total water cycle management plans.

Other matters a distributor-retailer must have regard to are:

- the most efficient cost asset cycle planning for the distributor-retailer's business;
- total water cycle management plans made by its participating local governments pursuant to the Water Policy;
- any guidelines made by the Queensland Water Commission about plan-making; and
- the customer water and wastewater code.

Part 4 Process for making or amending plans

Section 99BR Process for making or amending plan provides that a regulation will contain the detailed processes for a distributor-retailer to make and adopt its plan, and the key matters that the regulation must deal with. A distributor-retailer must follow the process prescribed in the regulation.

Section 99BS Content of regulation for making or amending plan provides for the key matters that must be dealt with in a regulation prescribing the process to make or amend a water netserv plan. This regulation must at least provide for:

- public notification of a distributor-retailer's intent to make a plan;
- public consultation and consideration of submissions about a proposed plan;
- endorsement by the Planning Minister that the proposed plan is consistent with the SEQ regional plan;
- endorsement by each participating local government that the proposed plan is consistent with the planning assumptions for the local government's area;
- adoption of the proposed plan by the distributor-retailer; and

- notification of the making of the plan in the Government Gazette.

The regulation may also provide for stated components of the water netserv plan to be approved by a stated public sector entity, which could be approval of components within part B by an asset regulator. The regulation may also make provision for components of the plan to require endorsement by an appropriately qualified person, such as a registered professional engineer.

This section also contains a definition of "public sector entity" for the section.

Clause 22 Insertion of new ch 5, pt 1 and pt 2 hdg

Part 1 Public access to information

Section 99BT Meaning of available for inspection and purchase provides that documents comply with a requirement to be available for inspection and purchase if the document or a certified copy of it is held in the distributor-retailer's office and any other place decided by the distributor-retailer.

Section 99BU Keeping particular documents available for inspection and purchase provides for the documents that a distributor-retailer must keep available for inspection and purchase.

For any document available for inspection and purchase, a person may inspect the document free of charge during the opening hours of the office where the document is held. Some documents are also required to be also available from distributor-retailers' websites.

Section 99BV Distributor-retailer may charge for copies of documents provides that the distributor-retailer may charge for supplying a copy or part of a copy of a document, provided the charge reflects the cost of making the copy available, including where applicable, the cost for posting the document.

Part 2 Other matters

Clause 23 Insertion of new ss 100A–100F provides for the insertion of new sections 100A to 100F.

Section 100A Trade waste management plans and plans for managing wastewater services is a transitional arrangement enabling the existing approved trade waste management plans of the participating local governments (under section 22 of the Water Policy to be taken to be the plans of the distributor-retailers for the transitional period, until the distributor-retailer has a water netserv plan, that will provide for trade waste management. Section 22 of the Water Policy will apply to a distributor-retailer until it has a water netserv plan..

Also under subsection (3), in managing its wastewater service, the distributor-retailer is to have regard to any provisions about sewage management incorporated in a participating local government's total water cycle management plans (under section 20 of the Water Policy). Subsection (5) provides that from the transfer of wastewater functions to a distributor-retailer, any participating local governments are no longer required to deal with sewage management in their total water cycle management plan.

Subsection (6) provides definitions of the terms "Water Policy".

Section 100B Distributor-retailer to prepare statement about capital works requires a distributor-retailer, from 1 July 2013, to prepare and publish an annual capital works program for each financial year. It also defines "annual capital works program".

Section 100C Commission may make guidelines provides for the Queensland Water Commission to make guidelines to provide guidance to the distributor-retailers about preparing their water netserv plan, and any content for the plan.

Section 100D Application of Water Supply Act internal and external review provisions for decisions under Act provides that the reviews and appeals provisions of the Water Supply Act chapter 7 (other than part 4) apply to recipients of:

- a work direction;
- a trade waste compliance notice; or

- a consistency amendment of a trade waste approval.

Section 100E Offences against Act are summary provides that an offence against the Act is a summary offence.

Section 100F Application of Water Supply Act enforcement provisions for particular offences applies provisions of the Water Supply Act chapter 5, part 9 to a contravention of a trade waste compliance notice, section 94A and a provision in a regulation that creates an offence.

Clause 24 Amendment of s 102 (Regulation-making power) provides for a regulation to be made about the customer water and wastewater code, and distinguishes that code from the SEQ design and construction code that is also mentioned in the Bill. It also provides for a regulation to be made dealing with compensation, and charges for water and wastewater services.

It also provides for a regulation to be made to identify provisions in a planning scheme that do not apply for assessing development applications. Such a regulation may be needed after the commencement of the water netserv plan if a planning scheme retains provisions to be replaced by those in the water netserv plan. This will avoid duplication of assessment as well as any confusion about the applicability of certain planning scheme provisions.

Clause 25 Insertion of new ch 6, pt 1 hdg

Part 1 Transitional provisions for Act No. 46 of 2009

Clause 26 Omission of s 105 (Application of customer service standards until code commences) omits section 105.

Clause 27 Insertion of new ch 6, pt 2 inserts a new Part 2, containing transitional provisions for the Act which:

- provide that particular types of approvals granted or imposed before the commencement are taken to be public entity approvals;
- defer certain obligations for the distributor-retailer to give public entities information about water infrastructure until after commencement; and

- provide that, for trade waste approvals given by a participating local government, the trade waste approval applies as it has been given by the distributor-retailer.

Part 2 Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010

Section 108 Public entity approvals taken to be given for existing water infrastructure work explains what are to be considered a public entity approval for the purposes of section 53CH (Liability for additional public entity road work expenses). The section applies to existing water infrastructure of a participating local government situated on a publically controlled place, which is transferred to a distributor-retailer under a transfer document. Any of the following are taken to be public entity approval for that water infrastructure:

- an approval given under an Act where a condition of an approval has not been contravened;
- a requirement imposed under theTIA; or
- for a road that is not a State controlled road, the carrying out of the infrastructure work by the local government. (as the local government would not have given approval to itself to carry out works on roads for which it is responsible).

Section 109 Deferral of distributor-retailer's liability for additional public entity road work expenses defers the operation of section 53CH (Liability for additional public entity road work expenses) until 1 July 2015.

Section 110 Existing authorised persons deems a person who held an appointment as an authorised officer with a participating local government before 1 July 2010 and who under a transition document is to become an employee of the distributor-retailer, to be appointed as an authorised person by the distributor-retailer.

Clause 28 Amendment of schedule (Dictionary) omits the definitions of "code", "customer" and "instrument" and includes new definitions.

Part 3 Amendment of Community Ambulance Cover Act 2003

Clause 29 Act amended, Clause 30 Insertion of new s 371A SEQ water distributor-retailer exemption, Clause 31 Insertion of new s 50A SEQ water distributor-retailer exemption, Clause 32 Insertion of new s 62A SEQ water distributor-retailer exemption and **Clause 33 Amendment of schedule (Dictionary)** amend the *Community Ambulance Cover Act 2003* to recognise that the distributor-retailers are taking over the provision of water and wastewater services from their participating local governments and that they should be entitled to the same community ambulance exemptions that currently apply to these local governments under this Act.

Part 4 Amendment of Environmental Protection Act 1994

Clause 34 Act amended provides that this part amends the *Environmental Protection Act 1994*.

Clause 35 Amendment of s 310C (Requirements for application) contains a technical amendment to a correct a reference to the new provisions.

Clause 36 Amendment of s 310D (Environmental management plan) amends section 310D to introduce additional requirements for preparing an environmental management plan where the application is for a CSG environmental authority. It applies to all CSG activities that require an environmental authority. The environmental management plan must outline the quantity, quality and flow rate of the CSG water expected to be generated through the life of the project and the proposed management of the water. The environmental management plan must also include

measurable criteria against which the applicant will monitor and assess the effectiveness of the management of the CSG water and the measures that will be taken if the management criteria are not satisfied. This is the first step of implementing an adaptive management regime by establishing the criteria against which the management of the water will be assessed.

This section also implements the policy of discontinuing the use of evaporation dams contained in the Blueprint for Queensland's LNG Industry by stating that the environmental management plan must not provide for an evaporation dam unless the application includes an evaluation of best practice environmental management and alternative methods for managing CSG water and the evaluation shows that there is no feasible alternatives. It is anticipated that only rare circumstances will exist where there will be no feasible alternative to using an evaporation dam as the primary means of treatment and disposal.

Clause 37 Amendment of s 310U (Requirements for amendment application) amends section 310U of the *Environmental Protection Act 1994* about the contents of amendment applications. For CSG environmental authorities, all amendment applications will be required to include a revised environmental management plan that complies with the requirements in section 310D(5) and (6) in relation to CSG water management. This is required as a change in the activity may significantly affect the amount and quality of the water produced and the regime necessary to manage it. This is consistent with the principles of adaptive management.

Clause 38 Amendment of s 312E (Other amendments) gives the administrative authority additional grounds for amending an environmental authority where a revised environmental management plan is received in relation to a CSG environmental authority. In some circumstances, it may be necessary to amend the conditions of the environmental authority to reflect the changes in the plan. This amendment gives the administering authority clear power to make such amendments. The power is limited so that an amendment can only be made insofar as it relates to a matter changed by the revised environmental management plan.

Clause 39 Insertion of new s 316A (Particular requirement for annual return for CSG environmental authority) inserts new requirements for annual returns for CSG environmental authorities. As part of the annual return, the authority holder must include an evaluation about the management of the CSG water against the management criteria contained in the environmental management plan. The evaluation must state whether

or not the management criteria have been satisfied. If the management criteria have not been satisfied, then the evaluation must state what action will be taken to ensure that the management criteria will be satisfied in the future and when that action will be taken. This will assist the administering authority in identifying necessary changes to the management of the CSG water. While there are no enforcement provisions for this section, the administering authority will be able to use existing tools in the Act such as transitional environmental plans or environmental protection orders to guarantee enforcement where there is a likelihood of environmental harm. Where necessary, the administering authority may also amend the conditions of the environmental authority based on information received in an annual return.

The evaluation process implements the adaptive management regime by providing a step to evaluate and identify necessary changes to the management of the CSG water.

Clause 40 Insertion of new ch 13, pt 15 contains transitional provisions implementing the new requirements for CSG environmental authorities.

Section 660 Definitions for pt 15 defines words and phrases used in this part.

Section 661 Temporary prohibition on constructing CSG evaporation dams under existing CSG authority prohibits the holder of an existing CSG environmental authority from constructing an evaporation dam except where the construction of the dam has substantially commenced. For example, a dam may be substantially commenced where all the necessary earthworks have been completed and lining of the dam is underway. The holder of the environmental authority may also construct a dam if the holder gives the administering authority a revised CSG environmental management plan that demonstrates that there is no feasible alternative other than to build the dam, in accordance with the new section 310D(6) and the holder receives notice in writing from the administering authority approving the construction of the dam. This provision gives rise to the fundamental legislative principle of abrogating a statutory right. Justification for this provision is above.

Section 662 Revised (CSG) EM plan required for existing CSG authority gives all holders of an existing CSG environmental authority 12 months to submit a revised environmental management plan including the new requirements under section 310D in relation to CSG water. This is to ensure that existing holders and new holders are all subject to the same

requirements and existing holders are meeting best practice environmental management. Existing holders have 12 months to ensure they meet the expanded requirements. If a holder of an environmental authority fails to comply with this section, then the administering authority may rely on the power to amend the conditions of the environmental authority under section 312E by reason of contravention of the Act. For example, the administering authority may amend the environmental authority to include conditions about the management of CSG water.

Section 663 First annual return for existing CSG authority states that the new provisions about annual returns for CSG environmental authorities contained in section 316A only apply for the first annual return if the holder has already submitted their revised environmental management plan. This prevents the impractical situation of requiring a holder to complete an evaluation before they have been through the process of revising their environmental management plan and proposing criteria against which it is to be evaluated.

Clause 41 Amendment of sch 4 (Dictionary) defines words and phrases that are used in the EP Act.

Part 5 Amendment of Plumbing and Drainage Act 2002

Plumbing and drainage work within premises (such as installing new water meters, installing trade waste facilities, installing some backflow prevention measures, or plumbing work that would increase water demand or sewerage generation) can have implications for water infrastructure.

The amendments to the *Plumbing and Drainage Act 2002* (Plumbing Act) in this Bill are based on three principles. Firstly, a local government should not approve regulated plumbing work that could not be operational without a connection, disconnection or change of connection to water infrastructure, unless there is a necessary approval by the distributor-retailer. Secondly, a distributor-retailer needs to be to able protect the integrity of its networks from misuse, damage or unauthorised connections, through its approval processes. Thirdly, applying the first two principles should not produce delays in processing plumbing and drainage approvals, particularly for housing.

Therefore three processes have been provided that allow the distributor-retailers to:

(a) determine circumstances where the distributor-retailer can delegate its power to approve a connection to, disconnection from, or alteration of connection to its water and wastewater infrastructure to a participating local government (with the delegation by the distributor-retailer subject to conditions about the exercise of the power by the local government);

(b) determine types of connection to, disconnection from, or alteration of connection to its water and wastewater infrastructure where the distributor-retailer can issue a "blanket approval" (which can be subject to standard conditions); and

(c) determine that a local government can issue compliance permits or compliance certificates for certain types of regulated work, without the approval of the distributor-retailer to connect, disconnect from or alter connections.

The distributor-retailers can also determine the categories of plumbing approvals about which they wish to receive information, including for example, "as constructed" plans.

It is up to the distributor-retailer to determine the circumstances in which these processes can apply and to select any standard conditions under which they will operate. However, it is expected that initially these processes will be applied to applications to local governments for compliance assessment that concern housing and associated buildings, ie class 1 and 10 buildings.

Greywater sourced from large treatment plants capable of treating more than 50kL of greywater per day is one of three prescribed sources of recycled water regulated under the Water Supply Act. Greywater use is also regulated under the Plumbing Act with chief executive and local government approvals required for installation of treatment plants capable of treating up to 50kL of greywater per day. Since initialisation of the Water Supply Act, review of these regulatory arrangements has determined that all greywater use can be adequately regulated under the Plumbing Act. The Bill amends the Plumbing Act to achieve this.

Changes to the Plumbing Act will commence on assent. The provisions preventing a local government from issuing a compliance permit or compliance certificate without a connections or other approval by or behalf

of the distributor-retailer, will not have effect until the transfer of water and wastewater infrastructure to the distributor-retailers. This will be at 1 July 2010.

Clause 42 Act amended provides that this part amends the *Plumbing and Drainage Act 2002*.

Clause 43 Amendment of s 83 (Compliance permit required for certain regulated work or any on-site sewerage work) provides that where a participating local government for a distributor-retailer resolves that certain regulated plumbing work will not require a compliance permit to carry out the work, the local government must give a copy of the resolution to the relevant distributor-retailer.

Clause 44 Amendment of s 84 (Regulated work or on-site sewerage work by a public sector entity) provides for regulated plumbing work undertaken by or for a public sector entity within the area of the distributor-retailer that involves connection, disconnection, or change of a connection, to a distributor-retailer's infrastructure. This provides that where a public sector entity undertakes compliance assessment of regulated work, it must not issue a compliance permit or compliance certificate for work without the approval of the distributor-retailer.

Amendments to subsection 84(5) provide that where the public sector entity issues a compliance permit or compliance certificate, it must provide a copy of the permit or certificate to the distributor-retailer as well as the participating local government.

Note that because a distributor-retailer is not a public sector entity, it may not carry out compliance assessment for its own regulated work or on-site sewerage work. It must apply to the relevant local government for compliance assessment.

Clause 45 Amendment of s 85 (Process for assessing plans) addresses the situation where a person applies for compliance assessment of plans for regulated work, and the work involves connecting to, disconnecting from, or changing a connection to, a distributor-retailer's infrastructure.

Subsection 85(2)(d) will provide that the application must be accompanied by information to show the connection, disconnection or change to connection has been approved by or for the distributor-retailer.

Subsection 85(7A)(a) will provide that a participating local government for a distributor-retailer cannot give a compliance permit for a plan without the

written consent of the distributor-retailer for the proposed connection, disconnection or change.

An approval by the distributor-retailer can be in the form of an approval to a development application under SPA, such as an operational works approval. Such an approval can impose conditions about connecting to the distributor-retailer's water infrastructure. An approval may also be a connections approval under section 167 of the Water Supply Act.

The distributor-retailer may issue a connections approval for a single application. Under new subsections 85(7A)(a) and (7B), the distributor-retailer may also advise the local government that the distributor-retailer issues a "blanket approval" for specified types of connections. For example, this could refer to the connection of detached houses (Class 1 buildings) within a specified area. .

Also, the distributor-retailer may have delegated its power to approve a connection, disconnection or change of connection to the local government (under amendments to section 53 of the SEQ Water D&R Act in this Bill). The local government would then issue an approval to connect, disconnect or change a connection on behalf of the distributor-retailer, in accordance with any conditions imposed by the distributor-retailer on the exercise of the delegated power.

Subsection 85(7A)(b) will also provide that the distributor-retailer may advise in writing that the requirement for prior approval of the connection, disconnection or change to connection before issuing a compliance permit, does not apply to particular types of regulated work. Where a distributor-retailer determines that this is the case, no information about prior approvals need be provided with the application for a compliance permit.

Subsection 85(8), which deals with the process for assessing a plan for regulated work or on site sewerage work, is amended to remove the requirement for the local government to give a copy of the compliance permit to the regulator under the Water Supply Act where the compliance permit relates to a greywater use facility that is or includes a large greywater treatment plant. This amendment is part of the changes to remove regulation of greywater use from the Water Supply Act. The regulation of greywater use where sourced from large treatment plants will fall under the Plumbing Act.

Clause 46 Insertion of new s 85A

Section 85A Participating local government to give documents or information to distributor-retailer allows a distributor-retailer to require a participating local government to provide information to the distributor-retailer about particular types of plumbing approvals for regulated work that involves connection, disconnection to or changing connection to the distributor-retailer's infrastructure.

Under subsection (1), the distributor-retailer may notify the local government in writing that it is to provide to the distributor-retailer copies of specified types of compliance permits and specified types of compliance certificates for regulated work. Subsection 85A(2) provides that the local government must comply with such a distributor-retailer notice.

Clause 47 Amendment of s 85B (Restrictions on giving compliance permit for greywater use facility in a sewered area) omits relevant parts of section 85B dealing with large greywater treatment plants and renumbers provisions accordingly.

Clause 48 Amendment of s 86 (General process for assessing regulated work and on-site sewerage work) addresses the situation where a person applies for compliance assessment of regulated work, and the work involves connecting to, disconnecting from, or changing a connection to, a distributor-retailer's infrastructure.

Subsection 86(2)(d) provides that the application must be accompanied by information to show the connection, disconnection, or change to connection, has been authorised by or for the distributor-retailer either with the application or an earlier application for compliance assessment.

Subsection 86(9A)(a) provides that a participating local government for a distributor-retailer cannot give a compliance certificate for regulated work without the written consent of the distributor-retailer for the proposed connection, disconnection or change.

An approval by the distributor-retailer can be in the form of an approval to a development application under SPA. It can also be a connections approval under section 167 of the Water Supply Act. The distributor-retailer may issue a connections approval for a single application. It may also advise the local government that the distributor-retailer approves specified types of connections, for example, that the connection of detached houses (Class 1 buildings) within a specified area..

Also, the distributor-retailer may have delegated its power to approve a connection, disconnection or change of connection to the local government (under amendments to section 53 of the SEQ Water D&R Act in this Bill). The local government would then issue an approval to connect, disconnect or change a connection on behalf of the distributor-retailer, in accordance with any conditions imposed by the distributor-retailer on the exercise of the delegated power.

Subsection 86(9A)(b) also provides that the distributor-retailer may advise in writing that the requirement for prior approval of the connection, disconnection or altered connection before issuing a compliance certificate, does not apply to particular types of regulated work. Where a distributor-retailer has determined that this is the case, no information need be provided with the application for a compliance permit.

Subsection 86(10)(c) is omitted to remove the requirement for the local government to give a copy of the compliance certificate to the regulator under the Water Supply Act where the compliance certificate relates to the installation or connection of a greywater use facility, that is or includes a large greywater treatment plant. This amendment is part of the changes to remove regulation of greywater use from the Water Supply Act. The regulation of greywater use where sourced from large treatment plants will fall under the Plumbing Act.

Clause 49 Insertion of new s 86AA

Section 86AA Participating local government to give documents or information to distributor-retailer inserts a new section to provide for the provision of information by a participating local government to the distributor-retailer. This ensures that a distributor-retailer can be aware of matters which may affect meters or water infrastructure.

The distributor-retailer may give a written notification to a local government directing it to provide to the distributor-retailer copies of:

(a) stated types of local government compliance certificates for regulated work;

(b) plans of the assessed work for the compliance certificates; or

(c) stated information about water meters installed on premises, for example about the number, type and location of water meters and sub-meters installed.

Clause 50 Amendment of s 86C (Conditions of compliance certificate) omits subsection (2A) relating to large greywater treatment plants.

Clause 51 Amendment of s 87 (Minor work) provides for emergency work, that would otherwise require prior approval by the local government, to be undertaken without that approval. However, notification of the work must be provided to the local government within a set time of the work. "Emergency work" is defined for this clause.

The amendments to section 87 provide that the relevant distributor-retailer must also be notified where the emergency work is carried out in the SEQ region that would involve connecting, disconnecting or changing a connection to a distributor retailer's infrastructure.

Clause 52 Amendment of s 126 (Restriction on building or installing greywater use facility) omits relevant parts of section 126 dealing with large greywater treatment plants. From the commencement, chief executive approval will be needed for greywater treatment plants of all sizes.

Clause 53 Amendment of s 128G (Owner's obligation to maintain plumbing and drainage and on-site sewerage facility) removes the distinction between large greywater treatment plants and other plants in relation to obligations to maintain facilities.

Clause 54 Amendment of s 128PA (Offence about using greywater) applies water quality standards stated in the Queensland Plumbing and Wastewater Code to all permitted uses of greywater and adds another permitted use that is "supply to a closed loop laundry system".

Clause 55 Amendment of s 143B (Local government's monitoring obligations for greywater use facilities in sewered areas) applies the requirement for local governments to monitor all greywater use facilities including large greywater treatment plants to ensure their operation is not affecting public health.

Clause 56 Omission of s 143D (Local government advice to regulator about greywater treatment plant) omits section 143D as part of removing regulation of greywater from the Water Supply Act.

Clause 57 Insertion of new pt 10, div 7 inserts a new part 10, division 7 heading (Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010, new subdivision 1 heading (Provisions for greywater treatment plants at particular hospitals) new sections 184 and 185, new subdivision 2 heading (Other provisions) and new sections 186 and 187.

Division 7 Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010

Subdivision 1 Provisions for greywater treatment plants at particular hospitals

Section 184 Chief executive approval of particular greywater treatment plant provides for chief executive approval of a type of greywater treatment plant that was installed as part of two "greywater" recycled water schemes approved under the Water Supply Act. The chief executive approval expires at the time the Water Supply Act approvals would expire.

Section 185 Relevant compliance certificate conditions for particular regulated work provides that the conditions applied to particular "greywater" recycled water schemes approved under the Water Supply Act, with certain exceptions, are taken to be compliance certificate conditions for section 143B of the Act. In accordance with section 143B, the relevant local government for the area, in this case Brisbane City Council, will be responsible for monitoring compliance with the conditions.

Subdivision 2 Other provisions

Section 186 Policies about installation and location of meters refers to any policy made by a participating local government before 1 July 2010, under the Queensland Plumbing and Wastewater Code, about the installation and location of meters for premises, is transitioned to be a policy of the distributor-retailer. Such local government policies are transitioned to be the policies of the relevant distributor-retailer.

Section 187 Amendment of regulation does not affect power of Governor in Council provides that the amendments made to the *Standard Plumbing and Drainage Regulation 2003* in this Bill do not affect the Governor in Council's power to make further amendments to the regulations or to repeal them.

Clause 58 Amendment of schedule (Dictionary) amends the schedule to amend the definition of *public sector entity* to exclude a distributor-retailer for the Plumbing Act. It omits the definitions "large greywater treatment plant" and "regulator" as part of removing regulation of greywater from the Water Supply Act.

Part 6 Amendment of Public Service Act 2008

Clause 59 Act Amended provides that this part amends the *Public Service Act 2008*.

Clause 60 Amendment of sch 1 (Public service offices and their heads) amends the schedule by replacing the reference to the Commissioner as the the head office for the commission, with the chief executive officer of the commission. This will allow the commission CEO to undertake the normal types of duties involved with running the commission as a public service office, for the purposes of the *Public Service Act 2008*.

Part 7 Amendment of Standard Plumbing and Drainage Regulation 2003

Clause 61 Regulation amended provides that this part amends the *Standard Plumbing and Drainage Regulation 2003.*

Clause 62 Amendment of s 14C (Additional requirements for plans for greywater use facilities not in a sewered area) relates to where a person makes a request under section 85(1) of the *Plumbing and Drainage Act 2002* for compliance assessment of a plan for regulated work for or including a greywater use facility that is not is a sewered area. Such an application requires the attachment of a plan for grey water use providing detailed information indicating there is an adequate water supply to the premises. The amendment inserts examples of details of the water supply that cover both water supplied via a distributor-retailer's reticulated network or from on-site water tanks.

Clause 63 Amendment of s 14D (Additional requirements for plans for on-site sewerage facilities) relates to where a person makes a request under section 85(1) of the *Plumbing and Drainage Act 2002* for compliance assessment of on-site sewerage work. Section 14D currently requires site plan that provides detailed information of the water supply to the premises. The amendment inserts examples of details of the water

supply that cover both water supplied via a distributor-retailer's reticulated network or from on-site water tanks.

Part 8 Amendment of Sustainable Planning Act 2009

This part amends various sections of the *SPA* (SPA) to accommodate the operation of distributor-retailers under SPA for the interim period to 30 June 2013.

In particular, the distributor-retailer will be indentified as a concurrence agency under SPA's integrated development assessment system (IDAS) for all development applications made to each relevant local government, and will have assessment powers within the following jurisdiction: "effects of the development on a water service or wastewater service of a distributor-retailer". These concurrence agency powers are required to be delegated to the relevant participating local government (the assessment manager for the application) under section 53 of the SEQ Water D&R Act. Such delegation ensures the assessment times and processes that normally apply for concurrence agency assessment are not triggered, avoiding any additional requirements for a development application.

A new assessment function has also been established for distributor-retailers in relation to requests for compliance assessment, whether the compliance assessor is a local government or an entity nominated by a local government. As for assessable development, these assessment functions of the distributor-retailer are required to be delegated to the relevant local government.

Note also that under these various circumstances, where functions have been delegated, the local government is the assessing authority for enforcement of a development permit, compliance permit or compliance certificate.

As the new provisions only apply to development applications and requests for compliance assessment made from the date of commencement (1 July 2010), all applications in progress are unaffected. However, there is still provision for input from distributor-retailers on water and wastewater matters in the assessment of an application in progress. A local government, as assessment manager can (under section 256 of SPA) ask

any person for advice or comment about the application at any stage of IDAS, other than the compliance stage. It is expected that such consultation between the local government and distributor-retailer will occur as appropriate for applications in progress.

For infrastructure charging, the distributor-retailer is given new interim powers under SPA to levy charges for supplying trunk infrastructure for its water service or wastewater service. These powers are not required to be delegated to local governments. (Note: conditions for infrastructure are imposed by local governments under the delegated concurrence agency powers).

Most amendments to SPA support the interim development assessment model under IDAS, and accordingly, are interim provisions that will apply only for the three year period between 1 July 2010 and 30 June 2013. At the end of that period it is intended that a new "utility model" of assessment will commence operation outside SPA and IDAS. Under the utility model separate applications will be required - one to the local government for assessment of the proposed development, and one to the distributor-retailer to consider connection of the proposed development to water and wastewater services.

A small number of other "permanent" amendments to SPA clarify or simplify the current provisions, relevant to the operation of the distributor-retailers.

Clause 64 Act amended provides that this part amends the *Sustainable Planning Act 2009*.

Clause 65 Amendment of s 120 (When planning scheme, temporary local planning instrument and amendments have effect) inserts a note to alert readers to s 78A of the SEQ Water D&R Act (Application of planning schemes for development in SEQ region), which complements a regulation-making power mentioned in an amendment to SEQ Water D&R Act, section 102.

A regulation may be prepared that identifies provisions in a planning scheme that do not apply for assessing development applications. Such a regulation may be needed after the commencement of the water netserv plan if a planning scheme retains provisions replaced by those in the water netserv plan. This will avoid any duplication of assessment as well as any confusion about the applicability of certain planning scheme provisions.

Clause 66 Amendment of s 249 (When assessment manager also has jurisdiction as concurrence agency) refers to where an entity is the assessment manager but also has a jurisdiction as a concurrence agency. In that circumstance, the entity is not a concurrence agency, but is the assessment manager with multiple jurisdictions, including the jurisdiction the entity would have had as a concurrence agency.

This amendment clarifies that the circumstances and outcome described in section 249, continue to apply whether or not the concurrence agency role has been devolved or delegated. This is important because the mandatory delegation of the concurrence powers to the assessment manager (i.e. the local government) under SEQ Water D&R Act, section 53, means that the normal IDAS processes arising for a concurrence agency do not apply (for example, issue of acknowledgement notice, referral of application, referral agency information request and assessment period). Consequently the processes followed by applicants in SEQ during the interim period will not change from 1 July 2010 when the distributor-retailers are identified as a concurrence agency for every application made to their respective participating local governments (see amendments to *Sustainable Planning Regulation 2009*, schedule 7, tables 2 and 3 in Part 9 of this Bill).

Clause 67 Amendment of s 628 (Local government must review its priority infrastructure plan every 5 years) provides for the distributor-retailers (as the entities in SEQ taking over responsibility for the provision of water and wastewater services in place of local governments) to be involved in the required 5-yearly review of a local government's priority infrastructure plan (PIP).

SPA provides for the making of statutory guidelines about the process for make planning schemes, including PIPs. It is intended to make amendments to these guidelines to provide the distributor-retailers with a clear role in providing relevant advice to local governments when preparing schemes and PIPs.

From 1 July 2013, PIPs will no longer be the plans dealing with water and wastewater networks but it is essential for any future review and amendment of a PIP, including the priority infrastructure area, that consideration is given to the advice from the relevant distributor-retailer about the efficient delivery of water and wastewater services.

Clause 68 Replacement of s 677 (Representations about notice)

Section 677 Representations about notice simplifies the existing section, and avoids the need to mention each entity individually when identifying

the entity a person may make representations to about a charges notice. The entity could include a local government, a state infrastructure provider or a distributor-retailer.

Clause 69 Insertion of ch 9, pt 7A

Part 7A Provisions for distributor-retailers

Division 1 Preliminary

Section 755A Definitions for pt 7A includes new definitions relating to the distributor-retailer and its functions under this part.

A notable definition is "development application (distributor-retailer)" which describes a development application made during the interim period that involves the "active" exercise by the local government of the distributor-retailer's concurrence agency jurisdiction, i.e. an application where water or wastewater matters were relevant in one or more conditions of approval, any reasons for refusal, or in deciding to give a preliminary approval when a development permit was sought.

This definition is relevant to new provisions about information to be provided in decision notices, requirements for giving copies of decision notices and notices of appeal to distributor-retailers, and issuing infrastructure charges notices.

Note also the definition of "SEQ infrastructure charges schedule" which includes, as well as an infrastructure charges schedule, "the part of a planning scheme policy to which section 847 applies that provides for contributions for a development infrastructure network". This means, under new section 755K, that a distributor-retailer is able to apply charges for supplying infrastructure for water or wastewater services through an infrastructure charges notice based on whichever instrument is in effect.

Section 755B Purpose of pt 7A sets out the purpose of this part which provides for matters relevant to the transfer of infrastructure and functions from SEQ local governments to the distributor-retailers on 1 July 2010.

Section 755C Application of pt 7A states that this part does not limit or affect the application of SPA other than to the extent stated in this part.

Division 2 Dealing with development applications—generally

Section 755D Application of particular assessment rules modifies the respective IDAS code and impact assessment rules that apply to development applications during the interim period to 30 June 2013. These rules are modified to provide for assessment against the SEQ design and construction code should the code take effect during that period. As the code will draw on, and replace, the design and construction standards contained in planning schemes (including relevant planning scheme polices mentioned in the schemes), the new section also provides for the code to prevail over the scheme provisions to the extent of any inconsistency.

Division 3 Dealing with development applications (distributor-retailer)

This division deals with a decision notice arising from a decision about a "development application (distributor-retailer)". This type of development application is defined in section 755A and describes a development application made during the interim period that also involves the "active" exercise by the local government of the distributor-retailer's concurrence agency jurisdiction, i.e. an application where water or wastewater matters were relevant in one or more conditions of approval, any reasons for refusal, or in deciding to give a preliminary approval when a development permit was sought.

Section 755E Decision notice or negotiated decision notice for development application (distributor-retailer) requires these notices to identify the conditions of approval, or reasons for a refusal, that relate to water and wastewater matters. This will be useful if any representations or appeal are made in relation to a decision on a development application.

Section 755F Local government to give notices to distributor-retailer requires the local government as the assessment manager to give copies of decisions on development applications to the distributor-retailer. Apart

from providing the distributor-retailers with a record of all decisions that involved the exercise of their concurrence agency jurisdiction, this provides for the timely issue of an infrastructure charges notice following a decision on a development application.

Division 4 Compliance assessment

This division deals with requests for compliance assessment made after 1 July 2010 and before 1 July 2013 that relate to water or wastewater matters. Respective sections deal with the circumstances when the local government is the compliance assessor and when the compliance assessor is a nominated entity of a local government.

Section 755G Compliance assessment—local government as compliance assessor establishes an assessment role for distributor-retailers for requests for compliance assessment made to a local government as compliance assessor, for example for. subdivisions of one lot into two, and the operational work for those subdivisions (under *Sustainable Planning Regulation 2009*, schedule 18). The provision defines the types of requests which will be subject to distributor-retailer assessment, such as those relating to the connecting to or construction of the distributor-retailer's water infrastructure, or to the safety or efficiency of the infrastructure.

Under subsection (2), the assessment will be against the matters or things normally identified that relate to the particular development, document or work, as well as the SEQ design and construction code, if it is in effect before 30 June 2013. In that circumstance, subsection (4) provides that the code will prevail over any local planning instruments, such as the construction standards in a planning scheme policy, to the extent of any inconsistency.

Under subsection (3), similar to a local government that assesses an aspect of a request made to a nominated entity of the local government (under SPA, section 402(6)), the distributor-retailer may tell the compliance assessor about required conditions, if the development, document or work does not comply (and the reasons), or that there are no requirements.

A note has been included in the section advising that these functions of the distributor-retailer, as for the concurrence agency powers, must be delegated to its relevant participating local government under the SEQ Water D&R Act, section 53. This recognises the distributor-retailer as the

entity responsible for water and wastewater matters, but also the need to avoid additional requirements on those making a request or development application.

Section 755H Compliance assessment—nominated entity as compliance assessor establishes a process for distributor-retailer assessment when a nominated entity is the compliance assessor. The process requires the same assessment, for the same types of requests, as described in the previous section when the local government is the compliance assessor. The assessment is initiated by the nominated entity referring the requests to the local government, under SPA, section 402. Once again, the assessment functions of the distributor-retailer must be delegated to its relevant participating local government under the SEQ Water D&R Act, section 53.

Section 755I Notice about compliance permits and compliance certificates requires the local government as the compliance assessor, or the recipient of a copy of a compliance permit or compliance certificate from a nominated entity under section 408(4), to give a copy of all relevant permits and certificates to the distributor-retailer given after 1 July 2010 and before 1 July 2013. Relevant permits or certificates are described in subsection (4).

Division 5 Infrastructure funding and planning for distributor-retailers

This division includes provisions that modify the application of SPA, chapter 8 in SEQ to account for the transfer of responsibility for providing water and wastewater services from local governments to the distributor-retailers. Chapter 8 applies when a planning scheme incorporates a priority infrastructure plan. It provides for the imposition of infrastructure charges, and also conditions about trunk and non-trunk infrastructure on development approvals. Chapter 8 operates together with chapter 6 of SPA which deals with the assessment of development applications by the assessment manager and referral agencies under IDAS, and general matters about imposing conditions on development approvals.

The amendments to chapter 8 provide for the distributor-retailers to apply charges for supplying infrastructure for water or wastewater services through an infrastructure charges notice based on either a planning scheme

policy or an infrastructure charges schedule. Both instruments are identified as an "SEQ infrastructure charges schedule", defined in section 755A.

This means that in SEQ, conditions on a development approval will no longer be used to apply contributions or "charges" for supplying water infrastructure to proposed development. This approach provides for distributor-retailers to impose infrastructure charges for water and wastewater services using a common process applicable across SEQ from 1 July 2010.

Subdivision 1 Conditions about non-trunk infrastructure and funding trunk infrastructure—general

This subdivision includes sections that modify the application of a number of sections under SPA, chapter 8 regarding conditions about non-trunk infrastructure and funding trunk infrastructure.

Section 755J Conditions about non-trunk infrastructure for water and wastewater services in SEQ, modifies SPA, section 626 providing for a local government to impose conditions about non-trunk infrastructure for a distributor-retailer's water service or wastewater service. The local government, as assessment manager, applies the concurrence agency powers delegated by the distributor-retailer. Non-trunk infrastructure may be internal to a development site or connect to external trunk infrastructure. It is usually provided by the developer. The ability to impose conditions ensures the non-trunk infrastructure is built according to the distributor-retailer's specific requirements for the proposed development and is designed and constructed to appropriate standards.

Section 755K Funding trunk infrastructure enables a distributor-retailer to levy a charge for supplying trunk infrastructure for water or wastewater services, and to give charges notices. This provision reflects existing local government powers under SPA, sections 629, 633 and 643 to levy charges for water and wastewater infrastructure provided by local governments, and to give charges notices. Time periods for the giving of the charges notices after receiving copies of a decision notice or deemed approval reflect those in equivalent circumstances under the existing sections.

The section refers to charges being levied under an "SEQ infrastructure charges schedule" (as well as a regulated infrastructure charges schedule). The SEQ schedule includes (apart from an infrastructure charges schedule), the part of a planning scheme policy under SPA, section 847 that provides for infrastructure contributions. This means that in SEQ,

conditions on a development approval will no longer be used to apply contributions or "charges" for supplying water infrastructure to proposed development. This approach provides for distributor-retailers to impose infrastructure charges for water and wastewater services using a common process applicable across SEQ from 1 July 2010.

Section 755L Agreements about, and alternatives to, paying infrastructure charge and **Section 755M Agreements about, and alternatives to, paying regulated infrastructure charge** provide for agreements with a distributor-retailer about paying infrastructure charges. This section is equivalent to SPA, sections 637 and 647 which provide for agreements with local governments. For example, an agreement may provide for a charge to be paid at a different time or in instalments, or provide for infrastructure to be supplied instead of all or part of the charge.

Section 755N Distributor-retailer may supply different trunk infrastructure from that identified in a priority infrastructure plan provides flexibility in determining the appropriate infrastructure to be constructed, as long as the proposed infrastructure delivers the same standard of service. This section is equivalent to section 638 of SPA for trunk infrastructure provided by local governments.

Subdivision 2 Application of particular provisions of ch 8

This subdivision includes sections that modify the application of a number of sections under SPA, chapter 8 regarding other matters about funding trunk infrastructure and conditions about trunk infrastructure.

Section 755O Application of particular provisions—generally provides that specified sections of SPA, subject to other sections that follow in the subdivision, apply to a distributor-retailer's trunk infrastructure for a water service or a wastewater service. As for non-trunk infrastructure, the local government, as assessment manager, imposes the conditions under concurrence agency powers delegated by the distributor-retailer.

Section 755P Application of ss 636 and 646 provides that sections 636(2) and 646 apply to infrastructure for a distributor-retailer's water service or wastewater service. These sections declare that infrastructure charges collected do not need to be held in trust. This means the distributor-retailer could use these funds for other purposes, provided it is able to supply the infrastructure when required.

Section 755Q Application of s 649 provides for section 649 to apply to infrastructure for a distributor-retailer's water service or wastewater

service. Section 649 deals with situations where trunk infrastructure required to service a particular premises that is the subject of a development application or a request for compliance assessment is not adequate, or not yet available.

This section allows conditions to be imposed that require the applicant or person who requested compliance assessment to supply the required trunk infrastructure (including different infrastructure if it delivers the same standard of service). It also allows for a refund to the applicant of the cost of the infrastructure not attributable to the premises as infrastructure charges are received for the subsequent development of other premises.

Note that the local government, as assessment manager, imposes the conditions under concurrence agency powers delegated by the distributor-retailer.

Section 755R Application of s 650 provides for section 650 to apply to infrastructure for a distributor-retailer's water service or wastewater service. Section 650 establishes the parameters for imposing conditions for additional trunk infrastructure costs. An example would be where the proposed development is inconsistent with the assumptions in the priority infrastructure plan. If the costs to supply the infrastructure are higher a condition can be imposed requiring an applicant to pay the additional costs of supplying trunk infrastructure.

Note that the local government, as assessment manager, imposes the conditions under concurrence agency powers delegated by the distributor-retailer.

Section 755S Application of s 651 provides for section 651 to apply to infrastructure for a distributor-retailer's water service or wastewater service. Section 651 deals with additional cost conditions under section 650 within priority infrastructure areas. This relates to where the additional costs are the result of having to supply trunk infrastructure to service the development earlier than anticipated in the priority infrastructure plan, or service development of a different type, scale or intensity than anticipated. In those circumstances, section 651 allows for imposing conditions that require the applicant or person requesting compliance assessment to pay the difference between the establishment cost of the infrastructure and any charges paid for that item. However, the applicant or person who requested compliance assessment is entitled to obtain, on agreed terms, a refund from the infrastructure provider for the

proportion of the cost of the infrastructure that can be attributed to other users and is collected under infrastructure charges.

Note that the local government, as assessment manager, imposes the conditions under concurrence agency powers delegated by the distributor-retailer.

Subdivision 3 Amending SEQ infrastructure charges schedule

This subdivision includes a section for amending an SEQ infrastructure charges schedule. See notes for section 755K about this particular type of schedule applied by distributor-retailers in SEQ.

Section 755T Amending SEQ infrastructure charges schedule enables a distributor-retailer to amend an SEQ infrastructure charges schedule. The amendment must be publicly notified and take account of any submissions before being approved by the Minister, i.e. the Minister for Planning. The Minister may seek advice from the Queensland Competition Authority.

These provisions are similar to the amendment processes for priority infrastructure plans (including infrastructure charges schedules) under the SPA and associated statutory guidelines. In particular, under subsection (6), provision is made for a shortened amendment process to apply if the amendment of a charge would result in less than a 5% increase in the charge (excluding an increase representing an increase in the consumer price index) in any one year.

Division 6 Provisions about appeals

This division includes sections related to appeals under SPA, chapter 7 (Appeals, offences and enforcement).

Section 755U Appeals for development application (distributor-retailer) requires the assessment manager for a development application (distributor-retailer) to give a copy of any appeal notice received under SPA, section 482 to the distributor-retailer. After receiving a notice, under subsection (3), the distributor-retailer may elect to be a co-respondent to the appeal.

Time periods are specified for the assessment manager to send a copy of the notice of appeal to the distributor-retailer (within 5 business days of receiving it), and for the distributor-retailer to elect to be a co-respondent (within 10 business days after a copy of the notice is given).

Section 755V Appeals about requests for compliance assessment is equivalent to the section about appeals for development application (distributor-retailer). Similarly, it requires a local government to give a copy of any appeal notice received under SPA, section 483 to the distributor-retailer about a request for compliance assessment if the request has been subject to distributor-retailer assessment under sections 755G or 755H (as delegated to the local government). As for relevant development applications, after receiving a copy of a notice of appeal, the distributor-retailer may then elect to be a co-respondent to the appeal. Similar time periods for actions by the local government and distributor-retailer also apply.

Section 755W Appeals about infrastructure charge or regulated infrastructure charge provides for a distributor-retailer (as an entity that issues notices for infrastructure charges), to be covered in section 478 of SPA. Section 478 establishes limits on an appeal about infrastructure charges, i.e. an appeal may only be made about whether a charge in the notice is so unreasonable that no reasonable relevant local government, State infrastructure provider or coordinating agency could have imposed the charge. The new section states that section 478 applies as if the reference to a relevant local government were a reference to a relevant distributor-retailer.

Clause 70 Amendment of sch 3 (Dictionary) inserts new definitions.

Part 9 Amendment of Sustainable Planning Regulation 2009

Clause 71 Regulation amended provides that this part amends the *Sustainable Planning Regulation 2009.*

Clause 72 Amendment of sch 7 (Referral agencies and their jurisdictions) provides for a distributor-retailer to be a concurrence agency for development applications made to local governments in SEQ before 1 July 2013. The jurisdiction for assessment of the applications is: "the effects of the development on a water service or wastewater service of a distributor-retailer".

These concurrence agency powers are required to be delegated to the relevant participating local government (the assessment manager for the

application) under section 55 of the SEQ Water D&R Act. Such delegation ensures the assessment times and processes that normally apply for concurrence agency assessment are not triggered, avoiding any additional requirements for a development application.

The date 1 July 2013 identifies the end of the interim period during which distributor-retailers will operate under SPA and IDAS. At the end of that period it is intended that a new "utility model" will commence operation outside SPA and IDAS. Under the utility model separate applications will be required - one to the local government for assessment of the proposed development, and one to the distributor-retailer to consider connection of the proposed development to water and wastewater services.

Clause 73 Amendment of sch 19 (Compliance assessment of subdivision plans) inserts, for the different types of subdivision plans, new requirements for compliance, i.e. there are no outstanding charges levied by a distributor-retailer under SPA or the SEQ Water D&R Act. This is equivalent to existing requirements about charges levied by local governments, and accounts for the transfer of responsibility in SEQ for supplying water and wastewater services from local governments to distributor-retailers.

Clause 74 Amendment of sch 26 (Dictionary) defines water service as:

(a) water harvesting or collection, including, for example, water storages, groundwater extraction or replenishment and river water extraction; or

(b) the transmission of water; or

(c) the reticulation of water; or

(d) drainage, other than stormwater drainage; or

(e) water treatment or recycling.

Part 10 Amendment of Transport Infrastructure Act 1994

Clause 75 Act amended amends the *Transport Infrastructure Act 1994*.

Clause 76 Amendment of s 77 (Application of div 3) makes provision for division 3 to apply to water infrastructure, or the carrying out of water infrastructure work, under the SEQ Water D&R Act.

Part 11 Amendment of Water Act 2000

Clause 77 Act amended provides that this part amends the *Water Act 2000*.

Clause 78 Amendment of s 25F (Regulation about water supply emergency) does not provide for any additional or expanded functions or powers. From 1 July 2010 the change from Councils to council-owned distributor-retailers providing retail water services in SEQ, means the commission will manage compliance and enforcement measures previously undertaken by water service providers.

The amendment provides that a regulation about water supply emergency may, for the SEQ region, include measures that may be carried out by the commission. This ensures that the commission will be able to undertake the functions listed in s25F(2)(d)(i) to (v), as required and appropriate.

Clause 79 Amendment of s 105 (General provision for amending resource operations plan) amends section 105 of the Water Act, by inserting an additional obligation for the chief executive to amend a resource operations plan if the plan is inconsistent with a new water resource plan approved to replace the existing water resource plan. The chief executive must amend the resource operations plan to ensure it is consistent with the existing water resource plan, or if replaced, with the new water resource plan.

This clause also renumbers internal subsections to reflect the inclusion of a new subsection.

Clause 80 Amendment of s 105A (Amendment to provide for deferred aspect) consequentially amends section 105A to reflect the internal renumbering of section 105.

Clause 81 Amendment of s 106 (Minor or stated amendments of resource operations plan) consequentially amends section 106 to reflect the internal renumbering of section 105.

Clause 82 Insertion of new ch 2, pt 4, div 2, sdiv 3

Subdivision 3 Continuation of resource operations plans

Section 106A Continuation of resource operations plan for new water resource plan inserts a new section 106A in the Water Act to provide for the continuation of a resource operations plan that implements an existing water resource plan when a new water resource plan is approved to replace the existing water resource plan. The clause specifies that the resource operations plan that implements the existing water resource plan continues to apply for the plan area of the new water resource plan and is the resource operations plan for the new water resource plan.

This clause also provides that to the extent of any inconsistency between the resource operations plan and the new water resource plan, the resource operations plan takes precedence, unless the new water resource plan expressly provides otherwise.

In addition, this clause makes it clear that this section does not limit or affect section 105(3) (as renumbered) in respect of the obligation for the chief executive to amend the resource operations plan to ensure the consistency of the plan with the new water resource plan.

Section 83 Insertion of new ch 2A, pt 2, div 4A

Division 4A Chief executive officer

Currently the Act provides for the Commissioner of the Queensland Water Commission to make all staff appointments and is silent on the appointment of the CEO. The purpose of the amendments is expressly make the Governor in Council responsible for the chief executive's appointment (rather than the Commissioner) and to transfer all responsibility for employment appointments and the ordinary control of the office, with the CEO as ordinarily would be the case.

Section 357 Appointment provides for the appointment of the chief executive officer ("commision ceo") of the office by the Governor in Council. The clause specifies that the chief executive is to be appointed for a term of up to 3 years, stated in the instrument of appointment. The instrument of appointment may also give the commision CEO an option to nominate before the stated term ends, to continue to hold the office for a period of not more than an additional 2 years.

The *Public Service Act 2008* does not apply to the appointment of the commision CEO.

Nothing in this provision prevents re-appointment for another 3 year term.

Section 358 Conditions of appointment provides that the remuneration and conditions of appointment of the commission CEO are decided by the Governor in Council.

Section 359 Functions specifies that the function of the commission CEO is to control the office and be responsible for its efficient and effective administration and operation.

Section 360 Provisions for performance of functions specifies that the commission CEO must act independently, impartially and in the public interest in performing his or her functions and exercising powers. The clause specifies that the commission CEO is not subject to the direction of the Minister.

Section 360A Conflicts of interest applies the same types of provisions to conflicts of interest to the commission CEO as apply to the Commissioner under s354 of the *Water Act 2000*, with the necessary changes.

Section 360AA Delegation by commission CEO enables the commission CEO to delegate the commission CEO's functions to an appropriately qualified commission officer, including a function delegated to the commission CEO by the commission.

Section 360AB Resignation specifies that the commission CEO may resign from the position by signed notice to the Minister.

Section 360AC Ending of appointment sets out the grounds on which the Governor in Council may end the appointment of the commission CEO.

Section 360AD Acting commission CEO allows the Governor in Council to appoint an acting commission CEO if:

- the office of the commission CEO is vacant;
- the commission CEO is absent from duty; or
- cannot, for another reason, perform the functions of the office.

Section 360AE Preservation of rights as public service officer preserves the employment rights of a public service officer appointed to the position of commission CEO to ensure that a public service officer is not disadvantaged by being appointed as the commission CEO.

Section 360AF Superannuation if previously a public service officer clarifies that a public service officer appointed as commission CEO remains eligible to be a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

Clause 84 Replacement of s 360B (Commission's staff)

Section 360B Commission's staff provides that the staff of the office, other than the commission CEO, are to be employed under the *Public Service Act 2008*. That Act does not apply to the appointment of the commission CEO.

Clause 85 Replacement of s 360I (Advice to Minister on options)

Section 360I Advice to Minister about options replaces the current s360I with a new section which recognises that the Minister might ask for options about the regional water security strategy to be revised.

Clause 86 Amendment of s 360T (Information may be required from water service providers) amend the previous provisions which enabled the Commission to request information from water service providers to perform its functions. The amendments broaden this to include any other entity to which the commission delegates a function.

Clause 87 Amendment of s 360Z (Amendment of plan) amends s360Z to ensure consistency with any relevant water resource plan.

Clause 88 Insertion of new s 360ZCAD (Definition for div 3) provides a definition of ***relevant entity*** in relation to a water efficiency management plan.

This definition manages the situation where the entity managing the water efficiency management plan process is different from the entity that originally requested the submission of a water efficiency management plan. It is required due to transition from Councils as water service providers to distributor-retailers from 1 July 2010.

Clause 89 Amendment of s 360ZCA (Purpose and application of division) omits the previous s 360ZCA(4) and replaces it with the previous s 360 ZCA(4)(b). Section 360ZCA(4)(a) is no longer necessary as the section would otherwise be self-referencing.

Clause 90 Amendment of s 360ZCB (When water efficiency management plan may be required) provides that the 360ZCB(7) does not take effect until a regulation is prescribed and that a reference to

"relevant customer" means any customer or type of customer of the provider.

It also provides a definition of ***relevant customer*** in relation to a water efficiency management plan. This permits the setting of triggers for inclusion in the water efficiency management plan program by regulation.

Clause 91 Replacement of s 360ZCC (Content of water efficiency management plan)

Section 360ZCC Guidelines and content requirements for water efficiency management plans clarifies that a commission guideline about a water efficiency management plan may include information on the content of a water efficiency management plan and also provide guidance on how to comply with obligations under Division 3.

Clause 92 Amendment of s 360ZCD (Approving water efficiency management plan) omits the reference to a "water service provider" and replaces it with "relevant entity". This provides for a situation where, after 1 July 2010, the entity that issued a notice requiring a customer to prepare and submit a water efficiency management plan may be different to the entity responsible for processing the water efficient management plan to approval.

360ZCD(7)(a) and (b) are amended so that local government is removed and replaced with the chief executive. This addresses the change from local government as water service providers to distributor-retailers and the consequential change of the commission managing compliance and enforcement measures previously undertaken by local governments (as water service providers).

Clause 93 Amendment of s 360ZCF (Reporting under water efficiency management plan) omits the reference to a "water service provider" and replaces it with "relevant entity". The amendment also increase the period that a customer has to submit an annual water efficiency management plan report from within 10 days to within 20 days after the required submission date.

Clause 94 Amendment of 360ZCG (Amending or replacing water efficiency management plan by commission direction) provides that the Commission may act directly to require a customer to amend or replace a water efficiency management plan (not through a water service provider or a distributor-retailer after 1 July 2010 as previously drafted).

Clause 95 Amendment of s 360ZCH (Amending or replacing water efficiency management plan by water service provider direction) omits the reference to a "water service provider" and replaces it with "relevant entity".

Clause 96 Amendment of s 360ZCI (Amending or replacing water efficiency management plan by request) omits the reference to a "water service provider" and replaces it with "relevant entity".

Clause 97 Amendment of s 360ZCJ (Notice to comply with water efficiency management plan) omits the reference to a "water service provider" and replaces it with "relevant entity".

Clause 98 Amendment of s 360ZCK (Reviewing water efficiency management plans omits the reference to a "water service provider" and replaces it with "relevant entity".

Clause 99 Insertion of new s 360ZCKA-360ZCKC

Section 360ZCKA Applying for cancellation of approved water efficiency management plan provides for a customer to apply to be relieved of the water efficiency management plan obligation if the customer no longer meets the trigger and/or criteria. Previously, once a customer was required to operate under an approved water efficiency management plan, there was no provision for that customer to be relieved of this obligation

Section 360ZCKB Administration fee provides that the relevant entity for a water efficiency management plan may recover a water efficiency management plan administration fee prescribed in regulation.

Section 360ZCKC Delegation by commission of functions for water efficiency management plans permits the Commission to delegate any of it functions or powers in relation to water efficiency management plans.

The delegate must have appropriately qualified staff with the expertise and experience to carry out the delegated function and the entity must be prescribed under a regulation.

Clause 100 Amendment of s 360ZCY (Content of market rules) makes amendments to the heads of power for the market rules to require the market rules to deal with who has responsibility for setting prices and to allow the market rules to deal with the new negotiated and default contracts applying in the grid.

In relation to pricing matters, the intent of the clause is to make clear that Minister through the Market Rules, is able to delegate responsibility for the setting of prices across the SEQ Water Market and making transparent the process and principles the nominated Price Regulator is required to follow. As it is intended for the economic regulation within the SEQ Water Market to be transitioned to an independent price regulator over a period of time it is necessary to provide the ability to delegate all or part of the administration of the relevant economic regulatory sections within the Market Rules to that nominated regulator whilst the State retains regulatory responsibility for those sectors of the SEQ Water Market yet to transition. It is intended that this delegation will enable the Queensland Competition Authority to assume responsibility for the economic regulation of some sectors of the SEQ Water Market with effect from 1 July 2011.

In relation to the negotiated and default contract matters, the intent of the clause is to clarify that the Market Rules can contain requirements for all types of contracts for the supply of declared water services under the *Water Act 2000*. Although the default contract will be the instrument which usually controls the content of the negotiated contracts (by having mandatory provisions override inconsistencies), this clause will also allow the market rules to set certain requirements. This may be needed to deal with peripheral or administrative issues arising out of the contract administration process. An example would be the need to apply or modify the existing dispute resolution provisions of the Market Rules to deal with contractual disputes under the water supply contracts.

The provision also provides that the market rules override any provision of a default or negotiated contract. This is consistent with the existing position under the Market Rules where the Market Rules override provisions of a Ministerially-made contract if there is any inconsistency. This will put the new types of contracts on the same footing.

Clause 101 Replacement of ch 2A, pt 5A, div 3, sdiv 2 (Grid contract documents and registered grid participants)

Subdivision 2 Default grid contract

Section 360ZDD Minister may make default grid contract provides that the Minister may make a default grid contract to provide terms for the supply of water to the SEQ Water Grid Manager by grid service providers, and the supply of water by the SEQ Water Grid Manager to grid customers. The default grid contract will outline mandatory terms for a supply, and may contain non-mandatory content as guidance.

This section sets out the status of the default grid contract and requires that the Minister give notice of its making by gazette notice, at least 7 days before it takes effect.

Section 360ZDDA Access to default grid contract provides that the default grid contract, or an amendment to it, must be tabled in the Legislative Assembly within 14 days of being made if the contract or amendment is not part of (or attached to) the gazette notice provided for under section 360ZDDA. This section also requires that the default grid contract be published on the Commission's website. Failure to comply with this section does not invalidate or otherwise affect the default grid contract**.**

Section 360ZDDB Effect of default grid contract provides that if there is no negotiated grid contract in place, the default grid contract (both mandatory and discretionary provisions) will apply. This prevents the parties from being "un-contracted" at any time. The contract parties are not required to execute the default grid contract as parties to the contract. Should the parties not wish to operate under the discretionary provisions of the default contract, they are able to negotiate their own changes for discretionary matters under s360ZDDC.

Subdivision 2A Negotiated grid contracts replaces the existing Subdivision 2. For provision of declared water services in SEQ, the parties to the physical flow of the water do not have a direct contractual relationship for these services. Instead, these parties contract for the provision of services through the SEQ Water Grid Manager under contracts made by the Minister. These existing arrangements allow for the limitation of grid-wide exposure to consequential losses. This is done through the Minister's contracts which contain specified obligations on the SEQ Water Grid Manager under its contracts, as well as indemnities given to and limitations on the liabilities of the Water Grid Manager.

The existing subdivision 2 for ministerially-made contracts was always designed to be transitional where the Minister's power to make or amend these types of contracts would expire on 30 July 2011. Subject to certain limitations, the new provisions are to allow the SEQ Water Grid Manager and the grid customer, or the SEQ Water Grid Manager and the grid service provider, to bilaterally negotiate their own contracts (including amending or terminating their existing Ministerially-made contracts if they choose). This timing was put in place to ensure Stage 2 of the reforms was in place at the time negotiations were commenced and that the new

distribution-retailers were fully operational. The new subdivision 2 and 2A, put those arrangements in place.

Section 360ZDDC Power to negotiate grid contract provides that the SEQ Water Grid Manager may enter into a negotiated grid contract for the supply of declared water services to either grid service providers or grid customers. This section specifies that if the default grid contract specifies mandatory terms, these are taken to be included as terms in all negotiated grid contracts and if a term of a negotiated contract is inconsistent with the mandatory term of the default contract, the mandatory term will prevail. As opposed to 360ZDDB above, this section applies if there is a negotiated grid contract between the parties so restrict the ability to negotiate around core requirements (such as limitation of liability) which underpin the grid arrangements, whilst allowing the parties to negotiate peripheral matters. Additionally, the existence of mandatory default provisions safeguards against the parties having failing to address certain requirements in their contract, despite having a contract of their own.

It is noted that the default contracts may still set out mandatory requirements for clauses which are discretionary. For example, the default contract may provide the Water Grid Manager discretion as to whether to require a certain type of insurance, but mandate that if the election is made to require that type of insurance, that certain provisions must be included so other parties' interests are noted on the insurance. The default contracts themselves will contain information about how to identify which provisions of the contracts are mandatory and which are discretionary.

Section 360ZDDD Consultation required with other affected grid service providers provides that the SEQ Water Grid Manager must provide a proposal notice to a grid service provider or a grid customer (affected entity), if the SEQ Water Grid Manager proposes to enter into a negotiated grid contract or amend a negotiated grid contract with another party, where the proposal, if given effect to, would materially affect the affected entity's rights or obligations under an existing contract. The proposal notice must include a copy of the proposal and advise the affected entity that it may object (on reasonable grounds) to the proposal by giving an objection notice within a stated period, which must be at least seven days.

The SEQ Water Grid Manager may only proceed with the proposal only if the affected entity has received a proposal notice and given the SEQ Water Grid Manager an objection notice to the proposal within the timeframe stated in the SEQ Water Grid Manager's proposal notice. If the affected

entity gives the SEQ Water Grid Manager an objection notice within the stated period, the objection is taken to be a dispute under the Market Rules and the provisions about resolving disputes on an urgent basis apply, with necessary changes. If the dispute is resolved under the market rules, the SEQ Water Grid Manager may enter into or amend the negotiated contract which was the subject of the proposal (even if, after dispute the proposal is different from that originally proposed).

The provision is designed to ensure that any proposals to enter into or materially amend a negotiated contract downstream, takes into account requirements which may be needed to be effect the proposal in any upstream contract (and vice versa). The provision aims to avoid the situation of disjointed chains of liability and obligations in the flow of contracts. This is necessary where the physical parties delivering and receiving the water do not have direct contractual relationships with each other (i.e. where the SEQ Water Grid Manager is the contractual hub). The dispute resolution provisions in the Market Rules apply to deal with any reasonable or unreasonable objections to be able to be dealt with on an urgent basis. This is designed to ensure that the Water Grid Manager's proposal is not unduly delayed, while ensuring that any objections which a correlating party might have with the proposal can be heard and resolved. .

Section 360ZDDE Effect of negotiated grid contract on contracts of other affected grid service providers provides that if, after having complied with s360DDD and having made or amended the relevant contract the subject of the proposal - the SEQ Water Grid Manager and the affected entity have not yet amended the affected entity's existing contract – the parties must amend the affected entity's contract. This provision is to ensure that the correlating up/ downstream contract is amended to ensure that the SEQ Water Grid Manager can meet its obligations for the new contract it has just made or amended. The definition of inconsistency clarifies that an inconsistency could include the simple fact that the affected entities' upstream or downstream contract does not allow performance. For example, it could be a failure of its contract to deal with a necessary matter. It need not necessarily be a clash between provisions of the two contracts.

Section 360ZDDF Negotiated contract prevails over non-market contracts between same parties provides that if there is a contract between the same parties for negotiated grid contracts as is the case for non-market contracts (i.e. contracts other than for supply of declared water

services) – where there is an inconsistency, the negotiated grid contract prevails to the extent of the inconsistency.

Section 360ZDDG Notice of negotiated grid contracts to rules administrator places an obligation on all parties to a negotiated grid contract to ensure that the rules administrator is given a copy of any negotiated grid contract it enters or amends within seven business days. Failure to do so may result in a penalty of up to 200 penalty units.

The rules administrator may issue a rectification notice if it considers that any term of a negotiated grid contract is an inconsistent with any mandatory term of a default contract, or if it considers that there is still an inconsistency between up and downstream contracts despite consultation between the entities referred to in s360ZDDD. The rectification notice will state the inconsistency and require the parties to remove the inconsistency and give a copy of the amended contract to the rules administrator within seven business days. At all material times, the mandatory term of the default contract applies until such time as the negotiated contract is rectified and registered with the rules administrator.

Section 360ZDDH Register of negotiated grid contracts requires that the rules administrator keep a register of negotiated grid contracts and amendments to negotiated grid contracts. The register must include a copy of any rectification notices issues under section 360ZDDG.

The parties themselves remain responsible for ensuring their contracts are consistent with the mandatory provisions of a default contract and registration does not cure any defect which may exist in the contracts.

The Rules Administrator may share any registered document (or part of a registered document) which is necessary for another any other regulatory agency's or public administration unit's lawful purposes. For example, the Queensland Competition Authority may require access to pricing provisions when it takes over responsibility for pricing matters.

Subdivision 2B Contract required for supply of declared water services

Section 360ZDDI Grid service providers provides that a grid service provider must only supply its declared water service to the SEQ Water Grid Manager in accordance with the negotiated or default grid contract in place. This provision simply reflects provisions which were already in place under the Water Act.

Section 360ZDDJ Grid customers provides that a grid customer must only be supplied with water from the SEQ Water Grid Manager in accordance with the negotiated or default grid contract in place. This provision simply reflects provisions which were already in place under the Water Act.

Clause 102 Amendment of s 360ZDI (Limited liability of grid participant) amends the existing liability provisions to make reference to the new negotiated grid contracts and the default grid contracts. This provision limits contracting out of liability in a negotiated grid contract so that it can only occur within the stipulations set out in any mandatory default contract provision.

Clause 103 Amendment of s 360ZE (Notice of commission water restriction must be given) broadens the Commission's consultation requirements when issuing a Commission water restriction from water service providers in the affected region to "anyone the Commission considers will be affected". The amendment also provides that a commission water restriction has effect on the day after it is given, or on a later day, provided the notice states the later day.

Clause 104 Amendment of s 360ZG (Delegation of particular functions for commission water restrictions) provides that the Commission may delegate to another appropriate qualified entity prescribed under regulation. Previously, the Commission was only permitted to delegate restriction functions to a water service provider

Clause 105 Amendment of s 692 (Public notice of proposed amalgamation or dissolution) amends section 692 to remove the mandatory requirement for the chief executive to publish a notice about a proposed dissolution or amalgamation of a category 2 water authority in certain circumstances.

The amendment provides that the requirement to publish a notice about a proposed amalgamation or dissolution of a category 2 water authority does not apply if the chief executive is satisfied of three relevant matters.

Firstly, that the water authority has informed ratepayers in the relevant authority area/s of the proposed amalgamation or dissolution.

Secondly, that the proposed amalgamation or dissolution is because of action taken by the State in response to the Webbe-Weller review.

Thirdly, that the publication of the notice is not appropriate, having had regard to the public interest in the circumstances.

Clause 106 Insertion of new s 706 Non-liability for State taxes provides an exemption from State taxes for category 2 water authorities and other entities in certain circumstances.

If a former water authority is dissolved or amalgamated with another water authority to form a new entity, and the Minister is satisfied this action has occurred in response to the Webbe-Weller review, an exemption from certain State taxes arises.

Neither a former water authority or a new entity are liable to pay a State tax for anything done in relation to the amalgamation or dissolution.

The section defines *State tax* to mean:

(a) duty under the *Duties Act 2001*; and

(b) a fee or charge under the *Land Act 1994*, *Land Title Act 1994* or the Water Act.

Clause 107 Amendment of s 739 (Appointment and qualifications of authorised officers), Clause 108 Amendment of s740 (Functions and powers of authorised officers), Clause 109 Amendment of s 741 (Conditions of appointment of authorised officers) and Clause 110 Amendment of s 742 (Authorised officer's identity card)

Previously the Commission had no monitoring and enforcement provisions and relied on the provisions already established for local governments (Councils as water service providers), including the power to appoint authorised officers for monitoring compliance and enforcement with restrictions and water efficiency management plans. From 1 July 2010 Councils will no longer be water service providers.

The amended s 739 gives the commission the power to appoint authorised officers for monitoring and enforcing compliance with restrictions and water efficiency management plans.

No additional or expanded functions or powers are included in these amendments beyond those that were available to Councils when enforcing Commission restrictions and water efficiency management plan requirements.

Clause 111 Amendment of s 743 (Failure to return identity card) omits the words "chief executive" and replaces with "appointor".

Clause 112 Insertion of new s 748A

Section 748A Power of entry for monitoring commission water restrictions and water efficiency management plans provides that authorised officers appointed by the commission may enter premises for the purpose of monitoring compliance with water restrictions or water efficiency management plans at any reasonable time.

Clause 113 Amendment of s 749 (Power to enter places for other purposes) provides for the inclusion of the new s 748A in s 749(1).

Clause 114 Amendment of s 932 (Who may bring proceedings for offences) provides the ability for an entity to whom the commission delegates an enforcement function to undertake proceedings.

Clause 115 Amendment of s 1014 (Regulation-making power) provides a power to make a regulation regarding any matter necessary to give effect to water efficiency management plans under chapter 2A, part 5, division 3 or commission restrictions under chapter 2A, part 6.

Clause 116 Omission of s 1141 (Existing regional water supply strategies) omits s1141

Clause 117 Insertion of new ch 9, pt 5, div 15 is a transitional provision. The result of this provision is that the new negotiated contracts and the default contracts under this bill do not apply until commencement of the section. Until such time, the existing contracts made by the Minister under s360ZDD continue to apply. After commencement, the Ministerially-made contracts are taken to be negotiated contracts and can be changed by the parties themselves.

Division 15 Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010

Subdivision 1 Provisions for water efficiency management plans and commission water restrictions The subdivision ensures the transition of compliance and enforcement of commission restrictions and water efficiency management plans from Council as water service providers to commission management post 1 July 2010.

Section 1173 Definitions for sdiv 1 provides that "commencement" means the day the transitional provisions commence and that "previous" includes

a provision of the Act immediately prior to the 1 July 2010 changes taking effect.

Section 1174 Application of section 360ZCB provides that the 360ZCB(7) does not take effect until a regulation is prescribed and that a reference to "relevant customer" means any customer or type of customer of the provider.

Section 1175 Particular notices to prepare water efficiency management plans transitions existing notices provided by a water service provider to a customer to prepare a water efficiency management plan to be a notice given by the commission under section 360ZCB(4).

Section 1176 Approved water efficiency management plans for water service providers in SEQ region provides that for a customer of a water service provider in the SEQ region with an approved water efficiency management plan, after 1 July 2010 the responsible entity for the approved plan will be the commission.

Subdivision 2 Other provisions

Section 1177 First commission CEO is a transitional provision to transfer the person holding the position of executive director to the position of commission CEO, for a term of 3 years, with an option to extend the appointment.

Any existing rights or obligations under existing conditions of employment apply, allowing for variations to existing remuneration. This provision is designed to ensure that the same terms and condition apply, allowing for any variance in the scale of remuneration paid under senior executive service rates which apply to all senior executives of the same type.

Section 1178 Grid contract documents become negotiated grid contracts provides that a grid contract document in place before the commencement of this section becomes a negotiated grid contract document between the named parties from commencement of this section.

Clause 118 Amendment of sch 4 (Dictionary) refers to the definition of "appointer of an authorised officer" in s 739. It provides for definitions relating to the negotiated and default grid contracts.

It also inserts a new definition of "commission CEO".

Part 12 Amendment of Water Supply (Safety and Reliability) Act 2008

Clause 119 Act Amended provides that this part amends the *Water Supply (Safety and Reliability) Act 2008* (the Act).

Clause 120 Amendment of s 41 (Restricting water supply) clarifies that division 3 applies to a water service provider outside SEQ. For SEQ, the Commission has the power to restrict water supply.

Clause 121 Amendment of s 54 (Approving water efficiency management plan) omits section 54(7) and renumbers section 54(8) as section 54(7).

Clause 122 Amendment of s 95 (Preparing drinking water quality management plan) makes minor amendments to make clear that a drinking water quality management plan must include measures to ensure compliance with the water quality criteria for drinking water.

Clause 123 Replacement of ch 2, pt 4, div 3, sdiv 3, hdg (Miscellaneous) replaces chapter 2, part 4, division 3, subdivision 3 heading with a new heading (Reporting requirements).

Subdivision 3 Reporting requirements

Clause 124 Replacement of s 102 (Notice of particular matter) replaces section 102 and inserts new section 102AA, 102, 102A and 102B and inserts a new subdivision 4 heading (Miscellaneous).

Section 102AA Application of sdiv 3 provides that the subdivision applies to a drinking water service provider that has an approved drinking water quality management plan. This section is intended to make clear that reporting requirements under the subdivision are distinct from any reporting requirements imposed under section 630 of the Act.

Section 102 Notice of noncompliance with water quality criteria replaces the previous section 102, including renaming the title as "Notice of noncompliance with water quality criteria", to better link the reporting of non-compliance with water quality criteria to the water quality criteria that are relevant to the water supplied under a particular drinking water service, including requirements to give details of any action taken, or to be taken by the provider to correct the non-compliance and prevent the non-compliance in the future.

Section 102A Notice of prescribed incident places requirements on drinking water service providers to give the regulator details of a "prescribed incident" and any action taken, or to be taken, by the provider in relation to the incident. A "prescribed incident" is defined for the section as "an incident prescribed under a regulation". A prescribed incident may include situations which will affect the provider's ability to adequately treat or provide drinking water. Examples include a bushfire or flood event that may affect drinking water quality, detection of a pathogen, or failure to meet a health related guideline value as specified in the Australian Drinking Water Guidelines or a parameter for which there is no guideline value in the Australian Drinking Water Guidelines.

Section 102B Self-incrimination not a reasonable excuse for sdiv 3 Under section 102 and new section 102A details of non-compliance with water quality criteria and details about prescribed incidents (relevant information) must be given to the regulator unless the drinking water service provider has a reasonable excuse. New section 102B provides that in relation to these matters, it is not a reasonable excuse that giving the information might tend to incriminate the provider. However, if the provider is an individual the information given to the regulator or evidence derived from the information is not admissible evidence against the provider in a civil or criminal proceeding other than a proceeding for an offence about the falsity of the information.

Subdivision 4 Miscellaneous

Clause 125 Amendment of s 123 (Preparing drought management plans) omits the note referred to in subsection (1).

Clause 126 Replacement of s 125 (Submitting drought management plan for registration) Section 123 requires relevant water service providers to prepare and submit drought management plans to the regulator for registration to minimise the impacts on communities of water shortages caused by drought.

Clause 126 replaces section 125 to make it an offence, with a maximum penalty of 200 penalty units, for a relevant water service provider to not comply with the section, unless the provider is given an exemption under section 126, from preparing a drought management plan. This replaces the current practice of naming non-compliant providers in Parliament each year.

Clause 127 Omission of s 131 (Tabling in Legislative Assembly) omits section 131 which provides for the naming of water service providers who have not complied with requirements relating to drought management plans.

The Bill makes it an offence to not comply with the requirement to have a drought management plan.

Clause 128 Amendment of s 138 (Guidelines for rate notice or account for supply of water to residential premises) clarifies (that because billing guidance for the SEQ distributor-retailers is to be provided under the new customer code), s 138 will no longer apply to SEQ.

Clause 129 Amendment of s 142 (Contents of annual report) amends section 142 to require "details" of the findings of and any recommendations stated in an audit report relating to a drinking water quality management plan and "details" of the information given to the regulator under section 102 and 102A relating to breaches of water quality criteria and prescribed incidents, in the financial year. This is to ensure that there is adequate public disclosure of these important matters in a provider's annual report.

Clause 130 Amendment of s 167 (Owner may ask for connection to service provider's infrastructure) provides that where an owner requests to be connected to a distributor-retailer's infrastructure, the owner must comply with any conditions imposed by the distributor-retailer for carrying out work associated with the connection.

Local governments assess and approve plumbing and drainage plans and works under the Plumbing Act. After 1 July 2010 local governments will not be able to issue a compliance permit for plans unless they have received advice of an approval by or on behalf of the distributor-retailer to allow connection or altering the connection to the distributor-retailer's water infrastructure.

This ensures that the distributor-retailer may, as a service provider, give an approval to connect that is conditional on construction of works to the satisfaction of the distributor-retailer, ie subject to a satisfactory final inspection of the works by or on behalf of the distributor-retailer to check for example that meters have not been located in an inaccessible position. This will allow the local government to issue a compliance permit approving the plans for plumbing works, because there is a conditional approval from the distributor-retailer to connect to the water infrastructure network.

Note that amendments to the Plumbing Act in this Bill will allow the distributor-retailer to determine that a local government can issue a compliance permit or a compliance certificate for specified types of regulated plumbing work, without requiring the distributor-retailer's approval to connect, disconnect or alter a connection to water

infrastructure. A distributor-retailer can also delegate its approval power to a local government, or make a blanket approval with standard conditions for specified connections, disconnections or alterations of connections.

Clause 131 Amendment of s 180 (Trade waste approvals), Clause 132 Amendment of s 181 (Approval may be conditional), Clause 133 Amendment of s 182 (Criteria for suspending or cancelling trade waste approval), Clause 134 Amendment of s 183 (Suspending or cancelling trade waste approval), Clause 135 Amendment of s 184 (Immediate suspension or cancellation) and Clause 136 Amendment of s 185 (Amending trade waste approval) provide for the Water Supply Act to be amended to enable sewerage service providers to give trade waste approvals and impose conditions upon those approvals. References to a "trade waste compliance notice" are changed to references to "regulator notice" so that there will not be confusion between a notice by the regulator and a trade waste compliance notice issued by a distributor-retailer.

Clause 137 Amendment of s 193 (Discharging particular materials) is amended to recognise that a person cannot discharge trade waste into a sewerage service provider's infrastructure without the service provider's approval.

Clause 138 Amendment of s 201 (Preparing particular plans) makes minor amendments to make clear that a recycled water management plan must include water quality criteria that are relevant to the recycled water scheme and measures to ensure compliance with the water quality criteria.

The clause also replaces the reference in subsection (5)(h) to "laundries" with "washing machines". This is consequential to other changes made by the Bill.

Clause 139 Amendment of s 206 (Notice of decision) amends section 206 to enable the regulator to increase the frequency of regular reviews and internal audits in approving a recycled water management plan. The current periods were inadvertently set longer than was intended. However, the regulator cannot require regular reviews and internal audits any more frequently than – for critical recycled water schemes, once each year, and for other schemes, once every two years.

Multiple use recycled water schemes can supply water for critical and non-critical uses and a recycled water management plan for a multiple use recycled water scheme can include both critical and non-critical uses. This clause amends section 206 to provide that review and audit intervals for a

recycled water management plan of a multiple use scheme will default to the review and audit intervals of a critical scheme.

Clause 140 Amendment of s 250 (Application for exemption) amends section 250 to include another type of potentially high-risk scheme as a scheme for which a recycled water provider may not apply under the section for an exemption from preparing a recycled water management plan, to include a scheme under which recycled water is supplied to premise by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in washing machines (otherwise generally know as "dual reticulation" schemes).

Clause 141 Replacement of ss 270–272 replaces sections 270–272 with new division 1 heading (Reporting requirements) new sections 270AA, 270, 271 and 272, new division 2 heading (Annual reports) and new sections 273 and 274.

Division 1 Reporting requirements

Section 270AA Application of div 1 provides that the division applies to a scheme manager, recycled water provider or other declared entity for a recycled water scheme if there is an approved recycled water management plan or exemption granted for the scheme.

Section 270 Notice of noncompliance with water quality criteria Current section 270 is replaced to better link the reporting of non-compliance with water quality criteria to the water quality criteria that are relevant to the recycled water that is produced or supplied under the scheme and to require notifications to include details of any action taken, or to be taken by the provider to correct the non-compliance and prevent the non-compliance in the future.

Section 271 Notice of prescribed incidents inserts new requirements for a scheme manager, recycled water provider, or other declared entity to give the regulator details of a "prescribed incident" and any action taken, or to be taken, in relation to the incident. A "prescribed incident" is defined for the section as "an incident prescribed under a regulation". Such incidents may include, for example, changes in the source water characteristics, which may indirectly affect water quality under the scheme.

Section 272 Self-incrimination not a reasonable excuse for div 1 Under new sections 270 and 271 details of non-compliance with water quality

criteria and details about prescribed incidents (relevant information) must be given to the regulator unless the scheme manager, recycled water provider or other declared entity has a reasonable excuse. New section 272 provides that in relation to these matters, it is not a reasonable excuse that giving the information might tend to incriminate the entity. However, if an entity is an individual, information given to the regulator or evidence derived from the information is not admissible evidence in a civil or criminal proceeding against the entity other than a proceeding for an offence about the falsity of the information.

Division 2 Annual reports

Section 273 Annual reporting requirement is amended to require, for schemes which have an approved recycled water management plan, "details" of the findings of and any recommendations stated in an audit report and "details" of the information given to the regulator under sections 270 and 271 relating to breaches of water quality criteria and prescribed incidents, in the financial year. This is to ensure that there is adequate public disclosure of these important matters in the annual report for a scheme.

New section 273 also requires for schemes for which an exemption has been granted, "details" of the information given to the regulator under sections 270 and 271 relating to breaches of water quality criteria and as required under the Bill any prescribed incidents, in the financial year.

Section 274 Sections 274–299 not used provides that sections 274 to 299 are not used.

Clause 142 Amendment of s 301 (Making declaration) amends section 301 to replace the word "laundries" with "washing machines". This is intended to better reflect the permitted uses of these types of schemes otherwise generally known as "dual reticulation" schemes.

Clause 143 Amendment of s 304 (Notice of declaration) amends section 304 to provide that the regulator may declare proposed infrastructure as well as existing infrastructure as forming part of a scheme when declaring a recycled water scheme to be a critical scheme.

Clause 144 Amendment of s 330 (Notice to local government) and **Clause 145 Amendment of s 331 (Report about compliance with notice)** see explanation for clauses 131-136.

Clause 146 Replacement of s 333 (Sections 333–339 not used) replaces section 333 and includes new section 334.

Section 333 Requirement for certain entities to give information to scheme manager provides for the scheme manager to give a notice requiring a recycled water provider or other declared entity for the scheme to give the scheme manager, within a stated reasonable period, information the scheme manager requires to perform the scheme manager's functions in complying with the Act.

Section 334 Sections 334–339 not used provides that sections 334 to 339 are not used.

Clause 147 Replacement of s 340 (Definition for pt 1) – Section 340 Ch 4 does not apply to particular dams omits the definition of "water" for this chapter as it is no longer considered to be needed.

Section 340 is replaced to make clear that hazardous waste dams and certain weirs are not subject to the regulatory requirements of chapter 4 and are not required to do a failure impact assessment.

Clause 148 Amendment of s 341 (What is a referable dam) amends section 341 to clarify that a referable dam does not include a hazardous waste dam or certain weirs. The definition of hazardous waste has been removed from this section and a new definition of *hazardous waste dam* has been included in schedule 3 of the Act.

A note has also been included in this section that makes reference to section 611. Under section 611 dams that were referable under the Water Act are taken to be referable dams.

Clause 149 Amendment of s 343 (When dam must be failure impact assessed) amends section 343 to provide that owners of existing non-referable dams will be required to have a failure impact assessment carried out if they propose to increase the size of their dam to meet the criteria stated in subsection (1)(a) or (b).

This clause also provides that owners of non-referable dams that meet the criteria stated in subsection (1)(a) or (b) will be required to have a failure impact assessment carried out if they propose to increase the storage capacity of their dam by more than 10%.

The section is also amended to make clear that owners of referable dams must ensure another failure impact assessment is carried out if they propose to increase the storage capacity of their dam by more than 10%.

Clause 149 also clarifies that the chief executive can issue a notice to any dam owner, irrespective of whether the dam meets the height and storage capacity criteria in subsection (1)(a) or (b), to undertake a failure impact assessment.

Clause 150 Amendment of s 344 (Process for failure impact assessment) makes consequential amendments to section 344 to provide that a dam that meets the requirements of section 343(1), (2), (3) or (4) as amended or inserted by the Bill must have their dam failure impact assessed and ensure the assessment is completed and accepted by the chief executive before construction of the dam begins or the carrying out of the works.

Clause 151 Amendment of s 345 (Requirement for other failure impact assessments) amends section 345 to provide ability for the chief executive to determine the timeframe for the next failure impact assessment required in accordance with section 350. The period for the next failure impact assessment should not be less than five years but could be longer. This is a key change to the current arrangements where failure impact assessments are required on a five yearly basis for certain dams. The chief executive will have the ability to determine the period for the next assessment having regard to the most recent failure impact assessment accepted by the chief executive and the nature and location of the dam.

Clause 152 Amendment of s 348 (Cost of failure impact assessment) makes consequential amendments to section 348 to refer to the renumbered subsections in section 343.

Clause 152 also clarifies that the chief executive is only liable to pay the reasonable costs of a failure impact assessment where the assessment has been triggered by a notice issued by the chief executive, it is accepted by the chief executive and the dam is under the height and storage capacity criteria set out in section 343(1).

Clause 153 Amendment of s 350 (Notice accepting failure impact assessment) amends section 350 to provide that when the chief executive accepts a failure impact assessment, the notice given under section 350 must also state the period for when another failure impact must be completed and given to the chief executive. The period should not be less than five years but can be longer. The section is also amended to make clear the chief executive cannot require another failure impact assessment for category 2 failure impact rated dams and any dam that does not meet the size criteria under section 343(1) and under the failure impact assessment was not given a failure impact rating. This is consistent with current arrangements, but is now provided for within this section rather than section 345.

When deciding this period the chief executive must have regard to information provided in the last failure impact assessment and the nature and location of the dam.

Clause 154 Amendment of s 355 (Process after deciding safety conditions) amends section 355 to provide that the chief executive does not have to give reasons for each safety condition imposed on a development permit for a referable dam. The number of safety conditions applied to a referable dam can be considerable and it is onerous to provide reasons for the imposition of each safety condition. A similar concern was acknowledged for the giving for reasons for each condition of a development approval under the repealed *Integrated Planning Act 1997* and an amendment was made to state that the assessment manager is not required to give reasons for each condition. This is also provided for in section 335(2) of the SPA.

Clause 155 Insertion of new s 357A Chief executive may engage person to provide information provides that if a person has been given a notice to provide information under sections 353(2) and 356(3) and has not complied with the requirements of the notice, the chief executive may engage a person to give the information requested to the chief executive.

Any expense the chief executive incurs when engaging a person to gather the information can be recovered from the dam owner as a debt.

Clause 156 Insertion of new ch 4, pt 1, div 4, sdiv 1 hdg inserts a new subdivision 1 heading (Preliminary).

Subdivision 1 Preliminary

Clause 157 Amendment of s 358 (Application of div 4) amends section 358 to provide that the chief executive can give a notice to a dam owner or operator in an emergency, regardless of whether the dam owner has completed a failure impact assessment or not.

However, the chief executive can only issue a notice in relation to a non-referable dam where it is reasonably believed that the dam would have a category 1 or 2 failure impact rating if an assessment were carried out.

Clause 158 Insertion of new ch 4, pt 1, div 4, sdiv 2 hdg inserts a new subdivision 2 heading (Chief executive may give direction or take action about failure of dam).

Subdivision 2 Chief executive may give direction or take action about failure of dam

Clause 159 Amendment of s 359 (Direction to owner of emergency part of land) amends section 359 to remove a redundant reference to the chief executive not needing to issue a show cause notice before issuing a notice in an emergency situation and renumbers provisions accordingly.

Clause 160 Insertion of new s 359A, and ch 4, pt 1, div 4, sdiv 3 hdg inserts new section 359A and a new subdivision 3 heading (Chief executive may recover expenses).

Section 359A Taking immediate action about failure of dam provides an alternative mechanism for the chief executive to step in and take action to address the danger of a dam failing and recover the reasonable costs.

Under division 4 the chief executive may give a notice to a dam owner or operator to take action in an emergency. However, the current law does not give the chief executive the ability to step in and take action if the circumstances warrant.

New section 359A sets out prescribed circumstances where it is believed there is danger of a dam failure when the chief executive may exercise powers and take action necessary to prevent a failure or minimise its impact.

The section provides for particular powers of the chief executive or authorised officer acting under this section. The chief executive or authorised officer may, without a warrant, enter any place, other than premises or part of premises where a person resides. In taking the steps the regulator or officer can exercise any powers of an authorised officer under chapter 5 part 2, 3 or 4 of the Act.

The section also provides that any expense the chief executive or authorised officer incurs when undertaking an action to address the danger of a dam failing can be recovered from the dam owner as a debt.

Subdivision 3 Chief executive may recover expenses

Clause 161 Replacement of s 360 (Failure to comply with notice) replaces section 360 including renaming the title as "Notice for recovering expenses" to state that the chief executive may issue a notice to a dam owner outlining the expense incurred when action is taken under section 467(1) or (3) when a dam owner has not complied with a notice issued in an emergency

under section 359, or when the chief executive or an authorised officer has taken steps to prevent or minimise the impact of a dam failure under section 359A.

Clause 162 Amendment of s 361 (Notice in relation to land other than leased State land) makes consequential amendments to section 361 to remove the reference to section 359(2)(c) and refers instead to "land that is not leased from the State under the *Land Act 1994"*.

Clause 163 Amendment of s 362 (Notice in relation to leased State land) makes consequential amendments to section 362 to remove the reference to section 359(2)(d) and refer instead to "land leased from the State under the *Land Act 1994"* .

Clause 164 Insertion of new ch 4, pt 1, div 4, sdiv 4 hdg inserts a new subdivision 4 heading (Miscellaneous).

Subdivision 4 Miscellaneous

Clause 165 Amendment of s 363 (Emergency powers if imminent danger of dam failure) amends the title of section 363 to "Form of notice if imminent danger of dam failure" to better reflect what the provision deals with.

Clause 166 Replacement of s 365 (Sections 365-369 not used) replaces section 365 with new sections 365 and 366.

Section 365 Cancellation of development permit for decommissioned dam applies if a dam is removed or decommissioned in a number of circumstances.

The section provides that the development permit for the dam to which a safety condition is attached is taken to be cancelled and of no effect on the day the dam is decommissioned from use or removed.

The chief executive must give notice to the local government for the area as soon as practicable after a dam is decommissioned or removed.

Section 366 Sections 366-369 not used provides that sections 366 to 369 are not used.

Clause 167 Amendment of s 510 (Who is an interested person) omits the reference in section 510(1)(c) to 'local government' and replaces it with a reference to 'service provider'.

Clause 168 Amendment of s 512 (Who may apply for review) omits the reference in section 510(2)(c) to 'local government' and replaces it with a reference to 'service provider'.

Clause 169 Amendment of s 514 (Review decision) amends section 514 to provide that the time available to review an original decision relating to a referable dam can be extended for a further unspecified period (beyond the 30 day extended period) so there is sufficient time to complete the review but only with the agreement of the applicant.

Clause 170 Amendment of s 561 (Development applications for referable dams) makes consequential amendments to section 561 to reflect the amendments to section 343 made by the Bill setting out additional circumstances for when failure impact assessments must be carried out, specifically where dams incrementally increase in size.

Clause 171 Amendment of s 571 (Regulator may make guidelines) updates a section reference in subsection (1) consequential to changes made by the Bill.

The clause also identifies additional guidelines the regulator may make, which include guidelines relating to:

- conducting a review of a recycled water management plan or drinking water quality management plan;
- who is a related entity to the producer of recycled water.

Clause 172 Amendment of s 572 (Chief executive may make guidelines) provides that the chief executive can make additional guidelines about:

- managing a referable dam; and
- flood capacity of dams.

These guidelines are relevant to safety conditions applied to referable dams to ensure dams have an effective dam safety management program in place.

Clause 173 Amendment of s 576 (Documents recycled water provider must keep available for inspection and purchase) amends section 576 to reflect the nature of multiple entity recycled water schemes. Inadvertently, in the current provisions a scheme manager is not recognised or obligated to retain the relevant documents available for public inspection. The amendment addresses this.

Clause 174 Amendment of s 579 (Regulator may share particular information) inserts new subsection (2) to provide that the regulator may share general information about water quality with the entities identified.

Clause 175 Insertion of new s 579A Chief executive may share particular information formalises the current practice for the chief executive to provide dam safety information to other agencies for the purpose of dealing with emergency situations and/or law enforcement. The information provided may include the name of the owner of the dam, the dam's location and storage capacity and details about persons at risk if the dam were to fail.

Clause 176 Amendment of s 580 (Non-disclosure of commercially sensitive information) amends section 580 to remove doubt that the Minister, chief executive officer or regulator can share commercially sensitive information about particular entities with:

- each other;
- an employee of the department of the Queensland Health; and
- an investigator for the purpose of an investigation.

Clause 177 Amendment of s 631 (Application of particular provisions—existing schemes) makes a minor change to section 631 to replace the word "laundries" with "washing machines". This is intended to better reflect the permitted uses of these types of schemes otherwise generally know as "dual reticulation" schemes.

Clause 178 Amendment of s 632 (Application of particular provisions—schemes supplying recycled water for particular purposes) makes a minor change to section 632 to replace the word "laundries" with "washing machines". This is intended to better reflect the permitted uses of these types of schemes otherwise generally know as "dual reticulation" schemes.

Clause 179 Amendment of s 633 (Application of particular provisions—other schemes) amends section 633 to remove the reference in subsection (1)(c) to schemes supplying greywater, consequential to removing regulation of greywater from the Act.

This clause also amends section 633 to correct an error in the original provision. The section provides a transitional period in which certain recycled water providers are not required to have an approved recycled water management plan to lawfully supply recycled water. Inadvertently, the effect of the original provision as drafted means that a recycled water

provider who commenced supply of recycled water for the first time on 1 July 2008 would never need a recycled water management plan to operate lawfully and would never be subject to the regulatory framework. The amendment addresses this.

Clause 180 Replacement of ch 10 hdg (Transitional provision for Sustainable Planning Act 2009) replaces the heading of chapter 10 with a new chapter heading (Other transitional provisions) and inserts a new chapter 10 part 1 heading (Transitional provision for Sustainable Planning Act 2009).

Chapter 10 Other transitional provisions

Part 1 Transitional provision for Sustainable Planning Act 2009

Clause 181 Replacement of ch 10A hdg (Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) Act 2009) replaces the heading of chapter 10A with a new chapter 10 part 2 heading (Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) Act 2009).

Part 2 Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 182 Insertion of new ch 10, pt 3 inserts a new chapter 10 part 3 heading (Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010) and inserts new sections 638 and 639.

Part 3 Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010

Section 638 Provision for carrying out particular failure impact assessments enables the chief executive to defer the timeframe for another failure impact assessment that is due under current section 345 by giving a notice to the dam owner. The chief executive may give the notice if the chief executive reasonably believes, based on the last failure impact assessment accepted by the chief executive, that there would be no change in the failure impact rating for the dam if another assessment was carried out or another assessment would not give a non-referable dam a failure impact rating.

From the commencement of the Bill, the period in which owners of these dams will be required to undertake another failure impact assessment will be determined by the chief executive on a case-by-case basis, rather than in accordance with current arrangements where assessments are required every five years.

Section 639 Service provider water restrictions provides that a water service provider restriction in place for the SEQ region on 1 July 2010, is taken to be a commission water restriction made by the commission under the Water Act after this date.

Clause 183 Amendment of sch 3 (Dictionary) omits the definitions of *greywater* and *trade waste compliance* and amends certain definitions contained in the Bill and inserts new definitions. In particular it amends the definition of "customer" of a distributor-retailer to include the following:

- a person who purchases registered services or services relating to trade waste;
- a person who wants to receive a registered service or service relating to trade waste and the services are, or can reasonably be made available at the premises, whether or not those premises are actually connected to the services; and

- a person to whom a registered service is available, whether or not the person wants to receive the service, and whether or not the premises are connected to the service.

A definition of *animal husbandry activities* is provided to mean "the breeding, keeping or raising of animals, or caring for animals, for commercial purposes if the animals are kept in an enclosure, pond or other confined area". The definition is not intended to capture agricultural activities where the animals roam free in paddocks, rivers, the sea or oceans.

The definition of *annual report* is amended to update a section reference as a consequence of renumbering by the Bill

The definition of *greywater* is omitted as greywater use will no longer be regulated under the Act. The regulation of greywater sourced from large treatment plants will fall under the Plumbing Act.

A definition of *hazardous waste dam* is inserted to mean

1. A hazardous waste dam means a dam containing, or that after its construction will contain—

   (a) a substance, whether liquid, solid or gaseous, derived by, or resulting from, the processing of minerals that tends to destroy life or impair or endanger health; or

   (b) ash resulting from the process of power generation.

2. A hazardous waste dam includes a dam that is used, or after its construction will be used, to prevent contamination of the environment by storing waste or a contaminant within the meaning of the *Environment Protection Act 1994*.

A definition of *health department* is inserted for the purposes of the Bill.

The definition of *information notice* is amended to recognise that a 'service provider' can issue information notices under the Act.

The definition of *multiple-entity recycled water scheme* is amended to correct an error in the original definition.

The definition of *owner* is amended to ensure that it includes referable dams and other dams.

The definition of *recycled water* is amended to remove the reference to large greywater treatment plant as greywater use will no longer be

regulated under the Act. The regulation of greywater sourced from large treatment plants will fall under the Plumbing Act.

A definition of *regulator notice* is inserted to replace the current definition of 'trade waste compliance notice'; this is to distinguish between the notice issued by the regulator under the Act and trade waste compliance notices issued by a distributor-retailer.

The definition of *safety condition* is amended to correct an incorrect reference.

The definition of *supply* is amended to remove the reference to large greywater treatment plants as greywater use will no longer regulated under the Water Supply Act. The regulation of greywater sourced from large treatment plants will fall under the Plumbing Act. The definition is also amended to enable a guideline made by the regulator (and called up under a regulation) to specify who is a related entity to a recycled water provider.

The definition of *water quality criteria* is amended for drinking water to include a reference to criteria stated in a condition applying to a drinking water quality management plan. A note is also inserted to clarify that a recycled water scheme may have more than one water quality criteria relevant to the scheme.

The definition of *wastewater* is amended to provide that animal husbandry activities will not be prescribed under a regulation. The definition of animal husbandry activities is provided for in the Bill.

The definition of *weir* is moved from chapter 4 to the dictionary.