Water and Other Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Policy Objectives

The objectives of the Bill are to:

- amend the *Energy Ombudsman Act 2006* (Energy Ombudsman Act) to expand the existing Energy Ombudsman Queensland's role, from 1 January 2011, to include water and wastewater disputes of small customers in South East Queensland (SEQ), in line with the commencement of the Customer Water and Wastewater Code (Customer Code);
- amend the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* (D-R Act) to provide for:
  - additional customer protection provisions and offences;
  - greater transparency of Distributor-retailer operations including publishing of participation agreements and prices and charges and that customer accounts clearly identify when a meter read is estimated; and
  - amendments which largely continue previously held exemptions from the payment of fixed access charges for water and wastewater services under the *Local Government Act 2009* (LGA) and associated regulations;
- make additional amendments to the D-R Act and *Water Act 2000* (Water Act) to ensure the Distributor-retailers have all the necessary powers to effectively perform their functions;
- amend the *Land Valuation Act 2010* to clarify the methodology for valuing mining, geothermal, GHG and petroleum leases;

- amend the *Queensland Competition Authority Act 1997* to declare the three SEQ Distributor-retailers for the purposes of the deterministic regulatory framework under Part 5A enabling the Queensland Competiton Authority (QCA) to make enforceable water pricing determinations;
- update and enhance the existing processes under Part 5A of the QCA Act, specifically indicating the need to moderate the impact of price increases on customers by implementing price paths, where appropriate;
- amend the *Queensland Institute of Medical Research Act 1945* (the QIMR Act) to help the Queensland Institute of Medical Research (the QIMR) operate more effectively and efficiently;
- introduce regulatory frameworks to improve the management of impacts arising from the extraction of underground water from petroleum activities, including coal seam gas (CSG) activities:
  - — in relation to impacts on underground water resources, by amending the *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum Acts) to relocate the existing 'make good' regulatory framework into the *Water Act 2000* (Water Act). Significantly the new Water Act framework is strengthened to protect landholders' existing and new water supply bores and to also protect natural springs from underground water extraction impacts by petroleum tenure holders;
  - — to amend the: *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) to provide a regulatory framework to regulate coal seam gas water impacting on drinking water supplies of a drinking water service provider ("coal seam gas recycled water") and to protect public health; and
- amend the *Wild Rivers Act 2005* (Wild Rivers Act) and related legislation primarily for the purpose of extending wild river protection to the Lake Eyre Basin rivers and make a number of operational amendments.

Reason for the Policy Objectives

South East Queensland Water Reform related amendments to the *Energy Ombudsman Act 2006, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and *Water Act 2000*

Stage Two of the SEQ water reform program, which commenced in July 2010, involved the separation of the distribution and retail functions for water and wastewater from the 10 SEQ local governments (Councils) and the establishment of three separate vertically integrated distribution-retail businesses (Distributor-retailers) under the D-R Act.

There are a number of existing customer protection provisions in the D-R Act which impose requirements on a Distributor-retailer. A key element of these customer protection provisions is the making of a Customer Water and Wastewater Code. The Customer Code will be developed in late 2010, targeted towards small customers (residential and small business customers) and will only apply within SEQ. The Code will provide a stand-alone simple English guide to customers about the obligations of their Distributor-retailers in supplying water and/or wastewater services to them, and their corresponding obligations.

In addition to the existing customer protection provisions in the D-R Act, proposed amendments to the D-R Act and Energy Ombudsman Act will provide further customer protection provisions.

Further amendments to the D-R Act are also required resulting from section 93(3) of the *Local Government Act 2009*. This section exempts certain land from being subject to the payment of rates. Prior to the commencement of the Distributor-retailers rates included utility charges (water and sewerage). The establishment of the SEQ Distributor-retailers and separation of water and wastewater charges from a rates notice has resulted in the existing exemptions not being applied. Amendments to the D-R Act are required to reinstate the bulk of the existing exemption provisions.

Some of the provisions of the D-R Act and Water Act also require clarification and some additional provisions are required to ensure that the Distributor-retailers can perform their functions effectively.

Queensland Competition Authority Act 1997

Part 5A (Pricing and Supply of Water) of the QCA Act contains a water pricing deterministic regime that may apply to water supply activities that have been declared as a 'monopoly water supply activity'. However,

declaration under part 5A is only applicable to privately owned water suppliers.

Regardless of the services provided by the DRs clearly meeting the criteria of a monopoly water supply activity, they are ineligible to be declared under part 5A and are automatically excluded from the part 5A price deterministic regime.

As such, the main purpose of the Bill is to amend part 5A to accommodate the declaration of the monopoly water and wastewater services provided by the DRs so that they are subject to the Authority's water pricing determination process. Importantly, the Bill specifies the new water pricing determinations will be set on an ongoing basis for specific water pricing periods, the first of which will commence from 1 July 2013.

Another key reason for the Bill is to add to the matters the Authority must consider when making their water pricing determinations. For the first time in the QCA Act, the Authority will be required to explicitly consider the implementation of a price path when making a water pricing determination to moderate the impact of price increases on customers. The Authority will also be required to have regard to the legitimate business interests of the water supplier carrying on the monopoly water supply activity.

Also, given that it is over 10 years since the introduction of part 5A and on the basis of significant water reforms that have occurred during this time, the Bill streamlines the price determination process the Authority must undertake and removes the now redundant negotiate/arbitrate framework for water supply agreements established under part 5A, divisions 3-5.

Queensland Institute of Medical Research Act 1945

The QIMR Council and the QIMR Trust are statutory bodies established under the QIMR Act. The QIMR Council has the governance role for the QIMR while the QIMR Trust has the function of raising and investing funds for the QIMR's research activities. The division of responsibilities between the Council and the Trust hinders the strategic management of the QIMR and the separation of functions does not provide for the clear and unified direction of the QIMR. Having dual statutory bodies also creates duplication of resources for the QIMR as the Council and the Trust both require separate administrative support and have separate reporting requirements.

Land Valuation Act 2010

The *Valuation of Land Act 2010* (VOLA) was repealed in September 2010 when the *Land Valuation Act 2010* (LVA) received assent. The new Act was developed in full consultation with industry stakeholders.

During the development of the Act, several meetings were held with the Queensland Resources Council regarding the valuation of mining, geothermal, GHG and petroleum leases. Based on the recommendations of the PricewaterhouseCoopers Report, it was endorsed that the methodology under the VOLA should be retained in the new legislation, with amendments to simplify the process.

Sections 24 and 26 of the VOLA contained two alternative methods of valuing mining, petroleum and CHG leases. The statutory valuation was based either on the unimproved value of the surface area of the land or on a formula which was a multiple of the annual lease rent, the lesser of the two amounts was the statutory value.

At the time of drafting the LVA it was thought that the formula was generally used and that it would simplify the Act to remove the alternative without making a difference to the statutory valuation of these particular leases. It was also considered that the process would be administratively streamlined.

However, since 1 October 2010, the date of valuation for valuations to be issued in 2011, more detailed analysis of the application of the new sections 30 and 31 in the LVA has been undertaken. In many cases, due to the removal of the alternative unimproved valuation of the surface area, the value of these leases has significantly increased, a result that has had unintended consequences and was not the Government's intent in implementing valuation reform.

Water Act 2000 and Petroleum Acts

In 2009, the Queensland Government released the Blueprint for Queensland's LNG Industry (LNG Blueprint) outlining the framework for facilitating the development of the Liquid Natural Gas (LNG) industry in Queensland. The management of this new emerging industry includes the management of impacts on water supply bores and natural spring ecosystems from the extraction of underground water associated with the production of petroleum and gas. Much of the area currently under development for CSG lies within the Great Artesian Basin. The aquifers of the Basin are an important underground water supply for Queensland

providing vital water to overlying regions for stock and domestic, urban, industrial and agricultural use, often in areas where there is no alternate water supply source. The Great Artesian Basin supports numerous springs and natural ecosystems which host a diverse range of unique flora and fauna. As well as its environmental importance, there are areas of spiritual and cultural significance to indigenous people.

The LNG Blueprint contains the following policy statements about managing the potential impact of CSG developments on underground water:

- Simplify the process for setting trigger thresholds for obligations to make good impacts on water supply bores.
- Expand the application of make good requirements, to include impacts on bores built after a petroleum tenure holder has been granted tenure rights, and to mitigate the impacts on natural spring ecosystems.
- Expand the application of make good requirements to include cumulative impacts.
- Develop a regional groundwater monitoring regime, to be funded via an industry levy on CSG producers and oversighted by an independent monitoring body.

The amendments to the Petroleum Acts and the Water Act will implement these Government's commitments to manage impacts arising from the extraction of underground water associated with all petroleum activities, including CSG activities, on water supply bores and natural spring ecosystems.

Water Supply (Safety and Reliability) Act 2008

The key driver for the amendments to the *Water Supply (Safety and Reliability) Act 2008* is to put in place new regulatory arrangements for CSG water impacting on the drinking water supplies of a drinking water service provider, primarily for the protection of public health by regulating this coal seam gas recycled water under the existing recycled water regulatory framework in the Act.

A liquefied natural gas industry based on coal seam gas is rapidly emerging in Queensland, with numerous proponents seeking to establish projects. With this expansion comes the need to appropriately manage the associated water that accompanies extraction of the gas. It is the responsibility of coal

seam gas producers to dispose of this water in an environmentally acceptable manner.

Options for disposal of coal seam gas recycled water currently include release into a water source (including to a watercourse, lake, dams, weirs or aquifers) or by directly supplying treated coal seam gas recycled water to a town as a source for drinking water supply.

The amendments to the recycled water regulatory framework are necessary to ensure there is appropriate management of coal seam gas recycled water, further reinforcing the Government's commitment to ensuring the safety of water supply needs and will provide certainty to coal seam gas recycled water providers on their regulatory requirements.

Wild Rivers Act 2005 and related legislation

Currently the purpose of the Wild Rivers Act is to preserve the natural values of rivers that have all, or almost all, of their natural values intact.

Amendments to the Wild Rivers Act (including to the purpose of the Act) are necessary to provide for the preservation of the existing natural values of the Lake Eyre Basin river systems. Although these river systems have a lower level of natural values intact compared to the river systems of the Gulf and the Cape, they do retain internationally acknowledged unique geographical and environmental values.

A significant feature of the Lake Eyre Basin rivers is the widely dispersed and braided channel systems. Although extending laterally for tens of kilometres, given the interconnectivity of these braided channels during flood times, they can be described as a single watercourse. Amendments to the Wild Rivers Act will establish a new management area for these braided channel systems to enable the regulatory framework to recognise their unique characteristics – the Special Floodplain Management Area (SFMA). The SFMA includes prohibitions only of intensive impacting activities, such as irrigated agriculture, animal husbandry and surface mining that will impact on natural floodplain flows. The declaration of a SFMA will not impact on current native vegetation management practices.

Amendments to the *Vegetation Management Act 1999* (Vegetation Management Act) will ensure that an existing category X and category C property map of assessable vegetation (PMAV) will not be affected by the declaration of a wild river area. Additional amendments to the Vegetation Management Act will ensure a landholder can apply for a category X

PMAV over an area mapped as non remnant regional ecosystem after the area has been included in a wild river declaration.

Other amendments related to the Wild Rivers Act include operational changes to meet operational efficiencies, including meeting the unique requirements of the Lake Eyre Basin.

How the Policy Objectives will be achieved

South East Queensland Water Reform related amendments to the *Energy Ombudsman Act 2006, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and *Water Act 2000*

The proposed amendments to the D-R Act and the Energy Ombudsman Act together provide key additional customer protection provisions enabling a customer to:

- be informed about the Distributor-retailer's governance and accountability arrangements in respect of its participant councils;
- be notified of water and wastewater prices and charges and the reasons for any increases;
- be better informed about the contents of their customer bill (for example, identifying when it has been based upon an estimated meter read); and
- have access to dispute resolution processes provided by the proposed Energy and Water Ombudsman Queensland (EWOQ) in accordance with a Customer Water and Wastewater Code from 1 January 2011.

The existing Energy Ombudsman Queensland's role will be expanded to include water and wastewater disputes to small customers (residential and small business customers) in SEQ. The Distributor-retailers will contribute to the funding of the operations of the expanded EWOQ.

A Customer Water and Wastewater Code will set the disputes which are able to be investigated by the EWOQ. This will be made by the Minister and be operational together with the EWOQ's dispute resolution function by January 2011.

The EWOQ can investigate, negotiate and conciliate. However, ultimately, the EWOQ may decide to make a final order against the Distributor-retailer to resolve a complaint. This order can be lodged in the Magistrates Court and can be enforced in the event the Distributor-retailer does not comply with the order.

The new customer protection provisions in the Bill are complemented by two key provisions:

- a requirement for the Distributor-retailers to report to the Queensland Water Commission (QWC) on complaints; and
- a general power given to the QWC to seek information from a Distributor-retailer where necessary for the QWC to perform its functions under the D-R Act.

The Bill also provides for amendments to continue previously held exemptions from the payment of fixed access charges for water and wastewater services under the *Local Government Act 2009* and associated regulations. The exemptions will no longer apply once the premises actually are connected and receiving water and wastewater services. The provision also provides for refunds where a payment has been made in respect of an account received for these premises after 1 July 2010.

Additional amendments to the D-R Act will ensure Distributor-retailers can perform their functions effectively. These amendments will:

- enable infrastructure charges that are owed to the Distributor-retailers, so far as they relate to premises, to be a charge on the premises;
- make clearer that the requirements for distributor-retailers' customer accounts to include a comparison with the consumption of other customers only applies to accounts for residential customers and not accounts issued to non-residential customers;
- enable authorised persons employed by the Distributor-retailers to require a person to provide their name and address where they are found in circumstances that give rise to a reasonable suspicion they are committing an offence;
- provide for the chief executives of the Distributor-retailers to be the principal officer for the purposes of the *Evidence Act 1977*, the *Information Privacy Act 2009*, and the *Right to Information Act 200*;
- clarify the chief executive's performance of his or her responsibilities is subject to the board's direction; and
- provide that SEQ local governments cease to be grid customers now that they have ceased to be service providers.

Additional amendments to the Water Act will ensure Distributor-retailers can perform their functions effectively. These amendments will:

- re-instate a maximum penalty of 500 penalty units into the requirement for a relevant customer to comply with a notice to prepare a water efficiency management plan;
- correct an erroneous reference to an authorised person appointed by the Queensland Water Commission so that it now refers to an authorised officer; and
- make a consequential amendment removing reference to the SEQ local governments as grid customers as they are no longer water and wastewater service providers in SEQ.

Queensland Competition Authority Act 1997

Under the provisions of the Bill, the water and wastewater services provided by each of the DRs will be legislatively declared as monopoly water supply activities under part 5A of the QCA Act. Once declared, the Authority can commence the comprehensive regulatory process in order to have a price determination for each of the three DRs in place by 1 July 2013. As declared monopoly water supply activities, the Authority will have the continuing jurisdiction to make ongoing price determinations for the DRs for subsequent water pricing periods.

Most importantly, for the first time in the QCA Act, when a water pricing determination has the effect of increasing customer prices higher than the rate of inflation, the Authority will be compelled to consider the need to implement a price path (smoothing price increases over time) to moderate the impact of price increases on customers. If the Authority decides not to implement a price path, it must give its reasons for doing so. A summary of other objectives that have been achieved include:

- updating and enhancing the price determination process. Generally, the amendments remove the role of the Ministers in the process and provide the Authority with flexibility in making price determinations, including by determining the length and timing of the regulatory periods and the approach taken to regulate pricing practices (e.g. price cap or revenue cap regulation);
- clarifying that the Authority may take a long term view of the matters it must consider when making a water pricing determination (i.e. the impact of decisions can extend over subsequent pricing periods rather than just the existing pricing period);

- introducing a process for the Ministers to make codes establishing rules for the making of water pricing determinations for monopoly water supply activities;
- establishing a process, when there is a material change of circumstances, for a water supplier to seek an amendment of a water pricing determination;
- other consequential amendments, most notably the removal of the negotiate/arbitrate framework established under part 5A, divisions 3-5. These divisions are no longer relevant on the basis of minimal usage to date and in the context of the significant water reforms and the establishment of the SEQ Water Grid.

Queensland Institute of Medical Research Act 1945

The Bill amends the QIMR Act to provide for the abolition of the QIMR Trust and for the QIMR Council to assume responsibility for the QIMR Trust's functions. The Bill provides for the QIMR Trust's assets and liabilities to vest in the QIMR Council and makes provision other necessary transitional matters arising from the abolition of the Trust.

The Bill also amends the QIMR Act to provide for a new membership structure for the QIMR Council that give greater flexibility in appointment of its members. Under the Bill, the new Council is to consist of between 7 and 11 members appointed by the Governor in Council. The Bill specifies the key areas of expertise that the Minister for Health may have regard to in recommending a person for appointment as a member of the Council.

Transitional provisions in the Bill continue the existing appointment of the current QIMR Council chairperson but provide that the other members of the current Council will cease to hold office once the amendments commence.

The amendments are an interim measure to help the QIMR to operate more efficiently and effectively until the QIMR's long-term governance arrangements are examined in 2012.

Land Valuation Act 2010

The policy objectives are achieved by amending the LVA to reinstate the provisions of the VOLA in the LVA to ensure that there is no change to way in which mining, geothermal, GHG and petroleum leases are valued. They will continue to be valued using the same methodology that was used under the VOLA.

Water Act 2000 and Petroleum Acts

The policy objectives are achieved by amending the Petroleum Acts and Water Act to implement the Government's commitments to manage impacts arising from the extraction of underground water associated with all petroleum activities, including CSG activities, on water supply bores and natural spring ecosystems. Under the Water Act, the Bill puts in place a strong underground water management regime to manage these impacts on water supply bores and natural spring ecosystems. An adaptive management framework underpins the new regulatory regime to allow progressive improvement in the understanding of impacts and also to support timely implementation of make good arrangements for water supply bores and mitigation measures to protect springs. Significantly the Bill is aimed at managing the cumulative impacts from the extraction of underground water by petroleum activities, including coal seam gas. This new strengthened regulatory regime replaces the current framework under the Petroleum Acts.

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

- Provide for the chief executive to declare a cumulative management area which is an area that may be affected by the exercise of underground water rights by two or more petroleum tenure holders.
- Expand the function of the Queensland Water Commission to oversee the management of cumulative underground water impacts in a declared cumulative management area to include overseeing the underground water monitoring, regional underground water modelling and reporting of cumulative underground water impacts.
- Provide for the Commission to levy petroleum tenure holders in carrying out the performance of its functions for underground water management.
- Define the scope of water supply bores that are subject to the underground water management framework.
- Define when an existing and new water supply bore has an impaired capacity for which a make good obligation will apply.
- Provide for a process for the preparation of an underground water impact report, every three years or earlier if required, which includes a comprehensive water monitoring program, a projection of future likely water level impacts using progressively updated underground

water flow models and a spring mitigation management strategy, for approval by the chief executive.

- Require the carrying out of baseline bore assessments by a petroleum tenure holder.
- Establish the framework for the make good obligation of a petroleum tenure holder, including a requirement for petroleum tenure holders to undertake bore assessments of water supply bores and the entering into of make good agreements with bore owners.
- Provide a dispute resolution process to facilitate the remedy of disputes about make good obligations.
- Provide for the chief executive to exercise emergency directions powers to address impaired supply of water supply bores
- Provide transitional arrangements for existing petroleum tenure holders
- Create offences for failing to comply with underground water obligations.

Water Supply (Safety and Reliability) Act 2008

The policy objectives are to be achieved by expanding the recycled water regulatory framework to include coal seam gas water that impacts on the drinking water supplies of a drinking water service provider. Recycled water providers that supply coal seam gas recycled water will be required to have an approved recycled water management plan except if they have no material impact on the drinking water supplies of a drinking water service provider. The amendments will be supported by the public health water quality standards for coal seam gas recycled water developed by Queensland Health. Public water quality standards will be included in the *Public Health Regulation 2005.*

Amendments to the Act are necessary to:-

- Require an interim recycled water management plan prior to supply of coal seam gas recycled water and then a full recycled water management plan within twelve months of commencing supply.
- Include additional requirements for recycled water management plans to ensure that the specific risk profile for coal seam gas recycled water is covered and that the water is consistently at a quality that protects public health.

- Ensure that a separately approved validation program will not be required, prior to the approval of a recycled water management plan, rather this will be part of the recycled water management plan.
- Ensure there is an approved drinking water quality management plan, prior to supply, where there is direct augmentation of the drinking water supplies of a drinking water service provider with coal seam gas recycled water; as well as a full recycled water management plan.
- Make coal seam gas recycled water schemes critical recycled water schemes and consequently where there are multiple entities, the scheme will have a single risk management plan with individual entities having sub-plans.
- Explicitly require incident and emergency response plans which include preventative and corrective actions and protocols for communications between entities including the relevant drinking water service provider.
- Ensure public reporting of water quality for recycled water:- supplied under a coal seam gas recycled water scheme; supplied to augment a supply of drinking water; or supplied to premises by way of a reticulation system used only to provide recycled water for outdoor use or use in flushing toilets or in washing machines.
- Provide an ability for the regulator to impose post supply obligation conditions on a recycled water management plan to manage the specific risks associated with release of coal seam gas recycled water into aquifers.
- Provide for exclusions from the operation of chapter 3 of the Act and the requirement to have a recycled water management plan where there is no material impact on the drinking water supplies of a drinking water service provider; as well as providing for exclusion decision conditions.
- Provide an ability for the regulator to revoke an exclusion decision if the supply is likely to have a material impact on the drinking water supplies of a drinking water service provider.
- Provide transitional arrangements for existing environmental authorities which are disposing of coal seam gas water which may impact on the drinking water supplies of a drinking water service provider.

- Require existing schemes to monitor water quality and report to the regulator, until an appropriate approval is in place.
- Expand the regulatory guideline making power to include public reporting and exclusion decisions.
- Create offences for failing to comply with a post supply obligation; the conditions of an exclusion decision; a regulator's notice requiring monitoring and reporting; and public reporting requirements.
- Make minor miscellaneous changes; including to compliance and enforcement powers; to provide access for monitoring and to comply with post supply obligations; to audit and review requirements for coal seam gas recycled water management plans as well as inserting new definitions.

Wild Rivers Act 2005 and related legislation

The policy objectives are to be achieved by amending the Wild Rivers Act and related legislation to:

- Provide for the extension of wild river protection to the Lake Eyre Basin rivers.
- Include a new Special Floodplain Management Area (SFMA) for a wild river area in the Lake Eyre Basin.
- Provide for the recognition of SFMAs under related legislation to give effect to a declaration of a Lake Eyre Basin wild river area.
- Make other necessary amendments for operational efficiency.

For the Vegetation Management Act:

- Provide for an existing category X and category C PMAV to not be affected by a wild river declaration.
- Provide that a landholder may apply for a category X PMAV in a wild river area.

Alternatives to the Bill

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

Estimated administrative cost to the Government for implementation

South East Queensland Water Reform related amendments to the *Energy Ombudsman Act 2006, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and *Water Act 2000*

Through the 2010-11 budget process, the Government approved funding from consolidated funding for establishment costs of the proposed EWOQ Scheme. The three SEQ Distributor-retailers will fund the ongoing operations of the expanded EWOQ Scheme. The funding arrangements will be similar to those imposed on the energy utilities and would include annual participation fees, user pays fees, supplementary and penalty fees as appropriate.

There will be no new or additional costs to the Government due to the SEQ water reform related amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Water Act 2000.*

Queensland Competition Authority Act 1997

It is not expected that the amendments to the QCA Act will impose costs for Government as the DREs are already subject to regulatory processes performed under the State's prices oversight regime under Part 3 of the QCA Act.

Queensland Institute of Medical Research Act 1945

Nil.

Land Valuation Act 2010

Nil

Water Act 2000 and Petroleum Acts

Through the 2010-11 budget process, the Government approved funding from consolidated funding for establishment costs of the proposed new expanded functionos of the Queensland Water Commission. This expanded role of the Queensland Water Commission to oversee the management of regional cumulative groundwater impacts and provide independent advice to the chief executive under the Water Act will be funded through charges on holders of petroleum tenures. In addition, the implementation of the increased regulatory requirements on the part of the Department of Environment and Resource Management will be met from existing departmental budgets.

Wild Rivers Act 2005 and related legislation

The implementation involved in declaring rivers of the Lake Eyre Basin to be a wild river area will be met from existing departmental budgets.

Water Supply (Safety and Reliability) Act 2008

The implementation of the increased regulatory requirements will be absorbed within existing departmental budgets.

Consistency with Fundamental Legislative Principles

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

Energy Ombudsman Act 2006

Self incrimination

There is an FLP issue for subsection 4 of Section 29 of the Energy Ombudsman Act concerning the exclusion of privilege against self-incrimination.

However, privilege only applies at common law to individuals. As the Distributor-retailers are statutory bodies (i.e. not individual persons), this provision would not apply. In addition, subsection 5 of Section 29 protects the confidential documents and private information.

This is an existing feature of the EOQ scheme for energy providers and it is considered that the Distributor-retailers be placed on the same footing.

Appeal/review rights

There is an FLP issue for Section 41 of the Energy Ombudsman Act with the absence of appeal or review right on the merits of an order made by the EWOQ (provided that the non-entity party, i.e. the small customer, accepts the order). This means that the Distributor-retailer may not apply for review of, or appeal against, the order other than under the *Judicial Review Act 1991*.

The purpose of this provision is to avoid legal actions for minor disputes and in doing so, protecting small customers. This is an existing feature of the EOQ scheme for energy providers and it is considered that water providers should be placed on the same footing.

There is also an FLP issue with Section 69 (Working out user-pays levy for quarter) with the absence of appeal or review right on the merits of the forecasted user pays fees (including the initial 'deemed user pays fees') or the adjustment (reconciliation) of them.

The Advisory Council (which include industry and consumer representatives) have, input into the budget guidelines and may make recommendations on the EWOQ operational budget.

The initial deemed user pays fees are necessary as the distributor-retailers have no 'use' history on which to base an estimate of the likely costs in using the scheme. Underpayments and overpayments to the scheme's operational costs are reconciled twice a year.

This is an existing feature of the EOQ scheme for energy providers and it is considered that water providers should be placed on the same footing.

Taxation by regulation

There is an FLP issue with Section 70 of the Energy Ombudsman Act as to whether it is appropriate for a tax to be imposed by subordinate legislation (as opposed to primary legislation).

A regulation is the only viable legislative method for the EWOQ to seek quick, additional funding for unforeseen expenditure. Typical examples of unforeseen circumstances include hiring additional call centre staff to deal with unforseen rises in complaint numbers which typically occurs when government policies around utilities change. The EWOQ is an independent industry funded body who is also a statutory body under the *Statutory Bodies Financial Administration Act 1982*. As such is its only source of funds is from industry and it is unable to access additional funds to meet immediately meet cash-flow problems as those entities are not ordinarily permitted access to overdraft facilities or consolidated revenue to cover immediate shortfalls. Without immediate access to this funding, the EWOQ's office would be at risk of failing to be able to address customer's needs. It would take too long to impose these further levies via primary legislation.

This is also an existing feature of the EOQ scheme for energy providers and it is considered that water providers should be placed on the same footing.

Rights and liberties of individuals/natural justice

There is an FLP issue with Section 96 of the Energy Ombudsman Act arising out of the termination of the appointments of all of the advisory

council, cutting short the term of the appointments. This has not been done due to any performance issues with the council, but instead is being done to facilitate a re-organisation of the makeup of the council so as to allow for water representation and to reflect the new 'water-inclusive' functions of the council.

It is necessary to keep the Advisory Council to a manageable size, having regard to the 'equal industry/ consumer representation'. The Minister will make the new appointments, and it is anticipated (subject to members nominating themselves again) that many existing members will be reappointed. The main difference will be the inclusion of a water representative and only one first tier energy retailer reprehensive.

It is considered that adequate provision has been made for first tier electricity retailers who, like the water entity representative, will have shorter terms to achieve a rotational effect, giving the desired representation over time.

Indicative data from interstate ombudsman schemes suggest water complaints comprise around four to six per cent of the cases referred to those schemes. On that basis, a mix of four energy industry members (representing electricity and gas distribution and retail entities) and one SEQ Distributor-retailer (representing the three water Distributor-retailer entities' industry) is considered appropriate.

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Does not adversely affect rights and liberties, or impose obligations, retrospectively

An infrastructure charge levied by a distributor retailer relates to "premises" and, consequently, it is appropriate to provide for its recovery in section 53AS of the D-R Act. This brings infrastructure charges levied by, or transferred to, the distributor retailers, which are overdue, within the same regime as overdue charges for water and wastewater services and costs of giving access to registered services.

The effect of the amended provision is that the owner of the land for the time being will be liable to pay the overdue infrastructure charge. The overdue infrastructure charge, but not interest on the amount, will become a charge on the premises. The charge on premises will be CPI indexed. Infrastructure charges levied by local governments are recoverable as a rate which means that overdue charges are a charge on premises. The

amendment puts an infrastructure charge levied by a distributor retailer in the same position in that regard.

It is proposed to make this provision retrospective to 1 July 2010 as the Distributor-retailers became operational on 1 July 2010.

From 1 July 2010, the Distributor-retailers became parties to infrastructure agreements entered into by the SEQ local governments and transferred to the Distributor-retailers or by reason of legislative provisions allowing the statutory novation of infrastructure agreements providing for water infrastructure in the distributor-retailer's geographic area. Furthermore, from 1 July 2010 section 755K of the *Sustainable Planning Act 2009* enabled the Distributor-retailers to levy a charge for supplying trunk infrastructure for water and wastewater service and to give infrastructure charges notices. Accordingly it is appropriate that they be able to recover overdue infrastructure charges owing to them, by way of a charge on the premises, as at and following, 1 July 2010.

The proposed amendments to the D-R and the *Water Act 2000* also provide for the SEQ local governments to cease to be grid customers under the market rules on and from 1 July 2010 as they ceased to be water and waster water service providers as at that date. The amendments in this regard are therefore merely consequential.

Henry-VIII clauses

There is an FLP issue as to whether the Customer Water and Wastewater Code (the Code) expressly or impliedly amends the customer service provisions in Part 4 of the D-R Act.

Office of Parliamentary Council have indicated that the Code is unlikely to raise a Henry VIII issues, provided that it does not:

(i) purport to regulate entities other than customers as defined in the D-R Act (i.e. it is intended that the Code be targeted toward small customers who are subsets of classes of 'customers', but the code cannot include people who are not 'customers' at all as defined by the Act);

(ii) go beyond the water and wastewater services as defined in the D-R Act (i.e. the code can limit its own application to a narrower range of services, but can't extend to commercial services that aren't water services or wastewater services as defined in the D-R Act); and

(iii) contain any provisions which are inconsistent with the general customer protection provisions in Part 4 (which are applicable to all customers, not just small customers).

The ability for the customer code to limit its application to certain classes of customer or service is recognised by s94(2) of the D-R Act. As indicated by the provisions of the bill this consistent with in s24 ('*Statutory instrument may be of general or limited application*') and s25 ('*Statutory instrument may make different provision for different categories*'). The provision also recognises that the code may impose requirements additional to those in Part 4.

Proportion and relevance

There is an FLP issue as to whether the general penalty of 1665 penalty units for breach of the 'Other customer service provisions' in Part 4 of the D-R Act is proportionate and relevant given the preference for general penalty provisions to be avoided.

While there is a general maximum penalty in Part 4, this is considered appropriate for all of the customer protection offences. In most cases, if the QWC needed to take action under these provisions, this would be because a distributor-retailers' contravention of relevant standards had occurred on a more systemic basis (i.e. in relation to many customers, not just an individual disputes which could be dealt with by the EWOQ). It is also noted that this provision replicates the existing provision in s99AF (which applied to the interim customer service provisions).

Exposure to multiple processes

There is an FLP issue around subjecting a person to more than one court or tribunal process arising out of a single act or omission without sufficient justification.

Section 99AF(2) provides that a proceeding for a breach of the provisions in Part 4 of the D-R Act (other customer provisions) may be prosecuted even though the Code, or an order under the Energy and Water Ombudsman Act provides for the payment of compensation relating to matters relevant to the offence. In this instance, orders by the Energy Ombudsman are targeted toward rectifying a dispute between a Distributor-retailer and their small customer, which may include orders to comply with the Code or to make a payment to redress a loss suffered.

Provisions for payments under the Code, whilst not being in place for first iterations of the code are envisaged to provide incentives to meet stated

customer service standards. Offences prosecuted by the QWC for Act breaches on the other hand, although potentially arising out of the same set of facts, are targeted at addressing illegal behaviour of the distributor-retailers (not compensating customers).

Self incrimination

There is an FLP issue for concerning privilege against self-incrimination in Section 100DA of the D-R Act. This section requires a distributor-retailer to give the QWC information where it is necessary for the QWC to perform its functions under the Act. The provision does not contain any right to refuse to provide the information on self-incrimination grounds.

As self-incrimination privileges only apply to individuals, and the entities are statutory entities, it is not considered that the FLP is raised in this instance. There are provisions to ensure that the distributor-retailer is made aware of that failure to comply is an offence, when being required to give the information and reasonable excuse provisions. This provision is necessary for the QWC to be able to obtain information from distributor-retailers around a number of offence provisions (including existing offence provisions).

Retrospectivity

The provisions in Section 113 of the D-R Act require the distributor-retailer to refund certain payments obtained for exemptions which did not technically exist at the time of issuing the account. This is necessary to address the effect of the separation of water and sewerage charges from rates notices for land in SEQ.

Queensland Competition Authority Act 1997

Amendments to the QCA Act raise some issues with regard to fundamental legislative principles (FLP) which have been adequately considered, including by the Office of the Queensland Parliamentary Counsel.

Deemed declaration of DRs

The Bill declares the water and wastewater services carried on by each of the DRs as monopoly water supply activities under part 5A of the QCA Act and immediately subjects the DRs to the price setting regime.

This may be seen as removing a 'protection' for the DRs in that their declaration is not made through the existing legislated declaration process which requires both the Authority and the Ministers to be satisfied that the services meet the relevant criteria published by the Authority used to

identify a 'monopoly' water supply activity (i.e."Criteria for the Identification of Monopoly Water Supply Activities 2000").

However, this is justified on the basis of the immediate need to capture the water and wastewater services provided by the DRs in the part 5A framework in order for the Authority to commence its price determination process so that a determination for each DR is in place by 1 July 2013.

The water and wastewater activities carried on by the DRs have met the relevant declaration criteria under part 3 of the QCA Act and have been declared by regulation as monopoly business activities for the purposes of the price monitoring regime under part 3. As such, it is arguable that the water and wastewater services provided by each of the DRs quite clearly meet the nearly identical declaration criteria under part 5A of the QCA Act.

Removal of Divisions 3-5

It could be argued that removing the 'negotiate/arbitrate' framework from part 5A, divisions 3-5 reduces a legislative right for an aggrieved water seeker to obtain compulsory arbitration with an enforceable outcome. However, given the significant reforms to the water supply industry in SEQ, and the price setting regulation of the SEQ distribution and retail water and wastewater services, the divisions are deemed redundant. That is, there is minimal to no risk of a water supplier in SEQ adversely using its market power. A price deterministic regime will offer the most protection and certainty for consumers in terms of the efficiency and reasonableness of water pricing practices.

In regard to water supply outside the SEQ corner, these provisions have only been used minimally since their introduction a decade ago. In any case, the anti-competitive conduct provisions of part IV of the *Trade Practices Act 1974* (Cth) (i.e. section 46, Misuse of market power) provide an appropriate remedy for an aggrieved water seeker seeking legal action against a misuse of market power by a water supplier.

Information to be considered by the Authority when making certain decisions

New section 170ZU clarifies the Authority's ability to make decisions about the making or amendment of a water pricing determination. This section allows the Authority to make these decisions without taking into account information that has not been provided to it by a specified date, if doing so is reasonable in all of the circumstances. It also clarifies that, if a person fails to comply with a requirement from the Authority to provide

certain information, the Authority may make the decision on the information available to it at the time.

This section is modelled on a similar provision set out under part 5 of the QCA Act and is intended to provide incentive for persons to provide the Authority with full and accurate information in a timely manner so that the price determination process is not unduly delayed. While administrative law principles dictate that a decision maker should consider the most recent and accurate information available to it at the time, the proposed amendments provide specific guidance to the Authority to ensure that information may only be disregarded if doing so is reasonable in all of the circumstances.

New investigative power for the Authority to monitor a water supplier's compliance with a water pricing determination

New section 170ZZZL provides the Authority with the power to require information from a water supplier for the purposes of investigating the water supplier's compliance with a water pricing determination. This section makes it an offence for a water supplier to fail, without a reasonable excuse, to comply with a requirement to give information to the Authority. The maximum penalty for this new offence is 500 penalty units or six months imprisonment. Protections are provided to ensure that a water supplier is given a reasonable length of time to provide information to the Authority.

Given the binding nature of water pricing determinations, it is considered necessary to provide the Authority with sufficient information gathering powers to ensure that the Authority can effectively monitor a water supplier's compliance with a water pricing determination. The introduction of an offence for not complying with an information request is justified as being necessary to support this investigative power. The offence (including the maximum penalty and protections provided to water suppliers) is consistent with other offences supporting similar investigative powers provided to the Authority under the QCA Act.

Land Valuation Act 2010

The Bill does infringe some FLPs. The amendments are retrospective. This is required to ensure that the statutory valuation to be issued in 2011 has a valuation date of 1 October 2010.

Water Act and Petroleum Acts

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

The Bill does not provide for internal review or other merits appeals against decisions of the chief executive about matters required to be in underground water impact reports or a final report or other chief executive decisions that impose obligations on a petroleum tenure holder in relation to the exercise of their underground water rights. Judicial review is not prohibited.

The purpose of a underground water impact report is to ensure that the impacts of giving a petroleum tenure holder rights to extract unlimited volume of underground water as part of a petroleum and gas extraction are managed appropriately such that bore owners are not seriously disadvantaged and natural spring ecosystems are not at severe risk. The petroleum industry is entitled to take unlimited underground water for petroleum and gas extraction, including CSG extraction. Significantly, this may be taken from aquifers shared by other water users or aquifers interconnected with those aquifers. The petroleum industry's unlimited right to take underground water must be managed to protect other bore owners, and natural spring ecosystems which are comparatively vulnerable in these circumstances.

Petroleum tenure holders need not delay production to address the impacts of underground water extraction. The obligations are imposed to protect third parties who may face serious and immediate impacts if water supply from a bore or is impaired or a spring is impacted by a petroleum tenure holder's extraction of underground water. Because petroleum production is permitted to commence before these matters are finalised, it is considered justified to exclude certain appeal rights. It is justified as it meets the overall policy intent of the regulatory regime and complying with community expectations for appropriate water resource management as well as ensuring the State retains stewardship of the overall water resource.

In addition, public consultation is a mandatory requirement in the development of a underground water impact report, allowing petroleum tenure holders, bore owners and other interested third parties to make submissions. Further, a underground water impact report for a cumulative management area is prepared by the commission as an independent body, and a underground water impact report for an area outside a cumulative management area will be reviewed by the commission. Capacity to provide

an individual petroleum tenure holder or other third party with an appeal right for a underground water impact report in a cumulative management area is severely limited because the underground water impact report manages the cumulative impacts CSG water extraction of all cumulative management area petroleum tenure holders. There is a need to ensure the underground water impact report is delivering a certain regulatory framework for managing impacts collectively. To allow appeals would effectively mean that each petroleum tenure holder and submitter may potentially be a party to the appeal raising issues about certainty and finalisation of a underground water impact report which may seriously compromise the achievement of the management regime. To deal with this, as discussed above, notification and consultation with petroleum tenure holders and potential submitters is undertaken. In addition the underground water impact report is overseen by the commission, being independent to the chief executive who approves the underground water impact report and make good agreements are in any event subject to review by the Land Court.

If at that time a underground water impact report submitted indicates the petroleum tenure holder is not acting appropriately to safeguard the vulnerable bore owner interests or natural springs, the department needs to be able to give directions to remedy the situation promptly so that the obligation to enter into make good agreements with bore owners commences. In addition, delays in commencing the make good process could have serious consequences for bore owners whose bores are impaired.

Importantly, judicial review remains an avenue for stakeholders to pursue any issues.

The Bill creates a number of new offences:

Under new sections 370, 374 and 390 a petroleum tenure holder must give the chief executive a underground water impact report or a final report for approval and must also comply with the requirements of an underground water impact report or final report. An offence with a maximum penalty of 1665 penalty units is prescribed. This penalty is considered appropriate. The underground water impact report provides the basis on which a petroleum tenure holder's obligations to make good impairment of water supply bores and to mitigate impacts on natural springs, caused by petroleum tenure holders' extraction of underground water, is established. Under new section 373 petroleum tenure holders are required to give notice of the end of their tenure. In addition petroleum tenure holders may be

required to amend an underground water impact report or final report before approval and take action about changing an approved report if circumstances appear to have changed. An offence with a maximum penalty of 500 penalty units is prescribed for failure to do coply with these three sections. This penalty is considered appropriate. These penalties are consistent with other comparable water legislation offences that apply to entities with substantial rights to take and use water. The CSG industry is an emerging industry in Queensland. Queensland Government policy requires that petroleum tenure holders' bear responsibility for the consequences of the extraction of underground water associated with CSG activities. Due to the potential for substantial damage to vital groundwater resources and farming interests, strict compliance is necessary.

There are a number of offences relating to baseline assessments. Under new section 397, a petroleum tenure holder must comply with the obligation to prepare a baseline plan. The purpose of the baseline plan is to provide a plan for how all necessary baseline assessments will be carried out. The key information to be collected from conducting baseline assessments includes bore details, pumping and supply information such as historical water use information, current water level and water quality analysis. Under new section 400 a petroleum tenure holder must comply with an approved baseline assessment plan. A petroleum tenure holder must give notice of the outcome of a bore assessment to the bore owner and the commission. Under new section 402, a petroleum tenure holder must comply with a direction by the chief executive to undertake a baseline assessment. It is an offence to not comply with these obligations; a maximum penalty of 500 penalty units has been prescribed. The penalty for these offences is considered appropriate as undertaking baseline assessments is a key element of the petroleum tenure holder's obligation and is required to help inform the negotiation of a make good agreement and determine the extent of any impairment of supply caused by the petroleum tenure holder's extraction of underground water.

There are a number of offences relating to bore assessments. Under new section 417, a responsible tenure holder must comply with the obligation to undertake a bore assessment of bores in an immediately affected area. Under new section 418, a petroleum tenure holder must comply with a direction by the chief executive to undertake a bore assessment. Under new section 419, a petroleum tenure holder must give notice of the outcome of a bore assessment to the bore owner and the commission. It is an offence to not comply with these obligations; a maximum penalty of 500 penalty units has been prescribed. The penalty for these offences is considered

appropriate. The purpose of a bore assessment is to establish whether a bore has an impaired capacity or whether the bore is likely to start having an impaired capacity in the future. Undertaking a bore assessment is a key element of the petroleum tenure holder's obligation to make good impairment of supply because of the petroleum tenure holder's extraction of underground water. Delay in compliance by a petroleum tenure holder could have severe consequences for bore owners.

Under new section 447, a petroleum tenure holder must comply with a notice from the commission requesting certain information. It is an offence for a petroleum tenure holder to not comply with the notice, unless the holder has a reasonable excuse. A reasonable excuse may include, for a tenure holder who is an individual, not complying with the notice because complying with the notice might tend to incriminate the individual. The notice must state how, and the day by which, the information must be given. A maximum penalty of 1665 penalty units is prescribed for failing to comply with a notice under this section without a reasonable excuse. This is considered appropriate for this particular offence as failing to provide information to the commission under this section could hinder the preparation of an underground water impact report for a cumulative management area. An underground water impact report prepared for a cumulative management area will provide the basis on which a petroleum tenure holders obligations to manage the impacts of underground water extraction area established for cumulative management area tenure holders. Delay in compliance by a petroleum tenure holder could have severe consequences for bore owners.

Under new section 449, a petroleum tenure holder must comply with a notice from the chief executive to carry out a water monitoring activity for a stated area. A water monitoring activity includes gathering information about, or monitoring the effects of the exercise of underground water rights of a tenure holder. It is an offence for a petroleum tenure holder to not comply with the notice. A penalty of maximum 500 penalty units is provided for failing to comply. This is considered appropriate as certain monitoring will be required to be undertaken to ensure the level of impact on underground water caused by petroleum operations is understood and can be managed appropriately.

Under new section 452, it is an offence for a petroleum tenure holder to not comply with a direction given by the chief executive requiring urgent action to be taken in an emergency situation as set out in section 451. The maximum penalty for an offence under this section is 1665 penalty units.

The substantial penalty provided is considered appropriate in regard to the emergency situations in which a direction can be given under section 451. This penalty is consistent with other offences for non-compliance with the Water Act.

The chief executive may give a direction to a petroleum tenure holder for the purpose of restoring water supply to an impaired water bore or to prevent or minimise the likelihood of a water bore having an impaired capacity. A direction notice given under this section may require the petroleum tenure holder to take reasonable steps within a stated reasonable period and must include a warning to the tenure holder that it is an offence not to comply with the direction without a reasonable excuse. The chief executive's power to issue such a direction is intended for use in an 'emergency', for example, when a make good agreement has not yet been signed or a make good agreement does not address the circumstances giving rise to the emergency. In the event a petroleum tenure holder has either failed to comply with a direction or has a reasonable excuse for not complying with the direction, the chief executive may take the stated action under new section 453. In this case, the chief executive may recover the costs from the petroleum tenure holder where appropriate. The cost recovery provision is necessary to ensure that the petroleum tenure holder responsible for the impaired or likely impaired capacity of the water bore, bears the costs associated with addressing the impairment or likely impairment. This is consistent with other petroleum tenure holder obligations under the Bill to make good impaired capacity of bores caused by their extraction of underground water.

Under new section 454, it is an offence for a petroleum tenure holder and a bore owner to not comply with a notice given by the chief executive requiring particular information, unless the person has a reasonable excuse. If the information requested by the chief executive might tend to incriminate the person, they are not required to comply with the notice. The chief executive may require a petroleum tenure holder to give information about a make good obligation for a water bore, the quantity and quality of water produced as a result of the exercise of the petroleum tenure holder's underground water rights or a matter in an underground water impact report or final report given to the chief executive. The chief executive may require a bore owner to provide information such as, information the bore owner is required to keep under the Water Act, or information about the condition and capacity of their water bore. The maximum penalty provided for not complying with a notice under this section is 200 penalty units. This penalty is considered reasonable given the nature of the obligation.

The Bill amends the Petroleum Acts to provide for an action to be taken under the Act in circumstances where notice is given by the Water Act chief executive to the Minister stating that the holder has been convicted of an offence against the Water Act, chapter 3. A potential breach of the above FLP may occur if the Bill allows further action for the same failure to comply with requirements of the Water Act. In this instance petroleum tenure holders extracting underground water are usually corporations, so the number of potentially affected individuals is limited. A similar amendment is also made to the Water Act that the chief executive may advise the petroleum Minister of the commission of an offence. This is arguably not a breach of the fundamental legislative principle on three grounds, (a) the non compliance action available under the Petroleum Acts does not involve a court or tribunal. (The Petroleum Acts require a show cause process before the Minister may take any of a suite of actions, including reducing the term of the tenure or cancelling the tenure.); (b) the compliance actions do not occur concurrently. The tenure holder must be convicted under the Water Act before the notice to the Petroleum Minister may be given; and (c) the decision to take non-compliance action under the Petroleum Acts is made by a different entity and there is nothing to suggest the Petroleum Minister will not exercise the prerogative in an appropriate way.

It is intended that where a tenure holder commits an offence or repeatedly commits an offence under Chapter 3 of the Water Act, the Water Act chief executive may notify the Petroleum Minister of the conviction. The tenure holder's entitlement to take water emanates from petroleum legislation while the protection of certain underground water reserves from adverse impacts from underground water extraction by petroleum tenure holders is a function of the Water Act.

If the Petroleum Minister has received a notice of such offence and is satisfied non-compliance action (such as suspension of tenure / water rights) under the Petroleum legislation should be taken to stop the impact or prevent the impact from occurring again, then the Petroleum Minister may take non-compliance action under the Petroleum Legislation. In considering whether the holder is a suitable person to hold, or to continue to hold, the tenure the Minister must consider the capability criteria defined in the Petroleum Acts. The power to report the conviction to the Petroleum Minister is not controversial because the conviction is generally information in the public domain.

A failure to implement an underground water impact report, for example, may lead to serious damage being suffered by bore owners affected by the

operations of the tenure holder and that failure may be an indicator that the tenure holder is not complying with obligations under the petroleum legislation.

Notifying the Petroleum Minister is justified and prudent if there is a risk of serious impacts on the underground water resources. Action by the Petroleum Minister in these circumstances is subject to show cause and submission processes which provide assurance that the petroleum tenure holder is afforded procedural fairness.

Whether a Bill has sufficient regard to the institution of Parliament

The Bill provides for the chief executive to declare a cumulative management area by a gazette notice published by the chief executive under the Water Act. A cumulative management area is declared to facilitate the regulation and management of the cumulative impacts on underground water reserves of petroleum tenure holders exercising underground water rights under petroleum legislation.

It is considered that the provisions for the regulation of underground water, of which the cumulative management area declaration process forms part, show sufficient regard to the institution of parliament and subjecting delegated legislative power to the scrutiny of parliament in this instance is not necessary because the delegation relates to a technical matter establishing a framework under which obligations may be imposed under an accountable process.

The declaration of a cumulative management area is not made by regulation because it is anticipated that test drilling and monitoring will result in the need to keep the area included in the cumulative management area under review to ensure fairness and accuracy. This needs to be done in a timely manner to provide certainty for all parties with underground water rights. The declaration of a cumulative management area is comparable to the declaration of water management areas under the Water Act. It is necessary to declare areas as a trigger for the application of the cumulative groundwater impact management framework.

In addition the declaration of a cumulative management area is to occur in the manner proposed because of the need to make immediate arrangements for the protection of underground water resources upon commencement of the new provisions. The government has recognised there is a need to actively manage the cumulative affects of the exercise of underground water rights by petroleum tenure holders and the declaration of a cumulative management area is preliminary technical matter and not something that should be open to challenge.

Assigning responsibility for addressing the adverse effects on bores caused by multiple petroleum tenure holders exercising underground water rights is a complex matter. The existence of aquifers containing different quality water at different levels and the number of petroleum tenure holders operating in areas with overlapping aquifers requires the declaration of a cumulative management area for an effective regulatory framework. It is a function of the commission, in consultation with the petroleum tenure holders to determine each tenure holder's responsibility for obligations required by the Bill. The area declared a cumulative management area is based on the information held by the department about the petroleum tenure areas and the location of aquifers and bores. The declaration of these areas is likely to affect corporations only and is an essential step required prior to the commission assigning liability and responsibility for implementing aspects of the underground water impact report for the cumulative management area. The declaration of a cumulative management area does not create significant additional obligations for the petroleum tenure holders because those holders would have similar responsibility to monitor bores and make good impairment of bores and natural springs if they were not operating in a cumulative management area. A petroleum tenure holder within the cumulative management area may pay a different levy to the commission to reflect the cost of the commission carrying out actions on behalf of the all cumulative management area tenure holders. A petroleum tenure holder outside the cumulative management area must prepare a underground water impact report and it is anticipated these tenure holders will pay a lesser levy for this reason. The impact the declaration will have on tenure holders is likely to be that their net costs will be unaffected by inclusion in the cumulative management area.

Legislation may offend legislative principles if a delegation of legislative power is not sufficiently subjected to the scrutiny of parliament. The Bill provides for the chief executive under the Water Act to make a number of guidelines in relation to the carrying out of a baseline assessment and a water bore assessment. The monitoring of bores is a technical matter and the engineering requirements for different bores in different locations for different purposes is not a matter which can easily or efficiently be expressed in legislation. The guidelines contain technical requirements about information necessary to determine the state of aquifers and bores at risk and will be the subject of professional expert scrutiny. The guideline making process will ensure the prospects of unnecessary or unduly onerous requirements being applied are remote. The parties required to comply with the guidelines are almost certainly all corporations

Amendments of the Water Act, sections 746 and 747 will extend existing authorised officer entry powers to allow entry to land to monitor compliance with underground water obligations or test related equipment or bores and to collect information required to assess the condition of underground water resouces or the impacts of the exercise of underground water rights. The power of entry is limited to land other than a part of land on which there is a structure that is, or is being used as, a dwelling place. The impacts of the extraction of CSG water by petroleum tenure holders is difficult to monitor because the aquifers are underground and aquifers accessed by tenure holders may be interconnected with other aquifers. These powers of entry are required to enable water levels and water quality to be monitored for the management and protection of water resources.

Water Supply Act

The Bill requires public reporting by a relevant entity for a scheme under which recycled water is:- supplied under a coal seam gas recycled water scheme; supplied to augment a supply of drinking water or supplied to premises by way of reticulation used only to provide recycled water for outdoor use or for use in flushing toilets or washing machines. The relevant entity must prepare and make publicly available a water quality report about the scheme for each reporting period (section 274). The public report must include the results of water quality monitoring carried out for the recycled water scheme during the reporting period; and details of any information given to the regulator, about inconsistency of water quality with the water quality criteria for the scheme, or in relation to prescribed incidents that may affect the water quality. The public report must also be prepared and made publicly available as required under a regulatory guideline. Legislation may offend legislative principles if there is not delegation of administrative power only in appropriate cases and to appropriate persons. The regulatory guidelines will contain information which is not appropriate for inclusion in legislation and is more appropriately included in the regulatory guideline. This approach is consistent with the existing approach in the Water Supply Act for regulatory guidelines.

Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. It is an offence to not comply unless there is a reasonable excuse and there is a maximum penalty of 500 penalty units. This offence is consistent with other provisions in the Act which require reporting.

It is not a reasonable excuse for failure to comply with the requirement, if the public report may tend to incriminate the relevant entity. However if the relevant entity is an individual, evidence of, or evidence directly or indirectly derived from the public report that might incriminate the entity 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 legislative principles if it does not provide sufficient protection against self incrimination. Water quality incidents can lead to serious adverse effects on public health. The public needs to be informed about these matters and to be advised that action has been taken where necessary. Public reporting will provide accountability and transparency. The provisions seek to balance the need to protect public health and protect the interests of individuals.

The Bill includes an exclusion from the requirements in chapter 3 of the Act, including having a recycled water management plan. If coal seam gas recycled water is released directly or indirectly into an aquifer and the supply has no material impact on the drinking water supply of a drinking water service provider, the coal seam gas water is taken not to be recycled water for chapter 3. A regulation will prescribe the circumstances for when there is no material impact. The exclusion is limited to where there is no material impact on the drinking water supply of a drinking water service provider. A precautionary approach has been taken, and all releases to aquifers of coal seam gas recycled water, if the recycled water is used by a drinking water service provider in a drinking water service, will require a recycled water management plan. There will be instances where the release is so far away from a location at which a drinking water service provider is authorised to take water that is supplied as drinking water, that there is no possibility of there being an impact on the drinking water supply. Given that release of coal seam gas recycled water into aquifers is a relatively new and emerging industry activity, and scientific knowledge about this practice is rapidly expanding, it is more appropriate to include the criteria for when there is no material impact in a regulation, as scientific knowledge will change. Legislation may offend legislative principles if an act can be impliedly amended by subordinate legislation. The purpose of the above exemption is limited to very specific circumstances and provides the necessary flexibility for the administration of the Act given the changing circumstances and information available in relation to release of coal seam gas recycled water into an aquifer.

The Bill also includes a power for the regulator to exclude a scheme under which it is proposed to supply coal seam gas recycled water, directly or

indirectly into a water source, from the requirements of chapter 3 of the Act. The coal seam gas water produced or supplied under the scheme is taken not to be recycled water for the purposes of chapter 3, other than for division 3 of Part 9A, section 199 and section 329J. The regulator's power is constrained and an exclusion decision can only be made if the regulator reasonably believes that the supply will not have a material impact on the drinking water supply of a drinking water service provider. The regulator must consider the following:-

- For direct release into an aquifer; whether the relevant location at which the drinking water service provider is authorised to take water that is supplied as drinking water is within the hydraulic impact zone from the release of the recycled water and if the relevant location is, then whether it is likely there will be an adverse detectable change in the quality of the water at the relevant location, including having regard to the difference between the quality of the recycled water at the point of supply nominated in the application and the quality of the water in the aquifer before the recycled coal seam gas water is released into it.
- For release into a water source other than by direct release into an aquifer; the ratio of the recycled water to other water in the water source at the relevant location for a drinking water service provider and the duration of the ratio.
- The cumulative impacts of the release of coal seam gas water, other than recycled water proposed to be supplied under the CSG recycled water scheme, in the water source at the relevant location for a drinking water service provider.
- The water quality criteria for recycled water.
- As well as any other relevant matters.

The matters that the regulator must have regard to are the application and any additional information, any environmental management plan for the environmental authority, the guidelines made by the regulator about exclusion decisions and any advice obtained by the regulator.

Legislation may offend legislative principles if there is not delegation of administrative power only in appropriate cases and to appropriate persons. The regulatory guidelines for exclusion decisions will contain highly technical information which is not appropriate for inclusion in legislation and is more appropriately included in the regulatory guidelines.

Legislation may offend legislative principles if it does make rights and liberties, or obligations, dependent on administrative power without the power being sufficiently defined and subject to appropriate review. The above power of the regulator to make an exclusion decision is subject to specific criteria for making the decision. A right of internal review and appeal has been provided for an exclusion decision. The provisions seek to balance the need to protect public health and to protect individual interests.

Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. The Bill creates an offence for failing to comply with an exclusion decision (section 198). The maximum penalty is 1665 penalty units. This is consistent with the other maximum penalties in the Act for failing to comply with a condition of a recycled water exemption.

The Bill also provides for the regulator to revoke an exclusion decision if the regulator reasonably believes the supply of coal seam gas recycled water is likely to have a material impact on a drinking water supply of a drinking water service provider. Circumstances may change, for example the relevant location at which a drinking water service provider is authorised to take water that is supplied as drinking water may change or there may be other proposed releases of coal seam gas recycled water which will have an effect on the existing excluded recycled water, and then the cumulative impact is likely to have a material impact on the drinking water supply of a drinking water service provider.

A show cause process has been included. There are specific criteria as to what the regulator must consider in making a decision including the criteria detailed above in relation to the direct release of coal seam gas recycled water into an aquifer and release into a water source other than by direct release into an aquifer as well as the cumulative impacts of other coal seam gas recycled water at the relevant location for a drinking water service provider. If the exclusion decision is revoked a recycled water management plan or an amendment to an existing plan is required within three months or within an extended period of not more than six months as notified by the regulator. Recycled water management plans require extensive supporting information and lengthy preparation. The regulator regularly requests supporting information from applicants in order to ensure that there is sufficient rigour in the recycled water management plan and this can extend the timeframes for the preparation of the plan. Consequently it is necessary for the regulator to be able to extend the period so that there is sufficient rigour in a recycled water management plan and public health is protected.

No review or appeal is available if the regulator refuses to extend the period. However the ability to extend the period is limited to a finite period of six months.

The power of the regulator to revoke an exclusion decision is subject to specific criteria for making the decision. A right of internal review and appeal has been provided for the revocation of an exclusion decision. If an exclusion decision is revoked and there is a stay of the original decision or a review decision, then the regulator can by notice require monitoring and reporting to the regulator, while the stay is in force. This provision is necessary to enable the risks to public health to be managed during the period of the stay. Legislation may offend legislative principles if it does make rights and liberties, or obligations, dependent on administrative power without the power being sufficiently defined and subject to appropriate review. These provisions seek to balance the need to protect public health and to protect individual interests.

Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. The Bill creates an offence for failing to comply with this monitoring and reporting notice (section 329C(4)). The maximum penalty is 500 penalty units. This is consistent with the other maximum penalties in the Act for failing to comply with monitoring and reporting notices.

The Bill provides for an interim recycled water management plan for a scheme under which coal seam gas recycled water is supplied by release directly or indirectly into a water source. An interim plan is for 1 year from the day the recycled water is first supplied, unless a shorter period is decided by the regulator to protect public health. If a shorter period applies, then a full recycled water management plan is required earlier. This power is necessary to ensure that any public health risks identified by the regulator relating to water quality of the released coal seam gas recycled water are managed appropriately and that public health is protected. Given the public health imperatives, no right of appeal or review has been provided for this decision. A recycled water provider may also choose to have a full recycled water management plan before the 1 year expires. Legislation may offend legislative principles if it does make rights and liberties, or obligations, dependent on administrative power without the power being sufficiently defined and subject to appropriate review. The legislation is constrained so that an interim period can only be shortened by the regulator if it is necessary to protect public health. This provision is justified on the basis of the need to protect public health.

The Bill provides for water quality data to be provided in certain circumstances, in support of an application for a recycled water management plan. There is an existing power in the Water Supply Act to make regulatory guidelines, including for recycled water management plans. In addition to the requirements in the Bill for water quality data, further details will be included in the regulatory guideline. Further details relating to recycled water management plans will also be included. Legislation may offend legislative principles if there is not delegation of administrative power only in appropriate cases and to appropriate persons. The regulatory guidelines will contain technical information which is not appropriate for inclusion in legislation and is more appropriately included in the regulatory guideline. This approach is consistent with the existing approach in the Water Supply Act.

The Bill creates a new offence if a responsible entity for a coal seam gas (aquifer) recycled water scheme fails to comply with a post supply obligation. A post supply obligation applies after supply of the coal seam gas recycled water has stopped and whether the recycled water management plan has been suspended or cancelled. This approach is similar to provisions in the *Environmental Protection Act 1994* which provide for a condition of an environmental authority to continue even after the authority has ended. Given the specific risks associated with release of coal seam gas recycled water into an aquifer there is a need to have ongoing requirements after supply has stopped including for monitoring of water quality and reporting to the regulator and for incident and emergency response. Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. The maximum penalty for failing to comply of 1665 penalty units is consistent with the other offences in the Act for failing to comply with a recycled water management plan.

A post supply obligation is taken to be an environmental requirement for the purposes of the existing *Environmental Protection Act 1994*, chapter 12, part 4. A post supply obligation could include undertaking on-going monitoring of water quality in order to ensure that public health is protected. It is necessary to ensure there is a means of access to land to carry out the required post supply obligations until they are complied with.

A requirement to undertake certain other monitoring (not under a post supply obligation) "a monitoring requirement" is also taken to be an environmental requirement for the purposes of the existing *Environmental Protection Act 1994*, Chapter 12, part 4. There is a need to ensure there is a

means of access to land to carry out this monitoring. This monitoring relates to monitoring of water quality to comply with an obligation under the Act, including under an approved recycled water management plan, a condition of an exclusion decision or a notice under section 329C or 643. It also relates to water quality monitoring required to make an application for approval of a recycled water management plan or an exclusion decision.

The *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010* implements the Government policy of discontinuing the use of evaporation dams contained in the Blueprint for Queensland's LNG industry through amendments to the *Environmental Protection Act 1994*. These amendments require that environmental management plans for CSG Environmental Authorities must not provide for using an evaporation dam in connection with carrying out a relevant CSG activity unless the plan includes an evaluation of best practice environmental management for managing the coal seam gas water and alternative ways for managing the water and the evaluation shows there is no feasible alternative to a CSG evaporation dam for managing the water. The coal seam gas industry is rapidly emerging in Queensland and with this expansion comes the need to appropriately manage the vast quantities of associated water that accompanies extraction of the gas. As it is only in vary rare circumstances that evaporation ponds will be used, there is a need to find alternative methods for disposal of this water. Options for disposal of coal seam gas recycled water include release into a water source (including to a watercourse, lake, dams, weirs or aquifers) or by directly supplying treated coal seam gas recycled water to a town as a source for drinking water supply. These disposal options include the beneficial use of the coal seam gas associated water. It has been determined that these disposal options will be regulated under the *Water Supply (Safety and Reliability) Act 2008* where they impact on the drinking water supplies of a drinking water service provider. Public health will be protected by regulating this coal seam gas water under the existing recycled water framework in the Act and a recycled water management plan will be required except if there is no material impact on the drinking water supplies of a drinking water service provider. If there is no material impact on the drinking water supplies of a drinking water service provider, then there may be an exclusion from chapter 3 of the Act and the requirement to have a recycled water management plan. In order to ascertain whether there is an impact on drinking water supplies water quality monitoring is required to be undertaken. It is also required as supporting information for an application for a recycled water management plan and an exclusion

decision. In addition it is required to meet strict requirements of an approval for a recycled water management plan or an exclusion decision as well as to meet certain requirements under regulator monitoring and reporting notices. Access to land to obtain water quality monitoring information is essential in order to ensure that public health is protected.

There are adequate safeguards in relation to the newly created means to obtain access to land for these monitoring requirements and for post supply obligations in the existing provisions of the *Environmental Protection Act 1994*, including the need to obtain an order from a Magistrate for access. Access cannot be authorised for entry to a building used for residential purposes. Legislation may offend legislative principles if it confers a power to enter premises without a warrant issued by a judge or other judicial officer. Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. The provisions seek to balance the interests of individuals with the need to protect public health by providing for rigorous processes and requiring an application to a magistrate for access to the land.

The Bill provides transitional provisions for existing CSG recycled water schemes under which recycled water that was coal seam gas water was supplied before the commencement of the legislation by its disposal under a CSG environmental authority. The transitional period is for a maximum period of fifteen months. This period is required to provide sufficient time for the operators to either make an application for an approved recycled water management plan or an exclusion decision approval, and if an exclusion application is refused, to then apply for a recycled water management plan. If the necessary applications are not made with the required timeframes the transitional period ends. The transitional period also ends when a relevant approval is granted, or when an existing CSG recycled water scheme is prescribed under a regulation (providing this occurs within four months from the commencement of the legislation). Given the potential public health risks associated with coal seam gas recycled water it is necessary for ongoing monitoring and reporting to the regulator in accordance with a regulator's notice during the transitional period. Legislation may offend legislative principles if it does not have sufficient regard to the rights and liberties of individuals. It is an offence to not comply with the notice and the maximum penalty is 500 penalty units. This is consistent with the existing penalty in the Act for failing to comply with a similar transitional monitoring and reporting regulator's notice for drinking water service providers.

Vegetation Management Act 1999

Whether legislation is consistent with principles of natural justice—LSA s4(3)(b)

A property map of assessable vegetation (PMAV) is a map certified by the chief executive under the *Vegetation Management Act 1999* (VMA) as a PMAV for an area and shows, at a property scale, the location, boundaries and status of vegetation as various categories. Where a PMAV exists it effectively replaces the regional ecosystem mapping and remnant mapping for determining, in part, whether a permit is required for clearing under the VMA.

Under the VMA a wild river high preservation area (HPA) is taken to be declared to be an area of high conservation value. The chief executive under the VMA may make a PMAV over the whole of an area that is a wild river HPA. If a PMAV is certified for an area the chief executive must give each owner of land included in the PMAV a copy of the PMAV.

Where a PMAV is made over an area that is a wild river HPA this may include a number of properties and each owner would receive a copy of the PMAV and this is retained under the proposed amendment. If a change is made to a PMAV that changes a boundary of mapped vegetation on the PMAV on only one of the properties covered by the PMAV, under the current provisions this would trigger the chief executive under the VMA giving a copy of the PMAV to each of the owners of the properties covered by the PMAV.

The Bill amends section 20F of the VMA to limit the persons to whom a copy of a made or replaced PMAV must be given. Under the amendments, the copy of the PMAV will no longer be given to all owners of land included in the PMAV. The copy of the PMAV will only be given to "affected owners", that is, those owners whose land will be affected by a change to the boundary of a vegetation category area in the PMAV.

If an owner of land not affected by a change to the boundary of a PMAV is not given a copy of the changed PMAV, the person will not be disadvantaged. The boundaries of the PMAV that relate to their land will not have changed and the change does not impact on their rights. Provision of a copy of the changed PMAV will not provide them with any new information relating to the boundaries of the PMAV as it relates to their land.

It is considered that this change is consistent with the principles of natural justice as those persons who may be impacted by the decision to change a PMAV will still receive a copy of the changed PMAV.

Wild Rivers Act 2005

Whether legislation is consistent with principles of natural justice—LSA s4(3)(b)

A number of amendments to the Wild Rivers Act will reduce the content of the public notice of intent to declare or amend a wild river declaration. The changes will mean that the moratorium for a declaration will no longer be described in full in the notice of intent. However, the notice of intent will be required to state where a document describing the moratorium can be viewed or obtained.

Currently, a notice of intent to declare a wild river area is published with extensive information about the proposed declaration and any moratorium that is to apply to the area. The amendments propose simplification of the notice of intent such that it refers to where a moratorium document may be viewed or obtained. This amendment will allow for a short, succinct notice to be published in local papers.

A short, succinct notice of intent will significantly reduce the resources currently required for the publication of a notice of intent. It will also assist the public in making the notice simpler and easier to read. Documents describing the moratorium and the full proposal are to be made available as a public document both on the department's website as well as in relevant departmental offices and service centres. In addition, the public will be able to call the department's call centre and request a copy of the relevant documents be sent to them, either as a hard copy or electronically.

Also, the definition of "publish" under the Wild Rivers Act is to be amended to omit the requirement for notices to be published in a newspaper circulating generally in the State. This amendment will reduce the requirement for publication of a notice to be only a paper circulating in the area for the proposed declaration, which recognises that a declaration relates to a single discrete area of the State, usually a single river catchment. Generally, it is considered that state-wide publication of the notice of intent is an inefficient use of resources in view of the significant costs involved. However, this will not preclude wider publication of a notice of intent if that is considered appropriate.

Persons directly impacted by a declaration are those living in the area of the declaration. Such persons are more likely to become aware of a declaration proposal through local media or by contact from the department than through publication in a state-wide newspaper.

It should be noted that when a notice of intent to declare a wild river area is published the Minister also releases a media statement about the proposed declaration, which is widely reported. Furthermore, the department mails out information packs containing complete documentation pertaining to the proposed declaration to all the main stakeholders. Affected persons are often informed of a declaration proposal and moratorium by means other than publication of a notice.

It is considered persons with an interest in an area proposed for declaration as a wild river area will not be denied natural justice as a result of these amendments.

Consultation

South East Queensland Water Reform related amendments to the *Energy Ombudsman Act 2006, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and *Water Act 2000*

Community and industry stakeholders

It is proposed the community will be asked to comment on a draft Customer Code to be made by the Minister in early November 2010. The draft Code will be provided directly to customer representative groups including the Queensland Council of Social Services Inc. Public consultation will be incorporated into the final Customer Code.

Government

The QWC has worked closely with the newly established Distributor-retailers, as well as key State agencies, to develop the EWOQ independent dispute resolution proposal and Customer Code proposals to support the commencement of the EWOQ.

Queensland Competition Authority Act 1997

The Queensland Competition Authority and the Queensland Water Commission were consulted in the drafting of the Bill.

Queensland Institute of Medical Research Act 1945

The QIMR, the National Health and Medical Research Council and the University of Queensland have been consulted about the proposed amendments to the QIMR Act and support the amendments.

Managing groundwater impacts and CSG recycled water related amendments – Water Act, Petroleum Acts and Water Supply Act

General – community and industry stakeholders

An Exposure Draft Bill relating to the CSG amendments only (managing groundwater impacts and managing drinking water impacts) was distributed on 23 September 2010 to targeted stakeholders with submissions due on 13 October 2010. The following stakeholders received copies: Australian Petroleum Production & Exploration Association (APPEA); AgForce; Australian Water Association; Basin Sustainability Alliance; Fitzroy Basin Association; Condamine Alliance; Queensland Murray-Darling Committee; Qld Regional NRM Groups Collective; Concerned Landholders Roma North (Roma area); Department of Sustainability, Environment, Water, Population and Communities; Great Artesian Basin Coordinating Committee (GABCC); Queensland Great Artesian Basin Advisory Council (GABAC); Queensland Resources Council (QRC); Queensland Farmers Federation (QFF); Queensland Conservation Council (QCC); World Wildlife Fund for Nature; Local Government Association of Queensland (LGAQ); Queensland Water Directorate (QWD); Western Downs Regional Council; Banana Shire Council; Maranoa Regional Council; Woorabinda Aboriginal Shire Council; Seqwater and SunWater.

In addition, consultation meetings on the Exposure Draft have been held with the Water Consultation Group (1 October 2010), Concerned Landholders Roma North (1 October 2010), QGABAC (6 October 2010), APPEA (6 October 2010), the Basin Sustainability Alliance (8 October 2010) and Western Downs Regional Council (11 October 2010). Department of Environment and Resource Management officers also briefed the Commonwealth Department of Sustainability, Environment, Water, Population and Communities on the Exposure Draft (12 October 2010). In addition, Department of Environment and Resorusce

Management officers also met with industry stakeholders on request and utilisied various industry forums to consult on the proposed amendments.

Written submissions were received by Water Consultation Group, QGABAC, APPEA, Basin Sustainability Alliance GLNG Santos, Condamine Alliance (CA) Queensland Murray Darling Committee (QMDC); QCC; World Wildlife Fund (WWF); LGAQ; Western Downs Regional Council; Landholder Services and AgForce.

Water Act and Petroleum Acts

Community and industry stakeholders

Further to the consultation detailed above, additional consultation on managing impacts on underground water has been undertaken with APPEA and also with representative peak bodies through the Department of Environment and Resorusce Management established Water Consultation Group, including AgForce, QFF, QRC and QCC. In addition, supporting consultation on the key elements of the new regulatory framework was presented at seven community CSG forums facilitated Department of Employment, Economic Development and Innovation throughout the Surat Basin between 24 August 2010 and September 9 2010.

Government

Representatives from the following Departments were consulted in detail on the amendments: Department of Premier and Cabinet, Queensland Treasury and Department of Employment, Economic Development and Innovation. Other Government departments were also consulted.

Water Supply Act

Community and industry stakeholders

Further to the consultation detailed above, representatives from representative peak bodies, mining organisations, drinking water service providers and community based organisations were also separately consulted on the changes to the Water Supply Act in the Bill. These included APPEA, LGAQ, QWD, Basin Sustainability Alliance, Condamine Alliance, QMDC, QCC, AgForce, Concerned Landholders Roma North and the GABCC as well as with SunWater, large coal seam gas providers, Western Downs Regional Council, Banana Shire Council, Woorabinda Aboriginal Shire Council and Maronoa Shire Council. Additional consultation on public reporting has been undertaken with the Western Corridor Recycled Water Scheme and recycled water providers with existing dual reticulation schemes

Government

Representatives from the following Departments were consulted in detail in relation to the Water Supply Act amendments contained in the Bill: Department of the Premier and Cabinet, Queensland Treasury, Department of Employment, Economic Development and Innovation, Department of Infrastructure and Planning and Queensland Health. Other Government departments were also consulted.

Wild Rivers Act

Community and industry stakeholders

Stakeholders in the Lake Eyre Basin including individual landholders, mining companies, Indigenous representative groups, the Desert Channels Queensland Natural Resource Management Body, Catchment Coordinating Committees, local governments and peak bodies such as the Western Rivers Alliance, AgForce, the Remote Area Planning and Development Boards and the QCC were consulted in relation to amendments that will provide for the declaration of Lake Eyre Basin rivers as wild river areas.

Government

Consultation was undertaken with Department of the Premier and Cabinet, Department of Employment, Economic Development and Innovation and the Department of Transport and Main Roads. Consultation was undertaken within the Department of Environment and Resource Management to identify streamlining opportunities and develop the amendments proposed in this submission.

Consultation was undertaken with the Department of Premier and Cabinet, and agencies responsible for administering legislation that may impact on rural landholders. Bio Security Queensland and LGAQ were consulted in regard to the pest management plans under the LPA. Department of Infrastructure and Planning was consulted in regard to the amendments to the *Sustainable Planning Regulation 2009*. The agencies consulted support the proposed changes.

Results of consultation

South East Queensland Water Reform related amendments to the *Energy Ombudsman Act 2006, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and *Water Act 2000*

Community and industry stakeholders

Community and industry stakeholders are generally supportive of the regulatory proposals to establish EWOQ and develop and use a Customer Code to set obligations, inform customers and manage disputes. The Code is the primary document of interest to the Distributor-retailers. The QWC has developed a consultation draft of the Code as part of a Distributor-retailer and QWC Working Group.

Government

The State agencies consulted are supportive of the SEQ Water Reform related amendments.

Water Act and Petroleum Acts

Community and industry stakeholders

Community stakeholders are supportive of the proposed regulatory framework. Consultation afforded the opportunity of clarifying that the scope of the proposed amendments specifically dealt with managing impacts on water supply bores and natural spring ecosystems from underground water extraction. Impacts on underground water more generally associated with petroleum activities are dealt with under other existing regulatory frameworks. However it was noted this issue is a significant matter and consideration will continue to be given to ensuring the necessary regulatory requirements are in place.

Industry stakeholders are generally supportive of the proposed regulatory framework. During preliminary consultation a number of issues were raised that were addressed through the later consultation on the Draft Exposure Bill. In particular, the obligation to undertake baseline assessments before petroleum testing or production for new tenures was modified to take into account industry concerns that exploration activities were an unnecessary early trigger. Changes to address concerns about limiting make good obligations at the end of tenure to a defined period were not accepted at this stage given the importance of ensuring a robust 'make good' framework applied to all future impacts on water supply bores due to petroleum activities. Industry raised objections about the limiting of appeal rights in relation to underground water impact reports and consequential assignment of underground water obligations. However it is considered justified to exclude certain appeal rights as it meets the overall policy intent of the regulatory regime and complying with community expectations for appropriate water

resource management as well as ensuring the State retains stewardship of the overall water resource.

Government

The State agencies consulted are supportive of the proposed regulatory framework.

Water Supply Act

Community and industry stakeholders

Representatives of the representative peak bodies, mining organisations, drinking water service providers, community based organisations, water entities and other recycled water industry representatives who were consulted, overall provided a positive response to the proposed measures.

A number of issues were also raised about the proposed measures and further consultation will occur in relation to these issues as well as on the implementation of the new regulatory arrangements, including on the associated regulatory guideline and related operational issues.

Government

The State agencies consulted support the amendments. An exemption from preparing a regulatory assessment statement was sought on the basis that an urgent regulatory response was required in order to ensure that public health is protected and that there is public confidence that public health is being protected. An exemption from the preparation of the regulatory assessment statement has been granted by the Queensland Treasurer.

Wild Rivers Act

Community and industry stakeholders

The amendments address issues raised in the feedback from stakeholders in the Lake Eyre Basin.

Government

The agencies consulted support the proposed changes. The Department of Employment, Economic Development and Innovation noted that there may be industry perception that expansion of the wild river program will lead to impacts on mining development. As wild rivers and mining and petroleum matters are within the portfolio of the Minister for Natural Resources, Mines and Energy all relevant wild rivers and economic development issues will be given due consideration by the Minister as part of his decision making processes. In addition, the Department of Environment

and Resource Management will consult with the Department of Employment, Economic Development and Innovation during the development of any future wild river declaration proposals to ensure a comprehensive consideration is undertaken with respect to mining developments within any proposed area.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title provides that the Act may be cited as the *Water and Other Legislation Amendment Act 2010.*

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

Part 2 Amendment of the Energy Ombudsman Act 2006

Clause 3 Act amended in pt 2 and sch 1 provides that Part 2 and schedule 1 of the Bill amend the *Energy Ombudsman Act 2006*.

Clause 4 Amendment of long title inserts the words "or water entities" after "former energy entities" to articulate the expanded role of the Energy and Water Ombudsman.

Clause 5 Amendment of s 1 (Short title) inserts the words "and Water" into the short title to articulate the expanded role of the Energy and Water Ombudsman.

Clause 6 Replacement of s 3 (Main purpose of Act) amends the existing purpose to include small water customers in the dispute resolution role of the Act.

Clause 7 Amendment of s 6 (Who is a small customer) amends the existing section 6 to clarify the section applies to energy customers only by inserting "(energy)" after "customer" in each subsection. Where the term small customer (energy) is used, the particular provision or part of the provision applies only to energy matters, not water related matters.

Clause 8 Insertion of new ss 6A and 6B inserts new provisions after section 6 which define small customer (water) and eligible customer.

Section 6A Who is a small customer (water) defines a small customer (water) for the purposes of dispute resolution by the Energy and Water Ombudsman as "a small customer under the customer water and wastewater code", being a code made under s93 of the *South-East Queensland (Distribution, Retail and Restructuring) Act 2009*. Accordingly, a small customer is only a customer who receives water and/or wastewater services from a distributor-retailer within the South East Queensland (SEQ) region. The Energy Ombudsman does not have jurisdiction over customers other than small customers (i.e. large customers) or water and wastewater customers outside of the SEQ region. Those customers continue to have access to the Queensland Ombudsman regime.

Section 6B Who is an eligible customer defines an eligible customer as a small customer (energy) or small customer (water) under the Act. This term is used throughout the Act where the particular provision or part of the provision applies to both energy and water matters.

Clause 9 Insertion of new ss 7A and 7B inserts new provisions after section 7 to define water entity and utility entity.

Section 7A What is a water entity defines a water entity as a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 8. This provision is the water equivalent of s7 of the Act (What is an *energy entity*). The definition describes which water and wastewater providers are subject to the Energy and Water Ombudsman's jurisdiction. Accordingly, only distributor-retailers in the SEQ region are subject to the jurisdiction. Any other water and wastewater service provider (such as private providers) within SEQ is not subject to the Energy and Water Ombudsman's jurisdiction.

Section 7B What is a utility entity defines a utility entity as an energy entity or a water entity under the Act. This term is used throughout the Act

where the particular provision or part of the provision applies to both energy entities and water entities.

Clause 10 Insertion of new s 8A inserts a new section 8A after section 8.

Section 8A What is a water entity function defines a water entity function as an obligation under the Customer Water and Wastewater Code which is performed, required or permitted to be performed by a water entity. This provision is the water equivalent of s8 of the Act (What is an *energy entity function*). The Energy and Water Ombudsman's jurisdiction only extends to disputes between small customers (water) and a distributor-retailer in relation to the water entity function. As the water entity function solely relates to obligations under the Customer Water and Wastewater Code, the Energy Ombudsman cannot hear other disputes between small customers and their distributor-retailer if the matter does not pertain to the application of the Code.

Clause 11 Amendment of s 11 (Functions) makes minor consequential amendments to section 11 of the Act to apply s11 to extend the Energy and Water Ombudsman's functions to both energy and water matters in the way described in the Act.

Clause 12 Amendment of s 12 (General restrictions on functions) amends s12 so that the provision only applies to energy functions. The clause also removes some of the generic provisions relating to matters which the Energy and Water Ombudsman cannot hear. These restrictions relate to generic matters which could apply to either energy and water matters, and have been moved to s12B of the Act (which now deals with general restrictions on functions instead of s12).

Clause 13 Insertion of new ss 12A and 12B inserts new provisions outlining the restrictions on matters the Energy and Water Ombudsman can investigate in relation to water customers.

Section 12A Restriction on functions – water entities provides that the Energy and Water Ombudsman cannot accept a referral about or investigate the fixing of charges for water services and wastewater services (as defined in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*) or the methodologies for fixing the charges. While the Energy and Water Ombudsman could not hear pricing matters as they are outside of the scope of the Customer Water and Wastewater Code anyway (because the dispute must relate to the distributor-retailer's water entity function), the provision is intended to put the restriction beyond doubt.

Section 12B General restrictions on functions provides that, for both water and energy matters described in the Act, the Energy and Water Ombudsman cannot accept a referral for a dispute about, or investigate:

- the content of government policies, legislation, an energy Act authority, an industry code or the Customer Water and Wastewater Code;
- a matter already decided by a proceeding; or
- a matter which is the subject of an unfinished proceeding which commenced before the referral.

Section 12B(2) provides that an unfinished proceeding (including an arbitration) may be considered if the Energy and Water Ombudsman and the parties to the proceeding agree that it be considered, or an order in the proceeding requires the Energy and Water Ombudsman to investigate the matter.

Clause 14 Amendment of s 13 (Exclusion of disputes relating to community ambulance cover levy) amends section 13 so that the section only applies to small customers (energy) because the ambulance cover levy is not applied in relation to customer accounts for water or wastewater services. The section also clarifies that the restriction on disputes about the application of the ambulance cover levy does not limit the more general restrictions placed on referrals which can be made to the Energy and Water Ombudsman under s12 (now Restrictions on energy entity functions) or s12A (General restrictions on functions).

Clause 15 Amendment of s 18 (Disputes that may be referred to energy ombudsman) amends the heading to *Disputes relating to energy entities that may be referred to energy and water ombudsman* to reflect the Energy and Water Ombudsman's new name following its expanded function and to clarify that section 18 only applies to energy entities. This clause also makes consequential amendments to other parts of section 18 to clarify that this section applies to energy customers.

Clause 16 Insertion of new s 18A inserts a new section after section 18.

Section 18A Disputes relating to water entities that may be referred to energy and water ombudsman outlines how disputes between a small customer (water) and a water entity about its performance of a water entity function may be referred to the Energy and Water Ombudsman. As the water entity functions are limited to matters around the application of the Customer Water and Wastewater Code made under the *South-East*

Queensland Water (Distribution and Retail Restructuring) Act 2009, the Energy and Water Ombudsman may only hear disputes about the application of the code (the water entities' function) and only in relation to disputes between small customers and their distributor-retailers within the SEQ region. For example, if the code does not yet deal with water quality provided to a customer, then the dispute could not be referred to the Energy and Water Ombudsman until such time as it was included in the code as an obligation under that code.

Subsection (4) of the section clarifies that the dispute can still be heard, even if the water entity function under the Customer Water and Wastewater Code has not yet been performed. This will ensure that the Energy and Water Ombudsman can also hear disputes about a failure to provide a service required to be performed under the code.

Clause 17 Amendment of s 19 (Restrictions on disputes that can be referred) amends the heading to *Restrictions on disputes relating to energy entities that can be referred* to clarify that section 19 only applies to energy entities. This clause also amends section 19(1)(b) to reference the new section 12B as preventing a proposed referral being made, in addition to the existing sections 12 and 13.

The clause omits sections 19(1)(c), (e) and (f) and 19(2) as the content in these provisions are now included in the new section 19A (General restrictions on disputes that can be referred).

Clause 18 Insertion of new s 19A inserts a new section after section 19.

Section 19A General restrictions on disputes that can be referred replaces the existing sections 19(1)(c), (e) and (f) and 19(2). Section 19A outlines the circumstances which prevent a matter being referred to the Energy and Water Ombudsman. It provides that a dispute cannot be referred if:

- 12 months have passed since the performance of the function to which the dispute relates or the party becoming aware of the performance of the function to which the dispute relates, whichever is later;
- the Energy and Water Ombudsman has already made a decision on an earlier dispute referral and the parties to the earlier dispute and the proposed dispute referral are the same as the previous dispute; or
- the party to the dispute is a non-entity party (while specifically defined, is generally speaking an energy or water customer who is involved in a dispute referral or final order) and the Energy and Water

Ombudsman is reasonably satisfied the party has not made a genuine attempt to resolve the matter.

Clause 19 Amendment of s 20 (Discretion to accept particular referrals made out-of-time) makes a number of minor amendments so that the section is capable of applying to both water and energy matters. The amendments are necessitated by the fact that the section refers in some parts to entities that have stopped performing their functions. This is a feature of the energy market where operators may enter and exit the market. This is not a feature of the water and wastewater market in SEQ (the distributor-retailers are responsible for this function on a foreseeably permanent basis under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009)*). Accordingly, those parts of the sections which make reference to entities that have or may stop performing their functions, do not apply in the same way for water entities. New, water-specific provisions have been included to cater for the water entities' permanent status. The amendments also reflect changes to the numbers of sections referred to due to other amendments in the Act.

Clause 20 Amendment of s 22 (Refusal to investigate dispute referral) amends subsection 22(1)(f) to clarify that the subsection only relates to energy entity functions only. As there are not the same types of provisions under the relevant water legislation (to be able to provide 'relief' to a customer), the provision cannot be applied in the same way to water matters.

Clause 20 also makes consequential amendments to subsection 22(4) to update references to those sections which empower the Energy and Water Ombudsman to not accept or investigate a matter.

Clause 21 Amendment of s 23 (Notice of referral not properly made or of refusal to investigate) makes consequential amendments to subsection 23(1) to update references to those sections which may impact when a dispute referral cannot be made or investigated.

Clause 22 Amendment of s 29 (Power to require particular documents or information from relevant entity) amends section 29(c) and (d) which are energy-specific, so that they are capable of including both energy and water matters as described in the Act.

Clause 23 Amendment of s 32 (Interim orders) omits the existing example of an order, which referred to disconnecting supply. As disconnection of supply for non-payment (among other things) is not an allowable feature of the water market, as it is for the energy market, the

example has been amended to include separate water and energy specific examples.

Clause 24 Amendment of s 35 (Final orders that may be made) amends subsections 35(1)(b) and (c) which are energy-specific, so that they are capable of including both energy and water matters as described in the Act. The subsections now also include references to the Customer Water and Wastewater Code. Clause 24 also amends subsection 35(2) (allowing the Energy and Water Ombudsman to make orders to end a negotiated contract), to limit its application to disputes which relate to an energy Act function. While negotiated contracts are a feature of the energy market (e.g. to facilitate changes to retail providers), negotiated contracts are not a predominant feature of the water market in SEQ in relation to the supply of water or wastewater services. Limiting the effect of the subsection to energy entities reflects the differences between these markets.

Clause 25 Amendment of s 36 (Criteria for making final order) omits the existing subsections 36(a) and (b) and replaces them with new subsections 36(a) and (b) which renumber the issues that must be considered in making a final order in relation to an energy Act function and include the provisions which must be considered in making a final order in relation to a Water Act function. For energy disputes, this has not changed. For water matters, the Energy and Water Ombudsman must consider the aspects of the Customer Water and Wastewater Code outlined in subsection (b) and any rights and obligations under a contract. As supply contracts are not a feature of the water market, this reference to a contract will usually refer to terms and conditions for connections to water and wastewater services.

Clause 26 Amendment of s 37 (Restrictions on final orders) amends section 37 to reflect the expanded role of the Energy and Water Ombudsman so as to include 'water legislation' in the list of laws, codes and authorities which the Energy and Water Ombudsman's order must not contravene. The amendment also defines water legislation for the purpose of the section.

Clause 27 Amendment of s 41 (Effect of accepted order) clarifies section 41 by amending it to refer to an "accepted order" rather than an "order". The purpose of the amendment is to clarify between an accepted order made by the Energy and Water Ombudsman and other orders of the Supreme Court mentioned in subsection 3.

Clause 28 Amendment of s 46 (Failure by relevant entity to comply with accepted order or compliance directions) amends subsection 46(2) to exclude subsections 46(3) to (5) from applying to water entities. Clause 28 also inserts new subsections 46(6) and (7) which provide that the Energy and Water Ombudsman or the non-entity party to a dispute may refer non-compliance with an accepted order or compliance directions to the Queensland Water Commission or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10 for consideration.

While the Energy and Water Ombudsman's jurisdiction relates to matters dealt with under the Customer Water and Wastewater Code and referrals would ordinarily be made to the Queensland Water Commission, the code may include re-statements of obligations imposed under the *Water Supply (Safety and Reliability) 2008* (the Water Supply Act). This amendment allows the Energy and Water Ombudsman to refer the matter directly to the regulator under the Water Supply Act if the breach of the code matter also relates to obligations imposed under the Water Supply Act.

Clause 29 Amendment of s 49 (Functions) amends subsection 49(b)(ii) to omit reference to "small customers" and replace it with "eligible customers" to capture all customers under the expanded Energy and Water Ombudsman.

Clause 29 also inserts a new subsection 49(d) which requires the advisory council to prepare and give advice the Minister about a number of aspects of the performance of the Energy and Water Ombudsman's functions, as well as the current obligation to advise the Minister on funding matters (i.e. the budget). The new provision requires the Advisory Council to prepare and give advice to the Minister, as soon as practicable after the end of the financial year about:

- matters arising in relation to the Energy and Water Ombudsman's independence;
- policy and procedural issues related to the Act;
- the operation of the Act for eligible customers and relevant occupiers of land;
- the development of guidelines under section 28(5); and
- the preparation of budgets under section 74, budget guidelines under section 75 and annual reports under section 77.

Clause 30 Amendment of s 50 (Appointment) amends the section so that references to scheme members are replaced with the term "scheme

participants" to clarify that industry members (now participants), while funding the scheme, do not have an ownership of the dispute resolution outcomes of the Energy and Water Ombudsman scheme, which is independent. The members of the industry participants who are appointed to the scheme's Advisory Council, do however have an interest in outcomes when making recommendations to the Minister or the Ombudsman in relation to the more broad issues around the operation of the scheme in accordance with s49 of the Act. Accordingly, the appointed representative of the energy or water entities that represent their industry continue to be referred to as members of the Advisory Council.

This section is also amended by adding a new subsection 50(7). The purpose of this subsection is to ensure that at least one member of the advisory council must represent the interests of the water entity scheme participants (i.e. the three distributor-retailers in the SEQ region).

Clause 31 Insertion of new s 50A inserts a new section 50A after section 50.

Section 50A Chairperson provides for a new maximum term of appointment. Section 50A also provides that the term of appointment must not be more than five years. However, this five year period need not be a consecutive one and the chairperson can be reappointed as long as the total of the person's term of appointment is not more than five years. The section does not operate in a retrospective manner.

Clause 32 Amendment of s 64 (Scheme membership) amends the heading for the section to replace the term scheme membership with scheme participation. This term has also been replaced throughout the Act, in order to clarify that industry members (now participants), while funding the scheme, do not have an ownership of the dispute resolution outcomes of the Energy and Water Ombudsman scheme, which is independent.

Subsections (2) and (4) have been amended with the effect that the whole of s64 only applies to energy entities and small customers (energy), not water matters. The relevant sections of that provision exist to indicate when energy entities become and stop being a participant of the scheme. As the water entities will not enter or exit the scheme because they have foreseeably permanent responsibility for those services under the *South-East Queensland (Distribution and Retail Restructuring) Act 2009*, there is no need for similar provisions for water entities.

Clause 33 Insertion of new s 64A inserts a new section 64A after section 64.

Section 64A Scheme participation – water entities provides that a water entity becomes a scheme participant on 1 January 2011. From this time, subject to transitional provisions elsewhere in the Act, water entities become subject to Act, including the funding obligations and dispute resolution provisions.

Clause 34 Amendment of s 66 (When membership fee is payable) inserts a reference to section 67A to include both energy entities and water entities (utility entities) in the existing provision outlining when membership fees are payable.

Clause 35 Amendment of s 67 (Amount of membership fee) amends the heading to *Amount of participation fee – energy entity* to provide that this section applies specifically to energy entities.

Clause 36 Insertion of new s 67A inserts a new section 67A after section 67.

Section 67A Amount of participation fee – water entity sets the annual participation fee for a water entity that is a scheme participant at the beginning of a financial year at $10,000. As the water entities become scheme participants on 1 January 2011 under s64A, subsection (2) provides that the 2010/11 financial year participation fee for these water entities is $5,000. This section applies to the water entities instead of the apportionment sections under s67(4).

Clause 37 Amendment of s 69 (Working out user-pays fees) amends the section so that the provisions used for adjusting user pays fees (e.g. subsections (5) to (6) used for reconciling the forward estimates of user pays fees to costs for the actual use of the scheme) are replaced by a provision allowing for adjustments to be made in accordance with the budget guidelines prepared under s75. The purpose of this amendment is to provide some flexibility in the manner in which the adjustments are performed, including the timeframes under which adjustments are made, subject to provisions of the Act, such as amendments to s75 (which among other things, require adjustments to be made at least twice yearly). The effect of the provision prohibiting an entitlement to interest on credits for adjustments is retained.

The definitions used in the section under s69 have been amended so that the relevant performance costs are not defined in a way that ties the definition to a time period, but simply defines what those costs consist of.

Clause 38 Amendment of s 74 (Annual budgets) inserts new subsections 74(2A) which provides that the Minister must approve or refuse to approve a budget by 30 April each year and 74(2B) which provides that failure to meet this deadline does not prevent the Minister approving or refusing to approve a budget at a later time.

Clause 39 Amendment of s 75 (Budget guidelines) amends section 75 to require that the budget guidelines address how adjustments to user pays fees are to be made, in addition to the existing requirement that they address content on working out the quantum and structure of the user pays fees. The section is also amended to provide that the budget guidelines must provide for the user-pays fees for a scheme participant to be adjusted twice yearly, paying regard to the forecast costs and relevant performance costs for the participant. The purpose of this provision is to provide flexibility around adjustment periods while providing for a minimum number of adjustments.

Clause 40 Amendment of s 76 (Delegation) amends the example in subsection 76(3) to clarify that the officer, who will already otherwise be a member of the public service, should have an appropriate classification or level with the Energy and Water Ombudsman's office. The section is also amended to include a reference to a power where a function is referred to in this section.

Clause 41 Amendment of s 77 (Annual report) amends subsection 77(2) to require the Energy and Water Ombudsman annual report be prepared so that it may be tabled within three months of the end of the financial year, instead of four months. The purpose of this amendment is to provide for a greater level of alignment with the *Financial and Performance Management Standard 2009.* Clause 41 also amends subsection 77(3)(a)(v) to require the annual report to detail matters referred to the Queensland Water Commission or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10.

Clause 42 Amendment of s 78 (Reports and observations on energy ombudsman's initiative) amends section 78 to include the Queensland Water Commission or the regulator under the *Water Supply (Safety and Reliability) Act 2008*, section 10 in the list of entities the Energy and Water Ombudsman may give a report on, or make observations about, matters arising from performance of the Energy and Water Ombudsman's functions.

Clause 43 Amendment of s 79 (Privacy) amends section 79 to reflect that a reference in this section to the Energy and Water Ombudsman or an Energy and Water Ombudsman officer includes a reference to a person who was the Energy Ombudsman or an Energy Ombudsman officer before the commencement of the amendments.

Clause 44 Amendment of s 80 (Disclosure of particular information) amends section 80 to replace subsection (1) and (2) which provide for the circumstances when the Energy and Water Ombudsman can disclose information given to the ombudsman under that section and when the ombudsman must disclose such information when a regulatory agency requests it. The effect of the amendments to these subsections are that the Energy and Water Ombudsman's obligation to disclose the information is changed to a discretion to disclose the information if the information is provided of its own volition. However, the obligation to disclose the information is retained if the provision of the information is as a result of a request from a regulatory agency. In both cases, the utility entity (i.e. the water entity or the energy entity) must consent to the disclosure. The amendments also ensure the provisions around what is effectively 'deemed consent' is preserved for energy entities, where energy Act authorities require consent to be given. No such deeming provision exists for water entities. This is because the distributor-retailers do not operate under authorities which are capable of being conditioned (as electricity entities do) but instead are registered to provide water services and wastewater services under the Water Supply Act. The section also outlines who is a relevant regulatory body for an energy entity and a water entity.

Clause 45 Amendment of Part 9 (Transitional provisions) amends the heading to *Transitional provisions for Act No. 61 of 2006.*

Clause 46 Amendment of s 84 (Definitions for pt 9) amends section 79 to clarify definitions of the energy ombudsman and scheme member mean the same under the pre-amended and post-amended Act for the purpose of interpreting the transitional provisions inserted into the Act under the current amendments.

Clause 47 Insertion of new Part 10 (Transitional provisions for the *Water and Other Legislation Amendment Act 2010*) inserts a new Part 10 into the *Energy and Water Ombudsman Act 2009*.

Section 91 Definitions for Part 10 provides definitions of the commencement of the provisions within the part and of the post amended

and pre-amended Act, for the purpose of interpreting the transitional provisions inserted into the Act under the current amendments.

Section 92 Office continues provides for the continuation of the Energy and Water Ombudsman and the Energy and Water Ombudsman's office, despite the change of the name so as to include 'water'.

Section 93 Savings of certain appointments etc. The purposes of the provisions are to clarify that the change of name is not a change of legal entity. All appointments held and anything done by the Energy and Water Ombudsman or its office under its previous name, are not affected despite the change of name. This includes, but is not limited to, saving existing delegations and approved forms.

Section 94 References to energy ombudsman provides that references in other Acts or documents (such as contracts or Memorandums of Understanding) are taken to be a reference to the Energy and Water Ombudsman under its previous name.

Section 95 Scheme members provides that an energy entity who was a scheme member before commencement of the transitional provisions, is on commencement, a scheme participant after commencement. The section also provides that amounts payable by an energy entity under part 8, division 2 of the pre-amended Act, continue to be payable despite the change of name. This includes payment obligations such as membership fees, user pays fees and any late payment of interest fees payable.

Section 96 Advisory council members go out of office and appointment of new members provides that on commencement of the part, the chairperson and the other members of the office go out of office. The purpose of the provision is to facilitate the re-appointment of a completely new 'water-inclusive' Advisory Council. The section also provides that for the first appointments after the Advisory Council going out of office, that the Minister is not required to make appointments to the new council based on recommendation of the chair (as there will be no council members to provide this). There is also a provision allowing for the water entities to be taken to be a scheme participant for the purposes of being allowed to be represented on the Advisory Council, despite the fact that they are not considered to be a scheme participant for other provisions until 1 January 2011. This will allow for water-inclusive representation on the council despite the water entities not being subject to the Energy and Water Ombudsman's dispute resolution jurisdiction or membership fees and user pays fees until 1 January 2011.

Section 97 Application of ss 68 and 69 to water entities for last 2 quarters of 2010/2011 financial year provides a deemed basis for applying user pays fees to water entities. Because user pays fees are usually based on historical use of the scheme (which will not be available for the water entities who join the scheme from 1 January 2011), this provision is necessary to provide a funding basis for the Energy and Water Ombudsman scheme for the first two financial quarters of the water entities' inclusion in the scheme (i.e. the third and fourth quarters). These fees are deemed to be $55,000 for each distributor-retailer, for each of the two quarters. The purpose of the provision in subsection (3) is to ensure that the provisions relating to late payments and interest elsewhere in the Act, apply to the deemed user fees as well.

Section 98 Energy and water ombudsman may prepare amended budget provides specifically for an amended budget to amend the current 2010/2011 budget to include the water dispute resolution. Due to the timing of the change (around Christmas) it may be that the Advisory Council is not appointed until after the budget is passed. Accordingly, the provision allows for the budget to be given to the Minister for consideration, despite the fact that an Advisory Council might not be in place to make recommendations as would ordinarily be the case.

Section 99 Advisory council to report in relation to water entities requires the Advisory Council to give a 'one-off' report to the Minister before the end of 2011 on the performance of the Energy and Water Ombudsman as it relates to the newly added water entities as participants of the scheme.

Section 100 Effect of regulation amendment clarifies that the amendment of the regulation by the Act amendments does not affect the power of the Governor in Council to amend the regulation.

Section 101 Transitional regulation-making power provides for the making of a transitional regulation-making power.

Clause 48 Amendment of schedule (Dictionary) amends the dictionary to include the new water related dispute resolution function and adjust existing definitions where necessary.

Part 3 Amendment of Environmental Protection Act 1994

Clause 49 Act amended provides that this part amends the *Environmental Protection Act 1994*.

Clause 50 Amendment of s 41 (Submission) provides clarification around the matters which must be included in the draft terms of reference for an environmental impact statement (EIS) if any of the operational land for the project is in a wild river area.

Currently if any of the operational land for the project is in a wild river area and if mining activities are to be carried out in the wild river high preservation area or under a nominated waterway in the wild river area, the draft terms of reference must include a statement of how the proponent proposes to decide the minimum depth below the surface of the land under which the mining activities can be carried out to ensure compliance with the wild river declaration for the area.

The amendment to section 41(2)(c)(i) clarifies that this requirement does not apply to mining activities that are specified works.

Specified works means specified works as defined in section 48(2) of the Wild Rivers Act.

Section 41(2)(c)(i) is also amended to clarify that the section only applies in relation to mining activities below the surface of the wild river high preservation area.

Clause 51 Amendment of s 151 (What is a level 1 mining project and a level 2 mining project) omits subsection (1)(c) to remove the mandating of certain mining activities in a wild river area as level 1 mining projects. This allows flexibility for certain mining activities in a wild river area to be level 2 mining projects, or subject to certain criteria to be prescribed under a regulation, to be level 1 mining projects.

Chapter 3, part 3 of the *Environmental Protection Regulation 2008* will prescribe the criteria for determining those mining activities in a wild river area that are to be level 1 mining projects or level 2 mining projects.

Clause 52 Amendment of s 162 (Decision about EIS requirement) excludes mining activities carried out for specified works (as defined in the *Wild Rivers Act 2005*) from the mandatory requirement for an EIS, if the mining activities are below the surface of a wild river high preservation

area or a wild river special floodplain management area, or under a nominated waterway in a wild river preservation area.

Clause 53 Amendment of s 163 (Minister's power to overturn decision about EIS requirement) inserts a wild river special floodplain management area as an area in which the Minister's power to overturn a decision about an EIS requirement under this section does not apply.

Clause 54 Amendment of sch 4 (Dictionary) inserts new definitions of *specified works* and *wild river special floodplain management area*.

Part 4 Amendment of Fisheries Act 1994

Clause 55 Act amended provides that this part amends the *Fisheries Act 1994*.

Clause 56 Amendment of s 76DA (Applications in relation to wild river preservation areas) in concert with amendments to the *Sustainable Planning Act 2009* (clause 140(2)) provides for exemptions to existing prohibitions to a material change of use of premises for aquaculture or the raising or constructing of waterway barrier works to apply in all parts of a wild river area.

Part 5 Amendment of Land Valuation Act 2010

Clause 57 Act Amended amends the *Land Valuation Act 2010*.

Clause 58 Amendments of s 30 (Mining leases) provides for the instatement of the provisions of the *Valuation of Land Act 2010* which were removed when the Act was repealed and the *Land Valuation Act 2010* commenced.

The amendments relate to the reinstatement of the alternatives to allow for a valuation to be made of the surface area of the lease.

Clause 59 Amendments of s 31 (Geothermal, GHG and petroleum leases) provides for the instatement of the provisions of the *Valuation of Land Act 2010* which were removed when the Act was repealed and the *Land Valuation Act 2010* commenced.

The amendments relate to the reinstatement of the alternatives to allow for a valuation to be made of the surface area of the lease.

Part 6 Amendment of Mineral Resources Act 1989

Clause 60 Act amended provides that this part amends the *Mineral Resources Act 1989*.

Clause 61 Amendment of s 382 (Definitions for pt 10A) inserts new definitions for *low impact activity* (for mining tenements), *specified works* and *wild river special floodplain management area* that apply to the part.

The definition of limited hand sampling techniques is also amended to ensure that it applies consistently for mineral development licences, exploration permits and mining leases.

Clause 62 Amendment of s 383 (Grant of mining tenements in wild river areas) provides for the inclusion of the grant of a mineral development licence as a mining tenement to which the section applies and extends the section to cover mining activities in a wild river special floodplain management area.

The amended subsection (3) provides that if a mineral development licence is granted over an area that is a wild river high preservation area, or a wild river special floodplain management area, mining activities permitted in the licence area are restricted to low impact activities and only if conducted outside a watercourse or lake. However, for mining activities carried out on the mineral development licence area within a watercourse or lake in a wild river high preservation area, wild river special floodplain management area or nominated waterway, activities are restricted to limited hand sampling techniques.

New subsection (3A) provides that if a mining lease is granted over a wild river area, an authorised activity must not be carried out in the wild river special floodplain management area; as is currently the case for authorised

activities in a nominated waterway or on the surface of land in the wild river high preservation area. An exception to the prohibition is provided if the activity is for specified works. The operation of subsection (3A) is subject to subsection (3B).

New subsection (3B) provides that if a mining lease is granted over an area that is a wild river high preservation area, or a wild river special floodplain management area, mining activities permitted in the lease area are restricted to low impact activities if conducted outside a watercourse or lake, and restricted to limited hand sampling techniques if carried out within a watercourse or lake.

Section 383(4) is amended to clarify that the prohibitions under subsections (3A) and (3B) relating to activities in nominated waterways in areas subject to the grants of a mining tenement or mining lease do not apply in the circumstances specified in subsection (4).

Clause 63 Amendment of s 384 (Renewal of mining tenements in wild river areas) provides for the inclusion of renewal of a mineral development licence as a mining tenement to which the section applies and extends the section to cover mining activities in a wild river special floodplain management area.

The amended subsection (3) provides that if a mineral development licence is renewed over land in an area that is a wild river high preservation area, or a wild river special floodplain management area, mining activities permitted in the licence area are restricted to low impact activities if conducted outside a watercourse or lake. However, for mining activities carried out on a renewed mineral development licence within a watercourse or lake in a wild river high preservation area, wild river special floodplain management area or nominated waterway, activities are restricted to limited hand sampling techniques.

New subsection (3A) provides that if a mining lease is renewed over a wild river area, an authorised activity must not be carried out in a nominated waterway or on the surface of land in the wild river high preservation area or the wild river special floodplain management area. An exception is provided if the activity is for specified works. The operation of subsection (3A) is subject to subsection (3B).

New subsection (3B) provides that if a mining lease is renewed over an area that is a wild river high preservation area, or a wild river special floodplain management area, mining activities permitted in the lease area are restricted to low impact activities if conducted outside a watercourse or

lake, and restricted to limited hand sampling techniques if carried out within a watercourse or lake.

Section 384(4) is amended to clarify that the prohibitions under subsections (3A) and (3B) relating to activities in nominated waterways in areas subject to the renewal of a mining tenement or mining lease do not apply in the circumstances specified in subsection (4).

Part 7 Amendment of Petroleum Act 1923

Clause 64 Act amended provides that part 7 of the Bill amends the *Petroleum Act 1923* (Petroleum Act).

Clause 65 Amendment of s 2 (Definitions) amends section 2 of the Petroleum Act by omitting several definitions relevant to underground water management. These definitions are no longer required because the Bill establishes the framework for managing the underground water impacts of petroleum tenure holders in the *Water Act 2000* (Water Act).

This clause also amends the existing definition of *1923 Act petroleum tenure* to ensure that for the purpose of parts 6H, 6I, 6J and 6K of the Petroleum Act, the entry to land requirements for a *1923 Act petroleum tenure* also apply to activities authorised under a water monitoring authority.

This clause also inserts the definition for *underground water obligations* to mean a petroleum tenure holder's underground water obligation under chapter 3 of the Water Act and any other obligation under the Water Act, chapter 3 which the petroleum tenure holder is required to comply with, if the failure to comply with the obligation is an offence against that Act.

This clause also amends the definitions of *owner* and *well* to align with the Water Act framework.

Clause 66 Amendment of 74X (Compliance with land access code) amends section 74X of the Petroleum Act to extend the requirement to comply with the land access code to a person carrying out an authorised activity for the tenure under a water monitoring authority.

Clause 67 Omission of pt 6CA (Existing Water Act bores) omits part 6CA (Existing Water Act bores) from the Petroleum Act. Part 6CA sets out the make good obligation for tenure holders under the Petroleum Act, as

well as reporting requirements relating to tenure holders impacts on underground water. This part is no longer required in the Petroleum Act because the Bill establishes the framework for managing the underground water impacts of petroleum tenure holders in the Water Act.

Clause 68 Amendment of s 75WA (Who may apply for water monitoring authority) amends section 75WA of the Petroleum Act to recognise the new Water Act underground water management framework established by the Bill. Section 75WA is amended to recognise that in addition to the make good obligation, the new framework introduces other petroleum tenure holder obligations referred to as underground water obligations. This amendment will ensure a petroleum tenure holder may apply for a water monitoring authority for complying with these obligations.

Clause 69 Amendment of s 75WC (Deciding application for water monitoring authority) amends section 75WC of the Petroleum Act to align with the new Water Act underground water management framework established by the Bill. Section 75WC provides for the Minister administering the Petroleum Act to grant water monitoring authorities. This clause provides that before deciding the application, the Minister may seek advice from the chief executive of the Water Act about the application.

In granting a water monitoring authority the Minister may exclude or restrict the carrying out of water monitoring activities. This clause provides that exclusions or restrictions cannot prevent a petroleum tenure holder from complying with their underground water obligations under the Water Act.

Clause 70 Amendment of s 75WD (Operation of sdiv 2) amends section 75WD of the Petroleum Act to ensure that a person undertaking water monitoring activities under the authority of a water monitoring authority is required to comply with the land access code.

Clause 71 Amendment of s 75WE (Water monitoring activities) amends section 75WE of the Petroleum Act to make it clear that the holder of a water monitoring authority may carry out water monitoring activities in the area of the water monitoring authority for the purpose of complying with the holder's underground water obligations.

Clause 72 Amendment of s 75WN (Amending water monitoring authority by application) amends section 75WN of the Petroleum Act to ensure that prior to amending a water monitoring authority, the Minister

may seek advice from the chief executive of the Water Act about the application.

Clause 73 Amendment of s 78M (Required contents of entry notice) amends section 78M of the Petroleum Act to ensure that the notice of entry requirements under that section, that apply for entry to private land, apply to activities authorised in the area of a water monitoring authority the same way as they apply to authorised activities for a 1923 Act petroleum tenure.

Clause 74 Amendment of pt 6K, div 1, hdg (Compensation other than for notifiable road uses and make good obligation) omits a reference to make good obligation from the heading of part 6K, division 1 of the Petroleum Act, to reflect the relocation of the water management framework, including the make good obligations, to the Water Act.

Clause 75 Amendment of 79P (Application of div 1) amends section 79P of the Petroleum Act to omit a reference to make good agreements to reflect the relocation of the water management framework, including the make good obligations, to the Water Act.

Clause 76 Amendment of s 80U (When noncompliance action may be taken) amends section 80U of the Petroleum Act to allow noncompliance action to be taken, under the Petroleum Act, against a petroleum tenure holder who has been convicted of an offence under the Water Act, chapter 3.

The amendment allows the Minister to take noncompliance action where the chief executive of the department administering the Water Act has given the Minister a notice stating that the petroleum tenure holder has been convicted of an offence under the new chapter 3 of the Water Act, inserted by the Bill.

Establishing this new ground for noncompliance action to be taken under the Petroleum Act makes it clear that it is an obligation for a petroleum tenure holder to comply with the Water Act.

It is intended that where a tenure holder commits an offence or repeatedly commits an offence under Chapter 3 of the Water Act, the Water Act chief executive may notify the Petroleum Minister of the conviction. The tenure holder's entitlement to take water emanates from petroleum legislation while the protection of certain underground water reserves from adverse impacts from underground water extraction by petroleum tenure holders is a function of the Water Act.

If the Petroleum Minister has received a notice of such offence and is satisfied non-compliance action (such as suspension of tenure / water rights) under the Petroleum Act legislation should be taken to stop the impact or prevent the impact from occurring again, then the Petroleum Minister may take non-compliance action under the Petroleum legislation. In considering whether the holder is a suitable person to hold, or to continue to hold, the tenure the Minister must consider the capability criteria defined in the Petroleum Act.

The power to report the conviction to the Petroleum Minister is not controversial because the conviction is generally information in the public domain.

Clause 77 Amendment of s 86 (Water rights) amends section 86 of the Petroleum Act to make it clear that any water rights granted to an authority to prospect holder or lessee under this section are subject to a condition that the holder or lessee complies with their underground water obligations under the Water Act, chapter 3.

Clause 78 Insertion of new s 87 inserts new section 87 into the Petroleum Act which provides that a petroleum tenure holder may carry out water monitoring activities in the area of their petroleum tenure to comply with the underground water obligations for the tenure.

Section 87 Water monitoring activities makes it clear that water monitoring activities may include:

- gathering information about, or undertaking an assessment of, a water bore;
- monitoring effects of the exercise of underground water rights for the tenure;
- constructing or plugging and abandoning a water observation bore;
- gathering information for preparing an underground water impact report or final report under the Water Act, chapter 3;
- carrying out any other activity necessary to comply with an underground water obligation.

This section defines the term *underground water rights* to mean the taking of water necessarily taken as part of petroleum production or testing for petroleum production under one or more 1923 Act petroleum tenures.

This section also defines *water bore* to mean *water bore* as defined in schedule 4 of the Water Act.

NOTE: A water monitoring authority, granted under section 75WC of the Petroleum Act, authorises the carrying out of water monitoring activities outside the area of the petroleum tenure.

Clause 79 Amendment of schedule (Decisions subject to appeal) amends the schedule - Decisions subject to appeal of the Petroleum Act to omit the entry 'Provisions for existing Water Act bores', in recognition of the omission of the provisions about Water Act bores from the Petroleum Act.

Part 8 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 80 Act amended provides that part 8 of the Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act).

Clause 81 Amendment of s 185 (Underground water rights) amends section 185 of the Petroleum and Gas Act to make it clear that the water rights provided to a petroleum tenure holder under this section are subject to the tenure holder complying with their underground water obligations established by the Bill in chapter 3 of the Water Act.

Clause 82 Amendment of s 187 (Water monitoring activities) amends section 187 of the Petroleum and Gas Act to align with the Water Act underground water management framework to be established by the Bill. Section 187 specifies the water monitoring activities a petroleum tenure holder can carry out within the area of their tenure for the purpose of complying with underground water obligations. Water monitoring activities include:

- gathering information about, or undertaking an assessment of, a water bore;
- monitoring effects of the exercise of underground water rights for the tenure;
- constructing or plugging and abandoning a water observation bore;

- gathering information for preparing an underground water impact report or final report under the Water Act, chapter 3;
- carrying out any other activity necessary to comply with an underground water obligation.

This section also defines water bore to mean water bore as defined in schedule 4 of the Water Act.

NOTE: A water monitoring authority, granted under section 192 of the Petroleum and Gas Act, authorises the carrying out of water monitoring activities outside the area of the petroleum tenure.

Clause 83 Amendment of s 190 (Who may apply for water monitoring authority) amends section 190 of the Petroleum and Gas Act to recognise the new Water Act underground water management framework to be established by the Bill.

Section 190 is amended to recognise that in addition to the make good obligation, the new framework introduces other petroleum tenure holder obligations referred to as underground water obligations. This amendment will ensure a petroleum tenure holder may apply for a water monitoring authority for complying with these obligations.

Clause 84 Amendment of s 192 (Deciding application for water monitoring authority) amends section 192 of the Petroleum and Gas Act to align with the underground water management framework to be established by the Bill in the Water Act. Section 192 provides for the Minister administering the Petroleum and Gas Act to grant water monitoring authorities. This clause provides that before deciding the application, the Minister may seek advice from the chief executive of the Water Act about the application.

Also, currently when granting a water monitoring authority the Minister may exclude or restrict the carrying out of water monitoring activities. This clause provides that these exclusions or restrictions cannot prevent a petroleum tenure holder from complying with their underground water obligations under the Water Act.

Clause 85 Amendment of s 203 (Amending water monitoring authority by application) amends section 203 of the Petroleum and Gas Act to ensure that prior to amending a water monitoring authority, the Minister may seek advice from the chief executive of the Water Act about the application.

Clause 86 Omission of ch 2, pt 9 (Existing Water Act bores) omits part 9 (Existing Water Act bores) from the Petroleum and Gas Act. Part 9 sets out the make good obligation for tenure holders under the Petroleum Act, as well as reporting requirements relating to tenure holder's impacts on underground water. This part is no longer required in the Petroleum and Gas Act because the Bill establishes the framework for managing the underground water impacts of petroleum tenure holders in the Water Act.

Clause 87 Amendment of ch 5, pt 5, div 1, hdg (Compensation other than for notifiable road uses and make good obligation) omits a reference to make good obligation from the heading of chapter 5, part 5, division 1 of the Petroleum and Gas Act, to reflect the relocation of the water management framework, including the make good obligations, to the Water Act.

Clause 88 Amendment of s 531 (Application of div 1) amends section 531 of the Petroleum and Gas Act to omit a reference to make good agreements to reflect the relocation of the water management framework, including the make good obligations, to the Water Act.

Clause 89 Amendment of s 564 (Petroleum register) amends section 564 of the Petroleum and Gas Act to align with the Water Act underground water management framework to be established by the Bill.

Section 564 is amended to remove the requirement for the chief executive to keep a register of details about trigger thresholds in relation to the make good obligation for petroleum tenures. This is no longer required as the new chapter 3 Water Act framework, established by the Bill, will prescribe the trigger threshold.

Clause 90 Amendment of s 790 (Types of noncompliance action that may be taken) amends section 790 of the Petroleum and Gas Act to provide limitations on the type of compliance action which may be taken in certain circumstances.

The amendment provides that where the Minister is given a notice by the chief executive of the department administering the Water Act stating that the holder has been convicted of an offence against the Water Act, chapter 3 relating to the tenure, the Minister may not require the authority holder to pay the State a monetary penalty under section 790(1)(f) unless the petroleum tenure holder has agreed to the requirement being made instead of the taking of another noncompliance action.

Clause 91 Amendment of s 791 (When noncompliance action may be taken) amends section 791 of the Petroleum and Gas Act to allow noncompliance action to be taken, under the Petroleum and Gas Act, against a petroleum tenure holder who has been convicted of an offence under the Water Act, chapter 3.

The amendment allows the Minister to take noncompliance action where the chief executive of the department administering the Water Act has given the Minister a notice stating that the petroleum tenure holder has been convicted of an offence under the new chapter 3 of the Water Act, inserted by the Bill.

Establishing this new ground for noncompliance action to be taken under the Petroleum and Gas Act makes it clear that it is an obligation for a petroleum tenure holder to comply with the Water Act.

Clause 92 Amendment of sch 2 (Dictionary) amends schedule 2 of the Petroleum and Gas Act by omitting several definitions relevant to underground water management. These definitions are no longer required because the Bill establishes the framework for managing the underground water impacts of petroleum tenure holders in the Water Act.

This clause also inserts a definition for *underground water obligation* to mean a petroleum tenure holder's underground water obligation under the chapter 3 of the Water Act and any other obligation under the Water Act, chapter 3 which the petroleum tenure holder is required to comply with, if the failure to comply with the obligation is an offence against that Act.

Part 9 Amendment of Queensland Competition Authority Act 1997

Clause 93 Act amended states this Act amends the *Queensland Competition Authority Act 1997* (QCA Act).

Clause 94 Amendment s 10 (Authority's functions) amends the Authority's functions under section 10 (Authority's functions) to reflect the omission of part 5A, divisions 3-5. The Authority are also provided with additional functions to monitor compliance with water pricing determinations and to give information or advice to the Ministers on water

pricing determination codes or proposed water pricing determination codes.

Clause 95 Amendment of s 72 (Meaning of *service*) to provide that the definition of 'service' provided under this section does not apply to part 5A.

Clause 96 Amendment of pt 5A, hdg (Pricing and supply of water) amends the heading of part 5A (Pricing and supply of water) to reflect the omission of part 5A, divisions 3-5.

Clause 97 Amendment of s 170A (Application of part to partnerships and joint ventures) amends section 170A (Application of part to partnerships and joint ventures) to reflect the omission of part 5A, divisions 3-5.

Clause 98 Amendment of s 170B (Application of Act to authority for purposes of giving notices) amends section 170B (Application of Act to authority for purposes of giving notices) to clarify that this section applies to part 5A.

Clause 99 Insertion of new pt 5A, div 2, sdiv 4A inserts a new subdivision 4A (Other declarations) into part 5A, division 2 that declares, as monopoly water supply activities, the candidate water supply activity carried on by each of the listed water suppliers.

Each declaration will expire 10 years after commencement of the section.

Clause 100 Replacement of s 170Y (Effect of expiry or revocation of declaration) amends section 170Y (Effect of expiry or revocation of declaration) to reflect the omission of part 5A, divisions 3-5.

Clause 101 Replacement of pt 5A, div 2, sdiv 7, hdg (Investigations about monopoly water supply activities and making water pricing determinations) amends the part 5A, division 2, subdivision 7 heading (Investigations about monopoly water supply activities and making water pricing determinations) to reflect the amended process for the making of water pricing determinations.

Clause 102 Replacement of ss 170ZA to 170ZG replaces sections 170ZA to 170ZG to amend the process for the making of water pricing determinations.

Section 170ZA (Definitions for sdiv 7) provides definitions for part 5A, division 2, subdivision 7.

Section 170ZB (Authority must make water pricing determinations) requires the Authority to make a water pricing determination for the monopoly water supply activity of a water supplier that relates to a particular period as determined by the Authority. The determination must not be inconsistent with section 170ZH (Restrictions affecting making of water pricing determination) and must require the water supplier to adopt the pricing practices stated in the determination in carrying on the monopoly water supply activity. The determination may also impose requirements for any matter relating to the pricing practices that the Authority considers appropriate. In its determination of the pricing practices the water supplier must adopt, the Authority has the discretion to impose the form of regulation it considers appropriate, including, for example, price or revenue cap regulation or another form of regulation.

A determination must always be in place for the monopoly water supply activity. A determination must specify a date by which the Authority will issue a notice under new section 170ZC starting the process for the making of a determination for the next water pricing period. The determination for the next water pricing period must be finalised at least 1 month before the end of an existing determination.

Section 170ZC (Notice of intention to make a water pricing determination) provides that, before making a determination, the Authority must give a notice to the water supplier advising it that it intends to make a water pricing determination for the activity and inviting it to make a water pricing proposal. The notice must state the day by which the proposal must be given to the Authority. This date must not be less than 180 days after the notice is given. The notice may prescribe the form of the proposal and any other information requirements the Authority considers will help it make a determination.

Section 170ZD (When notice must be given) provides that, for the first water pricing determination made for the activity, the notice must be given within 90 days after the declaration of the monopoly water supply activity. For subsequent water pricing determinations, the notice must be given by the date set in the existing determination.

Section 170ZE (Draft water pricing determination) provides that, after consideration of the water pricing proposal (and any restrictions and other specified matters), the Authority must prepare a draft water pricing determination for a water pricing period. The water supplier (and other parties the Authority considers appropriate) will then be invited to make submissions on the draft determination.

Section 170ZF (Water pricing determination) provides that, following its consideration of the submissions, the Authority must make the final water pricing determination and give its reasons for making the determination.

Clause 103 Amendment of s 170ZH (Restrictions affecting making of water pricing determination) amends section 170ZH (Restrictions affecting making of water pricing determination). The amendments reflect the removal of part 5A, divisions 3-5 and provide that the Authority must not make a determination that is inconsistent with a code made under the new part 5A, division 3. It also clarifies that a water pricing determination has no effect to the extent it is inconsistent with any of the listed restrictions.

Clause 104 Amendment of s 170ZI (Matters to be considered by authority in making of water pricing determination). The omission of one of the matters to consider reflects the removal of part 5A, divisions 3-5. A new subsection is added to reflect that the Authority can consider any of the listed matters over a timeframe it considers relevant, which may not coincide with the period of the determination. New subsections (4)-(8) compel the Authority to explicitly consider the implementation of a price path should a water pricing determination have the effect of increasing customer prices more than the rate of inflation. The price path should moderate the effect of the price increase on customers, may be implemented over a timeframe the authority considers appropriate and must consider the legitimate business interests of the water supplier. The Authority needs to provide its reasons should it decide not to implement a price path.

Clause 105 Amendment of s 170ZJ (When water pricing determination takes effect) amends and clarifies that a water pricing determination expires at the end of the water pricing period specified in the determination.

Clause 106 Amendment of s 170ZM (Register of water pricing determinations) to require the Authority to include details of any amendments to determinations in the register of water pricing determinations that the Authority is required to keep.

Clause 107 Omission of pt 5A, divs 3-5 omits part 5A, divisions 3-5.

Clause 108 Insertion of new ss 170ZN-170ZU inserts new sections 170ZN to 170ZU.

Section 170ZN (Ending of authority's jurisdiction to determine pricing) states the circumstance in which the jurisdiction of the Authority to make a water pricing determination about a monopoly water supply activity will end.

Sections 170ZO (Application for amendment of pricing determination), 170ZP (Refusal to amend) and **170ZQ (Approval of application)** together establish a process for the amendment of a water pricing determination where a material change of circumstances has occurred. A water supplier of a monopoly water supply activity for which a water pricing determination has been made may apply to the Authority for the amendment of the determination. The Authority will only be able to amend a determination where it is satisfied that a material change of circumstances justifying the amendment has occurred. In deciding whether to amend a determination, the Authority must also be satisfied that the amendment does not contravene the restrictions listed in section 170ZH (Restrictions affecting making of water pricing determination) and that the Authority has complied with section 170ZI (Matters to be considered by authority in making water pricing determination). To prevent a water supplier from seeking the amendment of a determination without justifiable cause, the Authority may decide not to consider an application if it considers the application is vexatious or frivolous.

Section 170ZR (Amendment on authority's own initiative) allows the Authority, on its own initiative, to amend a water pricing determination for certain corrections.

Section 170ZS (Investigation for sbdiv 7) provides that the Authority may conduct an investigation under part 6 for the purposes of making a water pricing determination or deciding whether to amend a water pricing determination.

Section 170ZT (Requirement to give information) allows the Authority, when making a water pricing determination or deciding whether to amend a water pricing determination, to require a water supplier to give the Authority information the Authority reasonably requires to ensure it does not contravene section 170ZH (Restrictions affecting making of water pricing determination) and complies with section 170ZI (Matters to be considered by authority in making water pricing determination). This power to require information is in addition to the Authority's investigative powers under part 6.

Section 170ZU (Information to be considered by authority in making decisions) applies to a decision about the making of a draft water pricing determination, a water pricing determination or an amendment to a water pricing determination. This section provides that, if a person makes a submission or gives information to the Authority after the period specified by the Authority, the Authority may make the decision without taking that late information into account, if doing so is reasonable in all of the circumstances. The section specifies factors which the Authority must take into account when deciding whether it is reasonable in all of the circumstances to make the decision without taking late information into account. If a person fails to provide requested information or produce a requested document (whether within or after the specified period), the Authority may make the decision on the basis of the information available to it at the time.

Clause 109 Insertion of new pt 5A, div 3 inserts a new division 3 (Codes for water pricing determinations) into part 5A.

Sections 170ZV (Making codes), 170ZW (Code is subordinate legislation) and **170ZX (Purpose and contents of codes)** allow the Ministers to make codes stating requirements for the making of a water pricing determination for a monopoly water supply activity. The Ministers may only make a code after complying with the specified consultation requirements and considering any submissions or information received from the Authority or other persons during consultation. Codes are subordinate legislation and may provide for any issue about a monopoly water supply activity.

Clause 110 Insertion of new pt 5A, div 6, sdiv 1, hdg inserts a new subdivision 1 heading (Court orders) into part 5A, division 6 to categorise the provisions related to enforcement for part 5A.

Clause 111 Amendment of s 170ZZZF (Orders to enforce water supply and pricing determinations) to reflect the omission of part 5A, divisions 3-5.

Clause 112 Replacement of s 170ZZZL (Orders to enforce approved water supply undertaking) inserts a new subdivision 2 (Information requirement) into part 5A, division 6 and a new section replacing section 170ZZZL (Requirement to give information about compliance with particular provisions). This section allows the Authority to require information from a water supplier for the purpose of monitoring the water supplier's compliance with a water pricing determination.

Clause 113 Amendment of s 171 (Application of part) to reflect the omission of part 5A, divisions 3-5.

Clause 114 Amendment of s 172 (Public seminars etc.) to clarify that during an investigation the Authority may conduct public consultation, which may include the listed examples.

Clause 115 Replacement of s 187A (Application of part) to reflect the omission of part 5A, division 3-5.

Clause 116 Amendment of s 188 (Application of part) to reflect the omission of part 5A, divisions 3-5.

Clause 117 Omission of s 188A (Consolidation of arbitration of access and water supply disputes) to reflect the omission of part 5A, divisions 3-5.

Clause 118 Insertion of new s 235A (Proceedings for offences) to provide that proceedings for an offence against the QCA Act may be taken in a summary way under the *Justices Act 1886*.

Clause 119 Insertion of new pt 13 (Transitional provision for Queensland Competition Authority Amendment Act 2010).

Section 251 (First water pricing determination) provides specific requirements for the first water pricing determination that the Authority makes for the monopoly water supply activity carried on by each of the listed water suppliers.

Clause 120 Amendment of sch 2 (Dictionary) to:

- remove words no longer used in the QCA Act;
- insert definitions for additional words used in the QCA Act; and
- amend definitions to ensure they apply where appropriate to new sections of the QCA Act.

Part 10 Amendment of Queensland Institute of Medical Research Act 1945

Clause 121 Act amended specifies that Part 10 of the Bill amends the *Queensland Institute of Medical Research Act 1945*.

Clause 122 Insertion of new pt 1 hdg inserts a new heading for Part 1 Preliminary.

Clause 123 Amendment of s 2 (Definitions) amends section 2 by omitting the definitions of 'chief health officer', 'official member' and 'Trust'.

Clause 124 Insertion of new pt 2 hdg inserts a new heading for Part 2 The Institute and the Council.

Clause 125 Insertion of new s 4A (Functions of the Council) sets out the functions of the QIMR Council (the Council).

Clause 126 Replacement of s 5 (Membership of Council) replaces section 5 with a new section that specifies that the Council consists of at least 7, but not more than 11, members appointed by the Governor in Council. The new section also outlines the areas of skill, experience and expertise that the Minister may have regard to when recommending a person to the Governor in Council for appointment as a member of the Council.

Clause 127 Omission of s 5A (Nominee Council members) omits section 5A which is redundant as a consequence of the replacement of section 5.

Clause 128 Amendment of s 5B (Council members' term of appointment) amends section 5B by omitting the reference to an official member of the QIMR Council as a consequence of the replacement of section 5.

Clause 129 Omission of ss 8A-8N omits sections 8A to 8N which provide for the establishment of the QIMR Trust (the Trust), its membership, functions and other matters relating to the Trust. These sections are no longer required because of the abolition of the Trust by new section 24.

Clause 130 Amendment of s 80 (Trust deemed to be sanctioned under Collections Act 1966) amends section 80 by replacing the reference to 'Trust' with 'Council'. The effect of the amendment is that the Council's

functions will be deemed to be sanctioned under Part 3 of the *Collections Act 1966*.

Clause 131 Amendment of s 8P (Term of office to continue) amends section 8P so that the section will cease to apply to members of the Trust because of its abolition. The reference to an official member of the Council is also omitted as a consequence of the replacement of section 5.

Clause 132 Amendment of s 11A (Appointment of personnel for joint research projects) amends section 11A(3) to omit references to the Trust.

Clause 133 Amendment of s 13 (Funds and financial provisions) amends section 13(1) to omit the reference to the Trust.

Clause 134 Insertion of new pt 3 hdg inserts a new heading for Part 3 Other matters relating to the Institute and the Council.

Clause 135 Amendment of s 15 (Requirements in respect of property given, devised or bequeathed) amends section 15 by omitting subsection (4) which is redundant as it requires the Council to pay the moneys referred to in the provision to the Trust. Sub clause (2) replaces the references to 'Trust' with 'Council' in subsections (4A) and (5), which means that the Council will have the investment powers conferred by those provisions. Sub clause (2) also amends subsection (4A) to clarify that the Council's investment powers apply to amounts accepted by it under section 14 or derived from any property accepted by it.

Clause 136 Insertion of new pt 4 hdg and pt 4, div 1 hdg inserts a new heading for Part 4 Transitional provisions and for Division 1 Transitional provisions for Health Legislation Amendment Act 2001 of that part.

Clause 137 Insertion of new pt 4, div 2 inserts new Part 4, Division 2 which consists of new sections 23 to 33.

Section 23 Definitions for div 2 inserts definitions for the terms 'former Trust', 'Trust Fund' and 'trust abolition day' for the new Division 2.

Section 24 Abolition of the former Trust specifies that, at the trust abolition day, the former Trust is abolished and its members cease to hold office. The section also provides that it does not affect the member's appointment in another office and that no compensation is payable to the member because of the section.

Section 25 The Council is the legal successor specifies that the Council is the successor in law of the former Trust and that the section is not limited by another provision of the Act.

Section 26 Assets and liabilities etc. specifies that, at the trust abolition day, assets and liabilities of the former Trust become assets and liabilities of the Council and that an amount in the Trust Fund (established under section 8N of the Act) also becomes an asset of the Council. The section also provides that any contracts, undertakings and arrangements to which the former Trust is party, are taken to have been entered into, and may be enforced against or by, the Council. Also, property held on trust or subject to as condition, by the former Trust continues to be held on the same trust or condition.

Section 27 Proceedings allows for the commencement of proceedings, or continuation of existing proceedings by the Council where those proceedings could have been, or have been, started by or against the former Trust before the trust abolition day.

Section 28 Records of the former Trust specifies that on the trust abolition day records of the former Trust become records of the Council.

Section 29 Things done by the former Trust provides that, from the trust abolition day, things done by the former Trust before the trust abolition day are taken to have been done by the Council.

Section 30 Rights, interests and obligations of the former Trust under this Act specifies that on the trust abolition day any right, interest or obligation of the former Trust becomes a right, interest or obligation of the Council.

Section 31 References to the former Trust provides that references to the former Trust in an Act or document may be taken as a reference to the Council and that the official seal of the Trust affixed to document is taken to be the official seal of the Council.

Section 32 Members of the Council go out of office specifies that a 'relevant member' goes out of office when the section commences and that no compensation is payable to the relevant member because of their office ceasing. A 'relevant member' means a member of the Council, other than the chairperson.

Section 33 Chairperson does not go out of office clarifies that the chairperson does not go out of office and that the office is not vacated despite clause 126 of the Bill, which inserts new section 5 of the Act that provides for a new Council to be appointed. The section also specifies that the chairperson's term of appointment is taken to end 3 years from the date

the section commences. This is to ensure that the terms of appointment of all members of the Council end on the same date.

Part 11 Amendment of the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 138 Act amended provides that Part 9 of the bill amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (the DR Act).

Clause 139 Amendment of s 4 (Achievement of purposes) corrects an error in the note to section 4(2)(a) which incorrectly referred to the *Queensland Bulk Water Manufactured Water Authority* rather than the *Queensland Manufactured Water Authority.*

Clause 140 Insertion of new s 30A inserts a new s30A into Chapter 2, part 3 of the DR Act.

Section 30A Publication of participation agreement etc. inserts a new requirement to publish participation agreements which have been entered into under the DR Act. As participation agreements have effect as a contract between the parties, even where the participation agreement is made by the Minister as outlined in s26, this new requirement would also apply so as to require publication of the participation scheme, despite the parties not having entered into it themselves. Any amendments to the participation agreement must also be separately published in addition to publication of the original participation agreement. Publication is to be on both the distributor-retailer's website and the participant council's website. In addition to publishing the actual participation agreements (and any amendments), a summary of the participation agreement (as amended) must also be published. The summary must cover the matters listed in s20(1) of the DR Act, at a minimum. The purpose of the provision is to allow customers of the distributor-retailers, and constituents of the participating local council, ready access to the participation agreements and to provide a greater awareness of the relationship between distributor-retailers and their participating councils.

Clause 141 Replacement of s 48 (Chief executive officer's responsibilities) omits the existing, and inserts a new, section 48 of the DR Act.

Section 48 Chief executive officer's responsibilities retains the existing provision for the chief executive officer to be responsible for managing the affairs of the distributor-retailer in accordance with the Act, other legislation and the board's policies. It clarifies that the chief executive officer is taken to be the distributor retailer's principal officer for the purposes of the *Right to Information Act 2009*, *Information Privacy Act 2009* and *Evidence Act 1977*.

This amendment is considered desirable because the distributor- retailers do not readily correspond to the meaning of "public authority" in those Acts and, consequently, the identification of the principal officer was not explicitly provided for. This amendment clarifies the position. However, this clarification is not intended to imply that the chief executive officers were not the principal officers for the purposes of that legislation prior to the amendment being made.

The new section 48 also clarifies that the chief executive officers performance of the responsibility for managing the distributor retailer's affairs is subject to the boards directions.

Clause 142 Amendment of s 53AE (Provision for market rules) provides that, since local governments are no longer water and wastewater service providers in SEQ, they no longer need to be registered as grid customers.

Clause 143 Amendment of ch 2A, pt 3, heading (Charges for water services and wastewater services) amends the heading to chapter 2A part 3 to indicate that the following provisions will address other matters besides charges for water services and wastewater services.

Clause 144 Amendment of s 53AS (Application of pt 3) amends section 53AS to bring infrastructure charges levied by, or transferred to, the distributor retailers, which are overdue, within the same regime as overdue charges for water and wastewater services and costs of giving access to registered services.

The effect of the amended provision is that the owner of the land for the time being will be liable to pay the overdue infrastructure charge along with overdue charges for water and wastewater services. The overdue

amount, including overdue infrastructure charges, but not interest on the amount, will become a charge on the premises.

Clause 145 Amendment of s53AT (Interest) corrects an error in the Act, now making reference to the Distributor-retailer rather than local government.

Clause 146 Insertion of new ch 2A, pt 3A Personal details requirements inserts a new chapter 2A part 3A consisting of new sections 53AXA and 53 AXD.

Section 53AXA Application of pt 3A provides that Part 3a applies if the authorised person appointed by a distributor-retailer finds a person either committing an infringement notice offence, or in circumstances that lead the authorised person to reasonably suspect that a person has just committed an offence against the Act, or has information that leads the authorised person to reasonably suspect a person has just committed an offence against the Act.

Section 53AXB Power to require name and residential address provides the power for an authorised person appointed by a distributor retailer to require a person to state the persons' name and address in the circumstances described in section 53AXA. The power is based on that of authorised officers in sections 432 and 433 of the *Water Supply (Safety and Reliability) Act 2008***.** It is also not dissimilar to the power of local government authorised persons in section 127 of the *Local Government Act 2009* although the power to require evidence of name or residential address is wider.

Section 53AXC Power to require evidence of name or residential address provides that, as with authorised officers under the *Water Supply (Safety and Reliability) Act 2008,* the authorised persons of distributor retailers will be able to require evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to be in possession of such evidence or otherwise be able to give such evidence.

The maximum penalty is 35 penalty units, consistent with the existing power to require names and addresses for trade waste officers in sections 53DB to DE and with the power of local government authorised persons in section 127 of the *Local Government Act 2009.*

Section 53AXD Exception if infringement notice offence not proved provides an exception to the application of part 3a. The person does not

commit an offence under this part if the requirement was made because the authorised person suspected the person has committed an infringement notice offence and the person is not proved to have committed the offence.

Clause 147 Omission of s 53AZ (Code supersedes customer service standards) omits s53AZ. Section 53AZ provided that the customer service standards applicable to water services providers such as the distributor-retailers, under the *Water Supply (Safety and Reliability) Act 2008* (the Water Supply Act) no longer apply on the happening of either: (a) the first making of the Customer Water and Wastewater Code under the DR Act; or (b) 30 June 2011 – whichever is the latter. As the code is being introduced before 30 June 2011, it is necessary to remove this section to allow for the code, made under the DR Act, to take over from the customer service standards made under the Water Supply Act. See also clause 174 of the bill which provides that on commencement of that section, customer service standards under the Water Supply Act no longer apply to distributor-retailers.

Clause 148 Replacement of ch 2C, pt 2, div 7 (Power to require name and address in connection with trade waste) replaces the existing chapter 2C, part 2, division 7 (power to require name and address in connection with trade waste) for consistency with the new chapter 2A part 3A.

Sections 53DB (Application of div 7), 53DC (Power to require name and residential address, 53DD (Power to require evidence of name or residential address) and 53DE (Exception if trade waste offence not proved) provide a power for authorised persons to require names and addresses in connection with infringement notice offences. The existing provisions contained the more limited power to require evidence of the correctness of the stated name and address which is provided by section 127 of the *Local Government Act 2009*. The new provisions will provide trade waste officers with the same powers as authorised persons generally.

Clause 149 Amendment of ch 4, heading Customer water and wastewater code amends the heading to chapter 4 to reflect the fact that the chapter now includes a number of new provisions around customer service standards, which are in addition to those imposed by the Customer Water and Wastewater Code.

Clause 150 Amendment of s 93 (Minister's power to make code) amends s93(2) so that the Customer Water and Wastewater Code is not subordinate legislation. The purpose of the amendment is to allow for the

code to be made by the Minister as a statutory instrument. This will provide for the code to be made in a more customer-friendly format and to place the code on the same legislative footing as the Gas Industry Code and Electricity Industry Code for which the Energy and Water Ombudsman also provides a small-customer dispute resolution service. Those energy codes set out a similar type of customer service standard regime to that which is eventually envisaged for water and wastewater services under the Customer Water and Wastewater Code. The two energy codes are also statutory instruments which are not subject to tabling for disallowance. It is envisaged that the code would eventually contain similar levels of detail making it inappropriate to draft the code as subordinate legislation. As the code is not subordinate legislation, the amendment reflects that it is no longer required to be approved by the Governor in Council.

Clause 151 Amendment of s 94 (Particular matters code may provide for) removes subsection (h) which allowed the Customer Water and Wastewater Code itself to provide for a code administrator. There is no longer a 'code administrator' as such, but new provisions in the new Part 3A which deal with code administration more generally.

Additionally, a number of other provisions have been inserted to clarify that the code may, itself, set the scope of customers it deals with, or the types of water or wastewater services it applies to. For example, the code may set customer service standards for all customers of the distributor-retailers or only for 'small customers' as defined by the code (such as residential or small business customers). Similarly it may apply to all of its water services and wastewater services, or it may exclude some services such as trade waste services or stand-alone water recycling services. As indicated by the new subsection (4), the code may impose additional requirements to those mentioned within part 4. The purpose of this section is to ensure that the code can provide for additional operational detail around code matters where this is not appropriate in the Act (provided that there is not an inconsistency) or to provide for additional matters not included in part 4 (provided they are within the ambit of s94).

Other minor amendments have been made to s94(C)(ii) to reflect that there are no longer offences for breaching the Code, but instead, that the Energy and Water Ombudsman may hear disputes about a failure to meet the standards contained in the code, provided that the dispute is able to be referred under s18A of the *Energy and Ombudsman Act 2006*. Referrals can only occur under that act if the dispute between a distributor-retailer and a small customer (water).

Clause 152 Replacement of new ss 94A Obligation to comply with code omits section 94A and replaces with section 94AA Gazettal and taking effect of code and section 94 AB Tabling of code.

Section 94AA Gazettal and taking effect of code requires that the Minister publish a gazette notice stating that the Minister has made the Customer Water and Wastewater Code and where it may be inspected. The notice must be published as soon as practicable after the making of the code. The effective date of the code is the latter of the date stated in the gazetted notice or the date of the gazette notice itself if no effective date is given in the gazette notice.

Section 94AB Tabling of code requires the Minister to table a copy of the Customer Water and Wastewater Code in the Legislative Assembly for information purposes, within 21 sitting days of the effective date of the code. A failure to comply with the tabling requirement will not affect the code's ongoing effect.

Clause 153 Amendment of s 95 (Public notice about availability of draft code) amends the timeframe for the making of the first Customer Water and Wastewater Code to allow for a 14-day submission period for the making of the first Customer and Water and Wastewater Customer Code, rather than the ordinary 28 day period.

Clause 154 Omission of s 98 (No regulatory impact statement for code) amends the Act by removing the regulatory impact statement requirements when making or amending the code. This omission reflects the fact that the code is no longer to be made as subordinate legislation, but will instead be a statutory instrument.

Clause 155 Insertion of new ch4, pt3A inserts a new part into chapter 4 of the DR Act.

Part 3A Code administration

Section 99A Commission to advise Minister inserts a new provision enabling the Queensland Water Commission to advise the Minister about the contents of the Customer Water and Wastewater Code or matters it thinks should be dealt with in the code. This may include providing advice around amendments to the code as proposed by stakeholders or as proposed by the Minister, as well as instances where the code is made or amended due to the Commission's own recommendations.

Section 99AA Distributor-retailer to give report to commission requires a distributor-retailer to provide a report about complaints received by the

distributor-retailer relating to matters mentioned in the code. The provision provides for a regulation to prescribe how the report must be given (i.e. its format, content and timing). A failure to provide a report in the way provided for in the regulation attracts a maximum penalty of 100 penalty units.

Clause 156 Amendment of ch4, pt4, hdg (Interim customer service provisions) amends the heading of the part to reflect that the part no longer contains the interim customer service standards, which applied to distributor-retailers, until such time as the Customer Water and Wastewater Code was made by the Minister. The part now contains provisions about other customer service matters (other than those dealt with under the code). In many cases the new provisions are the same (such as the provisions regarding when a meter is taken to register accurately in Division 2) or similar to those which existed as interim provisions (such as the customer service charter provisions in ss99AD to 99AE which have only been slightly modified). In other cases, there have been completely new requirements applied (such as the new requirement to publish current and proposed charges under s99ATA).

It should be noted that the provisions under this part apply to all customers of the distributor-retailers (i.e. both large and small customers), even if the customer service provisions under the code do not apply to them. The provisions also apply to all water and wastewater services of the distributor-retailers (unless otherwise stated), even if the code does not apply to the relevant services.

Clause 157 Omission of s 99AA and 99AB omits these sections from the DR Act. The purpose of the omission is to remove the interim standards (on the commencement of the section) that applied until such time as the Minister made the Customer Water and Wastewater Code. Under the commencement provisions, the interim standards will be removed upon the code taking effect. Until such time as those provisions are commenced, the existing s99AA and 99AB will continue.

It should be noted that under clause 115 of the bill, section 99AF of the bill as amended (Obligation to comply with part) will be relocated and renumbered as the new 99A, upon commencement of this section (i.e. when the code is brought into effect).

Clause 158 Amendment of s 99AD (Customer service charter) amends the section by requiring the Customer Service Charter (summarising the distributor-retailer's obligations to its customers) to include both

obligations under the Customer Water and Wastewater Code, as well as the obligations under this part. The purpose of this amendment is so that the distributor-retailer's charter will make clear which obligations apply to all customers, and which only apply to those customers who are dealt with by the Code.

Clause 159 Replacement of s 99AE (Access to customer service charter) replaces the existing s99AE with a new s99AE.

Section 99AE Updating of and access to customer service charter inserts provisions regarding updates to customer service charters as well as access provisions. The amendment requires the published customer service charter to be kept consistent with any updates to either the Customer Water and Wastewater Code or to this part. The provision requires that the distributor-retailer provide the first copy of a customer service charter to any person (not just customers) if asked, free of charge. Providing a 'free of charge' copy would also include providing first copies of amended charters free of charge as well. After the first copy is provided it is intended that the distributor-retailer could charge a reasonable charge. A requirement has also been added so that distributor-retailers must, on a one-off basis, include a copy of the customer service charter with a customers' account. This must be done for the first billing cycle after the amendments come into effect, or other time agreed by the Minister. As the customer service charters must be consistent with the Customer Water and Wastewater Code, the customer service charter would be required to include reference to the fact that small customers under the Customer Water and Wastewater Code, have access to the Energy and Water Ombudsman's dispute resolution service for disputes about matters outlined in the Code.

Clause 160 Amendment, relocation and renumbering of s 99AF (Obligation to comply with part) inserts new provisions into 99AF as well as relocating and renumbering the section (as amended) as s99A. While the penalty provision for breaching the Customer Water and Wastewater Code has been removed, as indicated elsewhere in the explanatory notes, the Energy and Water Ombudsman has powers to make enforceable orders in relation to disputes under the code and the Queensland Water Commission has the power to enforce provisions of the Act where the circumstances creating the breach of the code are also an offence under the Act. Subsection (2) of the amendment clarifies this. In the case of the Commission's powers, the purpose of this section is to allow the Commission to take action in cases where the wrong-doing extends past

(but could also include) the individual dispute heard by the Energy and Water Ombudsman. An example might be an instance where a distributor-retailer failed to comply with meter reading requirements applicable both under the code and the Act. In this case, the Queensland Water Commission may decide to take action where it was apparent that the wrong-doing extended not only to a customer who has brought the matter to the Energy and Water Ombudsman's attention, but also in relation to a number of other customers.

Clause 161 Insertion of new s 99AF inserts a new s99AF.

Section 99AF Distributor-retailer may accept meter reading by customer inserts a new provision which enables a distributor-retailer to accept a meter reading taken by the customer recording their consumption for a period (i.e. the billing period). Under the provision, the customer must have asked for this to occur on a case by case basis. The purpose of this provision is to ensure that a distributor-retailer does not attempt to move its own metering obligations under the Act onto the customer, but continues to allow the customer to insist on an actual meter reading provided by the customer if the distributor-retailer is not able to comply with the Act's requirements due to a reasonable excuse such as lack of access due to a dangerous dog on the premises.

Clause 162 Amendment of s 99AH (Methods of charging) amends the heading to Methods and basics for charging to indicate that the section now not only stipulates the method of charging (e.g. meter reading verses an estimated account) but also the basis for charging (i.e. how estimated accounts are to be worked out).

Under s99AG, a distributor-retailer is required to take reasonable steps to read each customer's water meter at least once a year. Subsection (2) adds to that obligation by including a new requirement that an estimated account cannot be given for 2 or more consecutive periods. Reasonable excuse provisions apply for breaches of either of sub-section (e.g. for lack of access etc). The practical effect of these sections, when read together, is that distributor-retailers will be required, ordinarily to do an actual meter read of the customer's meter at least twice a year.

Subsection (4) places new requirements around how estimated accounts may be calculated. The default provision is that where possible a customer's estimated account must be based on the consumption at the premises at the time the customer owned the premises (be it tenanted or not). If the customer has not owned the relevant premises long enough to

have a full billing cycle upon which to base an estimated account, the distributor-retailer may base the estimate on another agreed methodology or other reasonable basis decided by the distributor retailer. This might include using the history of usage at the premises as the basis, even if the customer did not own the premises at the time. It might also include basing the estimate on a typical usage for the type of customer and premises (e.g. typical residential usage).

Subsection (5) requires that in all cases (but subject to reasonable excuses in s99AA) that a first account given to a customer must be based on an actual meter reading. For example where a customer purchases a new property, under this provision their first account would be based on an actual meter read.

Clause 163 Amendment of s 99AR (Non-residential customers) omits the words *under section 99AQ(2)* from section 99AR.

Clause 164 Insertion of new s 99ASA inserts a new section 99ASA after section 99AS into the DR Act.

Section 99ASA Annual notice of security inserts a new section requiring a distributor-retailer to provide a customer who has provided a security deposit under the part, with an annual notice as to the status of the security deposit.

Clause 165 Amendment of s 99AT (Restricting water supply for not paying charges or giving security) amends section 99AT(1)(b) having regard to the definitions of non-residential customer and residential customer to be inserted by clause 13 but makes no substantive alteration to its effect.

Clause 166 Insertion of new ch4, pt4, div 3, sdiv 3, inserts a new part into chapter 4 of the DR Act.

Subdivision 3 Publication of, and exemption from, charges

Section 99ATA Publication etc. of charges inserts a new section requiring publication of the Distributor-retailer's charges. The section requires the Distributor-retailer to publish and maintain its charges for its water and wastewater services on its website.

In addition it must also publish the following financial year's charges. The requirement to publish charges occurs at two stages, the first being on 31 March each year and the second at 30 June each year. In both cases, the charges related to the charges for the following year. For example, on 31 March 2011, Distributor-retailers must publish their proposal for prices for

the period for 1 July 2011 – 30 June 2012. On 30 June 2011, the final price for that same period and a notice of the final charge must be published. The publications on 31 March and 30 June each year, must be on both the distributor-retailer's website an in a newspaper. Unlike the website publication, the newspaper publication does not need to include the actual details of the charge, but simply the fact that the details of the proposed or final charges can be found on its website. The newspaper notice is also required to inform people where they can find the website and where they can obtain hard copies of the charges. First hard copies are to be made available free of charge.

Section 99ATB Exemption from charges amends the Act so as to provide for exemptions from non-consumptive water service and wastewater service charges for certain entities in relation to certain premises where the entity has not yet requested a service.

- Before the distributor-retailers took responsibility for providing water and wastewater services in the SEQ region under the DR Act, certain entities (in relation to certain premises listed as non-rateable land under s93(3) of the *Local Government Act 2009*) were exempt from being levied for non-consumptive charges for water and wastewater service unless they had specifically requested services to be supplied to the premises pursuant to s40 of the Local Government (Finance, Plans and Reporting) Regulation 2010.
- The amendment seeks to preserve this 'pre-water reform' status by providing that premises previously exempted continue to be exempted. The exception to this is that entities and premises listed under s93(3)(h) and (i) of the *Local Government Act 1993* will no longer be able to obtain the exemption for non-consumptive water and wastewater charges under this section (unless prescribed by a regulation under the DR Act). Those provisions apply to exemptions granted as a result of resolutions made by local governments.
- The purpose of not extending the exemption from non-consumptive charges to those circumstances is to prevent the distributor-retailers from being subject to an expanding and undefined category of exemptions. Furthermore, it is not considered appropriate that the SEQ local governments should be able to grant exemptions from water and wastewater charges for services now provided by the distributor-retailers. It is possible for premises to be exempted by being prescribed in a regulation and for a regulation to be made about the provision of concessions by the distributor-retailers (s 102(2)(e) of

the D-R Act). The regulation making powers offer a way to appropriately respond to entities that fall outside the proposed exemptions that may be worthy candidates for exemption.

Section 99ATC Local government must provide information to distributor-retailer requires a participating local government to provide a distributor-retailer with details of which entities (in relation to particular premises) held exemptions from being given an account for non-rateable land. The requirement also includes a requirement for a participating local government to give update notices when land starts being non-rateable or existing land stops being non-rateable (such as the conversion of unallocated state land to freehold title etc).

Clause 167 Amendment of s 99AU (Application of div 4) amends the Act to correct a minor typographical error.

Clause 168 Amendment of s 99AV (Matters required to be stated in account) provides for a new matter which must be stated in accounts given for water and wastewater services. Under this section the account must state whether the account is based upon an actual or estimated meter read. The purpose of this provision is to provide customers of distributor-retailers, disclosure of the method on which their account has been prepared. The amendment also clarifies that for comparisons on an account between current use and use under the last account, which the comparison can be between actual and estimated 'reads'.

The provision in s99AV(1)(h) has also been removed. Instead of providing details on accounts, any relevant details of security deposits must be given in the way outlined in the new s99ASA.

A new provision has been inserted into s99AV(1) so as to allow for a regulation to state other matters which must be stated in a customer account.

The provision in s99AV(1)(e) has a typographical error corrected so that the word "enquires" becomes "enquiries".

Section 99AV(1)(l) is also amended to make clear that the requirement for an account to include a comparison with the consumption of other customers only applies to accounts for residential customers and not accounts issued to non-residential customers. It is not considered appropriate to compare the consumption of non-residential customers who will be using water for different purposes and under different arrangements

Clause 169 Insertion of new s 100DA inserts a new section 100DA into the Act.

Section 100DA Requirement of distributor-retailer to give information requires a distributor-retailer to give the Queensland Water Commission written information, if requested by the Commission, in the circumstance where the Commission reasonably requires the information to administer the Act. Reference to providing written information would include creating information to give to the Commission on request, in addition to providing written information already in existence. When making the request, the Commission is obliged to inform the distributor-retailer that a failure to comply with the requirement is an offence, unless the distributor-retailer has a reasonable excuse.

Clause 170 Amendment of s 100F (Application of Water Supply Act enforcement provisions for particular offences) amends the sections which can be used for the purpose of 'adopting' the Water Supply Act provisions in Chapter 5, Part 9 (enforcement proceedings). This now includes s30A (publication of participation agreement); s99AA (obligation to comply with part 4); and s112 (transitional requirements for publishing participation agreements).

Clause 171 Amendment of s 109 (Deferral of distributor-retailer 's

liability for additional public entity roadwork expenses') removes section 109(2) which defines existing water infrastructure as water infrastructure in the distributor-retailer's geographic area the construction of which was finished before 1 July 2010.

Clause 172 Insertion of new ch 6, pt 3 inserts a new a new chapter for transitional provisions into the Act.

Part 3 Transitional provisions for the Water and Other Legislation Amendment Act 2010

Section 111 Definition for pt 3 provides for definitions applying for the transitional provisions in part 3.

Section 112 Amendments to ss 53AE and 53AS provides for sections 53AE and 53AS to be of retrospective effect to 1 July 2010.

Section 113 Publication of participation agreements etc. provides the transitional provisions necessary to affect the intention behind the requirements to first publish participation agreements and summaries of them outlined in s30A. The transitional provision requires publication of participation agreements in force prior to commencement of the section (including a summary of the agreement which addresses the matters in s20(1) as a minimum) and publication within 30 days after commencement of the section. Publication is by way of publication on both the distributor-retailers' and the participating local councils' websites.

Section 114 Refund of certain charges is a transitional provision to allow for an entity to seek a refund of any money paid to a distributor-retailer in certain circumstances. The refund will be payable if the entity is exempt from the charge under s99ATB. The provision operates retrospectively. A distributor-retailer is not obliged to provide the refund until requested by the relevant entity, in which case the refund must be given within 30 days of the request. The purpose of the provision is to put both parties on the footing which would have been in place had the exemptions in relation to non-rateable land been continued, as was the policy intention. Entities which hold non-rateable land under sections s93(3)(h) and (i) of the *Local Government Act 2009* are not eligible for the continuing exemptions, nor refunds for the reasons outlined in the explanatory notes for section 99ATB.

Section 115 Matters relating to the first making of code provides that for the first time the Customer Water and Wastewater Code is prepared for consultation under s95, the provisions of the amendments (including those not commencing immediately upon assent), could form the basis for the drafting of the code. This provision is necessary to ensure that when the code is released for consultation, it will be consistent with the provisions of the Act, which are likely to be in place at the time the code begins to operate.

Clause 173 Amendment of schedule (Dictionary) amends the dictionary to define, an 'infringement notice offence', a 'non-residential customer', an 'offence warning', 'reasonably suspects' and 'residential customer'.

Part 12 Amendment of Sustainable Planning Act 2009

Clause 174 Act amended provides that this part amends the *Sustainable Planning Act 2009* (SPA).

Clause 175 Amendment of sch 1 (Prohibited development) amends the prohibitions on certain development in wild river areas.

Clause 175(1) omits and replaces Schedule 1, item 1. The new item 1 provides for the prohibition of the following development for agricultural or animal husbandry activities in a wild river area in the relevant parts of a wild river area:

Development that is—

(a) a material change of use of premises in a wild river area if the proposed use is for agricultural activities, to the extent the development is—

(i) in a wild river high preservation area; or

(ii) in a wild river preservation area or wild river special floodplain management area in relation to the production of a high risk species; or

(iii) in a wild river special floodplain management area and for agricultural activities that involve irrigation; or

(b) a material change of use of premises in a wild river area if the proposed use is for animal husbandry activities, to the extent the development is in a wild river high preservation area or a wild river special floodplain management area; or

(c) operational work for agricultural activities in a wild river area, if the operations are assessable development prescribed under section 232(1), to the extent the development is—

(i) in a wild river high preservation area; or

(ii) in a wild river preservation area or a wild river special floodplain management area in relation to the production of a high risk species; or

(d) operational work for animal husbandry activities in a wild river area, if the operations are assessable development prescribed under section

232(1), to the extent the development is in a wild river high preservation area or a wild river special floodplain management area.

Clause 175(2) amends the prohibitions relating to a material change of use of premises that is aquaculture or operational work that is the construction or raising of waterway barrier works to recognise wild river special floodplain management areas. The existing item 6 is replaced with a new item 6 which provides a prohibition of this type of development in a wild river high preservation area or a wild river special floodplain management area.

The amendment also provides an exemption from the prohibition for development involving operational work that is construction or raising of waterway barrier works in a wild river high preservation area or a wild river special floodplain management area if the development is:

- specified works, as defined in the Wild Rivers Act; or
- maintenance of existing waterway barrier works; or
- construction of temporary waterway barrier works, if the works are necessary to maintain existing works, or
- construction or raising of waterway barrier works used for storing water, but only if the water to be stored by the works is to be taken for town water supply purposes; or
- authorised wild river operational work, as defined in the Wild Rivers Act.

Clause 175(4) provides an exemption to the existing prohibitions in item 10 of schedule 1 relating to an environmentally relevant activity to extract quarry material to meet the needs of essential development.

Clauses 175(3), and (6) amend items 10 and 11 of schedule 1 by extending the existing prohibitions relating to an environmentally relevant activity to also apply in a wild river special floodplain management area.

Clause 175(5) removes the existing heading for item 11 in order to consolidate the prohibitions under items 9, 10 and 11 of schedule 1 under a single heading relating to environmentally relevant activities in a wild river area.

Clause 175(7) amends item 12, paragraph (a) of schedule 1 to extend the prohibition relating to operational works that interfere with the flow of water in a watercourse, lake or spring to also apply in a wild river special floodplain management area.

Clause 175(8) also amends item 12 of schedule 1 to provide some exemptions from the prohibition for works proposed in a wild river high preservation area or wild river special floodplain management area to allow for development applications to be made in respect of the following:

- works necessary to carry out maintenance of works, for example construction of a coffer dam in a watercourse to allow maintenance work on a weir; or
- works that increase the interference with water in the Lake Eyre Basin, if the interference is necessary for impounding water that is to be taken for town water supply purposes. This exemption allows for the construction or raising of a dam or weir, but only if the water impounded by the works is to be taken for town water supply purposes in the Lake Eyre basin; or
- authorised wild river operational work, which is operational works that take or interfere with water that are necessary for carrying out an activity or taking of a natural resource that was authorised at the time the wild river declaration was made.

Clause 175(9) amends item 12, paragraph (b) to exempt authorised wild river operational work from the prohibition, which means development that is operational works that take or interfere with water in a nominated waterway are not prohibited if the works are necessary for carrying out an activity or taking of a natural resource that was authorised at the time the wild river declaration was made.

Clause 175(10) inserts a wild river special floodplain management area into item 12, paragraph (c) to extend the existing prohibition relating to operational works that take overland flow water to also apply in a wild river special floodplain management area.

Clause 175(11) inserts a wild river special floodplain management area into item 12, paragraph (d) to extend the existing prohibition relating to operational works that interfere with overland flow water to also apply in a wild river special floodplain management area

Clause 176 Amendment of sch 3 (Dictionary) inserts new definitions for *authorised wild river operational work, charges schedule (water netserv plan), connections policy, infrastructure charge (water netserv plan), infrastructure charges notice (water netserv plan), Lake Eyre Basin, water netserv plan* and *wild river special floodplain management area*.

Part 13 Amendment of Vegetation Management Act 1999

Clause 177 Act amended provides that this part amends the *Vegetation Management Act 1999*.

Clause 178 Amendment of s 17 (Making declaration) provides for the exclusion of part of a wild river high preservation area from an area that is taken to be an area of high conservation value (an *excluded part*). A new subsection (4) inserts a definition of an *excluded part* of an area, for a wild river high preservation area, to mean a part of the area that:

(a) is a category X area or a category C area on a property map of assessable vegetation (PMAV) current at the time the wild river declaration for the area took effect; or

(b) is an area that, under section 20CA, the chief executive can make as a category X area on a PMAV; or

(c) is an area that, under section 20CA, the chief executive could make as a category X area on a PMAV if the area were not a declared area; or

(d) is regrowth vegetation that has not been cleared since 31 December 1989.

Clause 179 Amendment of s 20F (Copies of PMAV given to owners) changes the requirements for who must be given a copy of a PMAV following the making, or replacing, of a PMAV. The clause amends the section by providing a definition of an affected owner as an owner of land that will be affected by a change to the boundary of a vegetation category area in a PMAV. Furthermore, the amendment requires that a copy of a PMAV need only be given to an affected owner. The effect of this amendment is that where a PMAV covering a large number of properties is replaced due to changes to the boundary of a vegetation category on a single property, only the owner/s of the affected property/s must be given a copy of the replacement PMAV.

Clause 179(3) inserts a definition for the section of *affected owner.*

Clause 180 Amendment of s 22A (Particular vegetation clearing applications may be assessed) removes the prohibition relating to an application for clearing vegetation in a wild river high preservation area, if the application is for a relevant purpose that is fodder harvesting or thinning.

Part 14 Amendment of the Water Act 2000

Clause 181 Act amended provides that this part amends the *Water Act 2000*.

Clause 182 Amendment of s 203 (Definitions for pt 6) omits the definition for *petroleum tenure holder* from section 203 of the Water Act.

NOTE: Clause 206 of the Bill relocates this definition in schedule 4 (Dictionary) as it is now also relevant for the new chapter 3 of the Water Act established by the Bill.

Clause 183 Amendment of s 266 (Applying for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring) extends the application of the section to include activities in a wild river special floodplain management area. Section 266(4)(a) is amended to provide that an application for a riverine protection permit that relates to a wild river special floodplain management area is taken not to have been made, unless it relates to the activities specified under the subsection.

Clause 184 Amendment of s 268 (Criteria for deciding application for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring) amends the criteria under section 268(h) of the Water Act for deciding an application for a riverine protection permit, if the application relates to a wild river area. The amendment clarifies that the section applies only to applications in a wild river high preservation area, a wild river special floodplain management area or a nominated waterway and requires that the chief executive, when deciding an application for a riverine protection permit, must consider the wild river declaration for the area and any applicable code for the activities.

Clause 185 Amendment of s 280 (Applying for allocation of quarry material) removes from subsection (3) the requirement that an application for a quarry allocation notice in a wild river area may only be made if the material to be removed is to be used for specified works, or residential complexes. The amendment means that an application may be made regardless of the proposed end use of the material, provided that the material removed under the notice is to be used in the wild river area.

Clause 186 Amendment of s 282 (Criteria for deciding application for allocation of quarry material) replaces subsection (3)(a) with a new

subsection that provides if any part of an application for a quarry allocation notice relates to a wild river area, the chief executive must not grant the application unless satisfied there is no other suitable material available that is outside a watercourse, or within a reasonable distance from where the material is to be used.

Clause 187 Replacement of s 345 (Main functions of commission) replaces section 345 of the Water Act. The replacement provision expands the functions of the Queensland Water Commission (the commission) to include the functions related to underground water management under the new chapter 3 of the Water Act established by the Bill.

Clause 188 Amendment of s 347 (General powers) amends section 347 of the Water Act to reflect the new powers of the commission relevant to underground water management given under the new chapter 3 of the Water Act established by the Bill.

Clause 189 Amendment of s 349 (Eligibility for appointment) amends section 349 of the Water Act to reflect the new expanded role of the commission relating to underground water management, established by the Bill, by introducing an additional eligibility criterion for appointment of the commissioner.

The amendment provides that a person will not be eligible for appointment as commissioner if the person is an executive officer or employee of a corporation that is a petroleum tenure holder, if the area of the holder's tenure is within a cumulative management area.

Clause 190 Amendment of s 360E (Other references) amends section 360E of the Water Act to allow the Minister to direct the commission to provide advice to the Minister about a matter relating to the impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders. Section 360E currently provides that the Minister may direct the commission to provide advice to the Minister on water supply and demand management, this clause expands the scope of advice to reflect the new underground water management functions of the commission established by the Bill.

Clause 191 Amendment of s 360F (Annual levy) amends section 360F of the Water Act, which provides for the commission's functions to be funded by an annual levy payable by water service providers, to reflect the new expanded role of the commission relating to underground water management.

This clause limits the annual levy provided for in section 360F to only the water supply and demand management functions of the commission.

NOTE: New section 360FA, inserted by the Bill, provides for a separate levy to fund the underground water management functions of the commission.

Clause 192 Insertion of new s 360FA inserts new section 360FA into the Water Act.

Section 360FA Annual levy for underground water management provides for the establishment of an annual levy, payable by each petroleum tenure holder, for funding the underground water management functions of the commission, established in new chapter 3 of the Water Act. The levy is to be worked out in the way prescribed by regulation. The way the levy is worked out must be transparent and likely to be readily understood by petroleum tenure holders to which it applies.

The levy must be based on the amount needed to recover the estimated costs to the commission of carrying out its functions under chapter 3 and apportioned, where practicable, between petroleum tenure holders or classes of tenure holders according to the cost to the commission of carrying out functions specific to the holders or class of holders.

The commission's estimated costs must be prepared by the commission, in consultation with a relevant advisory body, and approved by the Minister.

New section 360FA also provides that the levy must be paid in the amount, at the time and in the way prescribed under a regulation. If a petroleum tenure holder does not pay the levy as required, the State may recover from the tenure holder the amount of the levy as a debt.

Clause 193 Amendment of s 360ZCB (When water efficiency management plan may be required) inserts a maximum penalty of 500 penalty units into the requirement for a relevant customer to comply with a notice to prepare a water efficiency management plan. The maximum penalty unit information was inadvertently omitted from the new sub-section (5) and needs to be reinstated.

Clause 194 Amendment of s 360ZE (Consultation and giving notice of commission water restriction) amends section 360ZE of the Water Act to correct an incorrect reference to authorised person by replacing it with authorised officer.

Clause 195 Insertion of new ch 3 inserts new chapter 3 into the Water Act. New chapter 3 establishes a regulatory framework for managing the

impacts of the extraction of underground water by petroleum tenure holders on water supply bores and natural spring ecosystems. The new chapter 3 replaces and strengthens the current regulatory arrangements under the Petroleum Act and the Petroleum and Gas Act (which are repealed by the Bill).

Chapter 3 Underground water management

Part 1 Preliminary

Division 1 Interpretation

Section 361 Purpose of ch 3 provides the purpose of chapter 3, which provides for underground water management. The purpose of chapter 3 is to provide for the management of impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders.

The purpose of chapter 3 is primarily achieved by the following:

- providing a regulatory framework to require petroleum tenure holders to monitor and assess the impact of the exercise of underground water rights on water bores and enter make good agreements with owners of the bores; and
- providing a regulatory framework to require the preparation of underground water impact reports which establish underground water obligations, including monitoring and managing impacts on aquifers and springs; and
- providing a regulatory framework to manage the cumulative impacts of the exercise of two or more petroleum tenure holders' underground water rights on underground water; and

- giving the chief executive and commission functions and powers for managing underground water.

Section 362 Definitions for ch 3 provides the following definitions for the purpose of chapter 3:

The new term *authorised use or purpose*, of water, means the use or purpose for which the taking of water is authorised under the Water Act. This relates to the authorised use or purpose of a water bore which may be impacted by a petroleum tenure holder exercising their underground water rights under the Petroleum and Gas Act or Petroleum Act. An authorised use or purpose could include, for example, stock or domestic purposes, or the purpose for which a water licence is granted to take water from the water bore, or other authorised taking of water without an entitlement under section 20 of the Water Act.

The new term *baseline assessment* is explained in section 394 of the Bill.

The new definition of *bore owner* provides that for the purposes of chapter 3, the bore owner, of a water bore is the person who owns the land on which the bore is located. Note, the owner, of land, is defined in schedule 4 of the Water Act.

The new definition of *bore trigger threshold* provides a key definition for chapter 3. The bore trigger threshold for an aquifer is a decline in water level in an aquifer prescribed by regulation, or otherwise five meters for consolidated aquifers, and two meters for unconsolidated aquifers.

The bore trigger threshold is used in determining the extent of an immediately affected area in an underground water impact report. An immediately affected area is the area of an aquifer where the water level is predicted to decline by more than the bore trigger threshold within three years because of the petroleum tenure holder's water extraction. The Bill creates an obligation for petroleum tenure holders to conduct bore assessments and enter make good agreements with the owner of each water bore in an immediately affected area. However, these obligations are not limited to an immediately affected area. Outside an immediately affected area, a petroleum tenure holder may be directed by the chief executive to undertake a bore assessment and consequentially enter into a make good agreement. It is not intended that the water level must decline by more than the bore trigger threshold before a bore owner has a right for a tenure holder to make good any impaired capacity caused by a petroleum tenure holder.

The five meter or two meter bore trigger threshold, which apply if no other threshold is prescribed by regulation, are intended to reflect a water level decline in an aquifer that would have a significant risk of causing a noticeable decline in the amount of water that can be pumped from a water bore tapping the aquifer. A lesser decline than the threshold value could affect a bore supply, but the risk would be lower. In areas where it is projected that the thresholds will be exceeded within three years, a bore assessment will be required in advance of the water bore supply being impaired.

It is important to note that some water bores are more susceptible to water level decline than other bores because of the way they are constructed. If a water supply is impaired by a petroleum tenure holders exercise of underground water rights then it is protected under the provisions of the Bill, even if the water level decline at the location is less than the trigger threshold. The trigger threshold has relevance for the taking of proactive action for entering make good agreements, rather than responding after a problem has occurred.

The bore trigger threshold is different for unconsolidated and consolidated aquifers. The reason for this difference is that water bores tapping unconsolidated aquifers tend to be shallower Also, unconsolidated sediments tend to be more permeable which means the pump in the bore does not need to be as set deep below the water level. For this reason, smaller water level declines cause a greater risk of impairment of pumping rate than for bores in consolidated sediments.

The new term *closing CMA tenure* is defined for the purpose of a petroleum tenure that gives notice of closure prior to, or within six months of, the declaration of a cumulative management area. *Closing CMA tenures* are likely to end by the time, or soon after, the first underground water impact report prepared by the commission is approved for a cumulative management area. For this reason, it is intended the commission will not have to account for these tenures in the underground water impact report, and the closing CMA tenure holder themselves will be required to prepare the final report for the closing tenure.

The new term *CMA tenure* refers to a petroleum tenure the area of which is included in a cumulative management area.

The new term *consolidated aquifer* means an aquifer consisting predominantly of consolidated sediment. This includes geological formations such as sandstone, fractured mudstone and basalts.

The new term *consultation day* refers to the day a proposed underground water impact report, or final report, is released for consultation. This means the day a notice is first published about the purposed report under section 378.

The new term *impact considerations* is defined to outline particular matters for consideration that relate to decisions about petroleum tenure holders under this chapter. For example, the commission may have regard to the impact considerations in identifying responsible tenure holders in a cumulative management area, and the chief executive must have regard to the impact considerations in deciding to direct a petroleum tenure holder to undertake a bore assessment. These *impact considerations* include the impacts, or likely impacts, of the tenure holder exercising their underground water rights on water bores or springs, the location and area of the holders tenure, water monitoring authorities held by the tenure holder, existing water monitoring infrastructure, existing make good agreements and existing agreements entered into by the holder with other petroleum tenure holders about managing the impacts of the exercise of underground water rights.

The new definition of *make good obligations* is inserted for the purposes of the new chapter 3 of the Water Act. This term is explained under section 405 make good obligations for water bores.

The term *production testing* is defined to mean, for a petroleum tenure granted under the Petroleum and Gas Act, testing for petroleum production in the area of the petroleum tenure under section 73 or section 152 of that Act, or for a petroleum tenure under the Petroleum Act, testing authorised under the petroleum tenure, for petroleum production in the area of the tenure.

The term *relevant underground water rights* is defined to make it clear, for the purpose of an underground water impact report or final report, which underground water rights are relevant and are to be captured by the report. For example, an underground water impact report contains predictions of the impact of the exercise of relevant underground water rights. Inside a cumulative management area the relevant underground water rights include the underground water rights of all petroleum tenure holders within the cumulative management area, other than the holder of a closing CMA tenure. However, for a petroleum tenure holder not located within a cumulative management area or for a final report, the relevant underground water rights are the rights of the tenure holder. Note, the Bill also provides

a definition of *underground water rights* in schedule 4 (Dictionary) of the Water Act.

The new term *report obligation* means a requirement with which a responsible tenure holder must comply under an approved underground water impact report or an approved final report. The report obligations include, for example, undertaking underground water monitoring in accordance with the water monitoring strategy in the approved report, and implementing the spring impact management strategy in the approved report.

The terms *responsible entity* and *responsible tenure holder* are defined for the purpose of chapter 3.

The new term *start day*, for a petroleum tenure, means the earlier of either the day production testing starts, or the day production of petroleum starts, in the area of the tenure. If production testing or petroleum production has already started in the area of the tenure the *start day* for the petroleum tenure is the day this definition commences.

The new term *unconsolidated aquifer* means an aquifer that is not a consolidated aquifer. This includes geological formations such as alluvial aquifers.

The term *underground water obligation* is defined to mean a make good obligation of a petroleum tenure holder for a water bore, or a report obligation, for which the petroleum tenure holder is the responsible tenure holder.

The new term *water level* is defined in relation to artesian water and subartesian water for the purpose of making clear what a decline in water level means when referred to by the Bill. The water level, in relation to measuring a decline in artesian water, is the level to which the water would, if it were tapped by a water bore and the water were contained vertically above the surface of the land, rise naturally above the surface of the land. The water level, in relation to measuring a decline in subartesian water, if the aquifer were tapped by a water bore, is the level of the water in the bore tapping the aquifer.

The new definition for *water monitoring bore* means a water bore used for monitoring impacts on underground water caused by the exercise of underground water rights of petroleum tenure holders.

Section 363 Water bores to which ch 3 applies makes it clear that the water bores to which chapter 3 applies only include water bores for which

the taking of, or interfering with, water is authorised under the Act, and if required, a development approval has been granted under the *Sustainable Planning Act 2009* or was granted under the repealed *Integrated Planning Act 1997*. An authorised water bore includes water bores from which the taking or interference with water is authorised without the requirement for a water entitlement under section 20 of the Water Act.

Section 364 References to petroleum tenure holder in ch 3 provides clarification around references to petroleum tenure and petroleum tenure holder in new chapter 3. The section is needed to ensure that a tenure holder's make good obligation continues when either a petroleum lease is granted from an authority to prospect or when tenure ends.

Division 2 Cumulative management areas

Section 365 Declaring cumulative management areas provides a discretion for the chief executive to declare, by gazette notice, a cumulative management area.

An area may be declared as a cumulative management area if the chief executive considers that the area may be affected by the exercise of underground water rights by two or more petroleum tenure holders.

The declaration of a cumulative management area allows the commission to have oversight over the cumulative management of the impacts of two or more petroleum tenure holders. In a cumulative management area the commission is the responsible entity for preparing an underground water impact report for the area.

The chief executive must give notice of the declaration of a cumulative management area to the commission and show a map of the area on the department's website. The chief executive must also give notice of the declaration to all petroleum tenure holders who's tenure is located the area subject of the declaration, other than the holder of a closing CMA tenure.

If the chief executive fails to give notice of the declaration and publish a map of the cumulative management area within 20 business days, this does not invalidate the declaration of a cumulative management area.

Division 3 General obligations of petroleum tenure holders

Section 366 Obligation to use best endeavours to obtain approvals provides that a petroleum tenure holder must use best endeavours to obtain any approval necessary to comply with its obligations under chapter 3. An approval under this section is defined to include a licence, permit, authorisation, consent, permission or other authority required under the Water Act or another Act.

Section 367 Obligation to use best endeavours to obtain information provides an obligation for a responsible entity or petroleum tenure holder to use best endeavours to obtain all information about water bores necessary to comply with their obligations under chapter 3. This includes, for example, undertaking a search of the department administering the Water Act's groundwater database and requesting a land owner to disclose the location and details of water bores.

Part 2 Reporting

Division 1 Preliminary

Section 368 Who is a *responsible entity* provides for who the responsible entity is for giving the chief executive an underground water impact report. The responsible entity in relation to a cumulative management area is the commission, other than for a closing CMA tenure. In relation to the area of a petroleum tenure that is not included in a cumulative management area or a closing CMA tenure, the holder of the petroleum tenure is the responsible entity.

Section 369 Who is a *responsible tenure holder* provides for who is a responsible tenure holder for complying with the make good obligation for a water bore, and for complying with a report obligation. For a petroleum tenure holder to which an approved underground water impact report for a cumulative management area relates, the responsible tenure holder is the petroleum tenure holder identified in the report as the responsible tenure holder for the obligation. For a petroleum tenure holder to which an

approved underground water impact report that is not for a cumulative management area, or a final report, relates, the petroleum tenure holder is the responsible tenure holder. Also, a petroleum tenure holder directed by the chief executive under section 418 to undertake a bore assessment of a water bore, is the responsible tenure holder for the make good obligations for that bore.

Division 2 Underground water impact reports

Section 370 Obligation to give underground water impact report provides an obligation for a responsible entity to give an underground water impact report to the chief executive. For a cumulative management area, the commission is the responsible entity and therefore must give the chief executive a report for each cumulative management area. If a petroleum tenure holder is the responsible entity, the tenure holder must give the chief executive the report for the tenure. It is an offence for a responsible entity not to give an underground water impact report to the chief executive as required under this section.

The responsible entity is required to give the initial underground water impact report to the chief executive either, within 14 months of the day a cumulative management area is declared if the responsible entity is the commission, or otherwise 14 months of the start day of the tenure. Start day is defined in new section 362. The chief executive has the discretion to agree to a longer period. A longer period may be agreed to, for example, where major issues are raised during consultation on the report and additional time is necessary for proper consideration.

An underground water impact report is required to comply with the requirements outlined in division 4 such as including a water monitoring strategy and spring impact management strategy.

After the first underground water impact report for a cumulative management area or tenure is approved, a further underground water impact report is to be given to the chief executive every three years, within 10 business days of each third anniversary of the day the first report took effect. However, the chief executive may require the report be given by an earlier day, provided it is a reasonable period, or agree to a later day. It is anticipated a later day may be granted by the chief executive, for example, where a petroleum tenure holder is not proposing to exercise underground

water rights, or the exercise of the underground water rights is likely to be minimal, over the three year period from the approval of the previous report.

When submitting an underground water impact report to the chief executive it must be accompanied by a submissions summary. This will allow the chief executive, in considering the report, to consider how the submissions have been noted by the responsible entity. Submissions on an underground water impact report will be given to the responsible entity and the chief executive, this way the chief executive can also consider the submissions in deciding whether to approve the report.

The offence for not giving a report as required under this section has a maximum penalty of 1665 penalty units. This is considered appropriate as an underground water impact report provides the basis on which a petroleum tenure holder's obligations to make good impairment of water supply bores and to manage the impacts on natural springs because of the petroleum tenure holder's extraction of underground water are established.

Section 371 When obligation to give underground water impact report does not apply provides the circumstances where a petroleum tenure holder is not required to give an underground water impact report. If a petroleum tenure holder gives a notice of closure before the day an underground water impact report is required to be given to the chief executive, the holder is not required to give the report, unless a renewal application is granted for the tenure.

Division 3 Notices of closure and final reports

Section 372 Obligation to give notice of closure – general creates an obligation for a petroleum tenure holder to give the chief executive notice of closure. Notice must be given on that day that is either, one year before the end of the term of the tenure, other than because it is divided under the Petroleum and Gas Act, chapter 2, or the day the holder makes a surrender application for the tenure. A surrender application means a surrender application made in relation to the tenure under the Petroleum and Gas Act, chapter 5, part 11, or under the Petroleum Act, section 21 or 52.

The notice of closure must state the details of the petroleum tenure and tenure holder, and whether the petroleum tenure will end or be surrendered. If the tenure is ending, the day the tenure will end must also be stated. If the

area of the holder's tenure is within a cumulative management area the holder must give a copy of the notice of closure to the commission.

It is an offence under this section not to give a notice of closure to the chief executive as required. The offence is prescribed with a maximum of 500 penalty units. This is considered appropriate because giving notice of closure is necessary to trigger the obligation to prepare a final report. A final report is what establishs a petroleum tenure holders final obligations, including the make good obligations.

Section 373 Obligations to give notice of closure – relevant events makes it clear that a notice of closure is required to be given to the chief executive in certain events. These events include, where a petroleum tenure holder is not required to give a final report because of an application to renew the tenure but the holder withdraws the application, the application is rejected, or the renewal is granted and then the tenure holder makes a surrender application for the tenure. Once a notice of closure has been given under this section, the chief executive must give a notice to the petreoleum tenure holder requiring a final report to be given for the tenure.

Section 374 Obligation to give final report imposes an obligation on the responsible entity to give the chief executive a final report for the tenure within the reasonable period decided by the chief executive. After recieving a notice of closure for a tenure in a cumulative management area, other than a closing CMA tenure, the chief executive must give the commission a notice about the requirement to lodge a final report for the tenure. After receiving a notice of closure for a tenure other than a cumulative management area tenure, or receiving notice of closure for a closing CMA tenure, then the chief executive must give the tenure holder the notice. This notice must state the reasonable period by which the responsible entity is required to lodge the report. If the notice of closure is given by the holder of a tenure within a cumulative management area, other than a closing CMA tenure, the chief executive must also give a copy of the notice, given to the commission, to the holder of the tenure.

The purpose of a final report is to predict the water bores that may develop an impaired capacity after the end of the tenure, as a result of the tenure holder's extraction of underground water during the term of the tenure, and to detail how the make good obligation has or will be complied with in relation to these bores. The final report will also, set out the final water monitoring strategy and spring impact management strategy to be implemented by the petroleum tenure holder, for the tenure.

The final report for a petroleum tenure provides the final requirements for a tenure holder in complying with the underground water obligations for the tenure, for approval of the chief executive. A submissions summary must accompany a final report that is given to the chief executive.

The offence provided under this section, with a maximum penalty of 1665 penalty units, is considered appropriate. This number of penalty units aligns with the offence to not give an underground water impact report to the chief executive. This is considered justified as a final report provides the basis on which a petroleum tenure holder's final obligations to make good the impairment of water supply bores and the impacts on natural springs caused by the petroleum tenure holder's extraction of underground water during the life of the tenure.

Section 375 When obligation to give final report does not apply provides the circumstances when the obligation to give a final report does not apply. If the petroleum tenure holder is granted a renewal for the tenure, then they are not required to give a final report to the chief executive unless they make a surrender application for the tenure, or the chief executive gives the holder a notice requiring the holder to lodge a final report.

If a petroleum tenure holder has given notice of closure in relation to a surrender application for the tenure, and the holder withdraws the surrender application, there is no requirement to prepare a final report as the tenure will continue.

Division 4 Requirements for underground water impact reports and final reports

Subdivision 1 Content

Section 376 Content of underground water impact report provides the requirements for underground water impact reports. In preparing a report, the responsible entity is required to:

- For the area to which the report relates, include the quantity of water produced or taken by the tenure holder, or tenure holders for a cumulative management area, under the exercise of relevant underground water rights, and an estimate of the volume of water to

be taken under the exercise of the relevant underground water rights for the following 3 year period.

- Identify and describe each aquifer that is, or is likely to be affected by the exercise of underground water rights of any relevant petroleum tenure holder, as well as providing an analysis of groundwater movement and interaction between aquifers.
- For each aquifer that is or is likely to be affected, the trends in water level change in the aquifer as a result of the taking of water by the tenure holder.
- Identify on a map the area for each aquifer, which once approved will become the immediately affected area, where because of the exercise of relevant underground water rights, the water level is predicted to decline by more than the bore trigger threshold within three years of the report being released for consultation.
- A map must also identify the area predicted to decline by more than the bore trigger threshold at any time in the future because of the exercise of relevant underground water rights, which once approved becomes the long term affected area. A long term affected area is effectively the maximum extent of the area where the water level is predicted to decline by more than the trigger threshold as a result of the petroleum operations. An immediately affected area and long term affected area are predictions, and are reviewed each time a new underground water impact report is prepared that relates to a petroleum tenure.
- Describe the methods and techniques used to make the predictions provided in the report, for example how the responsible entity came to their prediction of an immediately affected area.
- Provide a summary of information about all water bores in the proposed immediately affected area, including the number of bores, the location and authorised use or purpose of each bore.
- Provide a program for reporting to the chief executive about the outcome of an annual review of the accuracy of the predicted water level declines mentioned in 370(b)(iv) and (v). This is effectively a review of the immediately affected area and long-term affected areas to assess whether any new information available, such as monitoring data, would materially change the prediction of the areas in the approved report. The review will not require an updated a prediction

beyond the timeframe of the original predictions. Through this reporting, if it is identified that there has been a material change in the predictions, the chief executive may wish to require an amendment to the report to change the immediately affected areas and long-term affected areas.

- Propose a water monitoring strategy, in accordance with the requirements of section 378.
- Propose a spring impact management strategy, in accordance with the requirements of section 379.

Where an underground water impact report is prepared for a cumulative management area, with the commission as the responsible entity for preparing the report, the report must also identify proposed responsible tenure holders for each report obligation and the make good obligations for each water bore in the immediately affected areas. This is one of the key functions of the commission in preparing an underground water impact report for a cumulative management area.

The Bill also allows additional report requirements, such as information or matters to be included in a report, to be prescribed by regulation.

Section 377 Content of final report specifies particular requirements for preparing a final report. For preparation of a final report, certain requirements specified in section 376 for an underground water impact report are not required. These include the map showing the proposed immediately affected area and description of bores within this area, a program for reviewing the predicted decline in water level contained in the approved report, or for a cumulative management area a final report is not required to identify responsible tenure holders.

However, a final report must include a summary of information about all water bores in the proposed long term affected area, similar to that provided in other reports for an immediately affected area. A final report will include a summary about how the make good obligations applying to the tenure holder have been complied with, a summary of the make good obligations that are yet to be complied with and a plan for how the tenure holder intends to comply with these obligations.

Section 378 Content of water monitoring strategy provides for what must be included in a water monitoring strategy. A water monitoring strategy in an underground water impact report, or final report, must include a strategy for monitoring the extent of the impact of the exercise of

the relevant underground water rights on underground water. This must include a strategy for monitoring of the quantity of underground water produced or taken because of the exercise of the relevant underground water rights, the changes in water level of aquifers because of the exercise of underground water rights, and water quality changes in aquifers resulting from water level decline caused by the exercise of underground water rights. The strategy will include the parameters to be measured, the location measurements will be taken from, and the frequency for taking measurements.

The responsible entity for preparing the water monitoring strategy for an underground water impact report must include in the strategy, a rationale for the strategy and a timetable for its implementation. The strategy must also detail a program for reporting to the commission about the implementation of the strategy.

In addition, a program for undertaking baseline assessments of water bores outside the area of a tenure must be included within a water monitoring strategy of an underground water impact report. This is to enable a tenure holder to collect baseline information for water bores that are outside of a the tenure area that may be affected by the tenure holder extracting underground water in the future, and enable this information to be collected prior to the water bore being identified in an immediately affected area. As such, this will apply for an identified long term affected area.

If a water monitoring strategy is for a final report, the strategy is required to include a statement about any matters included in previous strategies that has not yet been complied with by the tenure holder.

Section 379 Content of spring impact management strategy provides for what must be included in a spring impact management strategy. The Bill creates an obligation for petroleum tenure holders to manage the impacts of their underground water extraction on springs. This obligation is established by the requirement to include a spring impact management strategy in the underground water impact report, or final report, for approval of the chief executive, and then the obligation to implement and comply with the approved report.

A spring impact management strategy in an underground water impact report, or final report, is required for the purpose of ensuring petroleum tenure holders manage the predicted impacts of the exercise of underground water rights on springs. A spring impact management strategy must identify each *potentially affected spring*. A *potentially affected spring*

is a spring where the water level in the aquifer is predicted to decline by more than the spring trigger threshold at the location of the spring, and the decline is because, or likely to be because, of the exercise of underground water rights to which the report relates.

The spring trigger threshold is to be prescribed by regulation, however if there is no regulation, is a decline of 0.2 metres. This decline of 0.2 metres, for where no regulation is prescribed, is intended to reflect a water level decline that is small enough to ensure that any spring that may experience a material impact will be captured under the strategy. This triggers is set as an early intervention and prevention measure to ensure that if any impact does start to occur, it can be immediately addressed.

In identifying springs, and the ecosystem, cultural and spiritual values of springs, it is intended a spring impact management strategy would include groundwater dependent ecosystems and streams that are groundwater dependent.

For each potentially affected spring identified, the strategy must assess the connectivity between the spring and the aquifer that is affected by the exercise of the underground water rights and predict the risk to, and likely impact on the ecosystem and cultural and spiritual values of the spring that could result from a decline in water level to the spring. Cultural and spiritual values of a spring are defined in this section to mean the aesthetic, historical, scientific, social or other significance, to the present generation or past or future generations. The exercise of underground water rights of a petroleum tenure could have an impact on the cultural and spiritual values of a spring, for example, if the water in a spring located in a park where people enjoy the aesthetic values of the spring, the water in the spring diminishes and the spring no longer has visual appeal.

The strategy will outline the options available to prevent or mitigate any potential impacts on the spring, and propose a strategy, including an action plan, for doing so. If it is identified for some reason that no strategy is required, for example it is found that the spring is supplied by an aquifer that is not likely to experience any water level decline because of the tenure holder's activities, the strategy must address why a strategy for prevention and mitigation of impacts on the spring is not necessary.

The strategy is to detail a timetable for implementing the strategy, as well as program for reporting about the implementation of the strategy. If prepared for a final report, the strategy is required to include a statement

about any matters under a previous strategy that have not yet been complied with.

Section 380 Identifying responsible tenure holders for cumulative management areas provides that the commission may have regard to the impact considerations in proposing responsible tenure holders in an underground water impact report for a cumulative management area. A responsible tenure holder is a tenure holder who is responsible for complying with an underground water obligation. The matters for consideration include for example, the impacts, or likely impacts, of the tenure holder exercising their underground water rights, the location and area of the holders tenure, water monitoring authorities held by the tenure holder, existing water monitoring infrastructure and existing make good agreements.

This section also provides that the way in which the commission may identify responsible tenure holders. This may be by using maps showing the area over which a tenure holder is a responsible tenure holder for a particular underground water obligation.

Also, the commission can not identifity the holder of a closing CMA tenure as a proposed responsible tenure holder unless, after the notice of closure is given, the petroleum tenure does not end.

Subdivision 2 Consultation by responsible entity

Section 381 Requirement for consultation requires the responsible entity for giving an underground water impact report or final report to undertake consultation on the report before giving the report to the chief executive. For a report which relates to a cumulative management area, including a final report for a cumulative management area tenure, the commission is the responsible entity for undertaking the consultation. For a report that does not relate to a cumulative management area tenure, the tenure holder is the responsible entity for undertaking consultation.

Section 382 Public notice and copies of report requires the responsible entity for giving an underground water impact report to publish a notice about the proposed underground water impact report, or final report. The notice must be published in a newspaper in the area to which the report relates, and on the entities website, if the entity has a website. The responsible entity must also provide a copy of the notice to each bore

owner to which the report relates and provide a full copy of the report to a bore owner, or any other person, who requests a copy.

In a cumulative management area the commission, who is the responsible entity for preparing the underground water impact report, or final report for a tenure, must also give a copy of the notice to each tenure holder within the cumulative management area (other than a closing CMA tenure holder).

A notice given under this section must include a description of the area to which the report relates, state that copies of the report may be obtained from the responsible entity and how a copy may be obtained. The notice is also required to state that submissions can be given on the report, where they can be given and that any submission made must be given to both the responsible entity and the chief executive. At least 20 business days must be allowed for submissions to be made.

This section requires that both the chief executive and the responsible entity will receive copies of submissions. The responsible entity needs to consider submissions, make any changes that arise as a result of the submissions, and prepare a submission summary for the chief executive along with the report. The chief executive will also receive copies of the submissions for consideration in deciding whether to approve a report.

The public notice for an underground water impact report must be published a minimum of 2 months prior to a report being given to the chief executive. As such, the public consultation period for reports will commence within 12 months of the declaration of a cumulative management area, or if the report does not relate to a cumulative management area, within 12 months of the start day of the tenure.

Section 383 Submissions summary establishes an obligation for the responsible entity to consider each properly made submission about the underground water impact report and prepare a submissions summary before giving the report to the chief executive. A submissions summary must summarise each properly made submission about the report, how the responsible entity addressed the submissions and any changes the responsible entity has made to the report as a result of the submissions.

Division 5 Approval of report by chief executive

Section 384 Modifying report before approval allows the chief executive to, before approving an underground water impact report or final report,

require the responsible entity modify their report. A modification may be required if the chief executive considers the report is inadequate in a material particular. A report may be considered inadequate in a material particular, for example, where the spring impact management strategy did not identify a spring that the chief executive considers should have been provided for in the report.

To require a modification the chief executive may give the responsible entity for the report a notice stating the reasons why the chief executive considers the report inadequate. The notice will state how the chief executive considers the report should be modified and that the responsible entity must either modify the report in the stated way and give the modified report to the chief executive, or make a submission about why the report should not be modified.

If a responsible entity makes a submission about why the report should not be modified and the chief executive still considers that the report should be modified, then the chief executive may give the responsible entity a further notice stating how the report must be modified, and the reasonable period within which the responsible entity must give the modified report to the chief executive. A responsible entity must comply with a notice to modify the report. The chief executive may give more than one notice under this section.

A maximum pentaly of 500 penatly units is prescribed as an offence for not complying with a notice under this section. This number of penalty units is considered appropriate as non-compliance with this section could delay the approval of an underground water impact report. An underground water impact report provides the basis for establishing obligations, such as make good obligations, for petroleum tenure holders to make good the impact of the exercise of underground water rights.

Section 385 Decision on report provides for the chief executive to approve an underground water impact report, or final report. The chief executive must decide within 60 business days whether to approve the report, with or without conditions, or require the responsible entity to modify the report. After making the decision the chief executive must give notice to the responsible entity within 10 business days and if the report relates to a cumulative management area, the holder of each petroleum tenure holder in the cumulative management area, other than a closing CMA tenure.

In approving a report, the chief executive may impose conditions. If conditions are imposed they are taken to be part of the report. The report takes effect on the day stated in the notice.

For a report that is not for a cumulative management area, the chief executive may seek advice from the commission about whether to approve the report.

Section 386 Publishing approval and making report available provides a requirement for the responsible entity for an underground water impact report or final report to publish a notice about the approval of the report, stating how copies of the approved report may be obtained. The notice must be published within 10 business days of receiving notice of approval in a newspaper that circulates generally in the area to which the report relates, and on the responsible entities website, if there is a website.

Also, to ensure water bore owners in the area are aware of the approved report, the responsible entity is required to notify all bore owners to which the report relates about the approval of the report. If a bore owner, or any other person, makes a request to the responsible entity for a copy of the report, the responsible entity must provide a copy of the report.

This section also requires the chief executive to publish each approved underground water impact report, and final report, on the department's website. This will allow members of the public to easily access the predictions of potential impacts on underground water caused petroleum tenure holders in their area. Also, water bore owners identified within an immediately affected area will be able to access information about who is the responsible tenure holder for undertaking bore assessments, and entering a make good agreement in relation to their bore.

Division 6 Provisions about approved reports

Section 387 Approved underground water impact report or final report establishes immediately affected and long-term affected areas provides that an *immediately affected area*, or *long-term affected area* is established on approval of an underground water impact report.

An *immediately affected area* of an aquifer is the area where, because of the exercise of underground water rights of one or more petroleum tenure holders, the water level is predicted to decline by more than the bore trigger threshold within three years of the day an underground water impact report

is released for consultation. The approval of an underground water impact report, and therefore an *immediately affected area*, creates an obligation for the responsible tenure holder to undertake bore assessments, and enter make good agreements with the owner of each water bore in an *immediately affected area*.

A *long-term affected area* of an aquifer is the area where, because of the exercise of underground water rights of one or more petroleum tenure holders, the water level is predicted to decline by more than the bore trigger threshold at any time in the future which represents the maximum extent of the area. This is intended to capture the greater area of impact the exercise of underground water rights may have on underground water. To make it clear this is intended to include any impact on underground water likely to occur after the tenure has ended because of the underground water extracted during the term of the tenure. In an approved final underground water impact report the *long-term affected area* identifies the final area over which the petroleum tenure holder has to comply with underground water obligations.

Section 388 Effect of approved underground water impact report provides the effect of approval of an underground water impact report. On the day an approved underground water impact report takes affect, certain underground water impact reports cease to apply. For a cumulative management area any underground water impact reports in effect for cumulative management area tenures, other than for closing CMA tenures, cease to apply. Note, any underground water impact reports relating to closing CMA tenures will remain in effect until a final report is approved for the closing CMA tenure.

On the day an approved underground water impact report takes affect for a petroleum tenure holder other than a cumulative management area tenure, or for a closing CMA tenure, any existing underground water impact report relating to the petroleum tenure, cease to apply.

This section also makes it clear that despite an approved report ceasing to apply where another report takes affect which relates to the tenure, this does not prevent any proceedings being started or continued for an offence for non-compliance with the approved report that has ceased to comply.

Section 389 Effect of approved final report provides for the effect of the approval of a final report. In relation to a cumulative management area, where an approved final report conflicts with the underground water impact report approved for the cumulative management area, the underground

water impact report is taken to have been amended to agree with the final report and the tenure holders within the cumulative management area, other than the holder of a closing CMA tenure, must continue to comply with the report, as amended by the final report.

When a final report takes effect for a petroleum tenure not included within a cumulative management area, or for a closing CMA tenure, the underground water impact report for the tenure stops applying. An underground water impact report for a cumulative management area, other than a closing CMA tenure, stops applying when a final report takes effect for the last remaining tenure within the area.

Section 390 Compliance with approved reports provides the requirement for petroleum tenure holders to comply with approved underground water impact reports and final reports, unless the holder has a reasonable excuse. Complying with an approved report includes for example, undertaking water monitoring in accordance with the approved water monitoring strategy, and implementing the approved spring impact management strategy. This section makes it an offence for a petroleum tenure holder to not comply with an approved report.

The offences provided under this section, with a maximum penalty of 1665 penalty units, are considered appropriate. They are considered justified as an underground water impact report, or final report sets out the obligations for petroleum tenure holders to manage the impacts on underground water caused by their operations.

Division 7 Amending approved reports

Section 391 Minor or agreed amendments of approved report provides a process for minor or agreed amendments of an approved underground water impact report, or final report. Minor amendments may be made under this section to correct a minor error, update a tenure holder's details, or make another change that is not a change of substance. Alternatively, the chief executive may amend a report under this section where the tenure holder agrees to the amendment or for a cumulative management area the commission and any tenure holders, other than a closing CMA tenure holder, affected by the amendment agree to the amendment.

If the chief executive amends a report under this section, the chief executive must publish the amended report on the department's website and

notify the responsible entity for the report and, for a cumulative management area, each petroleum tenure holder within the area. The notice may require the responsible entity for the report to publish a notice about the amendment, and give notice to any water bore owners that may be affected by the amendment.

Section 392 Direction to propose amendment and consult on proposal provides a process for amending an underground water impact report or final report in the circumstance there has been a material change in the information or a prediction in a report, or where the information or a prediction in a report it incorrect in a material particular. This amendment process may be used for example, where the annual reporting required under an underground water impact report identifies that the predictions for an immediately affected area have changed substantially, and as a result additional water bores should be identified within the immediately affected area.

In these circumstances, the chief executive may give notice to the responsible entity requiring the entity to propose an amendment to the report to address the material change or correct the material particular. For an amendment proposed under this section the consultation and approval process for approval of an underground water impact report apply.

It is an offence for a responsible entity not to comply with a notice given under this section. A maximum of 500 penatly units is prescribed for this offence. This is considered appropriate as an underground water impact report establishes obligations for petroleum tenure holders to monitor and make good the impacts of the exercise of the underground water rights. As such, it is important that in circumstances this section provides for, including where there is a material change or the report is incorrect in a material particular, that the report is amended.

Section 393 Other amendments provides a further process for amending an approved underground water impact report, or final report where the amendment will not adversely affect bore owners and the alternative amendment processes do not apply. This section applies where the chief executive reasonably considers that a matter in the report is no longer appropriate because there has been a material change in circumstances, for example, where a tenure holder has ceased production, or where the report is inappropriate for another reason.

This amendment process is intended to apply for amendments that do not have any adverse impact on a water bore owner and as such, no public consultation process is necessary.

To amend a report under this section, the chief executive may give the responsible entity for the report a notice of the proposed amendment. If the responsible entity is the commission, then the chief executive must also give a notice to any responsible tenure holder who may be affected by the proposed amendment. The notice would state the reasons why the chief executive considers the approved report requires amendment, how the chief executive proposes to amend the report and that the recipient of the notice may make a submission about why the report should not be amended. The time by which the notice recipient may make a submission must be at least 20 business days.

The chief executive must, after considering all of the properly made submissions, decide whether to make the amendment. Once the decision has been made, the chief executive must give a notice of the decision to all entities that were given notice about the proposed amendment. If the decision is to make the amendment, the amendment takes effect from the day stated in the notice.

After receiving notice of the amendment, notice of approval of the amendment must be published by the responsible entity within 10 business days in a relevant newspaper and on the entities website, if they have one, stating how copies of the approved report may be obtained. The responsible entity is also required to give a copy of the approved report to any person who requests a copy. The chief executive must publish the report on the department's website.

Part 3 Baseline assessments

Division 1 Preliminary

Section 394 What is a *baseline assessment* provides what is a *baseline assessment*. The Bill requires petroleum tenure holders to undertake *baseline assessments* of each water bore in the tenure area. A *baseline assessment* means obtaining information about the bore, including the

water level and quality, the type of construction and the type of pumping infrastructure.

Section 395 Chief executive may make guidelines allows the chief to make guidelines about the minimum requirements for undertaking a baseline assessment of a water bore. Under this section the chief executive may consult with any appropriate persons, or entities, prior to making the guidelines. If the chief executive does make guidelines under this section, they must be published on the department's website.

Section 396 Method of undertaking baseline assessment provides that if there are guidelines published by the chief executive about the requirements for undertaking a baseline assessment, a petroleum tenure holder must comply with the guidelines in undertaking a baseline assessment of a water bore. This section also makes it clear that a baseline assessment undertaken prior to the commencement of the Bill is not required to be consistent with any chief executive guidelines, provided the information obtained substantially meets the requirements under section 394 and the guidelines under section 395.

This section also provides that if there are no guidelines, a baseline assessment must comply with best practice industry standards for carrying out a similar activity.

Division 2 Preparing and approving baseline assessment plans

Section 397 Obligation to prepare baseline assessment plan creates an obligation for petroleum tenure holders to give a baseline assessment plan to the chief executive. In accordance with this section a petroleum tenure holder must give the chief executive a baseline assessment plan before the start day for the petroleum tenure, or if this day has already passed, within 30 business days of commencement unless a longer period is agreed to by the chief executive.

The requirements for a baseline assessment plan include, identifying *priority areas* for undertaking baseline assessments across the area of the tenure. The plan also needs to identify any water bores for which the tenure holder has already undertaken a baseline assessment, or equivalent, and the date by which the tenure holder will have completed baseline assessments in the priority areas. This is identified in the Bill as a *baseline assessment*

timetable. When identifying the date by which the tenure holder will have undertaken the baseline assessments, the plan must demonstrate that the dates represent the tenure holder's best endeavours to undertake the baseline assessments within a reasonable period.

It is an offence not to give the chief executive a baseline assessment plan as required under this section. The maximum penalty for this offence is prescribed as 500 penalty units. This penalty is considered appropriate as undertaking baseline assessments is a key element of the petroleum tenure holder's obligations. Baseline assessments are required to help inform the negotiation of a make good agreement and to determine the extent of any impairment of supply caused by the petroleum tenure holder's extraction of underground water.

Section 398 Requirements for baseline assessment timetable provides the requirements for a baseline assessment timetable, which is to be included as part of a baseline assessment plan. It is a requirement that a baseline assessment timetable provide for baseline assessments to be undertaken before either production of petroleum starts in a priority area, the 31st day of production testing starts, or the start of production testing if a water bore is located within two kilometres of testing that will take water from the aquifer supplying the bore and the tenure holder does not otherwise have the consent of the bore owner in writing agreeing to a later day. If however, production of petroleum, or more than 30 business days of production testing, whether continuous or not, had taken place in a priority area before the commencement of this section, then the timetable must propose a day by which a baseline assessment will be undertaken for each water bore in a priority area.

A baseline assessment timetable must include a rationale for each proposed date by which baseline assessments will be undertaken.

Section 399 Approval of baseline assessment plan provides that if the chief executive is given a baseline assessment plan the chief executive must approve the plan, with or without conditions, or ask the petroleum tenure holder who submitted the plan to amend and resubmit the plan within a reasonable timeframe.

Under this section, the chief executive must give notice of the decision to the petroleum tenure holder within 10 business days.

Section 400 Compliance with approved baseline assessment plan makes it an obligation to comply with an approved baseline assessment plan. This section provides that if an approved baseline assessment plan states a day

by which a baseline assessment of a water bore will be undertaken, the petroleum tenure holder must undertake the assessment by that day unless the holder has a reasonable excuse.

It is an offence for a tenure holder not to carry out a baseline assessment as required under this section. An offence with a maximum penalty of 500 penalty units is prescribed. This penalty is considered appropriate as undertaking baseline assessments is a key element of the petroleum tenure holder's obligation and is required to help inform the negotiation of a make good agreement and to determine the extent of any impairment of supply caused by the petroleum tenure holder's extraction of underground water.

Division 3 Amending approved baseline assessment plans

Section 401 Application to amend provides that a petroleum tenure holder may apply to the chief executive to amend their baseline assessment plan. A petroleum tenure holder must apply to the chief executive to amend their baseline assessment plan if there will be a material change to the tenure holders program for production testing or production contained in the baseline assessment plan previously approved by the chief executive. The application must state the reason why the tenure holder considers it necessary to amend the plan. If an application to amend a baseline assessment plan is given to the chief executive the chief executive must approve the amendment, with or without conditions, or ask the holder to amend and submit the amendment plan.

Division 4 Miscellaneous

Section 402 Direction by chief executive to undertake baseline assessment provides a power to the chief executive to direct a tenure holder to carry out a baseline assessment of a water bore outside the area of the holders petroleum tenure. This direction power may be used where the chief executive reasonably believes that the bore may become affected by the exercise of underground water rights by the tenure holder in the future.

A notice given under this section must identify the area in which the bore is situated, the reasons why the chief executive considers the bore may

become affected by the exercise of the holder's underground water rights and a reasonable period within which the assessment must be undertaken. In deciding the petroleum tenure holder to give a direction under this section the chief executive must have regard to the impact considerations.

It is an offence for a petroleum tenure holder not to comply with a direction given under this section, unless the holder has a reasonable excuse.

An offence for not complying with a direction to undertake baseline assessment has a maximum penalty of 500 penalty units. This penalty is considered appropriate as undertaking baseline assessments is a key element of the petroleum tenure holder's obligation and is required to help inform the negotiation of a make good agreement and to determine the extent of any impairment of supply caused by the petroleum tenure holder's extraction of underground water.

Section 403 Notice of intention to undertake baseline assessment requires a petroleum tenure holder to give notice to the owner of a water bore prior to undertaking a baseline assessment of the bore. Such a notice must be given at least 10 business days prior to the assessment, and include when the assessment will be undertaken and who will undertake the assessment.

Section 404 Bore owner must give information allows a petroleum tenure holder to request information from the owner of land about the location of the water bore, and any other information reasonably required to undertake a baseline assessment.

This section also provides that the owner of a water bore must comply with a request if the bore owner has the information. If the bore owner does not have the information requested, it is not expected that the bore owner obtain the information at their own expense in order to comply with the request.

Section 405 Notice of outcome of baseline assessment requires a petroleum tenure holder who has conducted a baseline assessment of a water bore to give notice of the outcome of the assessment to both the bore owner and the commission. If the baseline assessment was undertaken before the commencement of the Bill, notice of the results is to be given within 30 business days of the commencement. For baseline assessments undertaken after commencement, notice is to be given within 30 business days of completing the assessment. A notice under this section must be in the approved form. It is an offence not to give notice of the outcome of a baseline assessment as required under this section.

Similar to the other offences that relate to baseline assessments, a maximum penalty of 500 penalty units is prescribed. This is considered appropriate as it is necessary for both the commission and the bore owner to have the results of a baseline assessment on record. As baseline assessments may help to inform the negotiations of a make good agreement, a bore owner must have a copy of the outcome available.

Part 4 General agreements about water bores

Section 406 Obligation to negotiate general agreement imposes an obligation on a petroleum tenure holder to use its best endeavours to negotiate and enter into an agreement with the owner of a water bore that has an impaired capacity prior to the approval of an underground water impact report for the tenure. The agreement, similar to a make good agreement, is to be about make good measures and/or compensation payable in relation to the impaired capacity of the water bore. An agreement made under this section is taken to be a make good agreement, and as such a tenure holder is not required to undertake a bore assessment, or enter into a further agreement about make good after the approval of an underground water impact report.

The intent of this section is to provide an avenue for the owner of a water bore that develops an impaired capacity in the period between the commencement of petroleum operations and the approval of an underground water impact report. It provides protection to water bore owners to ensure they are able to be made good for any loss of reasonable supply of water because of the exercise of petroleum tenure holder's water rights, despite an underground water impact report not yet being approved in relation to the petroleum tenure.

Section 407 Effect of an agreement under this part makes it clear that an agreement entered into between a petroleum tenure holder and the owner of a water bore, under new section 406 of the Water Act, is a make good agreement for the purposes of the Bill. As such, a tenure holder is not required to undertake a bore assessment under section 417 if they have already entered into an agreement about the bore under this part. This section also ensures that the provisions for dispute resolution and variation of a make good agreement apply to an agreement.

Part 5 Make good obligations for water bores

Division 1 Preliminary

Section 408 Definition for pt 5 defines *immediately affected area bore* for the purposes of chapter 3. An *immediately affected area bore* is a bore located within an *immediately affected area*.

Section 409 *Make good obligations* for water bores provides the *make good obligations* for water bores. The *make good obligations* are imposed on petroleum tenure holders to ensure that the owners of water bores that are impaired, or that are likely to be impaired, by the extraction of underground water by a petroleum tenure holder maintain access to a reasonable supply of water for the authorised use and purpose of their water bore. Or, if agreed by the water bore owner, are compensated by the petroleum tenure holder for any loss of reasonable supply experienced because of the petroleum tenure holder's water extraction. A petroleum tenure holder responsible for complying with the *make good obligations* for a water bore is considered the *responsible tenure holder* for the *make good obligations* for that water bore.

In addition, if a petroleum tenure holder is asked to vary the make good agreement under section 418, in is considered part of the *make good obligations* for the holder to negotiate a variation of the agreement.

The make good obligations require tenure holders to undertake assessments of water bores, enter into make good agreements with water bore owners about the make good measures to be undertaken in relation to their water bores and to comply with the make good agreements.

The *make good obligations* can be either initiated through the approval of an underground water impact report, which identifies an immediately affected area, a final report which identifies a long term affected area or through a chief executive direction to undertake a bore assessment of a water bore.

Section 410 Who must comply with make good obligations provides that a *responsible tenure holder* must comply with the make good obligations.

If the make good obligations are initiated because of the approval of an underground water impact report which identifies an immediately affected area, for each immediately affected area bore the *responsible tenure holder* is either, for a cumulative management area the petroleum tenure holder identified in the report as the *responsible tenure holder*, or for an immediately affected area bore not inside a cumulative management area the holder of the petroleum tenure to which the report relates is the *responsible tenure holder.*

For a final report for the end of a petroleum tenure, the responsible entity is the holder of the petroleum tenure.

Where a petroleum tenure holder is directed by the chief executive to undertake a bore assessment, the petroleum tenure holder is the *responsible tenure holder* for the make good obligations in relation to that bore.

Division 2 Bore assessments

Subdivision 1 Preliminary

Section 411 What is a *bore assessment* provides for what is a *bore assessment*. A *bore assessment* is an assessment of a water bore undertaken by a petroleum tenure holder to establish whether the bore has an impaired capacity, or whether the bore is likely to start having an impaired capacity in the future. Undertaking a *bore assessment* of a water bore is the first step a petroleum tenure holder is required to undertake prior to negotiating a make good agreement, and is considered part of the make good obligations for a responsible tenure holder.

Bore assessments are either required as an automatic obligation for all water bores identified within an immediately affected area, or as directed by the chief executive outside an immediately affected area.

This section also makes it clear that undertaking a bore assessment includes analysing the data obtained during the assessment.

Section 412 When does a water bore have an *impaired capacity* provides for when an existing bore or a new water bore has an *impaired capacity. Impaired capacity* is a key concept of the new chapter 3.

The Bill carries over an existing obligation from the current regulatory framework under the Petroleum Act and the Petroleum and Gas Act for petroleum tenure holders to make good any impact on existing water bores caused by the exercise of the tenure holder's water rights, and expands this obligation to new water bores.

The term *impaired capacity* prescribes the circumstances when the exercise of the petroleum tenure holder's water rights prevents the bore from being able to supply a reasonable quantity and quality of water for the bore's authorised purpose or use.

Existing bores and new bores are treated differently.

If a water bore is an existing water bore it has an *impaired capacity* if there is a decline in the water level of the bore because of the exercise of underground water rights under the Petroleum Act or Petroleum and Gas Act, and because of the decline, the bore can no longer provide a reasonable supply of water, in terms of both quantity or quality, for its authorised use or purpose.

An existing water bore, in relation to a petroleum tenure, means any water bore in existence before the first underground water impact report that relates to the area in which the bore is situated take effect. *Impaired capacity* for the purposes of the new chapter 3 does not include any impairment of a water bore caused by any factor other than a petroleum tenure holder's extraction of underground water. For example, a bore that cannot supply a reasonable quantity and quality of water because of natural environmental factors, such as drought, does not have an *impaired capacity* for the purposes of the Bill.

If a water bore is a new water bore there are three criteria in determining whether the bore has an *impaired capacity.* Firstly, there must be a decline in the water level of the bore that is more than the decline predicted at the location of the bore in the approved underground water impact report at the time the bore was constructed. Secondly, that the decline in water level is because of the exercise of underground water rights. Thirdly, because of the decline, the bore can no longer provide a reasonable supply of water, in terms of both quantity and quality, for the authorised use or purpose of the water bore.

A person who constructs a water bore after an underground water impact report take effect, which relates to the area in which the bore is situated, would be aware of the potential impact of the petroleum operations and should take this into account in deciding to drill a bore. The definition of

impaired capacity for new bores allows for the recognition of predicted impacts at a point in time, and any water bore constructed after this point will only be considered to have an impaired capacity when the impact exceeds the predicted impact.

This section also provides that a regulation may prescribe a quality that is a reasonable quality for a particular use or purpose. The purpose of this regulation making power is to provide further clarification, if needed, about what is considered a reasonable quality in determining whether a water bore has an impaired capacity.

Section 413 Chief executive may make guidelines allows the chief executive to make guidelines about the minimum requirements for undertaking a bore assessment. Under this section the chief executive may consult with any appropriate entities prior to making the guidelines. If the chief executive makes guidelines under this section, they must be published on the department's website.

Section 414 Method of undertaking bore assessment provides that if there are guidelines published by the chief executive about the minimum requirements for undertaking a bore assessment, a petroleum tenure holder must comply with the guidelines in undertaking a bore assessment of a water bore. If there are no chief executive approved guidelines, the assessment should be undertaken with regard to the best practice industry standards for undertaking bore assessments.

This section also makes it clear that a bore assessment undertaken prior to the commencement of the Bill is not required to be consistent with any chief executive guidelines, provided the information obtained is sufficient to establish a matter under section 411.

Subdivision 2 Obligations relating to bore assessments

Section 415 Notice of intention to undertake bore assessment requires a responsible tenure holder to give notice to the owner of a water bore prior to undertaking a bore assessment of the bore. Such a notice must be given at least 10 business days prior to the assessment, and include when the assessment will be undertaken and who will undertake the assessment.

Section 416 Bore owner must give information allows a petroleum tenure holder to request information from the owner of land about the location of the water bore, and any other information reasonably required to undertake a bore assessment.

It also provides that the owner of a water bore must comply with a request if the bore owner has the information. If the bore owner does not have the information requested, it is not expected that the bore owner obtain the information at their own expense in order to comply with the request.

Subdivision 3 Obligations to undertake bore assessments

Section 417 Obligation to undertake bore assessment of immediately affected area bore in particular circumstances creates the obligation for a tenure holder to undertake a bore assessment for each water bore located within an immediately affected area identified in an approved underground water impact report. For each immediately affected area bore the responsible tenure holder must undertake a bore assessment within 60 business days of the day the report takes effect, or amendment to the report, or a later day agreed to by the chief executive, unless the holder has a reasonable excuse.

Undertaking a bore assessment is the first step in complying with the make good obligations, which includes negotiating a make good agreement. It is an offence not to undertake a bore assessment as required by this section.

As an immediately affected area is a prediction of the area likely to experience impact from the exercise of underground water rights within three years, in each further underground water impact report it is likely that this area will increase, and water bores located outside the area will then be included within the area. As such, the Bill requires petroleum tenure holders to take a proactive approach to their make good obligations by continuing to require bore assessments to be undertaken, and therefore make good agreements to be entered into, for each water bore that may develop an impaired capacity in the immediate (three year) future.

This proactive approach is intended to provide certainty to water bore owners. Even if a water bore does not have an impaired capacity but is located within an immediately affected area, the responsible tenure holder is obliged to enter into an agreement about the measures that will be taken

by the tenure holder if and when the bore does develop an impaired capacity.

The maximum penalty prescribed for not undertaking a bore assessment as required is 500 penalty units. This is considered appropriate as undertaking a bore assessment is a necessary element of the petroleum tenure holder's obligation to make good impairment of supply because of the petroleum tenure holder's extraction of underground water.

Section 418 Direction by chief executive to undertake bore assessment provides for the circumstance if a water bore can no longer supply a reasonable quantity or quality of water for its authorised use or purpose for any reason.

In these circumstances, the chief executive may direct a petroleum tenure holder, by way of notice, to carry out a bore assessment of the water bore. However, to utilise this direction power the chief executive must reasonably believe the water bore can no longer supply a reasonable quantity or quality of water.

The reason the Bill allows a bore assessment to be directed where a water bore can no longer supply a reasonably quantity or quality of water for any reason, is to ensure a bore owner is offered some protection where the cause of the loss of bore supply, in terms of quantity or quality, is unknown. In this scenario, a tenure holder may be directed to undertake a bore assessment to investigate the bore, and if it is found that the bore has an impaired capacity, meaning that the cause of the loss of supply is the exercise of underground water rights, then the bore owner will have a right to make good measures.

In addition to assessing whether a water bore has an imapred cpapacity, or whether the bore is likely to start having an impaired capacity, a bore assessment under this section includes an assessment of whether to bore can supply a reasonable quantity or quaitliy of water for its authorised use or purpose, and the reason for any reduced capacity of the water bore to supply the reasonable quantity or quality of water.

A notice given under this section must state that the tenure holder must either undertake a bore assessment within the reasonable period stated in the notice, or make a submission within the stated time about why the holder should not be required to undertake the assessment. The stated time for giving a submission must be at least 20 business days.

In determining the tenure holder to which a notice to require a bore assessment is given, the chief executive must have regard to the impact considerations.

If the tenure holder makes a submission under this section within the stated time, and after considering the submission the chief executive still considers that the tenure holder should undertake the bore assessment, the chief executive may give a further notice stating that the holder must undertake the assessment. The notice must also state a reasonable period within which the assessment is to be undertaken and that a copy of the notice of the outcome of a bore assessment must be given to the chief executive.

A bore assessment directed by the chief executive is also a trigger for requiring the tenure holder to negotiate a make good agreement with the bore owner. It is an offence for a tenure holder to not comply with a notice given under this section unless the holder has a reasonable excuse.

For the purpose of this section, a regulation may prescribe a quality of water that is reasonable quality of water for a particular authorised use or purpose.

An offence for not complying with a direction to undertake bore assessment has a maximum penalty of 500 penalty units. This penalty is considered appropriate as undertaking a bore assessment is a necessary element of the petroleum tenure holder's obligation to make good impairment of supply because of the petroleum tenure holder's extraction of underground water.

Section 419 Notice of outcome of bore assessment requires a petroleum tenure holder who has conducted a bore assessment of a water bore to give notice of the outcome of the assessment to both the commission and the bore owner. If the bore assessment was undertaken before the commencement of the Bill, notice of the results is to be given within 30 business days of the commencement. For baseline assessments undertaken after commencement, notice is to be given within 30 business days of completing the assessment. A notice under this section must be in the approved form. It is an offence for a petroleum tenure holder not to give notice of the results of a bore assessment as required under this section.

Similar to the other offences that relate to bore assessments, a maximum penalty of 500 penalty units is prescribed. This is considered appropriate as it is necessary for both the commission and the bore owner to have the results of a bore assessment on record.

Division 3 Make good agreements

Subdivision 1 Preliminary

Section 420 What is a *make good agreement* for a water bore provides what is a *make good agreement* for a water bore. A make good agreement is an agreement entered into by a responsible tenure holder and a bore owner about a water bore. The agreement provides for the outcome of the bore assessment and whether the bore has or is likely to have an impaired capacity. If the bore has, or is likely to have an impaired capacity, the *make good agreement* will indentify the make good measures to be undertaken by the responsible tenure holder.

Section 421 What is a *make good measure* for a water bore provides what are the make good measures in relation to a water bore. A *make good measure* for a water bore can include any of the following:

- Ensuring the bore owner has access to a reasonable quantity and quality of water for the bore's authorised use and purpose. For example, this could include deepening a bore or improving its pumping capacity, constructing a new bore, or providing a supply of an equivalent amount of water of a suitable quality by piping it from an alternative source;
- Carrying out a plan to monitor the bore, for example, by undertaking periodic bore assessments;
- Giving monetary or non-monetary compensation to the bore owner for the bore's impaired capacity.

Section 422 Persons bound by make good agreement provides that any make good agreement binds successors and assigns in relation to a water bore. This ensures that an agreement between a bore owner and a tenure holder in relation to a bore is binding. Noting, that while an agreement is binding the Bill provides that should there be a material change of circumstance such that, for example, a tenure holder increases their operations and is likely to cause a greater impact than what was predicted at the time of entering the agreement, either party may request the agreement be renegotiated.

Subdivision 2 Requirements to enter into make good agreements

Section 423 Requirement to enter into make good agreement and reimburse bore owner creates the requirement for a petroleum tenure holder to use best endeavours to enter into a make good agreement with the owner of a water bore for which a bore assessment has been undertaken. The petroleum tenure holder must use best endeavours to enter the agreement within 40 business days after undertaking the bore assessment, or a later day if agreed to by the chief executive.

The petroleum tenure holder must reimburse the bore owner for any accounting, legal or valuation costs the claimant necessarily and reasonably incurs in negotiating or preparing a make good agreement, other than the costs of a person facilitating an alternative dispute resolution requested by the bore owner.

Subdivision 3 Obligation to negotiate variation of make good agreements

Section 424 Negotiating variation of make good agreement imposes an obligation on either party to a make good agreement, to make reasonable attempts to negotiate a variation to the agreement if they have been given a notice by the other party to the agreement requesting they consider varying the agreement. A notice requesting a variation can be given in the circumstance a party to the agreement considers the existing agreement is not appropriate because of a material change in circumstances, a make good measure agreed to is not effective or another effective and efficient make good measure is available. A notice requesting a variation to a make good agreement is required to state why the party considers the matter is no longer appropriate.

This does not prevent the parties from otherwise agreeing to vary a make good agreement.

Division 4 Disputes about make good obligations

Subdivision 1 Preliminary

Section 425 Application of div 4 provides for the application of new division 4, of chapter 3, part 4 of the Water Act, which applies for the management of disputes about make good obligations. The disputes in relation to make good obligations to which this division applies include:

- if a petroleum tenure holder and the owner of a water bore cannot agree on the terms of a make good agreement within the required timeframe, this could include a disagreement about whether the bore has an impaired capacity;
- if the parties to a make good agreement can not agree about varying the terms of the agreement when there is an obligation to negotiate a variation; or
- a party to the make good agreement reasonably believes the other party has not complied with the agreement.

Section 426 Parties may seek conference or independent ADR provides that if a dispute arises between a petroleum tenure holder and a water bore owner, to which division 4 applies, either party may, by notice to the other party and the chief executive, request the chief executive direct an authorised officer to call a conference to negotiate a resolution of the dispute. Alternatively, either party may, by notice to the other party, ask the other party to agree to an alternative dispute resolution process (an ADR) to resolve the dispute. A notice given under this section is called an *election notice*. A party calling for an ADR is required to specify the type of ADR process proposed, for example, mediation or conciliation. That party is also liable for the costs for the person facilitating the ADR. The person engaged to facilitate the ADR must be independent of all parties involved in the negotiations.

Section 427 Duration of conference or ADR applies if either party issues an election notice. The timeframe for finishing a conference or an ADR is, in either case, 30 business days from the giving of that notice. The parties are able to agree a longer period to finish the conference or ADR.

Subdivision 2 Calling conference and attendance

Section 428 Calling conference provides that if a party asks the chief executive for a conference, via election notice, the chief executive must direct an authorised officer to conduct the conference. The authorised officer directed to conduct the conference is required to ask, by notice, the parties to attend a conference to negotiate a resolution. The notice given by the authorised officer must state when and where it may be held.

Section 429 Who may attend conference provides for who may attend a conference. Apart from the authorised officer directed by the chief executive to conduct the conference, and the parties to the dispute may attend the conference. With the authorised officer's approval, someone else may be present to help a party attending a conference. A party may only be represented by an agent if the authorised officer agrees and lawyers may only be present where the parties agree and the authorised officer is satisfied that a party is not disadvantaged.

Section 430 What happens if a party does not attend provides what may happen if a party given written of the notice of the conference does not attend. In the event that a party does not attend, the party who did attend is able to make an application to the Land Court for an order requiring the party that did not attend to pay their reasonable costs of attending the conference. In the event the Land Court is satisfied that the non-attending party had a reasonable excuse for not attending, the Court must not grant the order to pay the other parties cost of attending the conference. However, if the Land Court does make such an order, it must decide the amount to be paid by the non-attending party.

Subdivision 3 Conduct of conference

Section 431 Authorised officer's role obliges the authorised officer when conducting a conference to endeavour to assist the attending parties to settle the matter that is the subject of the conference in a timely and inexpensive manner. The manner in which the conference is to be conducted is a decision for the authorised officer.

Section 432 Statements made at conference provides that nothing said by a person at the conference is admissible in a proceeding without the person's consent.

Section 433 Negotiated agreement provides that if an agreement is negotiated at the conference, it must be documented and signed by or for the parties at the conclusion of the conference. An agreement reached at the conference may be a make good agreement or a variation of an existing make good agreement between the parties.

Subdivision 4 Land Court decision on dispute

Section 434 Deciding dispute through Land Court after unsuccessful conference or ADR provides for the circumstance a conference or ADR does not resolve a dispute within the required period. An eligible party may apply to the Land Court for it to decide the matter the subject of the mediation.

Where the conference or ADR does not finish within the required period, either party is an eligible party and may make an application to the Land Court. However only, a party that attended the conference or alternative dispute resolution can make application if they attended the conference or alternative dispute resolution.

Section 435 Provisions for making decision provides the things the Land Court may decide in relation to a matter the subject of an unsuccessful conference or ADR. If the matter is a dispute about the terms of a make good agreement, the Land Court may decide the terms of the make good agreement. If the dispute is about varying the terms of a make good agreement the Land Court may decide whether the terms are to be varied, and the terms of any variation. Where there is a make good agreement and the dispute is about a non-compliance with the agreement, the Land Court may decide whether anything must be done by a party to comply with the agreement. This section also allows the Land Court to make any order considered appropriate to meet or enforce a decision made under this section.

If making a decision about varying a make good agreement, the Land Court may decide to vary the agreement only to the extent the Land Court considers appropriate in order to address a material change in

circumstance, a make good measure that is not effective, or the availability of a more efficient and effective make good measure.

If the Land Court decides the terms of a make good agreement, or decides to vary an existing make good agreement, the decision or agreement as varied is taken to be the make good agreement for the bore.

Section 436 Provisions for deciding any compensation provides for the circumstances where the Land Court, in deciding an application in relation to a dispute about a make good obligation, decides to require a responsible tenure holder to compensate the bore owner. In this case, compensation may only be for any reduction in value of the bore owner's land on which the bore is located or any diminution of the capacity to enjoy the full authorised use or purpose of the water bore, that because of the impacts of the tenure holder exercising their underground water rights, or any cost or loss the owner suffers that is caused by the impaired capacity of the bore.

In making a decision about compensation, the Land Court may consider any make good measures, successful or otherwise, taken or attempted by the responsible tenure holder.

Section 437 Land Court's decision binds successors and assigns provides that a make good agreement, or a decision by the Land Court in relation to a make good agreement, is for the benefit of, and is taken to have been agreed to or decided for and is binding on, the owner of the relevant water bore, the relevant petroleum tenure holder, and each of their successors and assigns, including the successors and assigns of the relevant petroleum tenure holder.

Part 6 End of tenure provisions

Section 438 Application of make good obligations to particular bores provides for when a final report is approved for a petroleum tenure that identifies a long term affected area and one or more water bores are located within the long term affected area. This section provides that part 5, which details the requirements in relation to make good obligations, applies as though a reference to an immediately affected area is a reference to a long-term affected area, the bore was an immediately affected area bore, and a reference to an underground water impact report is a reference to a final report.

This section ensures that there is an obligation on petroleum tenure holders to conduct bore assessments, and enter make good agreements with each water bore owner whose bore is likely to be affected by the exercise of the tenure holders water rights, even in the bore is not likely to have an impaired until after the end of the holder's petroleum tenure. This provides security to bore owners as petroleum tenure holders will be obliged to undertake make good measures, or compensate bore owners, in relation to any impact predicted beyond the period of the tenure operations.

Section 439 Continuation of underground water obligations makes it clear that the obligation to give a final report, and the underground water obligations of a petroleum tenure holder continue to apply despite the end of the tenure.

Section 440 Petroleum tenure holder may start complying with make good obligations before final report approved makes it clear that nothing in the Bill prevents a petroleum tenure holder from undertaking action to comply with the make good obligations, such as undertaking bore assessments, or entering make good agreements with bore owners, prior to a final report being approved for the tenure.

Section 441 Right of entry after petroleum tenure ends to comply with particular obligations provides a right of entry to the former holder of a petroleum tenure, after the petroleum tenure has ended, in relation to land that is necessary for the former tenure holder to enter to comply with an underground water obligation. This section also applies where a former tenure holder has not complied with an obligation to give a final report, or has been given a direction by the chief executive under part 8.

The former tenure holder may enter land to comply with the obligation. In relation to the entry of land, the provisions of the Petroleum and Gas Act and Petroleum Act in regard to land access apply to the former tenure holder as though the tenure, and any water monitoring authorities that related to the tenure, were still in force and held by the former tenure holder and compliance with underground water obligations were an authorised activity for the tenure.

This is required to ensure that petroleum tenure holders are able to comply with their underground water obligations

As the impacts of petroleum tenure operations on underground water may not eventuate until after the tenure ends, the Bill continues a petroleum tenure holders obligations in relation to underground water impact

Part 7 Functions and powers of commission

Division 1 Functions

Section 442 Main functions of commission for ch 3 provides the main functions of the commission, which are:

- to advise the chief executive on matters relating to impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders; and
- establishing and maintaining a database of information about underground water; and
- preparing reports for cumulative management areas.

Section 443 Advice to chief executive allows the chief executive to give the commission written directions to provide advice to the chief executive on any matter relating to impacts on underground water caused by the exercise of underground water rights.

Section 444 Commission to keep and maintain database requires the commission to keep and maintain a database of information relevant to monitoring underground water, including information obtained by the

commission under this chapter, given to the commission in, or under, an underground water impact report. The database may be kept in the way the commission considers appropriate, including, for example, electronic form.

Section 445 Public access to database provides that the commission may make information kept on its database publicly available, provided the publicly available information does not include information obtained as part of undertaken a baseline assessment or a bore assessment, or the commission reasonably believes the information is commercially sensitive. The reason this information is not able to be made public is because it may include information the owner of a water bore wishes to be kept confidential.

This section also provides that the publicly available part of the database is to be made available to a person for inspection, free of charge, at the departments head office during business hours. A copy of the details contained in the publicly available data base may be obtained by a person on payment of a reasonable fee decided by the chief executive.

Section 446 Petroleum tenure holder access to information provides that the commission must make any information kept on the database available to a petroleum tenure holder. The commission must make the information available if reasonably satisfied the information would assist the petroleum tenure holder in complying with the holders obligations under this chapter.

The commission must not give information to a responsible tenure holder under this section if the commission reasonably believes that the information is commercially sensitive.

Division 2 Power for complying with obligations

Section 447 Obtaining information about underground water from petroleum tenure holders provides a power to the commission to request, via notice, information from a petroleum tenure holder about the exercise of underground water rights under the petroleum tenure. The commission may request information required for complying with its obligations as a responsible entity, such as information necessary for preparing an underground water impact report for a cumulative management area. Also, the commission may request other information required to analyse and monitor impacts on underground water generally.

It is an offence for a petroleum tenure holder to not comply with the notice, unless the holder has a reasonable excuse. A reasonable excuse may include, for a tenure holder who is an individual, not complying with the notice because complying with the notice might tend to incriminate the holder. The notice must state how, and a reasonable period of at least 20 business days by which, the information must be given.

A maximum penalty of 1665 penalty units is prescribed for failing to comply with a notice under this section without a reasonable excuse. This is considered appropriate for this particular offence as failing to provide information to the commission under this section could hinder the preparation of an underground water impact report for a cumulative management area. An underground water impact report prepared for a cumulative management area will provide the basis on which a petroleum tenure holders obligations to manage the impacts of underground water extraction area established for cumulative management area tenure holders.

Part 8 Directions by chief executive

Division 1 Direction to undertake water monitoring activities

Section 448 Application of div 1 provides the circumstances that division 1, which relates to chief executive directions to petroleum tenure holders to undertake water monitoring activities, applies. This division applies in relation to the exercise of underground water rights by a petroleum tenure holder if there is no approved underground water impact report that relates to the holder's petroleum tenure. This division also applies where there is an underground water impact report or final report, however that report is under the process of being amended, or has been amended but the amendment has not yet taken effect.

Section 449 Chief executive may direct tenure holder to carry out water monitoring activities provides a power to the chief executive to direct, by notice, a petroleum tenure holder to carry out a water monitoring activity for a stated area. A water monitoring activity includes gathering information about, or monitoring the effects of the exercise of underground water rights of a tenure holder. The chief executive must have regard to the

impact considerations in giving a direction notice under this section, this includes, for example, the impacts, or likely impacts of the petroleum tenure holder exercising their underground water rights, the location and area of the holder's petroleum tenure, and existing water monitoring infrastructure of equipment put in place by the tenure holder. Where the chief executive gives a notice under this section, the notice must state a reasonable period within which the monitoring must be undertaken.

It is an offence for a petroleum tenure holder to not comply with the notice. A penalty of maximum 500 penalty units is provided for failing to comply. This is considered appropriate as certain monitoring will be required to be undertaken to ensure the level of impact on underground water caused by petroleum operations is understood and can be managed appropriately.

Division 2 Emergency directions

Section 450 Application of div 2 provides the circumstances that division 2, which provides emergency direction powers to the chief executive, applies. This division applies if the chief executive reasonably believes that urgent action is necessary to restore water supply to a water bore with an impaired capacity, or prevent or minimise the likelihood of a water bore having an impaired capacity, and the chief executive is satisfied or reasonably believes failure to take action may result in significant economic loss or damage to any person, a significant risk to the health of stock, a loss of supply of water for domestic purposes or essential services including, for example, the generation of electricity or distribution of town water.

Section 451 Power to give direction provides a power to the chief executive to give a direction notice to a petroleum tenure holder for the purpose of taking urgent action in an emergency situation described under section 450. A direction notice given under this section may require the petroleum tenure holder to take reasonable steps within a stated reasonable period and must include a warning to the tenure holder that it is an offence not to comply with the direction unless there is a reasonable excuse.

In deciding to give the notice the chief executive must have regard to the impact considerations relating to the petroleum tenure holder.

Section 452 Offence to fail to comply with direction provides that it is an offence for a petroleum tenure holder to not comply with a chief executive direction under section 451.

The maximum penalty for an offence under this section is 1665 penalty units. The substantial penalty provided is considered appropriate in regard to the emergency situations in which a direction can be given under section 451.

Section 453 Chief executive may take action and recover costs provides that the chief executive may take the action required under a direction notice if the petroleum tenure holder to whom it was issued fails to do so. Any reasonable costs or expenses incurred by the chief executive in taking action may be recovered by the chief executive unless the petroleum tenure holder had a reasonable excuse for not complying with the direction. The chief executive may decide to recover costs by giving a petroleum tenure holder a cost recovery notice. If the recipient of a cost recovery notice does not pay the amount claimed within 30 days of the notice being given, the chief executive may recover the amount as debt.

Division 3 Other directions

Section 454 Directions to petroleum tenure holders and bore owners to give information allows the chief executive to give a petroleum tenure holder or bore owner a notice requiring particular information. Under this section the chief executive may require a petroleum tenure holder to give information about compliance with a make good obligation for a water bore, the quantity and quality of water produced as a result of the exercise of the tenure holder's underground water rights or a matter stated in an underground water impact report or final report given to the chief executive. The chief executive may require a bore owner to provide information such as, information the bore owner is required to keep under the Water Act, or information about the condition and capacity of their water bore.

A notice may be given at any time under this section and the notice must state a reasonable time by which the information must be given to the chief executive. It is an offence not to comply with a notice under this section unless the person has a reasonable excuse. If the information requested by

the chief executive might tend to incriminate the person, they are not required to comply with the notice.

The maximum penalty provided for not complying with a notice under this section is 200 penalty units.

Clause 196 Amendment of s 740 (Functions and powers of authorised officers) amends section 740 of the Water Act to provide that in addition to the functions and powers provided to authorised officers under this section, authorised officers also have any other functions conferred to an authorised officer otherwise under the Act. This will ensure that any additional functions provided to authorised officers by the Bill, for example the function of an authorised officer to hold a conference to help resolve disputes about make good agreements, are acknowledged as functions of authorised officers under section 740.

Clause 197 Amendment of s 746 (Power to enter land to monitor compliance) amends section 746 of the Water Act to provide an additional activity for which an authorised officer may enter land to monitor compliance. This clause provides for an authorised officer to enter land to test or assess equipment or water monitoring bores used for complying with an obligation under chapter 3, and also provides for an authorised officer to enter land to find out if a petroleum tenure holder is complying with an underground water obligation. These new authorised officer powers are necessary to ensure authorised officers area able to monitor compliance with the new underground water impact management framework established by the Bill as chapter 3 of the Water Act.

Clause 198 Amendment of s 747 (Power to enter land in relation to information collection) amends section 747 of the Water Act to provide an additional power of entry for an authorised officer in relation to information collection. This clause provides for an authorised officer to enter land to assess the condition of, or impacts on an aquifer, a spring, or a water bore, because of the exercise of underground water rights of a petroleum tenure holder.

Clause 199 Amendment of s 748A (Power of entry for monitoring commission water restrictions and water efficiency management plans) amends section 748A of the Water Act to correct an incorrect reference to authorised person by replacing it with authorised officer.

Clause 200 Amendment of s 814 (Destroying vegetation, excavating or placing fill without permit) provides for the omission of subsections 814(2AA) and 814(2AB). Section 814(2AA) provided that if a regulation

permits activities of destruction of vegetation, excavating or placing fill in a watercourse, lake or spring under a prescribed guideline that the permission did not apply in a wild river area. Section 814(2AB) provided that this prohibition extended to activities that may be authorised to continue or start and continue under section 17 of the *Wild Rivers Act 2005*. The omission of these subsections allows for guidelines prescribed under sections 49, 50 and 51 of the *Water Regulation 2002* to also apply in a wild river area. This recognises that the guidelines themselves may specifically permit or prohibit certain of these activities in a wild river area.

Clause 201 Amendment of s 966 (Additional criteria for assessing development applications) provides that this section also applies to an application for water related development in a wild river special floodplain management area.

Clause 202 Amendment of s 966B (Applications in relation to interfering with overland flow water in wild river floodplain management area) provides that this section also applies to a development application in relation to interference with overland flow water in a wild river special floodplain management area.

Clause 203 Insertion of new s 1013E (Advice to Petroleum Act Minister about commission of particular offences) inserts new section 1013E into the Water Act, which allows the Petroleum Act Minister to be notified of particular Water Act offences.

Section 1013E Advice to Petroleum Act Minister about commission of particular offences provides that the chief executive may advise, by way of notice, the Minister administering the Petroleum and Gas Act, or Petroleum Act, of an offence committed against chapter 3 of the Water Act. A notice under this section may only be given where a person is convicted of an offence. The Bill establishes, in the Petroleum and Gas Act and Petroleum Act, a requirement for a petroleum tenure holder under these Acts to comply with the underground water obligations under the Water Act in relation to the exercise of the underground water rights. The Bill provides that non-compliance action under the Petroleum and Gas Act and Petroleum Act may be taken in relation to a tenure holder not complying with their underground water obligations. This section provides a mechanism for the Minister to be made aware of instances of non-compliance.

The amendment provides that, in the event of a serious offence or repeated offence against the new chapter 3 of the Water Act, noncompliance action

may be taken against the petroleum tenure holder under the Petroleum Act, which provides additional incentive to comply with the Water Act framework.

Clause 204 Amendment of s 1162 (Grid customers) omits section 1162(c). The SEQ local governments no longer need to be registered as grid customers as they are no longer water and wastewater service providers in SEQ.

Clause 205 Insertion of new ch 9, pt 5, div 16 inserts new chapter 9, part 5, division 16 of the Water Act, which provides transitional arrangements for the establishment of the new chapter 3 in the Water Act.

Division 16 Transitional provisions for Water and Other Legislation Amendment Act 2010

Section 1179 Definitions for div 16 provides a definition for the purpose of the Water Act transitional arrangements.

The term *commencement* for this division means the day this section commences.

Section 1180 Application of obligation to give reports for particular petroleum tenure holders provides the transitional arrangements for a petroleum tenure holder who's petroleum tenure ends within one year, or gives notice of closure within 14 months of the Bill commencing. In these circumstances the tenure holder is not required to prepare an underground water impact report. However, these tenure holders are required to give notice of closure to the chief executive, who may require the preparation of a final report for the tenure.

Section 1181 Existing agreements between petroleum tenure holders and bore owners provides for make good agreements in existence between a petroleum tenure holder and the owner of a water bore at the time the Bill commences. This could include, for example, any make good agreements made under the Petroleum and Gas Act or the Petroleum Act. From commencement an existing agreement is taken to be a make good agreement for the water bore for the purposes of the Water Act. The tenure holder who is a party to the agreement is therefore not required to

undertake a bore assessment in relation any water bores already subject to agreements.

Clause 206 Amendment of sch 4 (Dictionary) makes amendments to schedule 4 of the Water Act to include definitions relevant to the amendments by the Bill.

Part 15 Amendment of the Water Supply (Safety and Reliability) Act 2008

Clause 207 Act amended provides that Part 13 amends the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

Clause 208 Amendment of s 20 (Who must apply for registration as a service provider) amends section 20(2) to include that a person who owns infrastructure that produces and supplies or supplies coal seam gas recycled water will not have to apply for registration as a service provider under section 20(1) unless the person also owns other infrastructure for supplying a water or sewerage service. A person will not be required under section 20(1)(c)(i) to be registered as a service provider unless the person owns infrastructure that produces and supplies or supplies coal seam gas recycled water; and the person owns other infrastructure for supplying a water or sewerage service; and a charge is intended to be made for supplying water or sewerage services.

Clause 209 Amendment of s 114 (Application of div 5) amends the Water Supply Act so that the customer service standards under division 5, no longer apply to distributor-retailers in SEQ upon commencement of the provision. The purpose of the section is to clarify that the customer service and other requirements in the Customer Water and Wastewater Code, and part 4 of the amendments apply in place of the stated Water Supply Act provisions.

Clause 210 Replacement of s 198 (Sections 198 - and 199 not used)

Section 198 Offence about compliance with post supply obligation requires a responsible entity for a CSG (aquifer) recycled water scheme to comply with a post supply obligation. Obligations that apply after the recycled water has ceased being supplied are required for aquifers due to the specific risks associated with release of CSG water into aquifers.

Therefore post supply obligations such as monitoring of water quality in the aquifer and reporting on the same to the regulator as well as incident and emergency response plans will be required and imposed through regulator conditions. The post supply obligation must be complied with, whether or not the recycled water management plan has been suspended or cancelled. Post supply obligations are required in order to ensure that public health risks are managed after supply and the intent is to complement the existing approach for environmental authorities conditions which may apply after the environmental authority has ceased to apply. The maximum penalty for non-compliance is 1665 penalty units.

Section 199 Offence about compliance with conditions of exclusion decision requires each responsible entity for a CSG (pt 9A, div 3) scheme (a scheme under which coal seam gas recycled water is proposed to be supplied by release directly or indirectly into a water source) to comply with the conditions of an exclusion decision. Further information concerning the types of conditions that may be included is provided under section 327. An exclusion decision by the regulator excludes the CSG recycled water scheme or part of the scheme from the requirements of chapter 3, except for division 3 of Part 9A, section 199 and section 329J. The maximum penalty for non-compliance with the conditions of the exclusion decision is 1665 penalty units.

Clause 211 Amendment of s 200 (Purpose of recycled water management plan) clarifies that the purpose of a recycled water management plan for a critical recycled water scheme is to protect public health and if applicable, to ensure the continuity of operation of the scheme. The nature of coal seam gas recycled water disposal and its potential limited life means that although coal seam gas recycled water schemes will be critical schemes, a coal seam gas recycled water management plan will not have a purpose of ensuring the continuity of operation of the scheme.

The purpose of other recycled water schemes is to protect public health.

Clause 212 Amendment of s 201 (Preparing particular plans) amends section 201 and includes a requirement for a recycled water management plan to include the incident and emergency response plan for the recycled water scheme. Existing recycled water management schemes already have incident and emergency response plans in accordance with requirements under guidelines. This amendment makes it explicit that an incident and emergency response plan is required.

It also clarifies that the requirements under section 201(5) for a recycled water management plan do not apply to an interim recycled water management plan under part 9A, division 4. The other requirements in section 201 do apply to interim recycled water management plans. It also makes a minor clarifying change to section 201(5)(g) and provides examples of infrastructure for the production or supply of recycled water for a CSG recycled water scheme, namely feed ponds, petroleum wells, storage and distribution infrastructure and treatment plants.

Clause 213 Insertion of new s 201A (Additional requirements for plans for CSG recycled water schemes) includes specific requirements for recycled water management plans for CSG recycled water schemes. These requirements apply to both a recycled water management plan under section 201(5) and to an interim recycled water management plan.

The recycled water management plan must demonstrate how any risks associated with variations in the quality of the source water will be managed, namely coal seam gas water produced under the scheme, including coal seam gas water from a petroleum well or a feed pond. This will address the additional risks in coal seam gas water associated with spatial and temporal variations in coal seam gas source water quality. It must also include pre-supply water quality data for the scheme as required under a regulatory guideline for:- the feed ponds and if this is unavailable, then for the petroleum wells; the coal seam gas water at the nominated point of supply and if the release of the recycled water is into an aquifer - the water in the aquifer before the recycled water is released into it.

If coal seam gas water is supplied (either directly or indirectly) into an aquifer, the hazards and hazardous events must be assessed and it must be demonstrated how the risks are to be managed. These include hazards and hazardous events that may affect the quality of the recycled water supplied under the scheme, the quality of the water in the aquifer after the recycled water is released into it, and the water at the relevant location for a drinking water service provider. Section 318 defines the relevant location for a drinking water service provider. There must also be a validation program for the scheme. The release of coal seam gas recycled water into an aquifer presents additional risks which need to be managed including the potential for reactions between the recycled water, the water in the aquifer and the aquifer material or other geotechnical and hydrogeological hazards. These interactions may occur over a long period of time.

Clause 214 Amendment of s 202 (Application for approval of recycled water management plan) amends section 202(3) so that schemes which

supply coal seam gas recycled water can apply for approval of a recycled water management plan without a separate approved validation program for the scheme. For these schemes the validation program should be included as part of the recycled water management plan.

Clause 215 Amendment of s 205 (Consideration of application) amends section 205(2)(c) so that the regulator is not required to have regard to a separate approved validation program when considering an application for a recycled water management plan for a coal seam gas recycled water management scheme.

Clause 216 Amendment of s 206 (Notice of decision) amends section 206 so that for a CSG (aquifer) recycled water scheme a regulator condition may impose an obligation on a responsible entity for the scheme that continues to apply after the supply of recycled water under the scheme has stopped, including if the recycled water management plan is suspended or cancelled. Additional regulatory mechanisms are required for release of coal seam gas recycled water into aquifers as there are physical and chemical processes and risks specific to aquifers and a precautionary approach is being taken to ensure that aquifers are managed after supply of the coal seam gas recycled water has stopped. These include the potential for reactions between the recycled water, the water in the aquifer and the aquifer material or other geotechnical and hydrogeological hazards. These processes and reactions may occur over long periods of time.

Post supply obligations are required in order to ensure that public health risks are managed after supply and the intent is to complement the existing approach for environmental authorities' conditions which may apply after the environmental authority has ceased to apply. The responsible entity includes an entity that immediately before supply of recycled water under the scheme had stopped, comprised the recycled water management scheme and was a responsible entity. A responsible entity if the CSG recycled water scheme is a single-entity scheme is the recycled water provider for the scheme or if the CSG recycled water scheme is a multiple-entity recycled water scheme – the scheme manager and each recycled water provider or other declared entity for the scheme.

Clause 217 Amendment of s 207 (When regulator must not approve recycled water management plan) amends the existing section 207(1) to provide for new circumstances which apply specifically for coal seam gas recycled water, namely if the water is proposed to be supplied by delivery to a drinking water service provider whose drinking water service includes the treatment, transmission or reticulation of the water for supply as

drinking water (‘direct augmentation” with coal seam gas recycled water). Section 207(2) is amended so that in these circumstances the part of the drinking water service delivered the coal seam gas recycled water and any other part of the drinking water service that uses the recycled water must have an approved drinking water quality management plan before the coal seam gas recycled water management plan is approved. For example if a drinking water service provider has a number of drinking water schemes, it is only the scheme that is delivered the coal seam gas recycled water that must have a drinking water quality management plan for the treatment, transmission and reticulation of the water.

This amendment is considered necessary to manage the additional risks associated with direct augmentation of a drinking water service provider’s drinking water supplies with coal seam gas recycled water. That is, there is no retention time for treated coal seam gas water or dilution of the concentration of it, if it is not stored in a buffer. This is to be contrasted with indirect augmentation with coal seam gas recycled water where it is released into a water source, either directly or indirectly.

Clause 218 Amendment of s 210 (Amendment of recycled water management plan for single-entity recycled water scheme – requirement of regulator) amends section 210 and makes minor changes to clarify that the regulator can amend a recycled water management plan for a single-entity scheme if the scheme is a critical recycled water scheme – to protect public health or to ensure the continuity of operation of the scheme; or for other schemes – to protect public health.

The nature of coal seam gas recycled water disposal and its potential limited life means that although coal seam gas recycled water schemes will be critical schemes, a coal seam gas recycled water management plan will not have a purpose of ensuring the continuity of operation of the scheme.

Clause 219 Amendment of s 211 (Amendment of recycled water management plan for multiple-entity recycled water scheme – requirement of regulator) amends section 211 and makes minor changes to clarify that the regulator can amend a recycled water management plan for a multiple-entity recycled water scheme, if the scheme is a critical recycled water scheme – to protect public health or to ensure the continuity of operation of the scheme; or for other schemes – to protect public health.

The nature of coal seam gas recycled water disposal and its potential limited life means that although coal seam gas recycled water schemes will

be critical schemes, a coal seam gas recycled water management plan will not have a purpose of ensuring the continuity of operation of the scheme.

Clause 220 Amendment of s 235 (Application of pt 4) amends section 235 so that Part 4 which includes requirements for a separate approved validation program for recycled water schemes augmenting a supply of drinking water, does not apply to coal seam gas recycled water.

Clause 221 Amendment of ch 3, pt 7 hdg (Reporting requirements and annual reports) amends the heading for chapter 3, part 7 to Reporting Requirements

Clause 222 Replacement of ch 3, pt 7, div 1, hdg (Reporting requirements) amends the heading for chapter 3, part 7, division 1 to Notices to be given.

Division 1 Notices to be given

Clause 223 Omission of s 274 (sections 274-299 not used) omits section 274.

Clause 224 Insertion of new ch 3, pt 7, div 3 inserts a new Division 3 for Public reports.

Division 3 Public reporting

Section 274 Public reporting requirement inserts a new requirement for public reporting on water quality if recycled water is supplied under a CSG recycled water scheme; or under a recycled water scheme to augment a supply of drinking water; or under a recycled water scheme to premises 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.

The relevant entity for the recycled water scheme must prepare and make publicly available a report about water quality. The public report must be prepared and be made publicly available in accordance with regulatory guidelines and must contain the results of water quality monitoring carried out for the scheme during the reporting period and details of the information given to the regulator under sections 270 and 271. This is to provide transparency and to ensure that the public is fully informed. This

will assist in providing public assurance that public health risks are appropriately managed. The relevant report must be available within 30 business days after the last day of the reporting period.

The relevant entity must comply with the requirements unless they have a reasonable excuse and the maximum penalty for the offence is 500 penalty units. 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 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.

Section 275 Sections 275-299 not used inserts editor's note for section.

Clause 225 Amendment of s 301 (Making declaration) inserts a minor clarifying amendments to section 301(2) to ensure that it is clear that the regulator must declare a recycled water scheme to be a critical recycled water scheme if recycled water that is coal seam gas water is supplied or proposed to be supplied under the scheme.

Clause 226 Amendment of s 316 (Application of pt 9) amends section 316 so that the dispute resolution process for a multiple entity recycled water scheme does not apply to a coal seam gas recycled water scheme. The nature of coal seam gas recycled water disposal and its potential limited life means that although coal seam gas recycled water schemes will be critical schemes, a coal seam gas recycled water management plan will not have a purpose of ensuring the continuity of operation of the scheme.

Clause 227 Omission of s 318 (Sections 318-329 not used) omits section 318.

Clause 228 Insertion of new ch 3, pt 9A

Part 9A Coal seam gas water

Division 1 Preliminary

Section 318 Meaning of *relevant location* for a drinking water service provider expressly includes definitions for part 9A for a 'relevant location'

for a drinking water service provider. This is the location at which the drinking water service provider is authorised, under the Water Act, to take water that is, or is intended to be, supplied as drinking water. This includes from water sources such as a watercourse and from a drinking water bore of a drinking water service provider in an aquifer. For the SEQ region the location includes a reference to the location at which the SEQ Water Grid Manager is authorised to take water under the Water Act.

Division 2 Exclusion from ch 3 of particular schemes involving release into aquifers

Section 319 Exclusion of particular CSG recycled water schemes involving release of coal seam gas water into aquifers provides that for a recycled water scheme which supplies coal seam gas recycled water into an aquifer (either directly or indirectly) which has no material impact on the drinking water supply of a drinking water service provider, the coal seam gas water is taken not to be recycled water for chapter 3. A regulation will prescribe the circumstances in which there is no material impact on the drinking water supply of a drinking water service provider. If the circumstances prescribed in the regulation are met, then the coal seam gas water is taken not to be recycled water for chapter 3. There is no need for an application to be made to the regulator. The coal seam gas water produced or supplied under the scheme or part of the scheme will still be recycled water for the remaining chapters of the *Water Supply (Safety and Reliability) Act 2008.* For instance chapter 5, part 5 will apply and the regulator's powers relating to emergencies and cost recovery will apply. If the prescribed circumstances in the regulation do not apply, the responsible entity for the scheme may still apply under section 322 to the regulator to be excluded from the requirements of chapter 3.

Division 3 Exclusion from ch 3 of CSG recycled water schemes by regulator

Subdivision 1 Preliminary

Section 320 Application of div 3 provides that division 3 applies to a CSG recycled water scheme under which recycled water is proposed to be supplied by release of it, directly or indirectly, into a water source (a CSG (pt 9A, div 3) scheme). A reference in division 3 to a CSG (pt 9A, div 3) scheme includes, if the context permits, a reference to part of a CSG (pt 9A, div 3) scheme. For instance an exclusion decision can be made under section 326 for part of a CSG (pt 9A, div 3) scheme.

Section 321 Purpose of div 3 provides that the purpose of this division is to allow a responsible entity to obtain a regulator decision excluding the coal seam gas water produced or supplied under the scheme from the requirements of chapter 3.

Subdivision 2 Applications for, and making of, exclusion decisions

Section 322 Application for exclusion decision provides that a responsible entity for a CSG (pt 9A, div 3) scheme may apply to the regulator for an exclusion decision and includes the requirements for the application. These include the application being accompanied by pre-supply water quality data and any other information or documents required under the guidelines for an exclusion decision as well as being supported by enough information to enable the regulator to decide the application. The pre-supply water quality data is only required where recycled water is proposed to be supplied by direct release into an aquifer if the relevant location for a drinking water service provider is within the hydraulic impact zone from the release of the recycled water. The pre-supply water quality data has the meaning given under section 201A.

Section 323 Additional information may be required provides that the regulator may by notice seek additional information about an application or any information included in the application. If the applicant fails to comply without reasonable excuse, within a reasonable period, the application is

taken to be withdrawn. A requirement under this section is an information requirement.

Section 324 Regulator may obtain advice about application provides that the regulator may obtain advice from an advisory council or any other entity the regulator considers appropriate before deciding the application. This provision would enable the regulator to seek advice from, for example, Queensland Health or an expert panel.

Section 325 Consideration of application makes provision for the matters that the regulator must consider and have regard to in making an exclusion decision with or without conditions and the timeframes for deciding the application.

The regulator may make an exclusion decision for the CSG (part 9A, division 3) scheme only if the regulator reasonably believes the supply of recycled water will have not have a material impact on the drinking water supply of a drinking water service provider.

The regulator must consider the following:-

(a) For direct release into an aquifer; whether the relevant location at which the drinking water service provider is authorised to take water that is supplied as drinking water is within the hydraulic impact zone from the release of the recycled water and if the relevant location is; then whether it is likely there will be an adverse detectable change in the quality of the water at the relevant location, including having regard to the difference between the quality of the recycled water at the point of supply nominated in the application and the quality of the water in the aquifer before the recycled water is released into it.

(b) For release into a water source other than by direct release into an aquifer; the ratio of the recycled water to other water in the water source at the relevant location for a drinking water service provider and the duration of the ratio.

(c) The cumulative impacts of the release of coal seam gas water, other than recycled water proposed to be supplied under the CSG recycled water scheme, in the water source at the relevant location for a drinking water service provider.

(d) The water quality criteria for recycled water.

(e) Any other matters the regulator considers relevant. An example of another relevant matter is whether there is agreement by the drinking water

service provider to not use a drinking water bore for drinking water purposes.

The matters the regulator must have regard to are the application and any additional information, the regulatory guidelines, any environmental management plan for the environmental authority and any advice obtained by the regulator.

Conditions may be required to ensure that the scheme continues to have no material impact on drinking water supplies of a drinking water service provider. Section 327 provides further information about the conditioning powers.

Section 326 Notice of decision provides the requirements for giving notice to applicants concerning an exclusion decision. If the decision is to approve the exclusion without regulator conditions, the regulator must give the applicant written notice of the decision. If the decision is to approve the exclusion with regulator conditions, or to refuse to approve the exclusion, or to approve an exclusion decision for part of the scheme when the application was for the scheme; the regulator must give the applicant an information notice. A person who has been given an information notice by the regulator has a right of internal review and appeal. If the CSG (pt 9A div 3) scheme is a multiple-entity scheme, the applicant must as soon as practicable give a copy of the notice or information notice to each other responsible entity for the scheme.

Section 327 Provision about conditions of exclusion decision provides that an exclusion decision condition for a CSG (part 9A, division 3) scheme may require 1 or more of the following- the monitoring of and giving reports to the regulator about the quality of the water at the point of nominated supply in the application and in the water source after recycled water is released into it; the provision of information to confirm the validity of information included in or accompanying the application; that the quality of the water at the point of nominated supply and in the water source after the recycled water is released into it, is to meet stated standards that are consistent with information included in or accompanying the application; and notification of the regulator if there is a change of circumstances that is or may be relevant to whether the supply of recycled water has a material impact on the drinking water supply of a drinking water service provider. These changes could include if the relevant location a drinking water service provider is authorised to take water supplied as drinking water is within the hydraulic impact zone from the release of the recycled water i.e. either the hydraulic impact zone is larger than originally

modelled or there may be a new drinking water bore of a drinking water service provider. A further example could be that another CSG recycled water provider is supplying coal seam gas recycled water and there is a cumulative impact on a drinking water service provider's supply of drinking water. The information included in or accompanying the exclusion application may include modelling of information e.g. modelling of groundwater flow and contaminant transport (including dispersion, dilution, absorption and other processes) of the recycled water. Conditions will ensure that the results of modelling submitted are consistent with the processes and water quality that occurs after supply has commenced.

Section 327(2) specifically states that section 327(1) does not limit what a condition of an exclusion decision may be about.

An exclusion decision applies only if the conditions of the exclusion decision are complied with by each responsible entity for the CSG (part 9A, division 3) scheme to the extent that they apply to the responsible entity.

Section 328 Duration of exclusion decision provides that an exclusion decision applies from the day the decision is made by the regulator or a later day stated in the notice of the decision and ends on the day the decision is revoked.

Section 329 Effect of exclusion decision provides that if an exclusion decision applies, the coal seam gas water produced or supplied under the scheme is taken not to be recycled water under chapter 3, other than for section 199, division 3 of Part 9A and section 329J. An exclusion decision can be for part of a coal seam gas recycled water scheme. If the exclusion decision is only for part of the coal seam gas recycled water scheme, then section 329 only applies to the part of the scheme that has an exclusion.

A recycled water management plan will not be required for the part of the scheme that is the subject of the exclusion decision. If the exclusion decision applies to the scheme, then a recycled water management plan will not be required for the scheme.

The coal seam gas water produced or supplied under the scheme or part of the scheme will still be recycled water for the remaining chapters of the *Water Supply (Safety and Reliability) Act 2008* as well as for division 3. For instance chapter 5, part 5 will apply and the regulators powers relating to emergencies and cost recovery will apply. The offence provision for failing to comply with conditions of an exclusion decision will also apply. Section 329J which provides for a mechanism to obtain access to undertake

monitoring, including under a requirement under an exclusion decision continues to apply.

Subdivision 3 Revocation of exclusion decision

Section 329A Grounds on which exclusion decision may be revoked by regulator provides that the regulator may revoke an exclusion decision if the regulator reasonably believes the supply of recycled water under the scheme is likely to have a material impact on a drinking supply of a drinking water service provider. The regulator must consider the matters in section 325(3) in making this decision. For example the cumulative impact of the coal seam gas recycled water for the recycled water scheme compared to other proposed releases of coal seam gas recycled water. Changes in the relevant location where a drinking water service provider is authorised to take water that is supplied as drinking water would also be a relevant consideration.

Section 329B Process for revoking exclusion decision provides the process for revoking an exclusion decision for a CSG (pt 9A Div 3 scheme) and includes a show cause process. If, after considering all properly made submissions about the proposed revocation, the regulator decides to revoke the exclusion decision it must give notice to the applicant. Namely of the day on which the exclusion decision is revoked and that a recycled water management plan or amendment to the recycled water management plan must be prepared and given to the regulator for approval within three months or a longer period notified by the regulator, but no longer than six months. If the scheme is a multiple-entity scheme each responsible entity for the scheme must be given a notice as well. An information notice for revoking the exclusion decision must also be given. A person who has been given an information notice by the regulator has a right of internal review and appeal. Section 196 - the offence of supplying recycled water without an approved recycled water management plan does not apply within the period allowed to prepare a recycled water management plan or an amendment to the plan; or until the relevant party receives a notice or information notice under section 206 for the regulator's decision on an application for approval of a recycled water management plan or an amendment to the plan.

If the regulator decides the exclusion decision should not be revoked, the regulator must give the original applicant notice that the exclusion decision has not been revoked.

Section 329C Water quality monitoring and reporting may be required if revocation is stayed provides that if the Planning and Environment Court stays either the original exclusion decision or a review decision about the original decision, then the regulator may issue a notice to a recycled water provider or any other responsible entity for the CSG (part 9A, division 3) scheme that applies during the stay. The notice may require:- monitoring of the recycled water produced or supplied under the scheme or the water in a water source into which the recycled water is released; reports to the regulator at stated intervals about the results of the monitoring; and reports to the regulator about the operation of the scheme, including, for example, reports about whether the quality of the water produced or supplied under the scheme is consistent with the water quality criteria for recycled water stated in the notice. The relevant person must comply with the notice unless they have a reasonable excuse and a maximum penalty of 500 penalty units is provided.

Division 4 Interim recycled water management plans for particular CSG recycled water schemes

Section 329D CSG recycled water scheme may have interim recycled water management plan for interim period provides that for a CSG (part 9A, division 3) recycled water scheme, for the interim period, the approved recycled water management plan may be a recycled water management plan that complies with section 329E instead of section 201(5). This "interim recycled water management plan" is an approved recycled water management plan. The interim period is 1 year from commencement of supply or a shorter period decided by the regulator. The regulator may determine a shorter period if the regulator reasonably believes the shorter period is necessary to protect public health. The regulator must provide notice of the shorter period, at the end of which the interim period for the scheme will end. At any time within the interim period the recycled water provider may prepare and apply for approval of a recycled water management plan that complies with section 201(5).

Section 329E Content of interim recycled water management plan contains the requirements for the contents of an interim recycled water management plan. The requirements for an interim plan do not include a formal risk assessment and management process to be undertaken, with the exception of where coal seam gas recycled water is proposed to be supplied by release into an aquifer. A precautionary approach has been taken in relation to recycled water supplied by release into an aquifer as there are specific risks associated with this supply. Coal seam gas recycled water has a different risk profile to other recycled water and therefore there are different requirements for an interim plan for an interim period. A recycled water management plan which complies with the requirements in section 201(5) is not subject to an interim period. The requirements in section 201(5) for a recycled water management plan include a formal risk assessment and management process.

The requirements for an interim recycled water management plan will ensure that public health is protected during the interim period. These will include requiring final water quality results before supply, extensive water quality monitoring programs and intensive incident management requirements including an incident and emergency response plan.

Example of infrastructure for the production or supply of recycled water has been provided in the section, namely feed ponds, petroleum wells, storage and distribution infrastructure, and treatment plants.

Section 329F Reviews and audits not required for interim recycled water management plan provides that reviews and audits, which would apply under a recycled water management plan, must not be stated in a notice or information notice given under section 206 for an interim recycled water management plan. Sections 258 to 261 do not apply if the approved recycled water management plan for a CSG (part 9A, division 3) scheme is an interim recycled water management plan.

Given that these reviews and audits would usually be required after a period longer than the interim period, their application to interim recycled water management plans is not warranted.

Section 329G Ending of approval of interim recycled water management plan provides that an interim recycled water management plan ends on the day the interim period for the scheme ends or, if earlier, the day the regulator approves a recycled water management plan for the scheme other than an interim recycled water management plan. The interim period is 1 year from the day the recycled water that is coal seam gas water is first

supplied or a shorter period determined by the regulator. An application for a recycled water management plan which complies with section 201(5) can be made during the interim period.

Division 5 Other provisions

Section 329H What is a *post supply obligation* provides that a post supply obligation is an obligation imposed on a responsible entity for a CSG (aquifer) recycled water scheme under a regulator condition of the approved recycled water management plan and that applies or continues to apply after the supply of recycled water has stopped, including if the plan is suspended or cancelled. The approved recycled water management plan for the scheme may be an approved interim recycled water management plan and post supply obligations may be imposed on an approved interim recycled water management plan.

Section 329I Application of enforcement provisions for post supply obligations provides that if a post supply obligation is imposed, then for chapter 5, part 5, and section 329J, the entities and infrastructure that comprised the scheme immediately before the supply of recycled water stopped are taken to continue to comprise the scheme and an entity that was a responsible entity for the scheme immediately before the supply stopped continues to be a responsible entity for the scheme and the post supply obligation conditions of the recycled water management plan continue to have effect despite the stopping of supply under the scheme and whether or not the plan has been suspended or cancelled. This ceases to have effect when all post supply obligations have been complied with.

A recycled water scheme is defined in the Act as a single-entity or a multiple-entity recycled water scheme. A multiple-entity coal seam gas recycled water scheme means a scheme involving the production and supply, or supply only, of recycled water that is coal seam gas water, by more than 1 recycled water provider, or at least 1 recycled water provider and another entity. A multiple-entity coal seam gas recycled water scheme is made up of each recycled water provider and other entity declared to be part of the scheme under a declaration for the scheme made under chapter 3, part 8; and the infrastructure for the production and supply, or supply only of recycled water that is coal seam gas water, that is stated to be part of the scheme under the declaration. Therefore for a multiple-entity recycled water scheme the entities and infrastructure identified above that

comprised the scheme immediately before the supply stopped are taken to continue to comprise the scheme and an entity that was a responsible entity for the scheme immediately before supply stopped continues to be a responsible entity for the scheme. A single-entity coal seam gas recycled water scheme means a scheme involving the production and supply, or supply only of recycled water that is coal seam gas water by only 1 recycled water provider and includes the infrastructure for the production and supply or supply only of the water; owned by the provider. For a single-entity coal seam gas recycled water scheme the entities and infrastructure identified above that comprised the scheme immediately before the supply stopped are taken to continue to comprise the scheme and an entity that was a responsible entity for the scheme immediately before supply stopped continues to be a responsible entity for the scheme.

Section 329J Power to enter land for compliance with particular requirements under ch 3

Section 329J applies if a responsible entity for a CSG (aquifer) recycled water scheme is subject to a post supply obligation. It also applies if the responsible entity for a CSG recycled water scheme must undertake monitoring of the quality of water to comply with an obligation under the Act, including, for example, under an approved recycled water management plan, a condition of an exclusion decision, or a notice under section 329C or 643 or to make an application for a recycled water management plan or an exclusion decision ("a monitoring requirement").

A monitoring requirement or post supply obligation is taken to be an environmental requirement for the purposes of the *Environmental Protection Act 1994*, chapter 12, part 4. This provides a means of access if access does not already exist including to carry out monitoring for a monitoring requirement or a post supply obligation or to do anything else required under the post supply obligation. Under the *Environmental Protection Act 1994,* an application can be made for an entry order to the magistrate to comply with an environmental requirement which includes a condition of an environmental authority that continues after the environmental authority has ended.

Post supply obligations are required in order to ensure that public health risks are managed after supply and the intent is to complement the existing approach for environmental authorities conditions which may apply after the environmental authority has ceased to apply.

Clause 229 Amendment of s 410 (Power to enter land to monitor compliance) amends section 410 to ensure that an authorised officer has power to enter land at any reasonable time to find out if any of the following are being complied with:- a notice issued to a drinking water service provider under section 630(2); a notice issued to a responsible entity for a CSG (part 9A, division 3) scheme under section 329C (2); a notice issued to a recycled water provider under section 643(2); the conditions of an exclusion decision or post supply obligations.

Clause 230 Amendment of s 435 (Application of pt 5) amends section 435 so that particular enforcement provisions relating to recycled water will apply to non-compliance with conditions of an exclusion decision, post supply obligations, a notice issued under section 329C(2) or section 643(2) and to an event if a post supply obligation is imposed even if the event happens or is likely to happen after supply of the recycled water has stopped, whether or not the approved recycled water management plan has been suspended or cancelled.

Clause 231 Amendment of s 441 (Definitions for div 3) amends the definition of an event and includes anything that happens or is likely to happen after the supply of recycled water under the scheme has stopped, whether or not the approved recycled water management plan for the scheme has been suspended or cancelled, if a post supply obligation has been imposed.

Clause 232 Amendment of s 571 (Regulator may make guidelines) amends section 571 to allow the regulator to make guidelines about applying for, and making, exclusion decisions and preparing and making water quality reports publicly available.

Clause 233 Amendment of s 579 (Regulator may share particular information) amends section 579(2) so that the regulator may give information about water quality to a responsible entity that is the scheme manager or a recycled water provider or other declared entity for a CSG recycled water scheme.

Clause 234 Amendment of s 628 (Application of particular provision) amends section 628 so that the transitional provisions for drinking water quality management plans do not apply to direct augmentation of drinking water supplies of a drinking water service provider, namely where the coal seam gas water is delivered to a drinking water service provider by another entity. For direct augmentation of drinking water supplies of a drinking water service provider, an approved drinking water quality management

plan will be required, prior to the supply of the coal seam gas recycled water. This only applies to the part of a drinking water scheme which is delivered the coal seam gas recycled water and any other part of the drinking water service that uses the recycled water. For example if a drinking water service provider has a number of drinking water schemes, it is only the scheme that is delivered the coal seam gas recycled water that must have a drinking water quality management plan for the treatment, transmission and reticulation of the water. A recycled water management plan will also be required by the coal seam gas recycled water provider. Direct augmentation poses higher risks than indirect augmentation as there is no retention of the treated coal seam gas recycled water in a buffer zone and no dilution of it and therefore these stronger measures are required to ensure that public health is protected.

It also amends section 628 so that the exclusion from the transitional provisions for drinking water quality management plans do not include indirect augmentation of drinking water supplies of a drinking water service provider with coal seam gas recycled water. Indirect augmentation of drinking water supplies of a drinking water service provider with coal seam gas recycled water is the release into a water source which is used by a drinking water service provider in a drinking water service. A drinking water quality management plan is not required to be approved prior to indirect augmentation of drinking water supplies with coal seam gas recycled water. A recycled water management plan is required by the coal seam gas recycled water provider prior to supply of the coal seam gas recycled water.

Clause 235 Amendment of s 633 (Application of particular provisions – other schemes) amends section 633(1) so that existing transitional provisions under the Act do not apply to existing CSG recycled water schemes as the transitional provisions for these schemes are dealt with in a new Part 4 in chapter 10 instead.

Clause 236 Insertion of new chapter 10, part 4

Part 4 Transitional provisions for Water and Other Legislation Amendment Act 2010

Section 640 Definitions for pt 4 inserts new definitions for part 4 including for an existing CSG recycled water scheme which means a recycled water scheme under which recycled water that was coal seam gas water was supplied before the commencement by its disposal under a CSG environmental authority.

Section 641 Conditions of particular CSG environmental authorities taken to be interim recycled water management plan states the effect of an existing recycled water scheme, being prescribed under a regulation, within four months of the commencement. The drinking water conditions of the prescribed CSG environmental authority, identified in a regulator notice, are then taken to be an approved interim recycled water management plan. The transitional period ends on the day the scheme is prescribed in a regulation. The interim period for the interim recycled water management plan starts on the commencement of the regulation.

Section 642 Transitional period for existing CSG recycled water schemes provides that section 196 does not apply to an existing CSG recycled water scheme until the day after the transitional period ends. Section 196 requires an approved recycled water management plan prior to supply of recycled water.

The transitional period starts on the commencement of the legislation and is for a maximum period of 15 months or until the approval of a recycled water management plan or an exclusion decision for the scheme or part of the scheme and is subject to the following requirements, which if not complied with, has the effect that the transitional period ends earlier. An existing CSG recycled water scheme must apply for approval of a recycled water management plan or an exclusion decision within four months unless it has already been prescribed under the regulation. If the relevant CSG environmental authority for an existing CSG recycled water scheme is prescribed under section 641, the transitional period for the scheme ends on the day the regulation prescribing the authority commences.

If there is approval for an exclusion decision for part of a recycled water management scheme, then the transitional period ends only for the part of the scheme that has an exclusion decision.

Section 643 Provision about water quality monitoring and reporting provides that during the transitional period, the regulator may by notice, require the recycled water provider for an existing CSG recycled water scheme to carry out water monitoring required in the notice and give the regulator reports about the results of the monitoring. The regulator may also require by a notice, reports about the operation of the recycled water scheme, including about whether the quality of the water produced or supplied is consistent with the water quality criteria for coal seam gas recycled water as identified in the notice. It is an offence to not comply with the notice unless there is a reasonable excuse and a maximum penalty of 500 penalty units applies. Strong incident management procedures will ensure that public health risks are managed prior to the appropriate regulatory approvals.

During the transitional period, the regulator may by notice, require the recycled water provider for an existing CSG recycled water scheme to carry out water monitoring required in the notice and give the regulator reports about the results of the monitoring. The regulator may also require by a notice, reports about the operation of the recycled water scheme, including about whether the quality of the water produced or supplied is consistent with the water quality criteria for coal seam gas recycled water as identified in the notice. It is an offence to not comply with notice unless there is a reasonable excuse and a maximum penalty of 500 penalty units applies. Strong incident management procedures will ensure that public health risks are managed prior to the appropriate regulatory approvals.

Clause 237 Amendment of sch 3 (Dictionary) amends certain definitions contained in the Bill and inserts new definitions. Many of the definitions provided are self-explanatory; however, below is a number of definitions that require further explanation:

Coal seam gas water continues to be coal seam gas water even if it is mixed with other water. For example if it is put into a water source and mixed with other water, such as into a watercourse, a lake, dam or weir, an aquifer or an off-stream storage. The mixing with other water does not mean that it is no longer coal seam water and that it is no longer subject to the regulatory framework. This applies whether it is supplied by release into a water source or whether it is delivered by an entity, other than a drinking water service provider who uses the recycled water in a drinking water service, to another entity. Coal seam gas water may be treated to comply with the public health standards for coal seam gas recycled water developed by Queensland Health or it may not require treatment prior to

supply to a water source, if the coal seam gas water is already of a high standard. Where coal seam gas water is supplied by delivery to a drinking water service provider and the recycled water is used in the drinking water service provider's drinking service the coal seam gas water must be treated to comply with the public health standards. The public health standards for coal seam gas recycled water will be included in the *Public Health Regulation 2005.*

Supply includes the release of the coal seam gas recycled water, directly or indirectly into a water source such as a watercourse, lake, dam, weir, aquifer or off-stream storage if the coal seam gas recycled water is used by a drinking water service provider in a drinking water service. Coal seam gas recycled water that mixes with other water in a water source is still recycled water. The definition of supply also includes the delivery of the recycled water by an entity (other than a drinking water service provider who uses the recycled water in a drinking water service) to another entity, if the recycled water is used by a drinking water service provider in a drinking water service. So if there are numerous parties and entities that are involved before the end delivery of the recycled water, then provided the recycled water is used by a drinking water service provider in a drinking water service, all the entities will be caught under the 'delivery" definition for supply. A drinking water service provider who carries out the subsequent treatment, transmission or reticulation of the coal seam gas recycled water for supply as drinking water is not captured by the definition of supply and is not required to have a recycled water management plan. If the entity that delivers the coal seam gas recycled water to an entity is also a drinking water service provider but is not **the** drinking water service provider who uses the coal seam gas recycled water in a drinking water service; that entity will be captured by the definition of supply and will be required to have a recycled water management plan.

Recycled water has been amended to include coal seam gas water that augments a supply of drinking water. This augmentation may be by indirect means whereby the coal seam gas recycled water is released into a water source and may mix with other water or it may be by direct augmentation where the coal seam gas recycled water is delivered by an entity (other than a drinking water service provider who uses the recycled water in a drinking water service) to another entity; and in both cases it must be used by a drinking water service provider in a drinking water service. It is not necessary for a coal seam gas recycled water provider to intend to augment a supply of drinking water and it is sufficient if it is coal seam gas water is released to a water source or delivered to an entity; providing that it is

ultimately used by a drinking water service provider in a drinking water service.

Part 16 Amendment of Wild Rivers Act 2005

Clause 238 Act amended provides that this part amends the *Wild Rivers Act 2005*.

Clause 239 Amendment of s 3 (Purpose of Act) amends section 3 to extend the purpose of the Wild Rivers Act to provide for the preservation of the natural values of the rivers of the Lake Eyre Basin. The amendment also includes provision under the wild rivers framework for a new area classification that is a special floodplain management area, to apply only to a wild river declaration for rivers in the Lake Eyre Basin. The new area classification recognises that rivers in the Lake Eyre Basin generally are braided and may cover an area that stretches laterally many kilometres such that the existing classification provision for a wild river high preservation area extending one kilometre either side of a major tributary is not appropriate.

Clause 240 Amendment of s 8 (Public notice of intention to declare wild river area) amends the requirements for a public notice of intention to declare a wild river area. Subsections (2)(e) and (f) are replaced with a new subsection (2)(e) requiring the public notice to state where a person may obtain further information about the proposed declaration and where they may obtain the document describing the moratorium that will have effect for the area. The purpose of the amendment is to reduce the size and complexity of a notice of intent for ease of understanding and publication.

Clause 241 Amendment of s 9 (Moratorium period) provides recognition that, for the moratorium period, the moratorium document is a stand alone document and does not form part of the notice of intent.

Clause 242 Amendment of s 10 (Application of moratorium) Clause 210(1) separates the moratorium from the notice of intent to be a stand alone moratorium document that is taken to be a moratorium under the *Water Act 2000* rather than a part of the notice of intent.

Clause 210(2) provides for a proposed special floodplain management area to be taken to be a special floodplain management area for the purpose of part 10A of the *Mineral Resources Act 1989*.

Clause 243 Amendment of s 12 (Content of declaration proposal) provides that a wild river declaration proposal may include the location of a proposed special floodplain management area and may state the types of works for interfering with overland flow water that are proposed to be made assessable or self-assessable in the special floodplain management area.

Clause 244 Amendment of s 14 (Content of wild river declaration) provides that a wild river declaration may also include the location of a special floodplain management area and may state the types of works for interfering with overland flow water that are assessable or self-assessable in the special floodplain management area.

Clause 245 Amendment of s 17 (Effect of declaration on activities and taking natural resources) clarifies the previous intent that authorised activities can continue, and existing agricultural activities and animal husbandry activities (that did not require an authorisation) can continue, as if there was no declaration.

Clause 246 Amendment of s 18 (Applications received but not decided) clarifies that applications received before or during a moratorium but not decided until after the declaration is made, must be dealt with in accordance with the declaration. Section 18 is amended to remove any doubt that an application to which the moratorium under section 10(2) or 10(4) applies includes an application received but not decided before the moratorium had effect.

Clause 247 Amendment of s 19 (Amending a wild river declaration) provides that the Minister must amend a wild river declaration if the Minister is satisfied the preservation of the natural values of rivers is not being met in the wild river area to which the declaration relates. This amendment recognises the amendment to the purpose of the Act included in the Bill.

Clause 248 amendment of s 20 (Public notice of intention to amend wild river declaration) replaces subsections (2)(c) and (2)(d) with a new subsection (2)(c) to provide that the notice of intent to amend a wild river declaration must state where a person may obtain further information about the proposed declaration and where they may obtain the document describing the moratorium that will have effect for the area.

Clause 249 Amendment of s 21 (Moratorium period) provides for the moratorium period for a moratorium commenced under a notice of intent.

Clause 250 Amendment of s 22 (Application of moratorium) provides for the extent of the moratorium to be stated in the moratorium document instead of the notice of intent as applied previously.

Clause 251 Amendment of s 31 (Minor amendments of wild river declaration) provides minor changes to the provisions relating to what matters may be considered to be minor amendments to a wild river declaration.

Clause 219(2) provides an example of a change to a wild river declaration that is not a change of substance includes a change to a reference to a renumbered provision of an Act, if the change is merely to update a reference in the declaration to make it consistent with that Act.

Clause 219(3) replaces the current subsection relating to a designated urban area with a new subsection and renumbers the current subsection relating to a subartesian management area. A designated urban area is replaced with a special floodplain management area to provide that a minor change to the boundary of an existing special floodplain management area in a wild river area can be dealt with as a minor amendment of a wild river declaration.

Clause 219(4) inserts a new subsection (f) under s31(1) to provide that a minor change to the existing boundary of a designated urban area within a wild river area is a minor amendment. This replaces the current subsection (1)(c)(v). Also, that another change to the boundary of a designated urban area in a wild river area that would not ordinarily be considered a minor change, is a minor change, if the change is made to ensure the area is consistent with a boundary shown on a planning scheme for the area under the Planning Act.

Clause 252 Amendment of s 39 (Copies of documents to be available for public inspection) inserts under subsection (1) the moratorium document that describes the moratorium for a proposed wild river area as a document to which the section applies.

Clause 253 Amendment of s 40 (Report by Minister on wild river declarations) provides that the Minister must report the findings of research and monitoring that relates to the preservation of the natural values of rivers in the wild river area to which the declaration relates. This

amendment recognises the amendment to the purpose of the Act included in the Bill.

Clause 254 Amendment of s 41 (Classification of wild river into high preservation area and preservation area) clarifies that the section, which provides for classification of a wild river area into a high preservation area and preservation area, applies to the classification of areas in a wild river area other than a wild river area in the Lake Eyre Basin.

Clause 255 Insertion of new s 41A (Classification of wild river area in Lake Eyre Basin into high preservation area, preservation area and special floodplain management area) provides for classification of the parts of a wild river area in the Lake Eyre Basin to include a high preservation area, a preservation area and a special floodplain management area. The section also provides for the identification of floodplain management areas, and subartesian management areas to assist in the regulation of activities and natural resource allocations in a Lake Eyre Basin wild river area.

The section also clarifies that a floodplain management area cannot exist over an area that has been classified a special floodplain management area.

Clause 256 Amendment of s 42 (Effect of classification on particular development applications) extends the provisions of the section to apply to all parts of a wild river area. The provision requires any development application for a material change of use of premises that is for agricultural or animal husbandry purposes in a wild river area to comply with the applicable code mentioned in the wild river declaration for the area.

Clause 257 Amendment of schedule (Dictionary) makes a number of amendments to definitions in the schedule.

The current definition of *publish,* for a notice, is amended to provide more flexibility in the way a notice is published.

New definitions for *Lake Eyre Basin* and *special floodplain management area* are included.

The definition of *agricultural activities* is amended to clarify that the definition:

- includes irrigating a crop;
- excludes producing agricultural products in a market garden, provided the maximum area of land on which the products are produced is not more than 4 hectares;

- excludes land rehabilitation or remediation activities such as deep ripping or shallow ponding of water;
- excludes blade ploughing used for controlling regrowth vegetation or woody weeds in an area that is shown on a PMAV made under the *Vegetation Management Act 1999* as category X or category C.

Part 17 Consequential amendments

Clause 258 Acts and regulations amended in schedule 2 provides for a number of amendments to Acts and regulations. The majority of these changes are to reflect the changes caused by the expansion of the Energy Ombdusman to the Energy and Water Ombudsman. For example, references to the Energy Ombudsman are now made to the Energy and Water Ombudsman.

The amendment to the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* omits the reference to the QIMR Trust in Schedule 1, item 7. This is necessary as a consequence of the abolition of the QIMR Trust under Part 10 of the Bill.