Land, Water and Other Legislation Amendment Bill 2013

Explanatory Notes

Short Title of the Bill

The short title of the Bill is the *Land, Water and Other Legislation Amendment Bill 2013.*

Policy objectives and the reasons for them

The Bill has seven major policy objectives which support and implement a number of commitments made by the Queensland Government:

1. Progressing the recommendations of the Queensland Floods Commission of Inquiry that relate to levees
2. Reduce red tape and regulation
3. Facilitate the conversion of water authorities to two tier co-operative structures
4. Address concerns raised by stakeholders during the Parliamentary Committee hearing into the *Mines Legislation (Streamlining) Amendment Act 2012* regarding pipelines carrying produced water
5. Clarify an amendment made to the Regional Vegetation Management Code in 2009
6. Extend timelines for the interim assessment process for water and sewerage issues for South-East Queensland Distributor-retailers and their owner Councils until 1 March 2014
7. Implement a number of other miscellaneous amendments to address operational issues necessary to provide for continued effective implementation of a range of legislation.

Queensland Floods Commission of Inquiry

On 17 January 2011, the Queensland Government established an independent body, the Queensland Floods Commission of Inquiry (the Commission) with wide-ranging powers of investigations into the Queensland floods of 2010 and 2011. The Commission delivered its Final Report on 16 March 2012 with 177 recommendations covering a broad range of areas including planning, development and essential services.

On 7 June 2012, the Queensland Government committed to implement all 123 recommendations which relate directly to the State. The government also committed to work with local governments to deliver improved flood outcomes across the state.

The Commission made five recommendations directly related to levees. In summary, the Commission recommended that levees should be regulated using the most appropriate regulatory regime under the *Sustainable Planning Act 2009* and that the regime should be developed in consultation with local governments.

The Bill amends the *Water Act 2000* to progress recommendations relating to levees. The Bill provides the first step in the development of a legislative framework for a consistent approach to regulate the construction of new levees and, modification of existing levees by including:

- a definition of 'levee'
- additional criteria for assessing levees that are made assessable development under the *Sustainable Planning Act 2009*
- the power to make regulations to state a code against which applications can be made and to provide for the control and management of different categories of levees, thus enabling different levels of assessment under the Sustainable Planning Regulation 2009.

Reducing red tape and regulation

The Queensland Government has committed to Grow a Four Pillar Economy by focussing on tourism, agriculture, resources and construction, and by cutting red tape and regulation. The Bill supports the government's policy by amending a number of Acts within the natural resources and mining portfolio.

A suite of legislative amendments proposed in this Bill have been developed to meet the government's commitment to reduce red tape on business and the community. Red tape reduction is an important step in the process of creating a more competitive and dynamic business environment and economy in Queensland.

Collectively, these amendments will deliver a range of benefits to stakeholders, making it easier for clients to do business with government through improved client services and streamlining of processes and requirements.

The Bill also seeks to remove a number of redundant and unnecessary regulations and requirements, further streamlining Queensland's regulatory framework and cutting red tape across the natural resource and mining sectors.

Facilitating the conversion of water authorities to two tier co-operative structures

Queensland Government policy is that the functions of category 2 water authorities (water authorities) should, where appropriate, transfer to alternative institutional structures as negotiated between the water authorities, the State and local governments. Water authorities are statutory bodies established under the *Water Act 2000* that commonly supply water to entitlement holders for irrigation or stock or domestic purposes, or provide drainage services.

Water authorities that own infrastructure for supply of a water or sewerage service are required to be registered service providers under the *Water Supply (Safety and Reliability) Act 2008* and may also hold a distribution operations licence (DOL) under the *Water Act 2000*.

The Department of Natural Resources and Mines has been working with water authorities to implement new institutional arrangements proposed by water authorities. In this regard, a number of amendments to the *Water Act 2000* and the *Water Supply (Safety and Reliability) Act 2008* to accommodate transfers to alternative institutional structures have been made, for example, to enable conversion of a water authority to two or more different entities. Currently the *Water Act 2000* and *Water Supply (Safety and Reliability) Act 2008* do not sufficiently accommodate conversion of a water authority into two separate entities, where one entity owns infrastructure while the other operates the infrastructure and provides services to customers.

In response to proposals from a number of water authorities to transition to a two tier co-operative structure involving a holding co-operative (which would own the water infrastructure) and a trading co-operative (which would provide water services to entitlement holders within the water supply scheme) the *Water Act 2000* and *Water Supply (Safety and Reliability) Act 2008* are being amended.

The objective of the amendments to the *Water Act 2000* is to provide for the transfer of functions from a water authority under Chapter 4 of the *Water Act 2000* to a holding co-operative and a trading co-operative (two tier co-operative) by providing that the owner of the infrastructure may nominate an entity to be the DOL holder under section 107C of the *Water Act 2000*.

Similarly, the amendments to the *Water Supply (Safety and Reliability) Act 2008* will enable an entity that does not own infrastructure to be registered as a service provider, if the entity is nominated by the infrastructure owner and prescribed under a regulation as a 'related entity' of the infrastructure owner.

Pipelines carrying produced water

The objectives of the amendment are to address concerns raised by stakeholders during the Parliamentary Committee hearing into the *Mines Legislation (Streamlining) Amendment Act 2012* and clarify which water facilities, in particular pipelines, should be included as operating plant.

Correction to the Regional Vegetation Management Code

The Bill's objective in relation to the amendment to the *Vegetation Management Act 1999* is to clarify an amendment made to the Regional Vegetation Management Code in 2009 that linked the definition of watercourses to a Vegetation Management Watercourse Map. There

was some inconsistency about the name of the map, where the map could be located, whether it is a hard copy or electronic map and how it is made and amended.

South East Queensland water related amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* and the Sustainable Planning Regulation 2009

South-East Queensland Distributor-retailers (Unitywater and Queensland Urban Utilities) and their owner Councils have been operating under an interim assessment process for water and sewerage issues in development applications, which expires on 30 June 2013.

These interim arrangements were adopted to allow the newly developed Distributor-retailers to become established, before moving to a new water approval process. Under the existing system Distributor-retailers rely on local governments to issue approvals on their behalf, based on their technical advice.

A new streamlined water approval system for South-East Queensland Distributor-retailers is proposed to be implemented from 1 March 2014. It will provide speedier approvals representing cost savings for both owners of new homes and large developers. It is proposed to extend the interim assessment process for water and sewerage issues in development applications until 28 February 2014. It is also proposed to extend the timeline for coordinated infrastructure and business plans from 1 July 2013 until 1 March 2014 to align with the commencement of the new water approval system on 1 March 2014.

The extension of the timelines will enable practical input from the development industry as well as councils and distributor-retailers on the new water approval system; provide implementation time and will ensure in the meantime that there is regulation for water and sewerage issues associated with development.

Miscellaneous and minor amendments

The Bill also contains a number of additional, miscellaneous and minor amendments which will further streamline the operation of a number of Acts as well as simplify or clarify existing processes.

Achievement of policy objectives

To achieve the objectives, the Bill amends the *Aboriginal Land Act 1991*, *Acquisition of Land Act 1967*, *Cape York Peninsula Heritage Act 2007*, *City of Brisbane Act 2010*, *Foreign Ownership of Land Register Act 1988*, *Land Act 1994*, *Land Title Act 1994*, *Land Valuation Act 2010*, *Local Government Act 2009*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *River Improvement Trust Act 1940*, *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, *Sustainable Planning Act 2009*, Sustainable

Planning Regulation 2009, *Torres Strait Islander Land Act 1991, Vegetation Management Act 1999, Water Act 2000,* and the *Water Supply (Safety and Reliability) Act 2008*.

Amendments to the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*

Reserves and roads

Indigenous deeds of grant in trust land (DOGITs) are transferable land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. The intent is that all lands within the DOGIT (under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*), with the exception of certain lands, such as roads, are transferred.

Unfortunately, the survey and general state of tenure identification on DOGIT lands is poor, for example roads are not constructed on their dedicated alignment.

Section 11(2) of the *Aboriginal Land Act 1991* and section 10(2) of the *Torres Strait Islander Land Act 1991* provide that the definition of a DOGIT includes certain closed roads. Unfortunately this definition does not include all closed roads, for example where a road is no longer required. Whilst the closed road area can be included into the DOGIT it would still not be transferable land. To transfer these closed roads requires regulating the closed road as transferable land. This is an unnecessary burden.

Under section 12 of the *Aboriginal Land Act 1991* and section 11 of the *Torres Strait Islander Land Act 1991* the same situation can occur within a reserve. Whilst the reserve is transferable land, any closed road within a reserve would not be transferable and would otherwise require a regulation to make the land transferable land.

The Bill simplifies dealings relating to reserves and the opening and closing of roads on Aboriginal and Torres Strait Islander lands and as such hastens the land transfer process because the intermediate and superfluous step of creating transferable land will no longer be required.

Subleases

Aurukun Shire lease land and Mornington Shire lease land are transferable lands under the *Aboriginal Land Act 1991*. Mornington Shire lease land has already been transferred and is now Aboriginal freehold land.

Upon transfer, the Shire lease is cancelled. Whilst the *Aboriginal Land Act 1991* provides for the continuation of any existing interests upon transfer of land, there is doubt about whether the subleases can continue. This is because the instrument under which the sub-lease is created (the Shire lease) no longer exists once the land is transferred and, accordingly, the sublease may cease to exist.

Therefore, the Bill puts it beyond doubt that a sublease entered into under the *Aurukun and Mornington Shire Leases Act 1978* continues in force upon the transfer of the Shire lease land under the *Aboriginal Land Act 1991*.

Starcke National Park

Amendment to section 177 – claimable lands made transferable

Most national park land in the Cape York Peninsula Region that was previously designated as claimable land under the *Aboriginal Land Act 1991* has been made transferable land under section 177 of that Act. Starcke National Park is the only park in the region that is still designated as claimable land, and this amendment will change it to transferable land, consistent with other parks in the region.

This amendment will enable Starcke National Park and three nearby parks which are already transferable land to be transferred to the same Aboriginal landholding body. This will streamline the conversion of these parks to national parks (Cape York Peninsula Aboriginal land), which will be managed jointly by the Aboriginal Traditional Owners and the Queensland Government.

Membership of land trusts

Land transferred under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* is held in trust by a land holding entity which can be an existing land trust (established under those Acts). There have been circumstances where the proper operation of a land trust has been frustrated by the actions of individual member(s).

Whilst trusts can remove, suspend or appoint members themselves, this relies on the trusts adopting such a rule; very few trusts have adopted these rules. To adopt such a rule requires 75% of members to agree, this can be difficult to achieve where the trust member to be removed or suspended actively works against the motion.

The Bill will amend the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to provide land trusts with the power to appoint, remove or suspend members of the land trust. The process for exercising this power will be mandated and will not be able to be amended.

Currently the Aboriginal Land Regulation 2011 and the Torres Strait Islander Land Regulation 2011 provide for the adoption of rules. The Bill will replace these provisions with default rules for appointment, removal or suspension, by the land trust, of members of the land trust.

The Minister also has the power to suspend or remove a member. Where a land trust does not have rules regarding same, they must request the Minister to remove or suspend a member. It has proven difficult for the Minister to act to remove or suspend a member until after a

serious event has occurred due to difficulty in meeting the requirements under the Acts – particularly that there is an immediate and serious risk to the proper operation of the land trust.

The Bill will amend the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* so that if the Minister forms a view that the actions of a member of the land trust is hindering the proper operation of the land trust and the Minister is satisfied that grounds exist for removing or suspending the member, this will be a sufficient basis to remove members.

The Bill will also clarify the operation of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* with respect to the Minister having the power to immediately suspend or remove a member and to remove a member following further investigation.

Amendments to the *Acquisition of Land Act 1967*

The Bill provides for shortened acquisition processes in simple cases where the parties agree or do not object.

In straightforward matters, the Bill will simplify the process of publishing a gazette resumption notice taking land or an easement. For example, if no objections are received then these matters may be considered by the Minister or the Ministers delegate without referral to the Governor in Council. If an agreement is entered into between the constructing authority and all relevant parties, then these compulsory acquisitions will no longer have to be referred to the Minister or to the Governor in Council. The Governor in Council approval to the taking of land or an easement will still be required in cases where any party objects to the proposed resumption.

In addition, the Bill will introduce consequential amendments. For example the process of publishing an amending gazette resumption notice will also be simplified.

The Bill amends the *Acquisition of Land Act 1967* to achieve the policy objectives by amending sections 9 and 15 so that there is an alternative procedure where Governor in Council approval will not be required for compulsory acquisitions of land and easements. This will apply where all parties agree or where there are no objections.

Amendments to the *Cape York Peninsula Heritage Act 2007*

Section 7 of the *Cape York Peninsula Heritage Act 2007* and the map to which it refers defines the Cape York Peninsula Region for the purposes of the *Aboriginal Land Act 1991* and other legislation. National parks in this defined region can be converted to national parks (Cape York Peninsula Aboriginal land) under the *Aboriginal Land Act 1991* and *Nature Conservation Act 1992*.

The region as currently defined excludes the Eastern Kuku Yalanji parks. This exclusion was intended to allow time for tenure changes and other actions that were agreed in an Indigenous

Land Use Agreement in 2006 to be completed, before further tenure changes were considered. Those actions were completed in late 2011.

The amendment will refer to a new map which will redefine the region to include these parks, so that they can in future be converted to national parks (Cape York Peninsula Aboriginal land). This will provide for joint management of these parks by the Aboriginal Traditional Owners and the Queensland Government, consistent with recent government commitments.

The amendment also provides for the map that defines the region to be revised from time to time by regulation, to streamline the process for adjusting the boundaries of the region in future.

Amendments to the *Foreign Ownership of Land Register Act 1988*

The *Foreign Ownership of Land Register Act 1988* requires the registrar of titles (the registrar) to keep a register of interests in land acquired by foreign persons and submit to the Minister an annual report on the administration of that Act. This report details the number of parcels and the area of land acquired by foreign persons during the previous year and the nationalities of the relevant persons.

At the time of its enactment, the *Foreign Ownership of Land Register Act 1988* was expressed to apply only to acquisition of freehold land, long-term leases of freehold land, leases of State land and certain other interests giving exclusive possession of State land. The *Foreign Ownership of Land Register Act 1988* specifically excluded other types of interests that do not give long-term exclusive possession or control of land, such as mortgages and easements.

Since that time, Queensland legislation has been amended to introduce four new types of registrable interest in land, none of which give long-term exclusive possession or control of land, namely:

- the profit a prendre – where a landholder grants a right to another person for a specified period to enter land and take something from the land, such as gravel or timber;
- the covenant – where a landholder by agreement places a restriction on the use of land or undertakes an obligation, such as preserving a natural habitat on the land;
- the plantation licence – where the State grants to another person rights to establish, maintain and harvest timber on State land; and
- the carbon abatement interest – where the owner of land or, for certain State lands, a person who holds the rights to carbon abatement product in trees and living biomass on those lands, grants to another person an interest in these rights.

The Bill will exclude these four types of interests from being recorded in the register kept under the *Foreign Ownership of Land Register Act 1988.*

Amendments to the *Land Act 1994*

Application process

The amendments to the *Land Act 1994* by the *Land and Other Legislation Amendment Act 2007* introduced administrative provisions which provided for consistent and impartial dealings in State land. These provisions need to be amended to enable a person who makes an application under the *Land Act 1994* to seek and provide to the Minister or chief executive, the agreement of any registered interest holder in the land subject to the application.

This amendment looks to the future when applications will be lodged and dealt with electronically and, by giving applicants an understanding of the issues the Minister or chief executive must consider before making a decision, enable the applicant to partially assess the viability of their application. The amendment will introduce a shorter application process which will benefit the applicant by enabling a decision to be made earlier than is currently possible. The amendment will also reduce the number of provisions in the *Land Act 1994*.

Dealings with trustee leases and subleases

Statutory bodies are appointed trustee of trust land because they have association or expertise with the land and its purpose or with the local community, and have the resources to properly and effectively manage the trust land. Before interests may be created over trust land, Ministerial approval is needed. In giving approval, the Minister is satisfied the interest being created is not inappropriate for, and does not diminish the purpose of, the trust.

Section 393(3) of the *Land Act 1994* enables the Minister to delegate his or her powers about trust land (including approving trustee leases and subleases) to local governments but not to other statutory bodies. Section 64 gives the Minister the power to give a trustee a written authority dispensing with the need for Ministerial approval to a trustee lease and a lessee of a trustee lease a written authority dispensing with the need for Ministerial approval to a sublease of the trustee lease but nothing more. These limitations mean that commercial decisions about trust land managed by statutory bodies as trustee are often delayed, which may have a negative impact on both the proponent and the trustee.

The Bill will amend the *Land Act 1994* to improve commercial dealings with trust land by removing the need for Ministerial approval if the trustee is a statutory body and the proposed trustee lease or sublease is subject to the terms of a registered mandatory standard terms document. The terms of the mandatory standard terms document will include the terms the Minister considers are necessary to ensure inappropriate interests are not entered into or registered.

Lease renewal and lease conversion considerations

In deciding whether to renew or convert a lease, the chief executive is required to consider whether 'part of the lease land is needed for property build-up purposes of other properties without reducing the remaining land to less than a living area' and 'whether the lease land could be subdivided without reducing the remaining land to less than a living area', among other things.

These considerations belong to the days of closer settlement when land considered as being in excess of a lessee's needs would be kept by the Queensland Government and added to an underperforming lease or else allocated to other persons willing to settle the land. Generally, leases under the *Land Act 1994* are used and sold as a business.

The market favours farming businesses being amalgamated to ensure their viability.

The Bill will amend the *Land Act 1994* to remove provisions designed to achieve closer settlement of pastoral, grazing or agricultural areas. With market forces determining that farming operations often need to amalgamate to survive, these provisions are out-dated.

When rent is owing

Section 190 of the *Land Act 1994* provides for the payment of rent. Subsection (3) of section 190 requires a lessee to pay rent when it is owing even if the lessee has made an application for an action under the *Land Act 1994* such as converting the lease to freehold land.

These provisions have led to cases where a lessee has paid the purchase price for the land being converted, and satisfied all conditions of the offer to convert, but still been required to pay rent for a lease which continues until the lease is wholly surrendered by registration of the deed of grant for the purchased land in the freehold land register. In effect, the lessee is required to pay rent for occupation and use of land the lessee has purchased in fee simple.

The Bill will amend the *Land Act 1994* to confirm no rent may be imposed on a lessee where the lessee has paid the purchase price for the land and fulfilled all conditions of offer for the free holding of the land.

Short term extension

Section 164 and section 173A of the *Land Act 1994* permit the Minister to extend the term of a lease being renewed or converted for a period of up to 1 year if it appears the lease will expire before finalisation of the application to renew or convert the lease.

Generally, consideration for renewal or conversion can be extensive and time consuming, in particular for rural leases where land condition is assessed and land management agreements are negotiated. In some cases, a one year term extension is too short, given also that rural lessees undertaking or about to undertake lease renewal may seek to have any decision about

their lease renewal deferred until the government has decided what action it will take arising from the State Development, Industry and Infrastructure Committee of Parliament report on the future and relevance of government land tenure across Queensland.

Section 392(4)(c) of the *Land Act 1994* prohibits exercising a delegated power to extend the term of a lease if it already has been extended.

The Bill will amend the *Land Act 1994* to permit the short-term extension of a lease for periods of up to 2 years, rather than 1 year.

Future Conservation Areas

At lease renewal, the State Rural Leasehold Land Strategy provides for the reservation of rural leasehold land and its acquisition in the future for the protected area estate.

Since the future conservation area provisions commenced on 1 January 2008, they have never been used. Instead, the provisions have created uncertainty amongst leaseholders about the future of their leases at lease renewal.

The Bill will repeal the Future Conservation Area provisions so as to:

- streamline the rural leasehold land lease renewal processes under the State Rural Leasehold Land Strategy; and
- increase security of tenure by providing certainty for leaseholders.

An administrative arrangement will replace the future conservation area provisions such that in future, should a leasehold property (or part of the property) be identified as a priority for adding to the conservation estate, the Queensland Government will stand in the market place independent of the lease renewal process and negotiate purchase of part or all of the lease.

Land management agreement for rural leases

The State Rural Leasehold Land Strategy and supporting provisions under the *Land Act 1994* currently require a land management agreement to be negotiated for all new and renewed leases over rural leasehold land where the area is 100 hectares or more and the term is for 20 years or more.

The process of negotiating a land management agreement includes an assessment of the condition of the lease land. Undertaking land condition assessments and preparing land management agreements for small rural leases has proven to be an unjustifiable intensive investment of resources for the State.

The Bill will amend the *Land Act 1994* to raise the land area threshold for land management agreements from ‘100 hectares or more’ to ‘1 000 hectares or more’. This means that a land management agreement will no longer be mandated for around 237 rural leases.

The Bill will provide the holder of a lease for which a land management agreement is no longer mandated the ability to:

- apply to cancel (under certain conditions) an already registered land management agreement burdening the lease, and amend the lease conditions to remove any imposed condition relating to the land management agreement. Cancellation of the land management agreement will not affect the term of the lease, but the lessee will lose the right to apply for a lease extension under chapter 4, part 3, division 1B of the *Land Act 1994*; or
- if the renewal or conversion application was lodged prior to the new arrangements taking effect, choose to have a lease renewed or converted under the new arrangements, that is, without a land management agreement. Where the lessee volunteers to enter into a land management agreement, they will continue to have the right to apply for an extension of the term of the lease under chapter 4, part 3, division 1B of the *Land Act 1994*.

The Bill also provides the Minister with the discretion to require a land management agreement for rural leasehold land if the lease land is vulnerable to land degradation or there are demonstrated land degradation issues which require remediation; or the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land, under section 199.

Cancelling a permit to occupy

The *Land Act 1994* acknowledges that a permit to occupy is a personal permission for the permittee to occupy the land for the purpose of the permit and is not an interest in land that may be transferred, mortgaged or leased to another person. The Bill will amend the reasons for cancelling a permit to occupy under section 180 of the *Land Act 1994* to better reflect the position that a permit to occupy is simply a permission to occupy the land.

Severing joint tenancy by transfer

The Bill will amend the *Land Act 1994* to modify a requirement applying when a joint tenant wishes to sever a joint tenancy by executing and registering a transfer. The chief executive will need to be satisfied that a reasonable attempt has been made to give a copy of the instrument of transfer to the other joint tenants, rather than being satisfied that a copy has actually been given.

This amendment corresponds to an amendment to the *Land Title Act 1994*.

Production of documents from a register under court process

The Bill will amend the *Land Act 1994* to provide that the regulated fees for obtaining copies of publicly available documents from a register kept under the *Land Act 1994* must be paid when the documents are provided under a subpoena or other court process.

This amendment corresponds to an amendment to the *Land Title Act 1994.*

Dealings with subleases of a lease

The Bill will amend the *Land Act 1994* to improve commercial dealings with leases by removing the need for Ministerial approval to the terms of a sublease of a lease if the sublease is subject to the terms of a mandatory standard terms document containing the terms the Minister considers are necessary to ensure an inappropriate sublease is not entered into or registered.

The lessee will need to ensure, for example, that the grant of the sublease is not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

Public utility easements

A public utility easement (commonly termed an easement in gross) may be registered under the *Land Act 1994* and the *Land Title Act 1994* in favour of a public utility provider if the easement is for a public utility service. Generally, public utility providers are the State, local government and statutory bodies that are expected to provide utility services such as the supply of water and electricity to the public. Since introduction of the public utility easement provisions, the entities that may be required or authorised to provide a particular utility service have expanded from government entities to include private entities.

The Bill will amend the *Land Act 1994* and the *Land Title Act 1994* to expand the definition of public utility provider.

Miscellaneous amendments

The Bill also includes amendments to provisions of the *Land Act 1994* that require renumbering or updating. For example, section 63(4)(a) of the *Land Act 1994* needs to be updated by removing reference to a department. This reference relates to the period when the *Land Act 1994* permitted a department to be appointed trustee of trust land but the current Act permits the State to be appointed as trustee. The State will be represented by the relevant department.

Amendments to the *Land Title Act 1994*

Statutory easements in small lot developments

As part of urban densification and urban renewal, one type of development is the creation of small lot subdivisions, where lot sizes are much smaller than traditional development lot sizes, typically $70m^2$ to $300m^2$. The size of these lots necessitates unique architectural solutions to provide suitable living spaces. This invariably leads to the design of a dwelling where there are common walls shared with adjoining dwellings ('terrace type houses').
These lots are being created as standard format lot subdivisions rather than community title schemes under the *Body Corporate and Community Management Act 1997* and therefore the statutory easement provisions of *Land Title Act 1994* for community titles schemes do not

apply. For that reason, these developments currently require the use of multiple two party easements, for support, party walls, services and projections and minor encroachments, which are surveyed and registered on title.

The Bill amends the *Land Title Act 1994* to provide for the registration of statutory easements over small terrace type housing lots, containing buildings with shared common walls, which reduces the cost and complexity associated with registering easements for these purposes. It will also reduce the future conveyancing costs for prospective purchasers, who would generally need to obtain copies of all registered easements and seek legal advice as to the effect of each easement.

Creation of indefeasible title where deed of grant delivered to grantee

For grants of land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, the deed of grant is delivered to the grantee and cannot be lodged in the land registry as required by the *Land Title Act 1994*. This means that an indefeasible title cannot be created strictly in accordance with the legislation. The *Land Title Act 1994* will be amended to provide for an alternative process leading to the creation of an indefeasible title in cases where the deed of grant is delivered to the grantee.

Creation of non-tidal boundary (watercourse) by registration of plan

For some properties, when the land was originally surveyed and a deed of grant issued, a watercourse that existed on the property was not defined. When the registered owner of the property attempts to develop the property, the local government will normally require that the watercourse is placed under their care for environmental reasons.

The most appropriate method to achieve environmental control by a responsible entity and to maintain the rights of the registered owner would be to dedicate the land as a non-tidal boundary (watercourse). However, there is currently no mechanism in the Act for a registered owner to define land as a non-tidal boundary (watercourse). The Bill amends the *Land Title Act 1994* to allow for the creation of a non-tidal boundary (watercourse) on the registration of a plan.

Severing joint tenancy by transfer

Section 59 of the *Land Title Act 1994* provides a mechanism for a joint tenant to unilaterally sever a joint tenancy by registration of a transfer. The registrar must first be satisfied that a copy of the transfer has been given to all other joint tenants. Some joint tenants are unable to utilise this mechanism, for example where another joint tenant's whereabouts is unknown. Section 59 will be amended so that the registrar need only be satisfied that a reasonable attempt has been made to give a copy of the instrument of transfer to all other joint tenants.

Public utility easements

The Bill will amend the *Land Title Act 1994* to expand the definition of public utility provider in the same manner and for the same purpose as amendments to the *Land Act 1994*.

Grant of easement by lessee

The *Land Title Act 1994* does not currently allow a lessee under a registered lease to grant an easement over all or part of the leased area although the granting of an easement by a lessee, for example providing access to an adjacent lot, is consistent with common law principles. Such an easement ends when the lease ends. An amendment will allow the lessee under a registered lease to grant an easement.

Production of documents from a register under court process

Currently, there is no requirement for a party who obtains a subpoena (or another type of court order for production of documents) against the registrar to pay the regulated fee for the production of documents that are available to the public under the *Land Title Act 1994*. This can result in the production of a large number of publicly available documents without the relevant party being required to pay the regulated fee which would normally be payable. Generally there is provision under the relevant court rules for some amount to be paid for production of documents; however this does not reflect the regulated fees under the *Land Title Act 1994*.

The Bill amends the *Land Title Act 1994* to provide that the regulated fees for obtaining copies of publicly available documents from the freehold land register must be paid when the documents are provided by the registrar under a subpoena or other court process.

Other amendments

A number of other amendments have been identified in the *Land Title Act 1994*, which will clarify provisions, remove obsolete provisions or to facilitate updated and improved registry processes. These include amendment of:

- section 50, which is very prescriptive of the situations where planning permission is not required for registration of a plan of subdivision and could be interpreted as requiring planning permission in all other circumstances. An amendment clarifies that there is no need to obtain planning permission where dispensation is provided under other legislation such as the State Development and Public Works Organisation Regulation 2010
- section 51, to provide a mechanism to dedicate an entire lot as road without having to prepare and register a plan of subdivision
- section 67, to clarify when an instrument of amendment may be registered to give effect to the exercise of an option to renew in a registered lease

- several sections, to provide that notifications relating to caveats given to the registrar under the *Land Title Act 1994* must be given in the manner required by the registrar, which will be by lodgement of a prescribed form. This will ensure that notifications can be recorded on titles as soon as they are received, which does not always occur when notifications are received by letter, email or other means
- section 115N, which provides for a statutory easement for support for community titles schemes. Such an easement includes subterranean support but not common wall (party wall) support. An amendment will provide that an easement of common wall support exists
- various other provisions, which require minor amendments for updating or clarification.

Amendments *Land Valuation Act 2010*

Market survey reports

The Bill amends the *Land Valuation Act 2010* to allow the flexibility for a market survey report to include sales that have occurred outside of a particular local government area (this could apply to large western grazing land where sales evidence can be limited and to complex properties like major shopping centres where there will often only be a small number of sales in Australia). This flexibility ensures that the Valuer-General is provided with an appropriate market survey report that establishes and supports a market level/trend and allows for an accurate assessment of the probable impact on values.

Properly made objection

Section 105 of the *Land Valuation Act 2010* details the owner's right to object to the Valuer-General and section 112 defines a properly made objection.

One of the intentions of the new objection process implemented as part of the introduction of the *Land Valuation Act 2010* was to improve the quality of the objection decision-making process by obtaining more accurate and detailed information 'up front' with lodgement of the objection. To achieve this there is the requirement to obtain specific information concerning each valuation however the *Land Valuation Act 2010* does not specify that a separate objection should be lodged per valuation.

The Bill clarifies that a separate objection must be lodged for each valuation to ensure that there is the opportunity for information relevant to the particular valuation to be included with the objection.

Immunity of Chairperson

The requirement for independent chairpersons to be appointed by the Valuer-General for objection conferences for valuations greater than $5 million was first introduced by the *Land Valuation Act 2010*.

There have been concerns raised by chairpersons appointed by the Valuer-General that the *Land Valuation Act 2010* does not provide an indemnity in the event of a potential civil proceeding being brought against them.

The Bill amends the *Land Valuation Act 2010* to provide that chairpersons appointed for an objection conference have immunity from civil liability for an act or omission made honestly and without negligence.

Appeal to the Land Court

Section 157 of the *Land Valuation Act 2010* provides information on how to lodge an appeal against an objection decision. To enable the Valuer-General, as the respondent, to prepare for an appeal, it is important to obtain as much specific information as possible for each appeal.

The *Land Valuation Act 2010* is silent on the requirement for a separate form for each appeal.

The Bill will amend the *Land Valuation Act 2010* to clarify that a separate appeal form must be lodged for each objection decision that is being appealed to the Land Court. This will ensure that the Valuer-General has as much specific information as possible to enhance preparations for each appeal.

Modernising address for service

Currently, under the *Land Valuation Act 2010,* a notice or other document is provided to a land owner by posting it to the address for service provided by the owner. The Bill amends the *Land Valuation Act 2010* to provide land owners with the flexibility to amend their service address to an electronic address (e.g. email or digital mailbox). If this occurs, the notice or document could be transmitted to the electronic address or a message could be transmitted stating that the notice or document is available by opening a stated hyperlink. Land owners who do not provide an electronic service address will continue to be posted hardcopy valuation notices.

Substituted service

The Bill amends an incorrect reference to service address in the substituted service provision. The reference to service address is being amended to the address of the relevant land which provides a more appropriate alternative for substituted service.

Amendments to *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*

Conversion of petroleum wells

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* currently provide for the grant of a petroleum tenure to a person or company. The petroleum

tenure, being an authority to prospect (ATP) or a petroleum lease (PL), allows its holder to (amongst other things) explore for, or produce petroleum, including coal seam gas (CSG).

One of the exploration activities that may be conducted on an ATP or PL is the drilling of a petroleum well. The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* currently provide for the transfer to landholders of abandoned petroleum wells, water supply bores and water observation bores. However, a petroleum well cannot be directly transferred from a petroleum tenure holder to a landholder on whose land the petroleum well was drilled, under the current legislation.

The reasons for such a prohibition are principally concerns relating to safety and health, and protection to the environment. The potential for a petroleum well to produce hydrocarbons presents a danger to persons not having the competency, or the capacity, to manage such risks. The risks that hydrocarbons pose to the environment (including groundwater systems) also needs to be mitigated before any access or use of the petroleum well, outside the authority of the petroleum legislation, is authorised.

Because of such considerations, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* prescribe that:

- only water supply bores and water observation bores may be transferred to a landholder during the term of the petroleum tenure; and
- only properly decommissioned petroleum wells may be transferred after the petroleum tenure ends.

For a petroleum well to be transferred to a landholder, the petroleum well must first be converted to a water supply bore or water observation bore. However, a number of issues with the current statutory conversion requirements have been identified.

The proposed amendments will address the safety of petroleum wells being converted to water bores on a landowner's property, avoiding any associated safety or health problems to the landowner or landowner's family, or the community. In particular the amendments will address the following issues:

- who may convert a petroleum well to a water supply bore or water observation bore
- the difficulties in obtaining water bore driller sign off for the conversion of a petroleum well to a water supply bore
- when a petroleum well becomes a water supply bore
- safety and environmental matters that arise when dealing with the above mentioned issues.

The amendments will streamline the process for the conversion of petroleum wells to water bores.

Simplifying the process for a petroleum tenure holder to convert a petroleum well to a water supply bore or water observation bore is likely to result in more petroleum wells being converted to water bores. This will benefit the community by providing landholders with ready access to water, without the landholder having to specifically pay for the drilling of a water bore.

Pipelines carrying produced water

The *Petroleum and Gas (Production and Safety) Act 2004* safety and health regime for upstream petroleum operations is centred on the term 'operating plant'. In broad terms the *Petroleum and Gas (Production and Safety) Act 2004* applies to matters requiring technical expertise in petroleum and gas. The *Work Health and Safety Act 2011* applies to all other safety matters.

The activities and facilities that are defined as operating plant under section 670(2) and (5) of the *Petroleum and Gas (Production and Safety) Act 2004* are regulated solely under the *Petroleum and Gas (Production and Safety) Act 2004*. All other authorised activities under a petroleum authority are not operating plant in their own right and are subject to the *Work Health and Safety Act 2011*. However, the operator is required under the *Petroleum and Gas (Production and Safety) Act 2004* to develop a safety management plan to capture all authorised activities for the petroleum authority.

The *Mines Legislation (Streamlining) Amendment Act 2012* made amendments to the *Petroleum and Gas (Production and Safety) Act 2004*. The changes included introducing the definition of produced water and excluding pipelines carrying produced water from the definition of operating plant.

The definition of operating plant (section 670) includes a facility that is used to take, interfere with or treat associated water (section 670(2)(b)). This was intended to capture facilities that may still have residual gas related risks such as pipelines carrying untreated CSG water from the well head to treatment facilities.

The amendments in the *Mines Legislation (Streamlining) Amendment Act 2012* unintentionally introduced a conflict by excluding pipelines carrying produced water, which includes CSG water, from the definition of operating plant (section 670(2)(d)). The result is that these pipelines are not captured under section 670(2) and are subject to the *Work Health and Safety Act 2011*. This unnecessarily complicates matters for CSG companies because untreated CSG water pipelines are laid in the same trench as gas pipelines (operating plant under the *Petroleum and Gas (Production and Safety) Act 2004*) and both are typically constructed out of the same material.

This matter was raised by stakeholders during the Parliamentary Committee inquiry into the Mines Legislation (Streamlining) Amendment Bill 2012. The Parliamentary Committee recommended amendments to provide that the *Petroleum and Gas (Production and Safety) Act 2004* applies to pipelines carrying produced water.

While the amendments will address stakeholder concerns not all pipelines transporting produced water will be regulated solely under the *Petroleum and Gas (Production and Safety) Act 2004*. Pipelines which are free of petroleum do not require the expert oversight of petroleum and gas inspectors. These pipelines will be regulated under the *Work Health and Safety Act 2011*, which was the case prior to the amendments made through the Mines Legislation (Streamlining) Amendment Bill 2012 and is the case for pipelines that are not on petroleum tenures and do not contain petroleum such as the pipelines carrying water from the desalination plant at Tugun.

During consultation different companies indicated different points along the production and processing facilities at which water will be completely separated from the petroleum. In order to cater for the differences, the amendments will require the operators to identify in their safety management plan those pipelines that transport produced water containing petroleum. These pipelines will be regulated by the *Petroleum and Gas (Production and Safety) Act 2004* only.

Amendments to the *River Improvement Trust Act 1940*

The *River Improvement Trust Act 1940* and the River Improvement Trust Regulation 1998 provide the legislative framework for river improvement trusts in Queensland.

A river improvement trust is a body corporate, with the primary role to plan, design, finance, undertake and maintain improvement works to benefit the community within its river improvement area.

In consultation with the trusts the Department of Natural Resources and Mines has identified a number of ways in which trust governance and administrative processes can be improved and which will result in 'red tape' reduction.

The amendments will:

- modify the appointment process for certain members, particularly replacing Governor in Council approval with Ministerial approval
- remove the requirement for a government representative member/chairperson from the trust membership, replace the government representative position with an additional non local government member and provide for the election of the chair from within the trust membership
- provide a framework for decision making about appointments of members and the duration of appointments of members, including maximum terms of 4 years
- provide for the Minister to determine the appropriate level of local government representation and non-local government membership on a trust

- modify the approval process for the annual works program, particularly removing the requirement for ministerial endorsement whilst maintaining the requirement for approval of the chief executive
- provide for the Minister to approve appropriate fees and allowances payable to members of a trust, instead of the Governor in Council, by Regulation
- insert a new requirement for a trust meeting to be held at least twice each financial year
- modernise the layout of the *River Improvement Trust Act 1940* by providing headings and updating a reference to 'chairperson' of the local government in section 5(1A).

The amendments remove time consuming and unnecessarily burdensome requirements for trust governance and administration.

Amendments to the *Vegetation Management Act 1999*

In September 2012, it emerged that there was a small difference between the watercourse definition in the regional vegetation management codes (Codes), and the official name of the watercourse map.

Between 6 November 2009 and 20 September 2012, the vegetation management watercourse map that underpinned watercourse code assessment was called the Vegetation Management Act Remnant Watercourses Version 2 and the Vegetation Management Act Remnant Watercourse 25K version 2.1. During this time however, the watercourse definition in the Codes did not exactly refer to these data sources.

It could be argued that for the purposes of code assessment, there is no official watercourse map.

Amendments are proposed to the *Vegetation Management Act 1999* to validate all decisions made since 6 November 2009 that have involved watercourses shown on the 'Vegetation Management Watercourse Map' and to remove any doubt that the Codes can refer to amongst other things, maps such as the 'Vegetation Management Watercourse Map'.

South East Queensland water related amendments to the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* and the Sustainable Planning Regulation 2009

The proposed amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* and the Sustainable Planning Regulation 2009 will extend the existing interim water approval process applying to the South-East Queensland Distributor-retailers (Queensland Urban Utilities and Unitywater) and their participating councils, for deciding the water and sewerage components of development applications under the provisions in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* and the Sustainable Planning Regulation 2009.

This interim water approval process which was due to expire as at 30 June 2013 under sunset clauses will be extended to 28 February 2014. This temporary regime will be replaced by a new water approvals regime under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to apply from 1 March 2014.

The date by which a Distributor-retailer or an ex Distributor-retailer council (Gold Coast, Logan and Redland City Councils) have to adopt their co-ordinated infrastructure and business plans (Water Netserv Plans) will also be extended from the current date of 1 July 2013 to 1 March 2014.

Amendments to the *Water Act 2000*

Regulation of levees

The Bill amends the *Water Act 2000* to progress and implement the five recommendations from the Commission's Final Report into the 2010-11 floods. In doing so, the Bill provides the first step in the development of a legislative framework for a consistent approach to regulate the construction of new levees and modification to existing levees and provides:

- a definition of levee and other supporting definitions (e.g. agricultural activities);
- additional criteria for assessing levees that are made assessable development under the *Sustainable Planning Act 2009*; and
- the power to make regulations to state a code against which applications can be made and to provide for the control and management of the construction of new levees and the modification of existing levees. The creation of different categories of levees will enable different levels of assessment under the Sustainable Planning Regulation 2009.

The definition of a levee will make it clear that a levee is an artificial embankment or wall which excludes, controls or regulates the movement of overland flow water. The definition of a levee will exclude some agricultural activities such as laser levelling and contouring and for irrigators, irrigation channels and ditches that are not associated with the construction of a levee. It is not intended to capture other standard agricultural practices (e.g. tilling, cropping) undertaken by landholders in the management of their property.

Some levees will be exempt as they are regulated under another Act or Regulation. The exemption being granted is provided on the basis that appropriate alternate regulatory controls for dealing with levees are in place and will be consistent with the proposed regulatory framework. Structures that were designed for another purpose but which have the effect of diverting overland flow water will be exempt where the diversion was considered as part of the design (for example state roads and railways).

The Bill will enable the prescription of different categories of levees based on risk assessment criteria. It is intended that the different categories of levees may have different levels of assessment nominated under the Sustainable Planning Regulation 2009 once levees are made

assessable development, with higher risk categories assessed more rigorously to reflect the risk involved.

Extending the term of water licences

There are approximately 27 000 water licences in existence state-wide, with around 24 000 authorising the take of water. As required under section 213(1)(a) of the *Water Act 2000*, each licence is granted with a specified expiry date.

Historically, most water licences were granted for a period of ten years, after which time, the holder must apply for the licence to be renewed.

One of the original purposes for this renewal process was to provide an opportunity to implement any changes to natural resource management policy that may have occurred during the licence period.

However, water resource plans (WRPs) and resource operations plans (ROPs) currently cover over 90% of the State and are the principal water planning mechanism for ensuring the sustainable management and allocation of water in Queensland. As a result, the 10 year expiry and renewal cycle for water licences is no longer required to implement natural resource management policy aimed at the sustainable management and allocation of water. The amendment will extend all current water licences to 30 June 2111 and all new water licences will be granted until that date (i.e. 99 years) unless otherwise stated by a WRP or ROP.

Removing the requirement for a water licence for associated water

Associated water is defined in the *Petroleum and Gas (Production and Safety) Act 2004* as underground water that is taken or interfered with during the course of, or as a result of, carrying out an activity for a petroleum tenure. Essentially, associated water is the 'by product' water of petroleum activities. Currently a petroleum tenure holder may provide associated water to a landholder whose land overlaps the petroleum tenure without further authorisation under the *Water Act 2000*. However, a water licence is required if the water is provided to another landholder whose property does not overlap the tenure. Petroleum industry stakeholders have raised this requirement as an unnecessary regulatory burden.

The original rationale for requiring water licences is no longer valid due to the evolution of the adaptive management framework for petroleum activities since 2004 when Chapter 3 of the *Water Act 2000*, which deals with underground water management, was enacted. Potential impacts on groundwater systems from water extraction associated with petroleum operations are now addressed through chapter 3.

In addition, the *Environmental Protection Act 1994* and the associated Environmental Authority for the operation, including approval requirements for coal seam gas water for

beneficial use, appropriately addresses potential environmental impacts associated with the use of associated water.

As such, the Bill removes the requirement for a petroleum tenure holder to obtain a water licence for the supply of associated water to other users. The amendments to the *Water Act 2000* are supported by amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and, where practicable, the *Petroleum Act 1923*.

Postponing the expiry of water resource plans

Under the *Water Act 2000*, the Minister must plan for the allocation and sustainable management of water to meet Queensland's water requirements. Planning for the allocation and sustainable management of water requires preparing WRPs and ROPs for any part of Queensland. WRPs state the outcomes, objectives and strategies for the allocation and management of water in a plan area. A ROP implements the WRP, and provides the operating rules and management arrangements under which the holders of water entitlements and water infrastructure operators must operate.

Under section 50 of the *Water Act 2000*, a WRP is subordinate legislation for the *Statutory Instruments Act 1992*. Section 54 of the *Statutory Instruments Act 1992* provides that subordinate legislation expires after the 10th anniversary of the day of its making. As such, there is a requirement to review and replace the WRPs prior to their expiry.

Section 55 of the *Water Act 2000* provides that the Minister must prepare a new WRP to replace an existing WRP before the existing WRP expires.
Several WRPs are due to expire over the coming years and will require the Department of Natural Resources and Mines (the department) to invest significant planning attention and resources. As a number of WRPs are due to expire at the same time, the department's ability to focus resources on those WRPs in need of review is restricted. For example, in some cases it is not an efficient use of government resources to review and replace a WRP before it expires, for instance:

- a WRP may not yet be fully implemented, i.e. the ROP development phase of the water resource planning process has not yet been completed.
- a WRP or ROP may have recently undergone an amendment, or had an amendment proposed due to resource allocation pressures in the catchment. There may also be insufficient time to assess the effectiveness of the new plan provisions before the WRP is due to expire.

The water resource planning provisions of the *Water Act 2000* will be amended to remove WRPs from the automatic expiry provisions of the *Statutory Instruments Act 1992*, provide for the duration and expiry of WRPs under the *Water Act 2000* and to allow the Minister to postpone the expiry of a WRP for up to ten years. Under the proposed framework the Minister will call for public submissions on the proposal to extend a WRP and the Minister's

decision to postpone the expiry will be informed by, amongst other things, the submissions received. This will provide more flexibility to the Minister in prioritising the department's work program and resources for water resource planning, providing the department with the flexibility needed to focus on those WRPs that have the highest priority for review.

Removing the requirement for a riverine protection permit to destroy vegetation

The destruction of vegetation in a watercourse, lake or spring generally requires a riverine protection permit under the *Water Act 2000*, or compliance with a guideline approved by the chief executive of the *Water Act 2000*.

The clearing of vegetation in Queensland is generally regulated under the *Vegetation Management Act 1999* and may require a development permit under the *Sustainable Planning Act 2009*. As such, a person undertaking vegetation clearing in a watercourse, lake or spring is currently required to consider the requirements of multiple frameworks.

The proposed amendment will simplify this overlap by amending the *Water Act 2000* to remove the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. This will ensure that all clearing/destruction of vegetation is regulated under one framework in Queensland, namely, the framework provided in the *Vegetation Management Act 1999* and the *Sustainable Planning Act 2009*.

The commencement of the amendments in the Bill will be timed to coincide with consequential amendments to the Sustainable Planning Regulation 2009. It is proposed to retain an exemption in schedule 24, part 1, item 1 of the Sustainable Planning Regulation 2009 to allow the clearing of an area of vegetation (less than 0.5 ha) in a watercourse, lake or spring where the clearing is a necessary and unavoidable part of excavating or placing fill in a watercourse, lake or spring and the excavating or placing of fill is either authorised by a riverine protection permit or carried out under a chief executive approved guideline. Retaining this exemption (to this extent) will ensure there is no duplication of approvals.

The removal of the requirement in the *Water Act 2000* to obtain a riverine protection permit to destroy vegetation in a watercourse, lake or spring presents a low risk to the physical integrity of a watercourse, lake or spring. A person will still be required to obtain a riverine protection permit to excavate or place fill in a watercourse, lake or spring, which includes vegetative material below the surface (such as root masses) which plays an important role in bank stability.

Removing the requirement for licences to interfere for watercourse diversions associated with resource activities

To undertake a resource activity, defined under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, an Environmental Authority (EA) under the *Environmental Protection Act 1994* is required. A resource activity is an activity

that involves a 'geothermal activity, a greenhouse gas storage activity, a mining activity or a petroleum activity'.

In most cases, the *Environmental Protection Act 1994* will require the proponent of a resource activity to provide details of how the identified impacts of the project on environmental values are to be managed as part of an EA application. If the EA is approved, it is issued with conditions that limit the environmental impacts legally authorised by the activity.

Water licences are entitlements to take or interfere with water and are granted in accordance with sections 211 or 212 of the *Water Act 2000*. Under section 808(2) of the *Water Act 2000*, a person must not interfere with water to which the Act applies, other than overland flow water, unless authorised to interfere with the water. Under section 206(1)(b) of the *Water Act 2000*, 'an owner of a parcel of land or owners of contiguous parcels of land, may apply for a water licence … to interfere with the flow of water on, under or adjoining any of the land'.

If the proponent of a resource activity needs to interfere with the flow of water in a watercourse by diverting the watercourse, in order to undertake operations, it is currently required to obtain a licence under the *Water Act 2000*. This creates a gap in the order of granting approvals for resource activities, requiring a proponent to undergo two assessment/approval processes (the grant of an EA and a water licence), which, for diversion-type interference, are similar in breadth and scope.

The Bill provides that diversion-type interference works, associated with a resource activity, are exempt from requiring a water licence in accordance with Chapter 2, Part 6, Division 2 of the *Water Act 2000* if the works are authorised under an EA under the *Environmental Protection Act 1994*. Proponents undertaking resource activities, where a watercourse diversion is necessary to undertake the activity, will be required to provide information regarding the watercourse diversion as part of their EA application.

The EA will authorise that water diversion works take place, subject to statements of compliance being given for both the design and the construction of the diversion. This is necessary to ensure that the design of the works meets the criteria to maintain the environmental values of the site, and to ensure that the works are constructed in accordance with the certified design plans.

Removing land and water management plans

The *Water Act 2000* currently provides a framework for the preparation and approval of water use plans and land and water management plans (LWMPs). These plans are designed to regulate water use if there is a risk of land and water degradation.

LWMPs are property-scale plans that are required for the use of water for irrigation in certain circumstances. As the current framework is not achieving its intended objectives and imposes

a regulatory burden on irrigators, it is proposed to remove the requirement for entitlement holders proposing to undertake irrigation to prepare LWMPs.

Rather, irrigators will self-manage the risks of land and water degradation associated with irrigation water use. Significantly the mechanism under the *Water Act 2000* to manage water use degradation risks on a landscape scale, through the development of a water use plan, will be retained.

Amendment of section 20 – exempting certain low risk activities from requiring an authorisation

Section 19 of the *Water Act 2000* provides that all rights to the use, flow and control of water in Queensland are vested in the State. As such, generally a water entitlement or water permit is required to take or interfere with water in Queensland.

Section 20 of the *Water Act 2000* provides an exception by authorising the take of water without a water entitlement in limited circumstances. The Bill amends section 20 of the *Water Act 2000* to allow additional low risk activities to be undertaken without a water entitlement. Low risk activities are those that pose minimal risk to the sustainable management of water resources if undertaken without a resource entitlement. Additional activities to be authorised under section 20 include:

- the take of, or interference with, water by Aboriginal or Torres Strait Islander parties for traditional or cultural purposes. This amendment reflects the legislative authority provided in the *Native Title Act 1993* (Cwlth) which provides Traditional Owners with the authority to access water for traditional or cultural use
- minor consumptive take (not stock and domestic) where the take is necessary to carry out certain activities (e.g. dairy wash downs, weed wash downs, filling chemical spray units)
- the take of, or interference with, water by petroleum tenure holders and water monitoring authority holders (under the *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*) to construct water monitoring bores and water observation bores
- the take of water by a constructing authority or water service provider (e.g. local government) to operate public showers or toilets
- the take of water by an owner of land on which there is water collected in a dam across a watercourse or lake for stock or domestic use (i.e. where stock lawfully accesses the foreshore)
- the take of water for fire fighting, including the testing of fire fighting equipment. Section 20 of the *Water Act 2000* currently limits the water that can be taken without a water entitlement for fire fighting to emergency situations where a fire is destroying or threatening a dwelling house. As it is inconceivable that an authorisation would not be given to access water to undertake any fire fighting activities, including bush fires that threaten public safety, section 20 will be amended to enable water to be taken for fire fighting in general.

The commencement of the amendments in the Bill will be timed to coincide with consequential amendments to the Sustainable Planning Regulation 2009 which will allow certain low risk activities to be undertaken without a development permit (exempt or self-assessable development).

Removing Declared Catchment Areas

The purpose of Declared Catchment Areas (DCAs) is to control land use activities on those areas that may have an adverse impact on water quality in a water storage, lake or groundwater area. Historically, DCAs were carried over into the *Water Act 2000* from the *Water Resources Act 1989*. Part 7, Chapter 2 of the *Water Act 2000* contains provisions that enable the declaration of a catchment area in order to regulate activities including land use and building works that may impact on water quality issues such as nutrient run-off.

Under Schedule 7 of the Sustainable Planning Regulation 2009, the chief executive administering the *Water Act 2000* is a concurrence agency for these activities in a DCA except for those DCAs in South-East Queensland where Seqwater is listed as a concurrence agency.

DCAs are currently over-regulated as the *Water Act 2000* provisions duplicate the role of planning schemes, local planning policies and other *Sustainable Planning Act 2009* planning instruments. Additionally, high risk and larger developments are regulated under the *Environmental Protection Act 1994*. For example, sewage treatment plants and intensive animal industries are regulated as environmentally relevant activities (ERAs). No additional issues are dealt with through DCA assessment to that considered under the *Environmental Protection Act 1994* or planning schemes.

In addition:

- no new DCA has been identified since 1990 and it is anticipated that no new DCAs will be declared in the future
- there have been significant improvements in effluent treatment technologies over the last two decades. These treatment technologies are more effective in reducing the pollutant load, especially nutrients and sediments. Therefore, the need for individual assessment of disposal options has been removed
- the State Government works with local governments to ensure the planning system effectively deals with:
  - sequencing of development
  - land use conflicts
  - appropriate disposal and treatment of waste
  - impacts of development and social and physical environment.

The amendments in this Bill will remove the DCA provisions from the *Water Act 2000* and Water Regulation 2002 and the relevant triggers from the Sustainable Planning Regulation

2009. Activities that pose a high risk to water quality will continue to be regulated under the *Environmental Protection Act 1994*.

Providing flexibility when publishing public notices

The *Water Act 2000* stipulates circumstances where public notification is required to inform interested parties and the wider community about water planning and management activities. This typically involves publishing a notice in a newspaper, publishing a gazette notice, or in some instances, placing information online or announcements on the radio. Examples of publishing requirements include:

- an application for a water licence which requires publication in a newspaper, the cost of which is borne by the applicant
- limiting the taking of water where there is a shortage of water, which requires the department to publish a notice in a newspaper, broadcast an announcement over a radio station, or give a notice to an affected licensee or permittee.

The type of notification required in a particular circumstance is specified in the definition of 'publish' in Schedule 4 of the *Water Act 2000*. This definition, and the associated provisions requiring public notification, was included in the *Water Act 2000* at a time when newspaper publication was still the most effective method of informing relevant parties within a district. With the decline in newspaper readership, increasing uptake of alternative information sources and the fact that 'owners' of land do not necessarily reside on that land, or even in the State, concerns have arisen with respect to whether newspaper publication is still the most effective methodology for informing interested parties.

Since the inclusion of the publishing requirements, a vast array of electronic communication methodologies have been adopted into common usage by the Department of Natural Resources and Mines, Department of Energy and Water Supply and the Department of Environment and Heritage Protection (the departments) and the community at large. Examples include the use of the internet, SMS and email. These methodologies provide the benefit of allowing timely communication and transfer of information to specific, affected parties, whilst web publishing provides a single point of reference for interested parties.

The Bill amends the definition of 'publish' to provide the departments with the flexibility to tailor the notification method to the intended audience. Providing this flexibility will also ease the regulatory burden on the departments and clients by enabling innovative, effective and cost effective methods of publication to be used.

Dealing with surrendered or forfeited interim water allocations

The *Water Act 2000* provides for interim water allocations. Interim water allocations are an entitlement to be supplied with a volumetric share of water by the operator of a water supply scheme. A water supply scheme delivers water from infrastructure, such as a dam. Owners of

interim water allocations are charged by the operator of the water supply scheme to store and supply their water. Section 192 of the *Water Act 2000* provides that generally, if a procedure for dealing with an interim water allocation is not stated, then it may be dealt with as if it were a water licence.

In accordance with sections 196 and 197 of the *Water Act 2000*, interim water allocations may be forfeited or surrendered. Forfeited or surrendered interim water allocations are held by the chief executive and are required to be dealt with as if they were forfeited water allocations. Subsection 138(6) requires a forfeited water allocation to be sold by public auction, public ballot or public tender. Subsection 138(7) sets out the way any money received from the sale is to be distributed.

It is not always desirable for interim water allocations to be sold. For example, where the supply of water in a particular water supply scheme is over allocated or not very reliable, the preference, from a resource management perspective, would be to cancel the interim water allocation, potentially increasing the reliability of supply for other users in the water supply scheme. Similarly, the mandatory sale of a forfeited or surrendered interim water allocation may not align with the resource management outcomes outlined in the relevant water resource plan.

The amendments in the Bill will provide flexibility to the chief executive in dealing with surrendered or forfeited interim water allocations by creating alternative option/s to the current mandatory requirement to sell the interim water allocation.

Facilitating the conversion of water authorities to two tier co-operative structures

Currently, the *Water Act 2000* does not sufficiently accommodate the conversion of a water authority into two separate entities, where one entity owns infrastructure while the other operates the infrastructure and provides services to customers.

Under section 107A(3) of the *Water Act 2000*, a 'distribution operations licence (DOL) may be held only by the owner of the water infrastructure to which the licence applies, or if the owner of the water infrastructure is a subsidiary company, the parent company of the subsidiary.'

In response to proposals from a number of water authorities to transition to a two tier co-operative structure involving a holding co-operative (which would own the water infrastructure) and a trading co-operative (which would provide water services to entitlement holders within the water supply scheme) the *Water Act 2000* is being amended to enable the owner of the infrastructure to nominate an entity to be the DOL holder.

Other minor amendments

The Bill also contains a number of other miscellaneous amendments to address operational issues necessary to provide for continued effective implementation of the water planning and management framework under the *Water Act 2000*. For example, the Bill amends:

- sections 22, 23 and 25 to correct an inconsistency between the authorisation and offence provisions
- section 47 to update a reference to the now superseded *Environmental Protection (Water) Policy 1997* with the *Environmental Protection (Water) Policy 2009*
- section 106 to provide that the chief executive may correct any inconsistencies between a water resource plan and resource operations plan without the notification provisions in sections 95 – 104 of the *Water Act 2000* applying
- section 184(3A) to correct an error in numbering
- section 223 of the *Water Act 2000* to provide that a water licence to take water (whether or not it attaches to land) may, where provided for by a regulation or resource operations plan, be:
    - transferred to other land or to a prescribed person
    - amended to change the location from which water may be taken or the purpose for which the water may be taken
    - amalgamated with another licence held or to be held by the transferee
- section 304 to correct an incorrect reference to section 303 which has been repealed
- section 882 to correct a drafting inconsistency
- section 992A to correct a definition of a 'special agreement Act'. The definition incorrectly refers to a definition contained in section 614 of the Environmental Protection Act 1994. The relevant definition is actually contained in section 584 of that Act.
- chapter 4, part 7 to allow water authorities converting to an alternative institutional structure to convert directly to private contracts
- section 1007 to remove the requirement for one part of the Department of Natural Resources and Mines to formally notify another part of the department of grants of water licences or interim water allocations. Amendments to section 1007 will also remove the need for water licences and interim water allocations to be noted on the land titles register
- the *Water Act 2000* to ensure governance arrangements for Category 1 Water Boards are consistent. Previously the board appointment process differed between the two Category 1 Water Authorities. The amendments to the *Water Act 2000* remove this inconsistency

Amendments to the *Water Supply (Safety and Reliability) Act 2008*

Facilitating the conversion of water authorities to two tier co-operative structures

Like the *Water Act 2000*, the *Water Supply (Safety and Reliability) Act 2008* does not currently accommodate the conversion of a water authority into two separate entities, where one entity owns infrastructure while the other operates the infrastructure and provides services to customers. The *Water Supply (Safety and Reliability) Act 2008* provides that generally, only owners of infrastructure can and must be registered as service providers before commencing to supply a water or sewerage service.

The amendments to the *Water Supply (Safety and Reliability) Act 2008* will enable an entity that does not own infrastructure to be registered as a service provider, if the entity is nominated by the infrastructure owner and prescribed under a regulation as a 'related entity' of the infrastructure owner. These amendments are enabling and as such can accommodate the conversion of other water authorities to a similar alternative structure involving a separation of infrastructure ownership and service provider functions. The amendments to the *Water Supply (Safety and Reliability) Act 2008* will, among other things, provide for:

- an entity that is nominated by a relevant infrastructure owner and prescribed under regulation as a 'related entity' of the infrastructure owner to be registered as a service provider
- enable service provider registration details to be updated by a prescribed related entity where it is a registered service provider
- enable the transfer of service provider registration to occur in different circumstances with or without a transfer of infrastructure
- ensure a prescribed related entity that becomes a registered service provider has all the powers of a service provider and can perform all of the functions of a service provider under the *Water Supply (Safety and Reliability) Act 2008* despite not being an infrastructure owner
- recognise and accommodate the relationship between the relevant infrastructure owner and the prescribed related entity in the context of the regulatory framework
- existing statutory plans and approvals for Pioneer Valley Water Board to transition on the changeover day to the entity which will be the registered service provider.

Defining Dual Reticulation

Dual reticulation involves the supply of high quality recycled water into premises through a separate network of pipes to reduce the demand on drinking water supplies. In these schemes, recycled water can be used for toilet flushing, the cold water supply to washing machines, watering gardens and external wash down. Because of the potential for misuse and cross

connection (accidently supplying recycled water through the drinking water pipes), additional requirements are applied to these types of schemes under the *Water Supply (Safety and Reliability) Act 2008* relative to other lower-risk schemes.

These include:

- section 201, the recycled water management plan (RWMP) must include details of an education and awareness program for customers of the scheme
- section 250, the recycled water provider is unable to apply for an exemption from having an approved RWMP
- section 274, the relevant entity must prepare and make publicly available a report about the scheme
- section 301, the regulator must declare the scheme to be critical if the scheme supplies at least 500KL of recycled water per day
- sections 631 and 632, transitional provisions (now expired)

Currently under the *Water Supply (Safety and Reliability) Act 2008*, 'dual reticulation' schemes are broadly described as any scheme 'if recycled water is supplied 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'. Except for the broad description, there is no specific definition of dual reticulation in the *Water Supply (Safety and Reliability) Act 2008*. As a consequence, a number of schemes that are not considered to be 'dual reticulation' schemes may be inadvertently caught and subject to the above provisions, for example, schemes that supply recycled water through a reticulation network to irrigate sporting fields, golf courses and agricultural land. Schemes inadvertently caught as dual reticulation would also be ineligible for extended transitional provisions.

To resolve this problem a definition is required to describe how the recycled water is intended to be used and the type of premises at which the recycled water is intended to be used to limit the scope of what is considered and regulated as a dual reticulation scheme. This has the effect of limiting the number of schemes that would be subject to the dual reticulation provisions in the *Water Supply (Safety and Reliability) Act 2008*. The amendments will also clarify the intended transitional provisions for lower-risk schemes apply to schemes currently inadvertently caught as dual reticulation.

Clarification of transitional provision application

When the *Water Supply (Safety and Reliability) Act 2008* was introduced it provided a short transitional period for schemes that supplied recycled water to irrigate minimally processed food crops or for dual reticulation. Depending on the date recycled water was first supplied, these schemes had up until 1 July 2009 to have a RWMP approved or an exemption from the requirement to have a RWMP granted (although dual reticulation schemes are not eligible for an exemption).

Other lower-risk schemes have a longer transitional period, and an approved RWMP or granted exemption is not required until the later of 1 July 2014 or one year after supply of recycled water first commenced.

However, because of an error in the original transitional provisions, the longer transitional period also applies to schemes that commenced suppling recycled water on or after 1 July 2009 to irrigate minimally processed food crops or for dual reticulation. Amendments to the *Water Supply (Safety and Reliability) Act 2008* are needed to clarify the original policy intent, which was that schemes supplying recycled water to irrigate minimally processed food crops or for dual reticulation only had a limited transitional period to have a RWMP approved, or exemption granted, concluding on 1 July 2009. As this period has now expired, any new scheme supplying recycled water to irrigate minimally processed food crops or for dual reticulation will require an approved RWMP or granted exemption prior to supply of recycled water commencing.

Alternative ways of achieving policy objectives

For all the amendments in the Bill other than those outlined below there are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991

Powers to determine land trust membership

The only alternative to reworking Part 20 was to make minor amendments or to leave the Part as it is. Neither of these options would address the issues identified with the Part.

Transfer of claimable land

Other legislative options were considered in 2010, but all were much more complex and less effective than amending section 177.

Making Starcke National Park transferable is the only option that will provide for this park to be transferred to the same grantee as other nearby parks.

Cape York Peninsula Heritage Act 2007

No other options were considered, as the Minister for Environment and Heritage Protection agreed, in June 2012, to seek a legislative amendment to convert the Eastern Kuku Yalanji parks into National Parks (Cape York Peninsula Aboriginal land).

Furthermore, if the current definition of the Cape York Peninsula Region was maintained, it would prevent the Eastern Kuku Yalanji parks from being converted to National Parks (Cape York Peninsula Aboriginal land). In this case, a separate Aboriginal Land Claim would proceed over Cedar Bay National Park, which would be costly to the State and would not result in an effective joint park management arrangement.

Land Act 1994

Trustee leases

Entirely removing the requirement for obtaining Ministerial consent was considered, but not adopted at this time so as not to pre-empt the government response to the outcome of the inquiry by the State Development, Infrastructure and Industry Committee inquiry into the future and continued relevance of government tenure across Queensland.

The proposed amendment simply improves the streamlined administration of trust land.

By requiring trustee leases and subleases to be subject to the terms of a mandatory standard terms document, the Minister ensures such interests contain 'necessary terms' (such as, a covenant indemnifying the State, or the requirement that all money received by the trustee from the leasing of the land must be spent on the trust land). In addition, the mandatory standard terms document terms ensure reserves and deeds of grant in trust will not be diminished by granting inappropriate interests in the land.

From the perspective of the trustee (and trustee lessee), the proposed amendment removes the need to seek and obtain Ministerial approval before the trustee lease or sublease may be registered.

Application process

The proposed amendments will introduce a more flexible assessment process that removes government red tape, without pre-empting the government response to the findings of the State Development, Infrastructure and Industry Committee inquiry into the future and continued relevance of government tenure across Queensland.

Dealings with subleases of a lease

Entirely removing the requirement for obtaining Ministerial consent was considered, but not adopted at this time so as not to pre-empt the government response to the outcome of the inquiry by the State Development, Infrastructure and Industry Committee inquiry into the future and continued relevance of government tenure across Queensland. The proposed amendment simply improves the streamlined administration of leasehold land.

By requiring subleases to be subject to the terms of a mandatory standard terms document, the Minister ensures such interests contain 'necessary terms' (such as a covenant indemnifying the State and a term informing the sublessee the leased land can be used only purposes consistent with the purpose of the head lease).

The lessee will need to ensure, for example, that the grant of the sublease is not inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*.

Water Act 2000

Regulation of levees

On 7 June 2012, the Queensland Government committed to implement all 123 of the Commission's recommendations which relate directly to the State. In relation to levees, the implementation of the recommendations could not be achieved without legislative amendments.

In essence, the recommendations included working with local governments to formulate a definition of levee and determine the most appropriate regulatory regime under the *Sustainable Planning Act 2009* to regulate levees. The continued use of alternative regulation or assessment processes outside of the Integrated Development Assessment System (IDAS), such as local laws is not supported by the *Sustainable Planning Act 2009* which requires that regulation of such development be integrated into planning instruments for assessment under IDAS.

The Bill forms part of a proposed regulatory framework that will also include development codes, guidelines and amendments to the Sustainable Planning Regulation 2009 and Water Regulation 2002.

Extending the term of water licences

Extending the term of all currently issued water licences will reduce the regulatory burden on licence holders as, in effect, the Bill removes the requirement to apply for a water licence to be renewed. As a result, the amendment will also deliver significant government savings.
The savings associated with extending the term of a water licence could have been achieved by amending the *Water Act 2000* to issue licences in perpetuity. However, this could be taken to mean 'unchanged forever'. This would be misleading as water licences would still be subject to the management strategies in WRPs and ROPs.

The department also considered extending the term of all water licences using the amendment processes outlined in the *Water Act 2000*. As this administrative process would need to be completed, individually, for all currently issued water licences it would be process and resource intensive.

Postponing the expiry of water resource plans

Amendments to the *Water Act 2000* are required to provide the Minister with the flexibility needed to prioritise the department's water planning program. In developing the Bill the department considered whether a short form replacement process could be used in conjunction with a process postponing the expiry of WRPs. However, as both processes would ultimately consider:

- whether the WRPs outcomes were being achieved

- whether the WRPs objectives, or the strategies for achieving the plan's outcomes, continue to be appropriate
- whether there would be any adverse effect on water entitlement holders or natural ecosystems

It was considered appropriate to consolidate the requirements into a single process.

Removing the requirement for licences to interfere for watercourse diversions associated with resource activities

Assessing watercourse diversions as part of the EA approval processes ensures a streamlined process for clients and has potential to reduce the time required to grant the approval.

Aligning the granting, under the *Water Act 2000,* of a water licence to interfere with the flow of water in a watercourse (through watercourse diversion), with the grant of an EA under the *Environmental Protection Act 1994* for resource activities was considered, but not adopted. That option proposed that the granting of the water licence be linked in some way to the assessment and approval of an EA. However this would still require two separate approval processes and two public notification processes.

Removing the requirement for a riverine protection permit to destroy vegetation

Ensuring that all clearing/destruction of vegetation is regulated under one framework, namely, the framework provided in the *Vegetation Management 1999* and the *Sustainable Planning Act 2009,* cannot be achieved without the removal of riverine protection permits (for the destruction of vegetation in a watercourse, lake or spring) from the *Water Act 2000*.

The department considered regulating the clearing of vegetation in a watercourse, lake or spring under a declared area code under the *Vegetation Management Act 1999* or, alternatively, under a new vegetation management code. However, the development of these codes has the potential to increase the legislative requirements authorising the clearing of vegetation. For instance, there would be multiple codes applying to the clearing of vegetation in a watercourse creating potential public confusion and duplication of assessment effort for government officers. There is also potential for different requirements to apply on the one property if more than one code were to apply. This outcome would be inconsistent with the government's commitment to cut red tape and regulation.

Removing land and water management plans

Land and water management plans (LWMPs) are required for the use of water for irrigation in certain circumstances. However, the LWMP framework involves complex triggers (i.e. for determining when a plan is required), is not achieving its intended objectives and imposes a regulatory burden on irrigators. Therefore, the Bill removes the requirement to prepare a LWMP.

Consideration was given to replacing LWMPs with a duty of care under the *Water Act 2000* or, alternatively, a statutory guideline applicable to all irrigators. However, a duty of care would apply state-wide, potentially increasing regulation/costs for some irrigators and may overlap with existing duties of care such as the general environmental duty in the Environmental *Protection Act 1994* and duty of care under the *Land Act 1994*.

Similarly, while a statutory guideline would apply a consistent minimum standard across the irrigation industry, it too has the potential to increase compliance costs for irrigators and would not relate the level of irrigation activity to the level of risk of land and water degradation. To address this issue, the department considered combining a duty of care concept with the capacity to declare specific standards in high risk areas. However, a framework of this nature is inconsistent with the government's commitment to cut red tape and regulation.

Removing Declared Catchment Areas

As DCAs under the *Water Act 2000* currently duplicate the role of planning schemes, local planning policies, other *Sustainable Planning Act 2009* planning instruments and the EA requirements under the *Environmental Protection Act 1994*, amendments to the *Water Act 2000* to remove the relevant provisions are required. As such, the Bill removes DCAs from the *Water Act 2000* and Water Regulation 2002. Consideration was given to removing the DCA provisions from the *Water Act 2000* for the department but retaining for Seqwater. However, this will not reduce red tape for businesses in South-East Queensland.

Providing flexibility when publishing public notices

'Publish' is defined in Schedule 4 of the *Water Act 2000* as meaning to publish in a prescribed manner, either as dictated by the definition, as determined by a provision, or if neither are to be found, by newspaper in an area circulating throughout the area. As the current requirements are prescribed in legislation, the only options available are to:

- amend the definition to remove the current restrictions and provide flexibility; or
- amend the definition to prescribe the preferred alternative means of communication to be used for each situation.

The most appropriate means of communication for each public notification should be identified at the time of publication and should reflect the local conditions and needs of the community (i.e. the intended audience). Prescribing legislative requirements does not cater for individual circumstances and may be counterproductive, resulting in future amendments as additional alternative publication methods arise.

Dealing with Surrendered or Forfeited Interim Water Allocations

The *Water Act 2000* currently requires the sale of surrendered and forfeited interim water allocations. Therefore, the options considered by the department were to retain the status quo

or provide the chief executive with flexibility when dealing with surrendered and forfeited interim water allocations. The current process constrains the chief executive and may result in the sale of interim water allocations in over allocated systems and outcomes that do not align with the resource management objectives in the relevant WRP. As a result, maintaining the status quo was not considered to be a feasible option.

Amendments to *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*

Conversion of petroleum wells

The following were considered, as alternatives to legislative amendments:

- ministerial policies
- departmental procedures and practices
- maintaining the status quo

It would have been advantageous to deal with the issues identified using a mechanism other than legislative amendments as this would enable issues to be addressed in a more timely manner. However, there was an insufficient statutory head of power to allow the Minister to approve a policy that would thoroughly address the safety and environmental issues identified.
For a similar reason, departmental procedures and practices were not the best vehicle to address the identified issues. Retaining the status quo would have put the government in a compromising position should an accident occur, as safety and environmental issues had been identified.

Also, as one of the key issues seeks to address safety and environmental matters, and maintaining safety and minimising environmental harm are clearly items of paramount importance to the government and the public, non-compliance with safety and environmental matters should carry penalties. These could not be adequately provided for under the three options that were ultimately rejected.

Amendments to the *Vegetation Management Act 1999*

There are no alternative options to achieving the objective, as it requires primary legislation to give effect to the validation of historical decisions made using the watercourse map.

Estimated costs for government implementation

There will not be any implementation costs associated with the majority of legislative amendments in the Bill. For the regulation of levees, any implementation costs will be managed within the existing budget of the Department of the Natural Resources and Mines.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in Section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. However, the Bill does include a number of provisions that may be regarded as departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure, are outlined below.

Whether legislation has sufficient regard to the institution of Parliament - Legislative Standards Act 1992 s 4(2)

The Bill exempts water resource plans from part 7 of the *Statutory Instruments Act 1992*. Part 7 of the *Statutory Instruments Act 1992* provides for the staged expiry of subordinate legislation and is designed to ensure subordinate legislation is regularly reviewed in order to reduce the regulatory burden, ensure subordinate legislation remains relevant and ensure subordinate legislation is of the highest standard. Under part 7 the *Statutory Instruments Act 1992* subordinate legislation ordinarily has a 10 year life which may be extended a year at a time where, for example, the legislation is under review.

While the Bill removes water resource plans from the operation of part 7 of the *Statutory Instruments Act 1992* the *Water Act 2000* will continue to provide for the expiry of water resource plans after 10 years. Importantly, the *Water Act 2000* will also allow the Minister to postpone the expiry of a water resource plan for an additional 10 years, where appropriate.

It is necessary to manage the expiry of water resource plans under the *Water Act 2000* in order to allow government resources to be targeted to where they are most needed and where they are of the most benefit to the State. Instead of the expiry of a water resource plan that is still relevant and appropriate for its plan area demanding the department's planning attention and resources, the amendments will allow resources to be focussed on those water resource plans in need of amendment or review. In doing so, the amendment provides the Minister with more flexibility in prioritising the review and replacement of water resource plans.

The Bill also introduces the process the Minister must follow to postpone the expiry of a water resource plan. The process provides that before postponing the expiry of a water resource plan, the Minister must reasonably believe that the postponement will not adversely affect water entitlement holders or natural ecosystems in the plan area.

In addition, the Minister must publish a notice stating the reasons for which the Minister is considering postponing the expiry of the water resource plan, the proposed new expiry date and that public submissions may be made about the proposal. In deciding whether to postpone the expiry of a plan the Minister must consider any submissions received, any periodic reports prepared about the plan and whether the plan's objectives/strategies are still appropriate. The Minister's decision will be tabled before, and may be disallowed by, the Legislative Assembly.

Whether legislation has sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992 s 4(2)(a)

(a) Infrastructure owner's unilateral right to remove related entity as a service provider

The Bill provides, in the amendments to the *Water Supply (Safety and Reliability Act) 2008*, for the owner of infrastructure for the supply of a water or sewerage service to nominate an entity (the 'related entity') to operate the infrastructure to provide the service as the registered service provider. The Bill also allows the infrastructure owner to transfer the related entity's registration as a service provider to another entity without the related entity's consent. This could cause great detriment to the related entity if it is not a party to, or in agreement with, the infrastructure owner's decision. This provision may raise the question as to whether the Bill has sufficient regards to the rights of the related entity.

Although the ability to transfer the service provider registration vests in the infrastructure owner, it is unlikely to be exercised arbitrarily against the interests of the related entity. It will be a matter for the infrastructure owner and related entity to enter into a contractual arrangement to ensure their respective interests are protected. The infrastructure owner in the first instance nominates the related entity to operate its infrastructure and must have the ability to nominate another entity for registration, should the related entity no longer be able or willing to operate the infrastructure to provide the registered service.

(b) Rights of ownership and operation of infrastructure overriding landholders' rights

The Bill provides, in the amendments to the *Water Supply (Safety and Reliability Act) 2008*, that the ownership and operation of infrastructure for supplying a water or sewerage service is not affected simply by the infrastructure being a part of land or being on land that is sold or otherwise disposed of. Arguably the provision breaches fundamental legislative principles as it overrides the rights of affected owners and occupiers of land on which the infrastructure is situated.

However, the provision is necessary and considered justified to ensure that a service provider has adequate access to and control over the infrastructure for providing the relevant service, even if the infrastructure is located on private land. Read in conjunction with the definition of 'service provider's infrastructure', the section affirms the service provider's rights of access to and control over infrastructure regardless of the location of the infrastructure. However, the *Water Supply (Safety and Reliability Act) 2008* constrains a service provider's right to access private land by specifying the circumstances and the process under which a provider may enter private land. This will be of particular relevance to water authorities (established under the *Water Act 2000*) that convert to alternative institutional structures and which will no longer be able to rely on powers granted to water authorities under that Act, such as the power to take land for carrying out works and any other purpose within the authority's main functions.

The provision does not seek to diminish or alter any existing rights that a landholder may have over infrastructure on the landholder's land and is therefore not considered to amount to an acquisition of property.

(c) Infrastructure owner's unilateral right to transfer distribution operations licence

The Bill provides for the owner of water infrastructure to which a distribution operations licence or proposed distribution operations licence relates to nominate an entity ('the nominee') to hold the licence. The Bill also allows the infrastructure owner to apply to transfer the licence without the nominee's consent.

Arguably the provisions are a breach of fundamental legislative principles because these amendments could potentially impose a severe detriment on a licensee without the licensee's consent.

However, in this case, both the infrastructure owner and the licence holder have a critical role to play in ensuring a reliable supply of water to entitlement holders under the distribution operation licence. Their roles are inextricably linked because infrastructure (in this case held by its owner) is necessary in order to distribute water effectively and so is the operation of that infrastructure by the licence holder (the nominee of the infrastructure owner). The two parties interests are intermeshed and any consent to a transfer would most likely be done in the interests of the users of the water who might be seriously disadvantaged if the transfer could not occur.

In addition, given the inextricable link that exists between the parties, it is reasonable to expect that the commercial arrangement between the infrastructure owner and the licence holder should deal with the issue of possible transfers of licence. The licence holder will also be in a position to appeal.

Whether legislation has sufficient regard to the rights and liberties of individuals - Legislative Standards Act 1992 s 4(3)

Clause 301 of the Bill imposes a new penalty of 1665 penalty units where a person (after any appeal against the compliance notice is dismissed) does not comply with a compliance notice regarding a direction by the chief executive to modify or remove a levee. Consequences and penalties imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by legislation. A penalty should be proportionate and appropriate to the offence.

On 16 March 2012, the Commission delivered its Final Report into the 2010-11 floods. In the report the Commission determined that levees can create a number of problems:

- flood mitigation levees designed to provide protection from water breaking out of rivers and creeks may increase flood heights on the other side of the river. In some places this may be significant
- if levees are overtopped the damage caused by the water's breakout can be considerable
- individuals or communities protected by a levee may become complacent, assuming that the levee will protect against all flood.

Given the findings of the Commission, the level of the new penalty is proportionate to the damage which a levy can cause. It should be noted that the power of the chief executive to give a direction and the associated penalty for failure to comply with that penalty only apply to levees constructed or modified after the commencement of this clause.

Whether legislation is consistent with principles of natural justice - Legislative Standards Act 1992 s 4(3)(b)

The Bill amends both the *Aboriginal Land Act 1991* and the *Torres Strait Islander Act* 1991 to allow the Minister or land trusts to immediately suspend a member (thus removing that member from a land trust) without a show cause process.

These powers are necessary in certain circumstances, for example, where a member frustrates a show cause process to the point that it cannot be undertaken or there is an immediate risk to trust property in which case a show cause notice, due to the time it takes to be completed, would be ineffective in preventing loss or damage to trust property.

However, to balance this lack of a show cause process, safeguards on the power to immediately suspend a member have been incorporated into the immediate suspension processes, these include:

- stipulating, in the legislation, the grounds for the immediate suspension of a member. These grounds are limited to those where the suspension is necessary to prevent a likely contravention of the Act by a member of the executive committee or to address an immediate risk to the proper operation of the land trust or proper dealing with trust property. That is, there is justification for immediate action without a show cause process to prevent a foreseeable risk/harm
- that an information notice about the decision must be provided to the member.

Further safeguards are also incorporated and vary on whether it is the Minister or the land trust who is undertaking the immediate suspension action. These are:

For Minister's decision:

- a show cause notice must be provided to the member and the land trust
- a copy of the information notice must be provided to the land trust
- the suspension ceases on the earlier of either the show cause notice being dealt with, or 60 days have passed.

For land trust's decision:

- a motion proposing disciplinary action to be taken against the member must be considered at a general meeting of the land trust within 60 days of receipt of the information notice by the member
- the suspension ceases upon the earliest of:
  - the motion proposing disciplinary action fails to pass by resolution at the general meeting of the land trust; or
  - 60 days have passed since the information notice was received by the member and the member has not received a show cause notice; or
  - the show cause notice was dealt with; or
  - 60 days have passed since the member received the show cause notice and it has not been dealt with.

Whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively - Legislative Standards Act 1992 s 4(3)(g)

(a) Vegetation Management Watercourse Map

Clause 225 of the Bill proposes to insert new section 109 into the *Vegetation Management Act 1999* to validate decisions retrospectively. Arguably the amendments are a breach of fundamental legislative principles. Such a breach is justified because of the decisions relating to watercourse performance requirements are otherwise uncertain.
The consequences of the retrospective clause for the public are low, as the relevant decisions that were made to the incorrectly labelled watercourse map have historically not been challenged or appealed. Any community concern about the clause is likely to be nil or negligible. Urgent reforms have taken effect to the relevant codes to remove any issues with current decisions that relate to the watercourse map. No current appeals are currently in progress that relate to the watercourse definition.

(b) Recycled water schemes

Amendments to section 633 of the *Water Supply (Safety and Reliability) Act 2008* operate retrospectively. The amendments remove the transitional period for recycled water schemes that commenced supply for irrigation of minimally processed food crops or for dual reticulation on or after 1 July 2009. An extended transitional period for these schemes was never intended. Although the amendments are retrospective, the Department of Energy and Water Supply is not aware of any schemes that will have their rights retrospectively affected. All schemes that commenced supply of recycled water on or after 1 July 2009 for either irrigation of minimally processed food crops or for dual reticulation had an approved recycled water management plan prior to supply commencing.

New section 659 of the *Water Supply (Safety and Reliability) Act 2008* operates retrospectively. However, the new section operates beneficially to ensure that entities

responsible for schemes inadvertently caught by the broad description of dual reticulation schemes under the *Water Supply (Safety and Reliability) Act 2008* are eligible for the intended transitional period. These schemes supply recycled water 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' but do not fall within the new definition of a 'dual reticulation system'. For example, schemes inadvertently caught may supply recycled water through a reticulation network to irrigate sporting fields, golf courses and agricultural land. While the amendments are retrospective, they are needed to validate the intended transitional provisions for relevant recycled water schemes.

(c) Category 1 water boards

New section 1239 of the *Water Act 2000* retrospectively validates the appointment of the chairperson of the Mount Isa Water Board. The chairperson was incorrectly appointed by the chief executive when they should have been chosen by the other Board members. The retrospective validation is required to provide certainty regarding the appointment and to remove any doubt about the validity of decisions made by the chairperson and by the Board. The Bill also addresses the inconsistent processes surrounding the appointment of chairpersons for water boards by ensuring that the chief executive has the power to appoint chairpersons.

Whether legislation is unambiguous and drafted in a sufficiently clear and precise way - Legislative Standards Act 1992 s4(3)(k)

(a) Extension of right to take for stock and domestic

Section 20(3) of the *Water Act 2000* authorises owners of land whose land adjoins a watercourse, lake or spring to take water for stock and domestic purposes. The proposed amendment will extend this authorisation to owners of land whose land does not adjoin a watercourse, lake or spring where provided for in a water resource plan or, where there is no water resource plan, in a regulation. It is arguable that this amendment is a breach of fundamental legislative principles as a person is required to understand either the Act and a water resource plan or the Act and a regulation in order to understand what is authorised under new section 20A(5).

However, it is appropriate for the section to be framed in this manner as the areas and circumstances in which water may be taken under this authorisation may vary between and within catchments. As a result, there is a need for the relevant water planning instrument to specify these requirements, ensuring that the take of water authorised under new section 20A(5) is consistent with the water management and planning approach applied in that area. Landholders will have an opportunity to comment on the application of this section in their area through the consultation that occurs as part of the water planning and management process.

(b) Use of water for traditional activities and cultural purposes

The Bill amends section 20 of the *Water Act 2000* to enable activities that pose minimal risk to the sustainable management of water resources to be undertaken without a water entitlement. In particular, the Bill authorises Aboriginal and Torres Strait Islander parties to take or interfere with water for traditional activities or cultural purposes; and provides that an owner of land may take water from a watercourse, lake or spring (including water collected in a dam across a watercourse or lake) for stock and domestic purposes where provided for in a water resource plan or, where there is no water resource plan, in a regulation.

New section 20(5) authorises Aboriginal and Torres Strait Islander parties to take or interfere with water for traditional activities or cultural purposes. While this amendment enacts a right to do an act based on the race or culture of a person, it is also consistent with the rights recognised under the *Native Title Act 1993* (Cwlth) and implements aspects of the Intergovernmental Agreement on a National Water Initiative.

Arguably the amendment is a breach of fundamental legislative principles in that the use of the term 'cultural purposes' may lead to confusion as to the extent of the benefit provided under section 20(5) of the *Water Act 2000*. However, this amendment appropriately refers to the definitions that are provided in the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*. This reference ensures that there is consistent understanding of what constitutes 'Aboriginal cultural heritage' and 'Torres Strait Islander cultural heritage' and that the definition is not unduly restrictive. It is intended that water will be taken or interfered with only where it is reasonable and necessary to undertake traditional activities or where it is reasonable and necessary to maintain or protect cultural heritage.

Whether legislation has sufficient regard to the institution of Parliament – Legislative Standards Act 1992 s 4(4)

The Bill exempts WRPs from Part 7 of the *Statutory Instruments Act 1992*. Part 7 of the *Statutory Instruments Act 1992* provides for the staged expiry of subordinate legislation and is designed to ensure subordinate legislation is regularly reviewed in order to reduce the regulatory burden, ensure subordinate legislation remains relevant and ensure subordinate legislation is of the highest standard. Under Part 7 of the *Statutory Instruments Act 1992* subordinate legislation ordinarily has a 10 year life which may be extended one year at a time where, for example, the legislation is under review.

While the Bill removes WRPs from the operation of Part 7 of the *Statutory Instruments Act 1992* the *Water Act 2000* will continue to provide a statutory process for the expiry of WRPs after 10 years. Importantly, the *Water Act 2000* will also allow the Minister to postpone the expiry of a WRP for an additional 10 years, where appropriate.

It is necessary to manage the expiry of WRPs under the *Water Act 2000* in order to allow government resources to be targeted to where they are most needed and where they are of the most benefit to the State. Instead of the expiry of a WRP that is still relevant and appropriate

for its plan area demanding the department's planning attention and resources, the amendments will allow resources to be focussed on those WRPs in need of amendment or review. In doing so, the amendment provides the Minister with more flexibility in prioritising the review and replacement of WRPs.

The Bill also introduces the process the Minister must follow to postpone the expiry of a WRP. The process retains, and in some aspects improves, the degree of rigour and transparency currently provided by the *Statutory Instruments Act 1992*.

In particular, the Bill provides that before postponing the expiry of a WRP, the Minister must reasonably believe that the postponement will not adversely affect water entitlement holders or natural ecosystems in the plan area. In addition, the Minister must publish a notice stating the reasons for which the Minister is considering postponing the expiry, the proposed new expiry date and that public submissions may be made about the proposal. In deciding whether to postpone the expiry of a plan the Minister must consider any submissions received, any periodic reports prepared about the plan and whether the plan's objectives/strategies are still appropriate. The Minister's decision will be tabled before, and may be disallowed by, the Legislative Assembly.

Consultation

Community

Amendments to the Land Title Act 1994

Statutory Easements - the changes were initially suggested by the development industry with support from Urban Development Institute of Australia (Qld), Property Council of Australia (Qld), Housing Industry Association (Qld), Urban Land Development Authority and the Council of Mayors South-East Queensland.

Amendments to the Acquisition of Land Act 1967

Consultation has been undertaken with the Brisbane City Council, Ergon and Powerlink.

Amendments to the Water Act 2000 – Levees

In relation to levees, a discussion paper on the definition of a levee was provided to the Queensland Farmers Federation, AgForce and the Local Government Association of Queensland (LGAQ) to disseminate to their members for comments. Consultation closed on 24 August 2012. Further targeted consultation was undertaken with the Queensland Farmers Federation, AgForce, Canegrowers and the Local Government Association of Queensland on 20 September 2012, in relation to the proposed amendments to the *Water Act 2000*.

Amendments to the Water Act 2000 – Other

A stakeholder consultation session was held on 27 September 2012. Representation was made by peak industry bodies such as: AgForce, Australian Petroleum Producers and Exploration Association, Australian Water Association, Canegrowers, Queensland Conservation Council, Queensland Farmers Federation, Queensland Resources Council, SunWater and SEQ Water. Consultation was also undertaken with the Pioneer Valley Water Board.

Amendments to the Water Supply (Safety and Reliability) Act 2008

There has been consultation with the Pioneer Valley Water Board over a long period in relation to the amendments to the *Water Supply (Safety and Reliability) Act 2008* to facilitate the Board's conversion from a statutory water authority under the *Water Act 2000* to a two tier co-operative structure involving a mutual co-operative (which will own infrastructure) and a trading co-operative (which will provide services to customers within the water supply scheme). The Board is supportive of the amendments.

Amendments to the River Improvement Trust Act 1940

The State Council of River Improvement Trusts and the LGAQ were consulted about the proposed amendments to the *River Improvement Trust Act 1940*.

Amendments to the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009, Sustainable Planning Act 2009 and Sustainable Planning Regulation 2009

There has been detailed consultation with South-East Queensland water businesses, councils, Council of Mayors South-East Queensland and briefings provided to key development industry groups (Urban Development Institute, Property Council of Australia, Housing Industry Association and Queensland Master Builders Association) on the proposed approach to planning and water approval processes for South-East Queensland water entities.

Amendment to the Petroleum and Gas (Production and Safety) Act 2004

The department has consulted with the Australian Petroleum Production and Exploration Association and representatives of gas companies to develop the amendments to simplify the regulation of pipelines carrying produced water on petroleum authorities.

Government

All government agencies were consulted on the Bill.

Results of Consultation

Community

Amendments to the Acquisition of Land Act 1967

Except for the following, no concerns have been expressed.

As the amendments are only intended to apply to straightforward matters where there are not objections, both the Coordinator General and Powerlink consider that there will be limited capacity to use the expedited process

In addition, Powerlink will need to continue to use the current process. This is because Governor in Council approval provides an exemption under the Protected Plants Legislative Framework in relation to native plants. Powerlink's right to take plants pursuant to the *Nature Conservation Act 1992* and *Nature Conservation (Protected Plants) Conservation Plan 2000* relies on authorisation by the Governor in Council.

Amendments to the Land Title Act 1994

Statutory Easements - Consultation with an industry working group has been undertaken, with broad support for the introduction of statutory easements.

Amendments to the Aboriginal Land Act 1991, Torres Strait Islander Land Act 1991 and Cape York Peninsula Heritage Act 2007

Claimable lands made transferable and definition of Cape York Peninsula Region – The Cape York Land Council support the proposed amendments to include Starcke National Park as transferable land and to convert the Eastern Kuku Yalanji parks into National Parks (Cape York Peninsula Aboriginal land).

Amendments to the Water Act - Levees

Consultation on the definition of a levee has been undertaken with key stakeholders and the majority of submissions supported the proposed exclusions and inclusions of the proposed definition. The proposed amendments to the *Water Act 2000* were noted by our stakeholders and no objections were raised. The department received a letter from the Local Government Association of Queensland expressing concern with the department's decision to proceed with the inclusion of amendments relating to levees without the proper resolution of a number of important aspects of the proposed regulation. In particular, the Local Government Association of Queensland states that there is currently no adequate details on the nature and scale of the impacts that regulation will seek to avoid or mitigate and thereby no understanding of the level of assessment that will be required by the assessment manager.

It must be noted that the Local Government Association of Queensland has been contributing to the development of the proposed regulatory framework and have not indicated to the working group that they oppose the particular amendments included in this submission. However, the Local Government Association of Queensland is opposed to the devolution of particular responsibilities back to local governments, as local governments are not in a position, with both resources and expertise, to undertake additional assessment manager roles such as proposed for levees.

Stakeholders have been informed on a regular basis that due to the Cabinet timeframes in relation to the regulation of levees, regulatory amendments were to be finalised by 31 March 2013. It has also been accepted by the working group that the development of guidelines (which will incorporate discussion on the nature and impacts of levees), assessment tools and the like (including the potential costs to the department and potentially to local governments) would be undertaken prior to the commencement of any regulatory framework. The Local Government Association of Queensland will be participating and contributing to the development of these tools and the regulatory impact statement and as such there is time to work with the Local Government Association of Queensland and its members to resolve their concerns.

Amendments to the Water Act 2000 – Other

In relation to the amendments (excluding levees) to the *Water Act 2000*, it was the view of stakeholders that the legislative amendments will reduce regulatory burden, simplify water legislation in Queensland and achieve streamlined services for clients into the future.

Amendment to the Petroleum and Gas (Production and Safety) Act 2004

The department held discussions with industry to determine the best way to regulate pipelines transporting produced water containing gas. Industry agreed these pipelines should be regulated solely by the *Petroleum and Gas (Production and Safety) Act 2004*. Different companies have indicated different points in their operating facilities at which the water is free of gas. In order to cater for the differences, the amendments will place an obligation on the operator to indicate in the safety management plan the pipelines that transport produced water containing gas. These pipelines will be operating plants in their own right and will be regulated by the *Petroleum and Gas (Production and Safety) Act 2004* only. Pipelines transporting produced water without gas will not be an operating plant in its own right and will be regulated by the *Work Health and Safety Act 2011*.

Government

All agencies consulted support the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on Provisions

Part 1 Preliminary

Division 1 Short Title

Clause 1 establishes the short title of the Act as the Land, Water and Other Legislation Amendment Bill 2013.

Commencement

Clause 2 details which parts commence on a date to be fixed by proclamation.

Part 2 Amendment of the Aboriginal Land Act 1991

Act amended

Clause 3 provides that this part amends the *Aboriginal Land Act 1991*.

Amendment of s 11 (DOGIT land)

Clause 4 amends section 11(2) to provide that if a road within the external boundaries of a DOGIT is closed, then the closed road area is included into the 'DOGIT land' upon closure of that road. This results in the area of closed road being transferable land under the Act.

The clause also amends section 11(4) to the effect that if any area of land within the external boundaries of a DOGIT is opened as a road, then the new road area ceases being DOGIT land and as a result is not transferable land under the Act.

Amendment of s 12 (Aboriginal reserve land)

Clause 5 amends section 12 to provide that if a road within the external boundaries of Aboriginal reserve land is closed, then the closed road area is included into the Aboriginal reserve land upon closure of that road. This results in the area of closed road being transferable land under the *Aboriginal Land Act 1991*.

The clause also amends the section to the effect that if any area of land within the external boundaries of Aboriginal reserve land is opened as a road, then the new road area ceases being Aboriginal reserve land and as a result is not transferable land under the *Aboriginal Land Act 1991*.

Amendment of s 45 (Existing interests)

Clause 6 amends section 45 to provide that where a sublease of the Aurukun Shire lease or the Mornington Shire lease existed immediately before the land became Aboriginal land, then upon transfer of the land the trustee of the land is substituted for the lessor of any such sublease.

Replacement of s 47 (Cancellation of deed of grant in trust)

Clause 7 replaces section 47 to provide that a deed of grant in trust is cancelled to the extent that a new deed, under section 44, is granted over all or part of the deed of grant in trust. The new section 47 applies irrespective of who is the trustee of the deed of grant in trust.

Amendment of s 48 (Cancellation of leases over Aurukun and Mornington Shire lease lands)

Clause 8 amends section 48 to put beyond doubt that despite the cancellation of either the Aurukun Shire lease or the Mornington Shire lease land under this section, any sublease of those leases continues in force as an existing interest with the trustee of the Aboriginal land as the lessor.

Amendment of s 177 (Claimable land recommended for grant taken to be transferable land)

Clause 9 includes an additional national park into section 177.

Amendment of s 250 (Minister may appoint member)

Clause 10 amends section 250 to reflect that all land trusts will have power to appoint members to their land trust.

Insertion of new s 250A

Clause 11 inserts a new section 250A which provides a land trust with the power to appoint a person to be a member of the land trust and the process to be followed.

Amendment of s 251 (Grounds for removal or suspension of member)

Clause 12 amends section 251 to provide that acting contrary to the best interests of the land trust is grounds for removal or suspension of a land trust member.
The section is also amended to reflect that all land trusts will have power to appoint members to their land trust.

Where a land trust cannot remove or suspend a member and a simple majority of the land trust requests the Minister in writing to either remove or suspend a member, then providing either subsections 1(a), (b) or (c) apply to the member, then this is grounds for the Minister to remove or suspend the member.

Replacement of pt 20, div 2, sdiv2, hdg (Removal or suspension of members)

Clause 13 replaces the heading of part 20, division 2, sdiv2, to better reflect the purposes of the subdivision.

Amendment of s 252 (Show cause notice)

Clause 14 amends section 252 to provide that a show cause notice must state that if a member is removed from a land trust they are also removed from any other land trusts.

Amendment of s 255 (Removing or suspending member)

Clause 15 amends section 255 to remove the definition for an information notice from this section as this term is now included in Schedule 1 (Dictionary).

Insertion of new s 255A

Clause 16 inserts new section 255A which provides that if a member who is removed by the Minister from a land trust, was also the member of any other land trust, then they are also removed from those land trusts.

Replacement of s 256 (Immediate removal or suspension of member)

Clause 17 replaces section 256 to clearly identify the grounds for the Minister to immediately suspend a member of a land trust, the process to be followed and the effect of such a decision.

Replacement of pt 20, div 2, sdiv3 (Other matters)

Clause 18 replaces subdivision 3 with a new subdivision that provides all land trusts with the power to appoint, remove, suspend or immediately suspend members of their trust and sets out the process to be followed.

The process includes the requirement to give a show cause notice to a member if action is proposed to be taken. The details of the show cause notice are detailed in the subdivision.

The member is given the opportunity to make written responses to the show cause notice (within the stated period) outlining why the proposed action should not be taken.

Any suspension of a member is temporary unless a show cause process results in formal suspension or removal.

Insertion of new s 265A

Clause 19 inserts section 265A to provide that an executive committee of a land trust can validly make a resolution without holding a meeting. To validly do so, a notice of the proposed resolution must be given to all members of the committee entitled to vote on the resolution and all voting members must vote and voting must be in writing. Voting in writing includes by way of a flying minute or signing the resolution.

Insertion of new pt 25, div 4

Clause 20 inserts new division 4 which provides that where a sublease of the Mornington Shire lease was in effect immediately before the cancellation of that lease under section 48(1), then that sublease is in force and is taken to have continued in force as a lease under section 45.

Amendment of sch 1 (Dictionary)

Clause 21 inserts new defined terms into the dictionary.

Part 3 Amendments to the Acquisition of Land Act 1967

Act amended

Clause 22 provides that this part amends the *Acquisition of Land Act 1967*.

Amendment of s 2 (Definitions)

Clause 23 introduces new definitions to clarify the amending provisions

Insertion of new ss 3 and 4

Clause 24 inserts new sections 3 and 4.

New section 3 – Meaning of *multi-parcel purpose*

New section 3 provides a definition of multi-parcel purpose which is to apply when land is taken for a particular purpose and it is necessary to take more than one parcel of land.

New section 4 – Relationship with other Acts

New section 4 provides that the amendments are not to apply to the taking of native title, Aboriginal or Torres Strait Islander interests.

Amendment of s 9 (Ways in which land is to be taken)

Clause 25 amends section 9 so that the relevant Minister may, by gazette notice, declare that land may be taken -

- if there are no objections; and
- if the land is being taken for a multi parcel purpose then there are no objections to the taking of every other parcel of land or these other parcels have already been taken or are the subject of a resumption agreement.

Amendment of s 11 (Amending of gazette resumption notice)

Clause 26 amends section 11 (Amending of Gazette Resumption Notice) to simplify this section and reflect that section 24 AA may be used to amend gazette notices.

Amendment of s 12 (Effect of gazette resumption notice)

Clause 27 amends section 12 so that it is consistent with the new processes.

Replacement of s 15 (Taking by agreement)

Clause 28 inserts a new section 15 so that it is unnecessary to obtain Governor in Council approval to a resumption agreement. The new section provides that a constructing authority may declare that land is taken where there is a resumption agreement. However the constructing authority may take land under a resumption agreement for a multi-parcel purpose only if every other parcel of land required to be taken to carry out the multi-parcel purpose –

- has been taken under the Act; or
- is the subject of a resumption agreement entered into by the constructing authority; or
- is the subject of a notice of intention to resume for which the objection period has ended and no objections have been received.

Amendment of s 17 (Revocation before determination of compensation)

Clause 29 introduces a consequential amendment so that section 17 is consistent with the new processes.

Replacement of s 36B (Minister may delegate certain authorities and functions)

Clause 30 amends section 36B to allow the Minster to delegate the Ministers functions under the Act. Previously the Minister could only delegate the Ministers powers as a constructing authority. This will enable the Ministers delegate to consider applications under section 9 and section 15.

Insertion of new pt 6, div 4

Clause 31 introduces transitional provisions.

Numbering of schedule (Purposes for taking land)

Clause 32 numbers the current Schedule as Schedule 1.

Insertion of new sch 2—

Clause 33 inserts schedule 2 to relocate the definitions from section 2 to a new schedule called 'Dictionary'.

Part 4 Amendment of Cape York Peninsula Heritage Act 2007

Act amended

Clause 34 provides that this part amends the *Cape York Peninsula Heritage Act 2007.*

Amendment of s 7 (Meaning of *Cape York Peninsula Region*)

Clause 35 amends section 7 to provide that the Cape York Peninsula Region is as shown on a map called 'designated map'.

Designated map is defined as a map prepared and held by the Department of Natural Resources and Mines and either called 'Map 2 Cape York Peninsula Region' or otherwise prescribed under a regulation.

Part 5 Amendment of City of Brisbane Act 2010

Act amended

Clause 36 provides that Part 5 amends the *City of Brisbane Act 2010*.

Amendment of s 40 (Development processes)

Clause 37 omits section 40(5)(c). Section 40 provides the council must not make a local law that establishes a process that is similar to or duplicates all or part of a process in the Planning Act, chapter 6. Section 40(5)(c) currently makes levees an exception to this local law making prohibition. Section 40(5)(c) is being omitted because the amendments being made by this Bill will introduce, in accordance with the recommendations of the Queensland Floods Commission of Inquiry, uniform regulation of levees across Queensland to replace the current piecemeal system which could include inconsistent local laws across local government areas.

Part 6 Amendment of Foreign Ownership of Land Register Act 1988

Act amended

Clause 38 provides that this part amends the *Foreign Ownership of Land Register Act 1988.*

Insertion of new s 2

Clause 39 provides that definitions are included in the dictionary.

Amendment of s 4 (Interpretation)

Clause 40 updates definitions and cross-referencing and moves the definitions to the schedule dictionary. In particular the definition of '*interest in* land' is updated to exclude certain interests in land from being recorded in the Foreign Ownership of Land Register, namely a carbon abatement interest under the *Land Act 1994* or the *Land Title Act 1994*; a covenant under the *Land Act 1994* or the *Land Title Act 1994*; a plantation license under the *Forestry Act 1959* and a profit a prendre under the *Land Act 1994* or the *Land Title Act 1994.*

Insertion of new schedule

Clause 41 inserts a new schedule dictionary for the definitions previously in section 4(1).

Part 7 Amendment of Land Act 1994

Act amended

Clause 42 provides that this part amends the *Land Act 1994* and refers to minor amendments included in the schedule of the Bill.

Amendment of s 8 (Definitions for pt 4)

Clause 43 provides for the omission of *lake and watercourse* in the definitions.

Amendment of s 13B (Power to declare and deal with former watercourse land)

Clause 44 amends section 13B. This amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 23A (Floating reservation on plan of subdivision)

Clause 45 amends section 23A and replaces subsection (2)(b) with new section 420FA (see clause 103).

Amendment of s 24 (Disposal of reservations no longer needed)

Clause 46 amends section 24 and replaces subsection (4)(b) with new section 420FA (see clause 103).

Replacement of ss 31C to 31E

Clause 47 replaces sections 31C, 31D and 31E.

New section 31C provides for making an application to dedicate land as a reserve under the Act. New section 31D provides for making an application to adjust the boundaries or purpose of a reserve.

Omitted section 31E is replaced by new section 420CB (see clause 102).

Amendment of s 31F (Notice of registration of action in relation to reserve)

Clause 48 amends section 31F and ensures that a person given notice by the applicant under section 31C or 31D will receive notice from the chief executive about the registration of the

document that dedicates land as, or adjusts the boundaries or purpose of, a reserve. Under the *Land Act 1994*, a reserve's dedication, change of boundaries or purpose takes effect from registration of the necessary document.

Amendment of s 34 (Applying to revoke dedication of reserve)

Clause 49 amends section 34. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 34E (Notice of revocation)

Clause 50 amends section 34E and ensures that a person given notice by the applicant under section 34 will receive notice from the chief executive about the registration of the document that revokes the reserve. Under the *Land Act 1994*, revocation of a reserve takes effect from registration of the necessary document (plan of subdivision or revocation notice).

Amendment of s 34I (Applying for deed of grant)

Clause 51 amends section 34I. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 34N (Notice of registration of deed of grant)

Clause 52 amends section 34N and ensures that a person given notice by the applicant under section 34I will receive notice from the chief executive about the registration of the deed of grant over an operational reserve. Under the *Land Act 1994*, a trustee of an operational reserve (that is, a reserve dedicated under the repealed *Land Act 1962* for a purpose which is not a community purpose under the current Act) may apply to freehold the reserve. If the land is granted in fee simple under chapter 3, part 1, division 2, subdivision 2 of the *Land Act 1994*, registration of the deed of grant revokes the reserve.

Amendment of s 38A (Applying for additional community purpose, amalgamation or cancellation)

Clause 53 amends section 38A. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 38D (Notice of registration of action)

Clause 54 amends section 34D and ensures that a person given notice by the applicant under section 38A will receive notice from the chief executive about the registration of the document which adds an additional community purpose, amalgamates or cancels a deed of grant in trust. Under the *Land Act 1994*, a deed of grant in trust may be cancelled,

amalgamated or changed (by addition of a community purpose) by registration of the necessary document.

Amendment of s 55A (Applying to surrender)

Clause 55 amends section 55A. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 55E (Notice of surrender)

Clause 56 amends section 55E and ensures that a person given notice by an applicant under section 55A will receive notice from the chief executive about registration of the document that surrenders the deed of grant in trust in whole or in part. Under the *Land Act 1994*, a deed of grant in trust may be surrendered, wholly or partially, by registration of a plan of subdivision or surrender notice.

Amendment of s 57 (Trustee leases)

Clause 57 amends section 57 to reduce red tape and costs for the State (as administrator of the *Land Act 1994*) and the State and statutory bodies as trustee of trust land.

The amendment will allow the State or statutory body, as trustee of trust land, to enter into, and have registered, a trustee lease without Ministerial approval if the trustee lease contains the terms of a stated mandatory standard terms document; the purpose of the lease is consistent with the purpose of the trust land; and, if the trust land is subject to a registered management plan, the lease is consistent with the terms of the management plan.

The stated mandatory standard terms document will contain terms the Minister considers are necessary inclusions in a trustee lease granted by the State or statutory body (for example, terms that protect the interests of the State as administrator of the *Land Act 1994*). Information about the stated mandatory standard terms document will be provided by the chief executive on the Department of Natural Resources and Mines website.

Amendment of s 57A (Amending a trustee lease)

Clause 58 amends section 57A and supports the amendments made to sections 57 and 58.

Section 320A of the *Land Act 1994* confirms that the terms of the stated mandatory standard terms document for a trustee lease or sublease prevail over any terms of an amendment of the trustee lease or sublease.

Amendment of s 58 (Other transactions relating to trustee leases)

Clause 59 amends section 58 and supports the amendments made to section 57.

Ministerial approval to the transfer, mortgage or sublease of a trustee lease will not be required if the trustee lease is granted by the State or statutory body under the amendments to section 57. The lessee of the trustee lease cannot grant a greater interest in the trust land than the interest held by the lessee.

Amendment of s 63 (Rent to be charged)

Clause 60 amends section 63 to remove an obsolete reference to department in subsection (4)(a).

Section 521E of the *Land Act 1994* confirms that a trustee of trust land that represented the State (such as a department) became the State as trustee of the land from 1 January 2008.

Amendment of s 97A (Definitions for div 2)

Clause 61 amends section 97A to replace the reference to subsection (2) with subsection (3) in the definition *temporary road closure application.*

Amendment of s 99 (Application to close road)

Clause 62 amends section 99 to confirm that a non-core utility provider cannot apply for the permanent closure of a road.

Amendment of s 115 (Conditions of sale)

Clause 63 amends section 115(3)(b) to increase the land area threshold applying to leases for which a land management agreement is required under the State Rural Leasehold Strategy. The area threshold changes from 100 hectares or more to 1 000 hectares or more.

Amendment of s 136 (Conditions of offer and lease)

Clause 64 amends section 136(5)(a) to increase the land area threshold applying to leases for which a land management agreement is required under the State Rural Leasehold Land Strategy. The area threshold changes from 100 hectares or more to 1 000 hectares or more.

Amendment of s 155 (Length of term leases)

Clause 65 amends section 155(4)(a), (5)(a) and (6)(a) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—for term leases requiring a land management agreement under the State Rural Leasehold Land Strategy.

Amendment of s 155AA (Application of division 1B)

Clause 66 amends section 155AA(1)(b) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—that applies to the extension of term leases under chapter 4, part 3, division 1B of the *Land Act 1994* and the State Rural Leasehold Land Strategy.

Amendment of s 158 (Application for new lease)

Clause 67 removes subsection 3 of section 158 as part of the repeal of provisions relating to future conservation areas on state rural leasehold land in order to—

- increase security of tenure for lessees over the future of their leases at lease renewal; and
- streamline rural lease renewal processes under the State Rural Leasehold Land Strategy.

Amendment of s 159 (General provisions for deciding application)

Clause 68 amends section 159 to increase security of tenure for lessees over the future of their leases at lease renewal; and to streamline rural lease renewal processes under the State Rural Leasehold Land Strategy.

The amendments remove:

- provisions relating to future conservation areas on state rural leasehold land; and
- other provisions designed to achieve closer settlement of agricultural areas.

Amendment of s 160A (Land management agreement for particular offers)

Clause 69 amends section 160A(1)(c) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—for term leases under the State Rural Leasehold Land Strategy where the offer of a new or renewed lease is subject to a land management agreement being entered into.

Amendment of s 162A (Conditions imposed on particular leases)

Clause 70 amends section 162A(1)(b) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—for new and renewed term leases under the State Rural Leasehold Land Strategy that are subject to a land management agreement being in place and being complied with.

Amendment of s 164 (Short term extension)

Clause 71 amends section 164 to provide for the short term extension of a lease for up to two years (instead of one year) if it appears a lease would expire before a renewal application is finalised.

This amendment will enable the Minister to extend the term of leases by up to two years to allow sufficient time to finalise investigations of a renewal application and negotiate the terms and conditions of any proposed new lease. This will have particular immediate relevance to rural leases affected by the State Rural Leasehold Land Strategy on the basis that lessees of such leases who are undertaking or about to undertake lease renewal may seek to have any decision about the renewal delayed pending the outcomes of:

- the State Development, Industry and Infrastructure Committee of Parliament report on the future and relevance of government land tenure across Queensland; and
- government's decisions and actions in response to the Committee's report.

Amendment of s 166 (Application to convert lease)

Clause 72 removes subsection (4) of section 166 as part of the repeal of provisions relating to future conservation areas on state rural leasehold in order to—

- increase security of tenure for lessees over the future of their leases at lease renewal; and
- streamline rural lease renewal processes under the State Rural Leasehold Land Strategy.

The amendment also renumbers the remaining subsections and cross-reference within the section.

Amendment of s 167 (Provisions for deciding application)

Clause 73 removes:

- provisions relating to future conservation areas on state rural leasehold land; and
- other provisions designed to achieve closer settlement of agricultural areas.

These amendments increase security of tenure for lessees over the future of their leases at lease conversion and, for pastoral leases being converted to a perpetual lease, streamline rural lease conversion processes.

Amendment of s 168A (Land management agreement for new perpetual lease)

Clause 74 amends section 168A(1) to restrict the requirement for land management for new perpetual leases over rural leasehold land. The section will apply if:

- the lease is for rural leasehold land with a term of 20 years of more and the lease land is 1 000 ha or more; or
- a land management agreement is required or has been entered into under section 176UA (see clause 78).

Amendment of s 173A (Short term extension)

Clause 75 amends section 173A to provide for the short term extension of a lease for up to two years (instead of one year) if it appears a lease would expire before a conversion application is finalised.

This amendment will enable the Minister to extend the term of rural leases affected by the State Rural Leasehold Land Strategy on the basis that lessees of pastoral leases who are undertaking or about to undertake lease conversion may seek to have any decision about the conversion delayed pending the outcomes of:

- the State Development, Industry and Infrastructure Committee of Parliament report on the future and relevance of government land tenure across Queensland; and
- Government's decisions and actions in response to the Committee's report.

Amendment of s 176A (General provisions for deciding application)

Clause 76 amends section 176A(5)(b)(ii) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—for subdivided term leases for which a land management agreement is required under the State Rural Leasehold Land Strategy.

Amendment of s 176L (General provisions for deciding application)

Clause 77 amends section 176L(5)(b)(ii) to increase the land area threshold—from 100 hectares or more to 1 000 hectares or more—for amalgamated term leases to which the condition that a land management agreement must be entered into applies under the State Rural Leasehold Land Strategy.

Insertion of new s 176UA

Clause 78 inserts a new provision to provide the Minister with discretionary powers to require a land management agreement for a term or perpetual lease for rural leasehold land if:

- if the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land (under section 199); or in a way that is likely to cause, or that has caused, land degradation; or
- if the lease land suffers from, or is at risk of, land degradation.

New section 176UA may be invoked in the following situations:

- if there is no land management agreement or no land management agreement is required under the *Land Act 1994*—during the life of a lease or at lease renewal;
- as an alternative to remedial action notice (and, for that matter, forfeiture action) under chapter 5, part 2, division 5 of the *Land Act 1994*—during the life of a lease.

Amendment of s 177A (Applying for permit)

Clause 79 amends section 177A. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102)

Amendment of s 177D (Notice of permit)

Clause 80 amends section 177D and ensures that a person given notice by an applicant under section 177A will receive written notice from the chief executive about the issued permit to occupy.

Amendment of s 180 (When permit may be cancelled or surrendered)

Clause 81 amends section 180 to confirm a permit to occupy may be cancelled if cancellation of the permit is needed to enable the land to be further allocated under the *Land Act 1994*. The amendment will also enable the permit to be cancelled if the permit land is a road or reserve and the road controller or trustee advises the chief executive better control of the land requires the permit to be cancelled.

Amendment of s 180A (Applying to cancel or surrender permit)

Clause 82 amends section 180A. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 180E (Notice about cancellation or surrender)

Clause 83 amends section 180E and ensures that a person given notice by an applicant under section 180A will receive written notice from the chief executive about the cancellation or surrender of the permit to occupy.

Insertion of new s 183B

Clause 84 inserts new section 183B to confirm that a person who has purchased a lease being converted will not pay rent for occupation of the land between the time the conditions of offer to convert the lease have been satisfied and the time the deed of grant for the purchased ;land is registered in the freehold land register.

Amendment of s 188A (Limited rent discount for particular leases)

Clause 85 amends section 188A(5) to increase the land area threshold for leases eligible for the rental discount—from 100 hectares or more to 1 000 hectares or more. This amendment:

- aligns the land area threshold with the new threshold land area for leases for which a land management agreement is required under the State Rural Leasehold Land Strategy; and
- preserves the intent that the rental discount will apply only to State Rural Leasehold Land Strategy leases.

Omission of ch 5, pt 1A (Future conservation areas)

Clause 86 repeals sections 198A and 198B relating to future conservation areas on state rural leasehold land in order to—

- increase security of tenure for lessees over the future of their leases at lease renewal; and
- streamline rural lease renewal processes under the State Rural Leasehold Land Strategy.

Amendment of s 201A (Land management agreement condition)

Clause 87 amends the general mandatory condition under section 201A(b) relating to land management agreements being entered into for term leases affected by the State Rural Leasehold Land Strategy. The amendment increases the land area threshold from 100 hectares or more to 1 000 hectares or more.

Amendment of s 234 (When lease may be forfeited)

Clause 88 amends section 234 to remove reference to section 198B that is being omitted by clause 86.

Amendment of s 240I (Sale of lease)

Clause 89 amends section 240I by providing for the sale of a lease by local government under the *Local Government Act 2009*. This power may be exercised if the local government has received notice from the chief executive that the lease may be forfeited under the *Land*

Act 1994 and the lessee has an overdue rate payable to the local government for the lease land.

Insertion of new s 284A

Clause 90 inserts a new section 284A to confirm that any regulated fee payable for obtaining copies of documents from a register under the Act must be paid where the documents are obtained under a subpoena or other court process. This is similar to the new section 35A inserted into the *Land Title Act 1994*.

Amendment of s 290JA (Dedication of public use land in plan)

Clause 91 amends section 290JA to provide that the dedication of a non-tidal boundary watercourse or lake may occur on the registration of a plan of subdivision without requiring anything further. This is similar to an amendment made to section 51 of the *Land Title Act 1994*.

Amendment of s 290JB (Access for public use land)

Clause 92 makes a consequential amendment to section 290JB.

Amendment of s 332A (Severing joint tenancy by transfer)

Clause 93 amends section 322A to modify the requirements for a joint tenant to unilaterally sever a joint tenancy by registration of a transfer. This is similar to an amendment made to section 59 of the *Land Title Act 1994*.

Amendment of s 327B (Applying to surrender)

Clause 94 amends section 327B by removing references to surrendering a lease. Those references have been moved to amended section 327C (see following clause).

Replacement of s 327C (Notice of proposal to approve surrender of lease)

Clause 95 replaces section 327C to restrict the section to applying for the surrender of all or part of the lease. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 327F (Notice of surrender)

Clause 96 amends section 327F and ensures that a person given notice by an applicant under section 327C will receive notice from the chief executive about the surrender of the lease.

Amendment of s 332 (Subleases require Minister's approval)

Clause 97 amends section 332 to remove the need for Ministerial approval to the grant or registration of a sublease of a lease from the State if a stated mandatory standard terms document forms part of the sublease.

Replacement of s 360D (Notice of proposal to amend lease)

Clause 98 amends section 360D. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 360F (Notice of registration of amendment of lease)

Clause 99 amends section 360F and ensures that a person given notice by an applicant under section 360D will receive notice from the chief executive about the amendment of the lease.

Amendment of s 369 (Public utility easements)

Clause 100 amends section 369 in support of the change to the definition of public utility provider (see clause 109).

Amendment of s 420C (Requirements for making an application)

Clause 101 amends section 420C in support of other amendments (such as the amendment to section 13B) that requires an applicant to advise other parties about the purpose of the application.

Insertion of new ss 420CA and 420CB

Clause 102 inserts new sections 420CA and 420CB.

Under the *Land Act 1994*, an applicant will be required to advise other persons about their proposed application and those persons will be given the right to make a submission, within a set time, against the proposal. The submission may be given to the applicant or the chief executive. These amendments will enable applicants to obtain necessary information before an application is lodged with the chief executive, assess the impact of the proposal on other persons with an interest in the land, and have a better understanding of the likeliness of the application being approved. In addition, an application lodged with the necessary information will enable the application to be processed in a timelier manner.

The insertion of section 420CA will ensure consistency in the matters shown in a notice given by an applicant to other persons. The insertion of section 420CB will ensure recipients

of a notice about a proposed application have the right to make a submission against the proposed application and, by ensuring the response is in the approved form, enable consistency in the matters provided against the submission.

Insertion of new s 420FA

Clause 103 inserts new section 420FA to confirm that a person making a decision with regards to a received application may obtain information and advice the decision-maker considers is appropriate before a decision may be made.

Amendment of s 481B (Application to cancel or surrender)

Clause 104 amends section 481B. The amendment is supported by introduction of new sections 420CA and 420CB (see clause 102).

Amendment of s 481G (Notice of cancellation or absolute surrender)

Clause 105 amends section 481G and ensures that a person given notice by an applicant under section 481B will receive notice from the chief executive about the cancellation or surrender of the occupation licence.

Insertion of new ch 9, pt 1K

Clause 106 inserts transitional provisions for leases over rural leasehold land, with a term of 20 years of more and a land area of 100 hectares or more but less than 1 000 hectares, where land management agreements were required under the Act prior to the provisions amending the land area threshold commencing:

- New section 521ZD defines the terms used in new part 1K.
- New section 251ZE provides that for a lease for which a land management agreement has already been registered, the lessee may apply to have the land management agreement cancelled under certain circumstances. The cancellation of the agreement does not affect the term of the lease. If the Minister decides to refuse to grant the cancellation the lessee may appeal against the decision.
- New section 521ZF prohibits the cancellation of registered agreements where the lease has been or is granted an extension of the term under chapter 4, part 3, division 1B of the *Land Act 1994*.
- New section 521ZG provides that where a registered land management agreement is cancelled under section 521ZE, the conditions relating to the land management agreement which burden the lease are also removed.

- New section 521ZH provides that chapter 4, part 3, division 1B (Extension of particular term leases) and chapter 4, part 3, division 1C (Reduction of particular term leases) continue to apply to a lease where the lease has been granted an extension under chapter 4, part 3, division 1B before the commencement of the provisions.
- New section 521ZI applies to leases for which a lease renewal application has been made under chapter 4, part 3 but not decided before the commencement of the provisions. This section provides that the provisions of chapter 4, part 3 and chapter 5, part 2 continue to apply to the application, but the applicant may choose—if the application is for rural leasehold land with a term of 20 years or more and a land area of less than 1 000 hectares—to have the application dealt with under the new arrangements. In this circumstance, the lessee cannot then apply for the cancellation of the land management agreement under section 521ZE.

Amendment of sch 2 (Original decisions)

Clause 107 amends schedule 2, the entry for section 332, as a result of the renumbering of the subsections of section 332 under clause 95.

Amendment of sch 3 (Requirements for approved agreements)

Clause 108 amends schedule 3, part 1, section 1(c) and part 2, section 1(c) to increase the land area threshold for leases to which Indigenous cultural interest provisions apply—from 100 hectares or more to 1 000 hectares or more. This amendment:

- aligns the land area threshold with the new threshold land area for leases for which a land management agreement is required under the State Rural Leasehold Land Strategy; and
- preserves the intent that Indigenous cultural interests, and supporting Indigenous Access and Use Agreements or Indigenous Land Use Agreements, will apply only to State Rural Leasehold Land Strategy leases.

Amendment of sch 6 (Dictionary)

Clause 109 amends schedule 6 by-

- inserting new terms in support of amendments to other parts of the *Land Act 1994* (for example, insertion of a definition for trustee lease (State or statutory body) for a trustee lease of trust land granted by the State or statutory body);
- omitting references in the schedule to terms that have become obsolete as a result of changes to the *Land Act 1994* or other Acts (for example, omission of the reference to 'future conservation area' as a result of the omission of the provisions relating to future conservation areas); and

- expanding the definition of public utility provider to enable co-operatives, commercial companies and other persons authorised under a law to provide a particular utility service to be recognised under the *Land Act 1994* as a 'public utility provider'.

Part 8 Amendment of Land Title Act 1994

Act amended

Clause 110 provides that this part amends the *Land Title Act 1994* and refers to minor amendments included in the schedule.

Insertion of new s 35A

Clause 111 inserts a new section 35A to confirm that any regulated fee payable for obtaining copies of documents under the Act must be paid where the documents are obtained under a subpoena or other court process. This will ensure that the regulated fees are not avoided by using court processes to obtain copies of publicly available documents.

Amendment of s 47 (Alienated State land to be registered)

Clause 112 amends section 47 to provide for an alternative process in certain cases where land is granted in fee simple and is to be recorded in the freehold land register. Section 47 requires that the deed of grant must be lodged in the land registry and, upon registration, an indefeasible title is created. However, it is not possible to lodge the deed of grant where the grant is made under legislation which requires the deed of grant to be delivered to the grantee.

Amendment of s 50 (Requirements for registration of plan of subdivision)

Clause 113 amends section 50 to clarify that the requirement for a plan of subdivision to have planning approval in order to be registered is subject to exemptions in other legislation. Section 50(3) includes specific exceptions but these are not intended to be the only exceptions to the requirement for planning approval.

Amendment of s 51 (Dedication of public use land in plan)

Clause 114 amends section 51 to provide that the dedication of a non-tidal boundary watercourse or lake may occur on the registration of a plan of subdivision without requiring anything further. On registration of the plan of subdivision the non-tidal boundary watercourse or lake, the ownership of that watercourse or land is identified as being with the

State, see section 13A *Land Act 1994*. This provision aligns with existing provisions regarding the dedication of other types of public use land.

Amendment of s 51A (Access for public use land)

Clause 115 makes a consequential amendment to section 51A required because of the amendment of section 51.

Renumbering of s 54 (Division excluding road or watercourse)

Clause 116 renumbers existing section 54 as 53A.

Insertion of new pt 4, div 3A

Clause 117 inserts a new division 3A into part 4, which consists of section 54A. This new provision allows for a lot to be dedicated as a road for public use by registration of a plan of subdivision. The dedication must be of an entire lot as identified on a registered plan of subdivision and must be approved by the relevant planning body. This provision will remove the necessity to register a new plan of subdivision to dedicate the road, which has limited utility when the area is already adequately described on a previously registered plan of subdivision. This aligns with the process for dedicating as road a non-freehold lot under section 94 of the *Land Act 1994*.

Amendment of s 59 (Severing joint tenancy)

Clause 118 amends section 59 to modify the process for a joint tenant to unilaterally sever a joint tenancy by registering an instrument of transfer. This alleviates the difficulty experienced by some persons wishing to utilise this section if they are unable to give a copy of the transfer to the other joint tenants, for example where a joint tenant cannot be located.

Amendment of s 67 (Amending a lease)

Clause 119 amends section 67 to clarify the meaning of 'term' of a lease for the purpose of registering an amendment of lease under that section and to clarify how the section applies when a registered lease provides for multiple options for renewal. If an option to renew has been exercised, the term of the lease will include the period of that option (even if the extended period has not yet been formalised by registration of an instrument) but will not include any later potential renewal period under an unexercised option.

Amendment of s 81A (Definitions for div 4)

Clause 120 amends section 81A to expand the definition of public utility provider to enable co-operatives, commercial companies and other persons authorised under a law to provide a

particular utility service to be recognised under the *Land Title Act 1994* as a 'public utility provider'.

Amendment of s 82 (Creation of easement by registration)

Clause 121 amends section 82 for minor clarification, to allow an easement to be created by a registered lessee and to include references to high-density development easements introduced by this Bill.

Amendment of s 83 (Registration of easement)

Clause 122 makes consequential amendments to section 83 required because of the insertion of the new Division 4AA in Part 6 and the amendment of section 82.

Amendment of s 83A (Registration of plan showing proposed easement)

Clause 123 makes a consequential amendment to section 83A required because of the insertion of the new Division 4AA in Part 6.

Amendment of s 84 (Limitation of easements)

Clause 124 makes a consequential amendment to section 84 required because of the insertion of the new Division 4AA in Part 6.

Amendment of s 89 (Easements for public utility providers)

Clause 125 amends section 89. The amendment is consequential to the amended definition of 'public utility provider' being made by clause 120.

Insertion of new s 90A

Clause 126 inserts a new section 90A to provide that an easement created by a registered lessee ends when the lease ends. The new provision also allows the registrar to remove an easement that has ended from the freehold land register.

Amendment of s 91 (Amending an easement)

Clause 127 makes a consequential amendment to section 91 required because of the insertion of the new division 4AA in part 6.

Insertion of new pt 6, div 4AA

Clause 128 inserts a new division 4AA in part 6 (sections 92A to 92I). These new sections provide for the registration and creation of easements in high density developments in a more simplified manner. High density development easements will be limited to particular purposes and will be limited in application to particular developments and will not require the easement to be defined on a plan of survey. Section 92C identifies the particulars for high density development easements for support. Section 92D identifies the particulars for high density development easements for shelter. Section 92E identifies the particulars for high density development easements for projections. Section 92F identifies the particulars for high density development easements for maintenance of a building close to a boundary. Section 92G identifies the particulars for high density development easements for roof water drainage. Section 92H identifies the insurance arrangements and obligations for easements for high density development. Section 92H identifies the notice of entry powers and obligations for easements for high density developments.

Amendment of s 105 (Lapsing of caveat)

Clause 129 amends section 105 to provide that notice required to be given to the registrar under the section must be given in the way required by the registrar. The registrar will require notice to be given by lodgement of a prescribed form, which is currently the preferred practice. This will ensure that the notice is electronically recorded on the relevant title as soon as it is received, which is not always possible when notice is received by letter or another method.

Amendment of s 107 (Refusing or compromising application)

Clause 130 amends section 107 to substitute a word and to provide that notice required to be given to the registrar under the section must be given in the way required by the registrar. The registrar will require notice to be given by lodgement of a prescribed form, which is currently the preferred practice. This will ensure that the notice is electronically recorded on the relevant title as soon as it is received, which is not always possible when notice is received by letter or another method.

Amendment of s 112 (Registering beneficiary)

Clause 131 amends section 112 to provide consistency between subsection (1) and subsection (2)(b).

Amendment of s 115N (Easements for support)

Clause 132 amends section 115N to provide for a statutory easement of support (common or party wall easement) for lots or common property with common walls in standard format plan community titles schemes. Section 115N in effect codifies the common law in relation to

easements for support in the context of a community titles scheme. However at common law, an easement of lateral support did not include a party or common wall easement. The amendment will provide for an easement of support for a party or common wall to exist by operation of this provision, without requiring a survey of the walls on a plan and the registration of easements for each of the affected land parcels.

Amendment of s 126 (Lapsing of caveat)

Clause 133 amends section 126 to provide that notice required to be given to the registrar under the section must be given in the way required by the registrar. The registrar will require notice to be given by lodgement of a prescribed form, which is currently the preferred practice. A further amendment clarifies that a court proceeding cannot support the continuation of a caveat from lapsing if the court proceeding has been decided, discontinued or withdrawn.

Amendment of s 128 (Cancelling a caveat)

Clause 134 amends section 128 to clarify that the registrar may cancel a caveat if a transfer resulting from a mortgagee sale is registered in accordance with section 124(2)(c). In these cases the caveat does not prevent registration of the transfer. As the interest claimed by the caveator cannot be sustained against the new registered owners, the caveat should be removed from the title, however this was not explicit in the legislation.

Amendment of s 133 (Registering power of attorney)

Clause 135 amends section 133 to provide that either an original power of attorney or a certified copy may be deposited and to reflect the current practice of only keeping electronic copies of documents in the registry.

Amendment of s 151 (Effect of transferee's notice on caveat)

Clause 136 amends the heading for section 151 to correctly reflect the content of the section.

Amendment of s 154 (Lodging certificate of title)

Clause 137 amends section 154 to provide an additional exception to the requirement to return a certificate of title for cancellation. The exception is for certain types of dealings which will not affect the fee simple but only relate to a change in the registered holder of certain secondary interest which does not benefit another lot. Subsection (2)(a) provides a similar exception for dealings relating to the interest of a registered lessee.

Omission of s 163 (Substitute instrument)

Clause 138 omits section 163 which is obsolete, as it is no longer the registrar's practice to issue substitute instruments.

Amendment of sch 1 (Witnesses to instruments)

Clause 139 amends schedule 1 to clarify the persons who may witness instruments by providing more description for place of execution and the term 'conveyancer', by removing overlapping categories and by substituting current terms used in the *Legal Profession Act 2007*.

Amendment of sch 2 (Dictionary)

Clause 140 amends schedule 2 (Dictionary) to include and cross-reference terms defined in particular sections and to include definitions to further clarify the categories of witnesses in schedule 1.

Part 9 Amendment of Land Valuation Act 2010

Division 1 Preliminary

Act amended

Clause 141 provides that Part 9 amends the *Land Valuation Act 2010* and refers to minor amendments included in the schedule.

Division 2 Amendments commencing on assent

Amendment of s 74 (Exceptions to annual valuation requirement)

Clause 142 amends the definition of market survey report in section 74 to provide the flexibility for a report to include not only sales of land that have occurred within the subject local government area, but also sales that have occurred elsewhere in Queensland or other Australian jurisdictions.

There may be limited sales evidence available for certain property types (e.g. far western grazing or major shopping centres) and when these sales occur they are sometimes referenced in other jurisdictions.
This flexibility will allow for the inclusion of sales that have occurred in the subject area and/or sales that have occurred elsewhere in Australia.

This will assist in providing the Valuer-General with market survey reports that establish and support a market level/trend and allow for a more accurate assessment of the potential impact on values.

Amendment of s 112 (What is a *properly made* objection)

Clause 143 amends section 112 to clarify that a separate objection must be lodged for each valuation. This ensures that there is the opportunity for information relevant to the particular valuation to be included with the objection.

One of the intentions of the new objection process implemented as part of the introduction of the Land Valuation Act in 2010 was to improve the quality of objection decision-making by obtaining more accurate and detailed information 'up front' with lodgement of the objection.

To achieve this there is the requirement to obtain specific information concerning each valuation however the Act did not clarify that a separate objection should be lodged for each valuation.

Insertion of new s 131A

Clause 144 inserts new section 131A to provide that chairpersons appointed for an objection conference have immunity from civil liability for an act or omission made honestly and without negligence.
The requirement for independent chairpersons to be appointed by the Valuer-General for objection conferences for valuations greater than $5 million was first introduced by the Land Valuation Act in 2010. There have been concerns raised by chairpersons that the Act does not provide protection in the event of a potential civil proceeding being brought against them.

The provision of this immunity promotes an underlying principle of the *Land Valuation Act 2010* - that the chairperson is truly independent.

Amendment of s 157 (How to appeal)

Clause 145 amends section 157 to clarify that a separate appeal form must be lodged for each objection decision that is being appealed to the Land Court.

To enable the Valuer-General (as the respondent), to prepare for an appeal, it is important to obtain as much specific information as possible for each appeal. The Act is silent on the requirement for a separate form for each appeal to an objection decision.

This amendment will ensure that the Valuer-General has as much specific information as possible to enhance preparation for each appeal.

Amendment of s 248 (Substituted service)

Clause 146 amends an incorrect reference to service address in section 248. This section deals with substituted service which is an alternative to ordinary service. As service address

is associated with ordinary service it is not applicable to substituted service. To provide a viable alternative, the reference to service address is being amended to the address of the relevant land.

Division 3 Amendments commencing by proclamation

Amendment of s 247 (General address for service)

Clause 147 amends section 247 to clarify that a reference to a person's service address can include an electronic address. This supports subsequent clauses that insert information relevant to electronic service and a definition of service address.

Insertion of new s 247A

Clause 148 inserts new section 247A which supports the inclusion of the definition of 'address for service' in the dictionary. This new section applies if an owner has supplied an electronic service address. It describes that a notice/document can be served on an owner by transmitting either the notice/document or a message that contains a hyperlink that connects to the notice/document.

The new section also contains a standard service provision stating that if a hyperlink has been provided, service is taken to have occurred if the document was able to be viewed when the hyperlink was transmitted and for a reasonable period after transmission. As an example, the 60 days allowed for an objection to be lodged after the issue of a notice would be considered a reasonable period. Where the notice/document has been transmitted to the electronic address then service is taken to have occurred when it was transmitted.

Amendment of schedule (Dictionary)

Clause 149 inserts 'address for service' into the dictionary contained in the schedule to the Act together with the statement that it includes an electronic address. This modernises service provisions by allowing the flexibility for an owner to provide an electronic service address such as an email address, internet protocol address or the address of a digital mailbox.

If an owner provides an electronic service address then notices or other documents under the Act could either be transmitted as an attachment or could be accessed via a hyperlink transmitted to the address.

Land owners who do not provide an electronic service address will continue to be posted hardcopy valuation notices.

Part 10 Amendment of Local Government Act 2009

Act amended

Clause 150 provides that this part amends the *Local Government Act 2009*.

Amendment of s 37 (Development processes)

Clause 151 omits section 37(5)(c). Section 37 provides that a local government must not make a local law that establishes a process that is similar to or duplicates all or part of a process in the Planning Act, chapter 6. Section 37(5)(c) currently makes levees an exception to this local law making prohibition. Section 37(5)(c) is being omitted because the amendments being made by this Bill will introduce, in accordance with the recommendations of the Commission's Final Report, uniform regulation of levees across Queensland to replace the current piecemeal system which could include inconsistent local laws across local government areas.

Part 11 Amendment of *Petroleum Act 1923*

Division 1 Preliminary
Act amended

Clause 152 provides that this part amends the *Petroleum Act 1923*.

Division 2 Amendments commencing on assent

Amendment of s 2 (Definitions)

Clause 153 provides that section 2 be amended so that water monitoring authority granted under the *Petroleum Act 1923* may, with an authority to prospect or a petroleum lease, be generally referred to as a '1923 Act petroleum tenure' in certain parts of the *Petroleum Act 1923* as detailed.

Amendment of s 75L (Restrictions on making conversion)

Clause 154 provides an additional restriction on when a 1923 Act petroleum tenure holder may convert a well to a water supply bore. The additional restriction provides that the conversion of a well may only be made if the drilling of the well commenced on or after 1 January 2012 or the well was decommissioned on or after 1 January 2012.

The reason for this is that certain wells for which the commencement of drilling (or the decommissioning of the well) occurred on or after 1 January 2012, were drilled or decommissioned in compliance with the *Code of Practice for Constructing and Abandoning Coal Seam Gas Wells in Queensland* (CSG COP). The development of the CSG COP was

initiated because of community concerns that the standard of construction and decommissioning (called 'abandonment' by the petroleum industry) of certain wells was not adequate.

The wells constructed or abandoned in compliance with the CSG COP maintain long term well integrity, containment of gaseous petroleum and the protection of groundwater resources. For the conversion of wells to a water supply bore, the drilling of these wells must have commenced on or after 1 January 2012 or the well was decommissioned on or after 1 January 2012 to generally maintain the integrity of the resultant water supply bore.

Amendment of s 75U (Obligation to decommission)

Clause 155 provides for an obligation on a 1923 Act petroleum tenure holder and a water monitoring authority holder to ensure a well, water observation bore or water supply bore (in the detailed circumstances under section 75U of the *Petroleum Act 1923*) is decommissioned from use.

Amendment of s 75V (Right of entry to facilitate decommissioning)

Clause 156 extends the right of entry, to facilitate decommissioning under section 75V of the *Petroleum Act 1923*, to a water monitoring authority holder.

Amendment of s 75W (Responsibility for well or bore after decommissioning)

Clause 157 provides for an extension of the responsibilities under section 75W of the *Petroleum Act 1923* to ensure that a water monitoring authority holder now has the responsibilities detailed under section 75W of the *Petroleum Act 1923*.

Amendment of s 75X (Requirement to report outcome of testing)

Clause 158 omits section 75X(3) of the *Petroleum Act 1923*. Any requirements to report on amounts of water are provided for in Chapter 3, part 2 of the *Water Act 2000*.

Amendment of s 86 (Water rights)

Clause 159 provides for the removal of one of the parameters around the supply of water permitted to be obtained by an authority to prospect or petroleum lease holder under section 86 of the *Petroleum Act 1923*. In particular, this water may now be supplied to an owner or occupier of particular land, as detailed in this section, without the amount supplied to the landowner or occupier being limited to use for domestic purposes or stock purposes.

The effect of this amendment is that water, for which permission has been obtained under section 86 of the *Petroleum Act 1923*, may be supplied to the owner or occupier of land:

- within the area of an authority to prospect or petroleum lease; or
- adjoining or in the vicinity of such land.

The only quantity and usage limits (if any) to the amount of water, for which a permission has been obtained under section 86 of the *Petroleum Act 1923* and which may be given to this type of landowner or occupier, is that determined by the chief executive of the department that administers the *Water Act 2000*.

Insertion of new pt 15

Clause 160 provides transitional provisions for the Land, Water and Other Legislation Amendment Bill 2013. This clause also provides definitions for this part.

Division 3 Amendments commencing by proclamation

Amendment of s 2 (Definitions)

Clause 161 provides section 2 be amended so that the definition of 'water observation bore' and 'water supply bore' includes a well that has been, or is taken to have been, converted and is a water observation bore or a water supply bore.

This clause also provides that the definition of water supply bore will also include a water bore, drilled under section 86 of the *Petroleum Act 1923*, with the permission of the Minister administering the *Petroleum Act 1923.*

Replacement of s 75K (Restriction on who may drill water observation bore or water supply bore)

Clause 162 provides for who may drill a water observation bore or water supply bore. The amendment effectively provides that the holder of an authority to prospect or a petroleum lease, granted under the *Petroleum Act 1923*, may drill a water observation bore or water supply bore in the area of the authority or lease. The amendment also provides that the holder of a water monitoring authority, granted under the *Petroleum Act 1923*, may drill a water observation bore in the area of the authority.

Prior to this clause commencing, a water observation bore or water supply bore could only be drilled by a licensed water bore driller, or under the supervision of a licensed water bore driller, licenced under the *Water Act 2000*.

This clause still provides that a licensed water bore driller may drill a water observation bore or water supply bore. However, the competencies of a well driller, acting under the authority of the authority to prospect, petroleum lease or water monitoring authority, is now recognised by this amendment.

As a well is generally drilled to a greater depth than a water observation bore or water supply bore, a person who drills a well should have the capacity to drill a water observation bore or water supply bore.

None the less, where the holder of an authority to prospect, petroleum lease or water monitoring authority proposes to drill a water observation bore or water supply bore, this clause provides that a person drilling these types of bores under the authority of the authority to prospect, petroleum lease or water monitoring authority, must comply with the requirements for drilling these types of bores prescribed under a regulation.

This will ensure that these types of bores are drilled in a way that, among other things, protects the underground water reservoir from contamination and ensures the long term integrity of these bores.

It should be noted that this clause does not require a licensed water bore driller to comply with the requirements for drilling a water observation bore or water supply bore prescribed under a regulation of the *Petroleum Act 1923*. This is because the licensed water bore driller should already have the competency for drilling water bores because of compliance with the conditions for the licence provided for in the *Water Act 2000* and its regulation.

Replacement of pt 6D, div 2 (Converting well to water supply bore)

Clause 163 provides for the replacement of Part 6D, division 2 of the *Petroleum Act 1923*.

Division 2 Converting well to water observation bore or water supply bore

New section 75KA – Application of div 2

New section 75KA provides that Part 6D, division 2 of the *Petroleum Act 1923* applies only to a well in the area of a 1923 Act petroleum tenure that has been drilled under section 75J of the *Petroleum Act 1923* or decommissioned under section 75U of the *Petroleum Act 1923* on or after 1 January 2012.

The reason for this is that certain wells for which the commencement of drilling (or the decommissioning of the well occurred) on or after 1 January 2012, were drilled or decommissioned in compliance with the *Code of Practice for Constructing and Abandoning Coal Seam Gas Wells in Queensland* (CSG COP). The development of the CSG COP was initiated because of community concerns that the standard of construction and decommissioning (called 'abandonment' by the petroleum industry) of certain wells was not adequate.

The wells constructed or abandoned in compliance with the CSG COP maintain long term well integrity, containment of gaseous petroleum and the protection of groundwater resources. For the conversion of wells to a water observation bore or a water supply bore provided for under section 75L of the *Petroleum Act 1923*, the drilling of these wells must have commenced on or after 1 January 2012 or the well was decommissioned on or after 1 January 2012 to generally maintain the integrity of the resultant water observation bore or water supply bore.

New section 75L – Restrictions on making conversion

New section 75L provides for who may convert a well to a water observation bore or water supply bore and the requirements for doing this.

Prior to this clause commencing, a 1923 Act petroleum tenure holder, who had drilled a well, could only convert the well to a water supply bore if the conversion was carried out by a licensed water bore driller.

It was recognised that this requirement imposed additional time, cost and practical constraints on 1923 Act petroleum tenure holders and did not recognise the competencies that well drillers possess. It was also recognised that in certain circumstances, converting a well to water supply bore may have been beyond the competencies, or the capacity of the equipment, of a licensed water bore driller. This was because of the safety hazards that may have been present because of the geological stratum/strata the well intersects, particularly if the stratum/strata contained gaseous petroleum.

Therefore, this new section provides that a 1923 Act petroleum tenure holder may convert a well to a water observation bore or a water supply bore.

This new section also provides that a well completion report must be lodged for the well proposed to be converted to a water observation bore or a water supply bore, prior to the conversion commencing. This will ensure that because the well is converted under section 75L of the *Petroleum Act 1923* and because of the conversion it may be considered that it is no longer a well, it cannot be argued that a well completion report is not required.
Also, this new section provides that a 1923 Act petroleum tenure holder may convert a well to a water observation bore or water supply bore only if the holder complies with requirements prescribed under a regulation for converting a well to a water observation bore or water supply bore.

Compliance with requirements prescribed under a regulation for converting a well to a water observation bore or water supply bore will ensure the 1923 Act petroleum tenure holder does not purport to have converted a well that has had some modification for the purpose of taking water, but remains substantially a well.

Having the 1923 Act petroleum tenure holder comply with requirements prescribed under a regulation for converting a well to a water observation bore or water supply bore means that such a bore:

- if transferred to a landowner, does not present a safety hazard to the landowner, occupier or any other person accessing the bore; and
- is less of a risk to the environment.

Prior to this new section commencing, a 1923 Act petroleum tenure holder, who had drilled a well, could only convert the well to a water supply bore if the conversion was completed by a licensed water bore driller. This was clearly stated in section 75L of the *Petroleum Act 1923*.

This new section also omits any direct reference to a licensed water bore driller being able to convert a well to a water supply bore. This direct reference was provided for in section 75L of the *Petroleum Act 1923* prior to this clause commencing. However, the omission of this direct reference to a licensed water bore driller does not preclude a 1923 Act petroleum tenure holder from authorising a licensed water bore driller to carry out the conversion of a well to a water observation bore or a water supply bore.

This new section also provides that a notice, in the approved form, must be lodged by a 1923 Act petroleum tenure holder about the holder's intention to convert a well to a water observation bore or a water supply bore. This clause also provides that this approved form must require the 1923 Act petroleum tenure holder to state an expected day for when the well conversion, to a water observation bore or a water supply bore, has been effected.

This day is required so that the time of conversion, pursuant to section 75MA of the *Petroleum Act 1923* (for when a well is taken to be converted to a water observation bore or a water supply bore) may be determined.

New section 75M – Notice of conversion

New section 75M provides that a notice must be lodged, by a 1923 Act petroleum tenure holder, within 10 business days after the holder converts the well.

This notice is required so that the time of conversion, pursuant to section 75MA of the *Petroleum Act 1923* (for when a well is taken to be converted to a water observation bore or a water supply bore) may be determined.

New section 75MA – Time of conversion

New section 75MA provides a time of conversion for when a well is taken to be converted to a water observation bore or a water supply bore.

Knowing the time of conversion will ensure that there is a clear demarcation as to which safety provisions apply relate to the well and which safety provisions relate to the resultant water observation bore or water supply bore.

For example, a well is being converted to a water supply bore under section 75L of the *Petroleum Act 1923*. Up to the date the notice of conversion (under section 75M of the *Petroleum Act 1923*) is lodged, the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004* apply to the conversion. On the date the notice of conversion is lodged, the well is taken to be a water observation bore or water supply bore (water bore). Therefore, the safety provisions under the *Work Health and Safety Act 2011* apply in relation to the water bore, on or after the lodgement date of the notice of conversion.

Also, a date when a well is taken to be converted to a water observation bore or a water supply bore must also be able to be determined when a notice under section 75L of the *Petroleum Act 1923* has been lodged and no notice of conversion (under section 75M of the *Petroleum Act 1923*) is lodged.

The notice under section 75L of the *Petroleum Act 1923* must state an expected day for when the well conversion, to a water observation bore or a water supply bore, has been effected. Therefore, if no notice of conversion is lodged, the notice under section 75L of the *Petroleum Act 1923* will assist in determining the time of conversion.

If no notices are lodged under sections 75L and 75M of the *Petroleum Act 1923*, and a well has purported to have been converted to a water observation bore or a water supply bore, this clause also provides that the well is taken to be converted to a water observation bore or water supply bore the day the well is converted. This will ensure that even if a 1923 Act petroleum tenure holder has been remiss in advising of the commencement and completion of activities that are purported to be the conversion of a well, it can be ascertained at what time the well was taken to be converted to a water observation bore or a water supply bore for the application of any statutory safety provisions.

It should be noted that the *Petroleum Act 1923* provides for penalties for the non-lodgement of notices under section 75L and 75M of the *Petroleum Act 1923*.

Replacement of s 75Q (Transfer of water observation bore or water supply bore to landowner)

Clause 164 provides that a 1923 Act petroleum tenure holder may transfer a water observation bore or a water supply bore, which is in the area of the 1923 Act petroleum tenure, to the owner of the land on which the water observation bore or a water supply bore is located.

This clause also provides that a water monitoring authority holder may transfer a water observation bore that is in the area of the water monitoring authority, to the owner of the land on which the water observation bore is located.

Also, this clause provides a number of other matters that need to be addressed before the transfer of a water observation bore or a water supply bore to the landowner may be affected.

One of these matters is that a notice about the transfer has been lodged on the approved form. This approved form must include a statement from the holder transferring the water observation bore or a water supply bore that:

- if the bore has been drilled under section 75K of the Petroleum Act 1923 – section 75K of the Petroleum Act 1923 has been complied with for the bore; or
- if the bore has been converted from a well under section 75L of the Petroleum Act 1923 – section 75L of the Petroleum Act 1923 has been complied with.

This will give the landowner a level of comfort that the water observation bore or a water supply bore has met the requirements for these bores under the *Petroleum Act 1923* and the landowner is not transferred a well that has had minor modifications and is purported to be a water observation bore or a water supply bore.

This will ensure that the landowner is transferred a fully functioning water bore that meets an acceptable standard for a water bore so the bore does not present a safety hazard to the landowner (or any other person accessing the bore) or a risk to the environment.
This clause has a note referring to the *Water Act 2000*. In effect, it is reminding the landowner that although the transfer of the water observation bore or a water supply bore may be made to the landowner, the landowner still has obligations under the *Water Act 2000* before taking or interfering with the water from the bore. For example, a water licence may need to be granted to the landowner, under the *Water Act 2000*, before the landowner may take water from the bore.

Amendment of s 75S (Transfer of water observation bore to petroleum tenure holders or water monitoring authority holder)

Clause 165 provides that the approved form being lodged about the transfer of the water observation bore, must include a statement from the holder transferring the water observation bore that:

- if the bore has been drilled under section 75K of the Petroleum Act 1923 – section 75K of the Petroleum Act 1923 has been complied with for the bore; or
- if the bore has been drilled under the Petroleum and Gas (Production and Safety) Act 2004, section 282 – the Petroleum and Gas (Production and Safety) Act 2004, section 282 has been complied with for the bore.

This will give the transferee a level of comfort that the water observation bore has met the requirements for these bores under the *Petroleum Act 1923* and the transferee is not transferred a well that has had minor modifications and is purported to be a water observation bore.

This will ensure that the transferee is transferred a fully functioning water observation bore that meets an acceptable standard for a water observation bore so the water observation bore does not present a safety hazard to the transferee (or any other person accessing the water observation bore) or a risk to the environment.

Insertion of new s 75XA

Clause 166 provides that a person who drills a water observation bore or water supply bore, or converts a well to a water observation bore or water supply bore, must give a notice to the *Water Act 2000* regulator stating the information prescribed under a regulation about the bore.

Certain amendments in the Land, Water and Other Legislation Bill 2013 provide that the holder of an authority to prospect or a petroleum lease, granted under the *Petroleum Act 1923*, may drill a water observation bore or water supply bore in the area of the authority or lease.

A licensed water bore driller may also drill a water observation bore or water supply bore under the *Petroleum Act 1923*. If a licensed water bore driller drills such a bore, there is a requirement under section 313 of the *Water Act 2000* that the licensed water bore driller must give, to the chief executive of the department that administers the *Water Act 2000*, a copy of the information (prescribed under the Water Regulation 2002) about each water bore within a certain period.

Analogous with this, this clause provides that a person who may drill a water observation bore or water supply bore (including the holder of a 1923 Act petroleum tenure holder) in the area of the authority or lease, must provide information about the bore, to the chief executive of the department that administers the *Water Act 2000*, as prescribed under a regulation.

Insertion of new ss 201–205

Clause 167 inserts new sections 201 to 205 to provide transitional provisions for the Land, Water and Other Legislation Amendment Bill 2013.

Part 12 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Division 1 Preliminary

Act amended

Clause 168 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004* and refers to minor amendments included in the schedule.

Division 2 Amendments commencing on assent

Amendment of s 185 (Underground water rights)

Clause 169 amends section 185 to remove restrictions on the use of associated water by a tenure holder a petroleum tenure holder.

Currently the petroleum tenure holder may provide the "by product" water (called "associated water") to a landholder whose land overlaps the tenement area without further authorisation under the *Water Act 2000*. However, a water licence is required if the water is provided to another landholder whose property does not overlap the tenure. Petroleum industry stakeholders have raised this requirement as an unnecessary regulatory burden.

The original rationale for requiring water licences is no longer valid due to the evolution of the adaptive management framework for petroleum activities since 2004 when chapter 3 of the *Water Act 2000*, which deals with underground water management, was enacted. Potential impacts on groundwater systems from water extraction associated with petroleum operations are now addressed through chapter 3 which provides for the management of impacts on underground water caused by the exercise of underground water rights by petroleum tenure holders (including requiring the preparation of underground water impact reports that establish underground water obligations, including obligations to monitor and manage impacts on aquifers and springs).

The *Environmental Protection Act 1994* and the associated EA for the operation, including approval requirements for coal seam gas water for beneficial use, appropriately addresses potential environmental impacts from the disposal of water.

Omission of s 186 (Right to allow use of associated water for domestic or stock purposes)

Clause 170 omits section 186. Under section 186 of the *Petroleum and Gas (Production and Safety) Act 2004*, a petroleum tenure holder may allow an owner or occupier of land in the area of the tenure, and of land that adjoins the tenure to use, on that land, associated water for domestic purposes or stock purposes. This section was an exception to the restrictions imposed under section 185 which provided that a tenure holder could only provide associated water for an off tenure purpose after obtaining a water licence. This section is being removed as a consequence of the amendment to section 185 which removes restrictions on the use of associated water by a tenure holder a petroleum tenure holder.

Amendment of s 188 (Authorisation for Water Act)

Clause 171 amends section 188 to remove the authorisation for the use, under section 186 (Right to allow use of associated water for domestic or stock purposes). This section is being removed as a consequence of the amendment to section 185 which removes restrictions on the use of associated water by a tenure holder a petroleum tenure holder.

Amendment of s 283 (Restrictions on making conversion)

Clause 172 provides an additional restriction on when a petroleum tenure holder may convert a petroleum well to a water supply bore. The additional restriction provides that the conversion of a petroleum well may only be made if the drilling of the petroleum well commenced on or after 1 January 2012 or the petroleum well was decommissioned on or after 1 January 2012.

The reason for this is that certain petroleum wells for which the commencement of drilling (or the decommissioning of the petroleum well) occurred on or after 1 January 2012, were drilled or decommissioned in compliance with the *Code of Practice for Constructing and Abandoning Coal Seam Gas Wells in Queensland* (CSG COP). The development of the CSG COP was initiated because of community concerns that the standard of construction and decommissioning (also called 'abandonment' by the petroleum industry) of certain petroleum wells was not adequate.

The petroleum wells constructed or abandoned in compliance with the CSG COP maintain long term well integrity, containment of gaseous petroleum and the protection of groundwater resources. For the conversion of petroleum wells to a water supply bore, the drilling of these petroleum wells must have commenced on or after 1 January 2012 or the petroleum well was decommissioned on or after 1 January 2012 to generally maintain the integrity of the resultant water supply bore.

Amendment of s 292 (Obligation to decommission)

Clause 173 provides for an obligation on a petroleum tenure holder and a water monitoring authority holder to ensure a petroleum well, water observation bore or water supply bore (in the detailed circumstances under section 292 of the *Petroleum and Gas (Production and Safety) Act 2004)* is decommissioned from use.

In addition, this clause provides that a water observation bore or water supply bore must comply with the requirements for decommissioning provided for under sections 816 and 817 of the *Water Act 2000*.

Amendment of s 294 (Responsibility for well or bore after decommissioning)

Clause 174 provides for an extension of the responsibilities under section 294 of the *Petroleum and Gas (Production and Safety) Act 2004* to ensure that a water monitoring authority holder now has the responsibilities detailed under section 294 the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 543 (Requirement of petroleum tenure holder to report outcome of testing)

Clause 175 omits section 543(3) of the *Petroleum and Gas (Production and Safety) Act 200*4. Any requirements to report on amounts of water are provided for in chapter 3, part 2 of the *Water Act 2000*.

Amendment of s 670 (What is an operating plant)

Clause 176 amends section 670 to clarify that a facility used to take, interfere with or treat associated water is an operating plant only where water at the facility also has any petroleum incidentally collected with the water. The intention is that plant where petroleum may still exist and pose risk is best administered under this *Petroleum and Gas (Production and Safety) Act 200*4 in a similar manner to related petroleum plant.
The clause also clarifies that pipelines carrying produced water containing petroleum is an operating plant in its own right and is therefore regulated solely under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s675 (Content requirements for safety management plans)

Clause 177 inserts a new subsection 3 into section 675. Subsection 3 requires operators of pipelines to include in the safety management plan a description of the pipelines, if any, that transport produced water containing petroleum. When describing the pipeline operators must identify the point from which the pipeline will be free of petroleum. This point must be at a distinguishable part of the pipeline. It is intended that the point of separation of the pipeline that is non-operating plant is at a logical and readily identifiable point such as at an isolation valve or inlet point and not just in the middle of a pipe.

Insertion of new ch 15, pt 16

Clause 178 provides transitional provisions for the Land, Water and Other Legislation Amendment Bill 2013. This clause also provides definitions for this part.

Division 3 Amendments commencing by proclamation

Replacement of s 282 (Restriction on who may drill water observation bore or water supply bore)

Clause 179 provides for who may drill a water observation bore or water supply bore. The amendment effectively provides that the holder of an authority to prospect or a petroleum lease, granted under the *Petroleum and Gas (Production and Safety) Act 2004*, may drill a water observation bore or water supply bore in the area of the authority or lease. The amendment also provides that the holder of a water monitoring authority, granted under the *Petroleum and Gas (Production and Safety) Act 2004*, may drill a water observation bore in the area of the authority.

Prior to this clause commencing, a water observation bore or water supply bore could only be drilled by a water bore driller, or under the supervision of a water bore driller, licenced under the *Water Act 2000*.

This clause still provides that a licensed water bore driller may drill a water observation bore or water supply bore. However, the competencies of a petroleum well driller, acting under the authority of the authority to prospect, petroleum lease or water monitoring authority, is now recognised by this amendment.

As a petroleum well is generally drilled to a greater depth than a water observation bore or water supply bore, a person who drills a petroleum well should have the capacity to drill a water observation bore or water supply bore.

None the less, where the holder of an authority to prospect, petroleum lease or water monitoring authority proposes to drill a water observation bore or water supply bore, this clause provides that a person drilling these types of bores under the authority of the authority to prospect, petroleum lease or water monitoring authority, must comply with the requirements for drilling these types of bores prescribed under a regulation.

This will ensure that these types of bores are drilled in a way that, among other things, protects the underground water reservoir from contamination and ensures the long term integrity of these bores.

It should be noted that this clause does not require a licensed water bore driller to comply with the requirements for drilling a water observation bore or water supply bore prescribed under a regulation of the *Petroleum and Gas (Production and Safety) Act 2004*. This is because the licensed water bore driller should already have the competency for drilling water bores because of compliance with the conditions for the licence provided for in the *Water Act 2000* and its regulation.

Replacement of ch 2, pt 10, div 2 (Converting petroleum well to water supply bore)

Clause 180 replaces chapter 2, part 10, division 2 which relates to converting petroleum well to water supply bore.

New Division 2 Converting petroleum well to water observation bore or water supply bore

New section 282A – Application of div 2

New section 282A provides that chapter 2, part 10, division 2 of the *Petroleum and Gas (Production and Safety) Act 2004* applies only to a petroleum well in the area of a petroleum tenure that has been drilled under section 281 of the *Petroleum and Gas (Production and Safety) Act 2004* or decommissioned under section 282 of the *Petroleum and Gas (Production and Safety) Act 2004* on or after 1 January 2012.

The reason for this is that certain wells for which the commencement of drilling (or the decommissioning of the well occurred) on or after 1 January 2012, were drilled or decommissioned in compliance with the *Code of Practice for Constructing and Abandoning Coal Seam Gas Wells in Queensland* (CSG COP). The development of the CSG COP was initiated because of community concerns that the standard of construction and decommissioning (called 'abandonment' by the petroleum industry) of certain wells was not adequate.

The petroleum wells constructed or abandoned in compliance with the CSG COP maintain long term well integrity, containment of gaseous petroleum and the protection of groundwater resources. For the conversion of petroleum wells to a water observation bore or a water supply bore provided for under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004*, the drilling of these petroleum wells must have commenced on or after 1 January 2012 or the petroleum well was decommissioned on or after 1 January 2012 to generally maintain the integrity of the resultant water observation bore or water supply bore.

New section 283 – Restrictions on making conversion

New section 283 provides for who may convert a petroleum well to a water observation bore or water supply bore and the requirements for doing this.

Prior to this clause commencing, a petroleum tenure holder, who had drilled a petroleum well, could only convert the petroleum well to a water supply bore if the conversion was completed by, or under the supervision of, a licensed water bore driller.

It was recognised that this requirement imposed additional time, cost and practical constraints on petroleum tenure holders and did not recognise the competencies that petroleum well

drillers possess. It was also recognised that in certain circumstances, converting a petroleum well to water supply bore may have been beyond the competencies, or the capacity of the equipment, of a licensed water bore driller. This was because of the safety hazards that may have been present because of the geological stratum/strata the petroleum well intersects, particularly if the stratum/strata contained gaseous petroleum.

Therefore, this clause provides that a petroleum tenure holder may convert a petroleum well to a water observation bore or a water supply bore.

This new section also provides that a well completion report must be lodged for the petroleum well proposed to be converted to a water observation bore or a water supply bore, prior to the conversion commencing. This will ensure that because the petroleum well is converted under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* and because of the conversion it may be considered that it is no longer a petroleum well, it cannot be argued that a well completion report is not required.

Also, this new section provides that a petroleum tenure holder may convert a petroleum well to a water observation bore or water supply bore only if the holder complies with requirements prescribed under a regulation for converting a petroleum well to a water observation bore or water supply bore.

Compliance with requirements prescribed under a regulation for converting a petroleum well to a water observation bore or water supply bore will ensure the petroleum tenure holder does not purport to have converted a petroleum well that has had some modification for the purpose of taking water, but remains substantially a petroleum well.

Having the petroleum tenure holder comply with requirements prescribed under a regulation for converting a petroleum well to a water observation bore or water supply bore means that such a bore:

- if transferred to a landowner, does not present a safety hazard to the landowner, occupier or any other person accessing the bore; and
- is less of a risk to the environment.

Prior to this clause commencing, a petroleum tenure holder, who had drilled a petroleum well, could only convert the petroleum well to a water supply bore if the conversion was completed by a licensed water bore driller. This was clearly stated in section 282 of the *Petroleum and Gas (Production and Safety) Act 2004*.

This new section also omits any direct reference to a licensed water bore driller being able to convert a petroleum well to a water supply bore. This direct reference was provided for in section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* prior to this clause commencing. However, the omission of this direct reference to a licensed water bore driller does not preclude a petroleum tenure holder from authorising a licensed water bore driller to

carry out the conversion of a petroleum well (the type of which is detailed under this clause) to a water observation bore or a water supply bore.

This new section also provides that a notice, in the approved form, must be lodged by a petroleum tenure holder about the holder's intention to convert a petroleum well to a water observation bore or a water supply bore. This clause also provides that this approved form must require the petroleum tenure holder to state an expected day for when the petroleum well conversion, to a water observation bore or a water supply bore, has been effected.

This day is required so that the time of conversion, pursuant to section 284A of the *Petroleum and Gas (Production and Safety) Act 2004* (for when a petroleum well is taken to be converted to a water observation bore or a water supply bore) may be determined.

New section 284 – Notice of conversion

New section 284 provides that a notice must be lodged, by a petroleum tenure holder, within 10 business days after the holder converts the well.

This notice is required so that the time of conversion, pursuant to section 284A of the *Petroleum and Gas (Production and Safety) Act 2004* (for when a petroleum well is taken to be converted to a water observation bore or a water supply bore) may be determined.

New section 284A –Time of conversion

New section 284A provides a time of conversion for when a petroleum well is taken to be converted to a water observation bore or a water supply bore.

Knowing the time of conversion will ensure that there is a clear demarcation as to which statutory safety provisions apply to the petroleum well and which statutory safety provisions apply to the resultant water observation bore or water supply bore.
For example, a petroleum well is being converted to a water supply bore under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004*. Up to the date the notice of conversion (under section 284 of the *Petroleum and Gas (Production and Safety) Act 2004*) is lodged, the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004* apply to the conversion. On the date the notice of conversion is lodged, the petroleum well is taken to be a water observation bore or water supply bore (water bore). Therefore, the safety provisions under the *Work Health and Safety Act 2011* apply in relation to the water bore, on or after the lodgement date of the notice of conversion.

Also, a date when a petroleum well is taken to be converted to a water observation bore or a water supply bore must also be able to be determined when a notice under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* has been lodged and no notice of conversion (under section 284 of the *Petroleum and Gas (Production and Safety) Act 2004*) is lodged.

The notice under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* must state an expected day for when the petroleum well conversion, to a water observation bore or a water supply bore, has been effected. Therefore, if no notice of conversion is lodged, the notice under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* will assist in determining the time of conversion.

If no notices are lodged under sections 283 and 284 of the *Petroleum and Gas (Production and Safety) Act 2004*, and a well has purported to have been converted to a water observation bore or a water supply bore, this clause also provides that the well is taken to be converted to a water observation bore or water supply bore the day the well is converted. This will ensure that even if a petroleum tenure holder has been remiss in advising of the commencement and completion of activities that are purported to be the conversion of a well, it can be ascertained at what time the well was taken to be converted to a water observation bore or a water supply bore for the application of any statutory safety provisions.

It should be noted that the *Petroleum and Gas (Production and Safety) Act 2004* provides for penalties for the non-lodgement of notices under section 283 and 284 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 288 (Transfer of water observation bore or water supply bore to landowner)

Clause 181 provides that a petroleum tenure holder may transfer a water observation bore or a water supply bore, which is in the area of the petroleum tenure, to the owner of the land on which the water observation bore or a water supply bore is located.

Also, this clause provides a number of other matters that need to be addressed before the transfer of a water observation bore or a water supply bore to the landowner may be affected.

One of these matters is that a notice about the transfer has been lodged on the approved form. This approved form must include a statement from the holder transferring the water observation bore or a water supply bore that:

- if the bore has been drilled under section 282 of the *Petroleum and Gas (Production and Safety) Act 2004* – section 282 of the *Petroleum and Gas (Production and Safety) Act 2004* has been complied with for the bore; or
- if the bore has been converted from a petroleum well under section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* – section 283 of the *Petroleum and Gas (Production and Safety) Act 2004* has been complied with for the bore.

This will give the landowner a level of comfort that the water observation bore or a water supply bore has met the requirements for these bores under the *Petroleum and Gas (Production and Safety) Act 2004* and the landowner is not transferred a petroleum well that

has had minor modifications and is purported to be a water observation bore or a water supply bore.

This will ensure that the landowner is transferred a fully functioning water bore that meets an acceptable standard for a water bore so the bore does not present a safety hazard to the landowner (or any other person accessing the bore) or a risk to the environment.

This clause has a note referring to the *Water Act 2000*. In effect, it is reminding the landowner that although the transfer of the water observation bore or a water supply bore may be made to the landowner, the landowner still has obligations under the *Water Act 2000* before taking or interfering with the water from the bore. For example, a water licence may need to be granted to the landowner, under the *Water Act 2000*, before the landowner may take water from the bore.

Amendment of s 290 (Transfer of water observation bore to petroleum tenure or water monitoring authority holder)

Clause 182 provides that the approved form being lodged about the transfer of the water observation bore, must include a statement from the holder transferring the water observation bore that section 282 of the *Petroleum and Gas (Production and Safety) Act 2004* has been complied with for the bore.

This will give the transferee a level of comfort that the water observation bore has met the requirements for these bores under the *Petroleum and Gas (Production and Safety) Act 2004* and the transferee is not transferred a petroleum well that has had minor modifications and is purported to be a water observation bore.

This will ensure that the transferee is transferred a fully functioning water observation bore that meets an acceptable standard for a water observation bore so the water observation bore does not present a safety hazard to the transferee (or any other person accessing the water observation bore) or a risk to the environment.

Insertion of new s 543A

Clause 183 provides that a person who drills a water observation bore or water supply bore, or converts a petroleum well to a water observation bore or water supply bore, must give a notice to the Water Act regulator (that is, the chief executive of the department that administers the *Water Act 2000*) stating the information prescribed under a regulation about the bore

Certain amendments in the Land, Water and Other Legislation Bill 2013 provide that the holder of an authority to prospect or a petroleum lease, granted under the *Petroleum and Gas (Production and Safety) Act 2004*, may drill a water observation bore or water supply bore in the area of the authority or lease.

A licensed water bore driller may also drill a water observation bore or water supply bore under the *Petroleum and Gas (Production and Safety) Act 2004*. If a licensed water bore driller drills such a bore, there is a requirement under section 313 of the *Water Act 2000* that the licensed water bore driller must give, to the chief executive of the department that administers the *Water Act 2000*, a copy of the information (prescribed under the Water Regulation 2002) about each water bore within a certain period.

Analogous with this, this clause provides that a person who may drill a water observation bore or water supply bore (including the holder of a petroleum tenure) in the area of an authority to prospect or petroleum lease, must provide information about the bore, as prescribed under a regulation, to the chief executive of the department that administers the *Water Act 2000*.

Amendment of s670 (What is an *operating plant*)

Clause 184 provides that the machinery used for activities that are the conversion of a petroleum well to a water observation bore or water supply bore are included in 'Chapter 9 Safety' of the *Petroleum and Gas (Production and Safety) Act 2004*. This is done by defining this machinery as 'operating plant' which requires a 'safety management plan' under this chapter of this Act for each stage of the operating plant.

This clause also provides for a clarification as to what activities a 'work over rig' may carry out and clarifies that these activities carried out by a work over rig are 'operating plant' which requires a 'safety management plan' under this chapter of this Act for each stage of the operating plant.

Insertion of new ss 979–982

Clause 185 inserts new sections 979 to 982 to provide transitional provisions for the Land, Water and Other Legislation Amendment Bill 2013.

Amendment of sch 2 (Dictionary)

Clause 186 provides 'Schedule 2 Dictionary' of the *Petroleum and Gas (Production and Safety) Act 2004* be amended so that the definition of 'water observation bore' and 'water supply bore' includes a petroleum well that has been, or is taken to have been, converted to a water observation bore or a water supply bore.

Part 13 Amendment of River Improvement Trust Act 1940

Division 1 Preliminary

Act amended

Clause 187 provides that this part of the Bill amends the *River Improvement Trust Act 1940*.

Division 2 Amendments commencing on assent

Amendment of s 2 (Definitions)

Clause 188 inserts a new definition of 'councillor' for the Act and relocates all of the definitions to the dictionary in the schedule in line with modern drafting practice.

Replacement of s 5 (Membership of trust)

The current section 5 is large and reflective of early drafting practices. This section is to be replaced with multiple provisions which largely replicate the meaning of the current provision however are drafted in a more contemporary style.

Clause 189 replaces section 5 with new sections 5, 5A to 5S reflecting that the *River Improvement Trust Act 1940* will be divided into parts, divisions and new sections to achieve consistency with modern drafting practices and to enhance the useability of the *River Improvement Trust Act 1940*. The provisions are placed in a more logical grouping under descriptive headings for ease of reference. Additionally, matters relating to appointment are dealt with in a more contemporary manner. For example, currently under section 5, Governor in Council appointees to a trust hold office as a member of a trust 'during the pleasure of the Governor in Council'. Modern drafting practice is to provide further detail regarding the exercise of this power, particularly in relation to the scope of the power to terminate an appointment.

New Part 3 Membership and operation of trusts

New section 5 – Membership of trust

New section 5 provides for the membership of a trust being up to 3 members appointed by the relevant local government for the trust and up to 3 members appointed by the Minister. This amendment provides the Minister with the power to appoint members rather than the Governor in Council. Additionally, the current requirement for a trust to include a representative of the government who is also chairperson is removed. The opportunity to expand local government and non-local government members to a maximum of 3 each is provided.

New section 5 also provides for a new maximum term of 4 years for members. The term of membership is determined by the relevant local government or Minister at the time of appointment. This section also continues to provide for succession of appointments and inserts a definition for 'constituent local government' which refers to the local government

whose local government area (or part thereof) is included within the river improvement area for which the trust is constituted.

New section 5A – Appointment of members to vacancies

New section 5A modifies existing requirements in relation to the appointment of members to vacancies. This amendment provides for the appointment of members to vacancies within a trust to ensure that vacancies are always filled within reasonable timeframes. If a vacancy occurs in the office of trust member that has been appointed by the Minister, the Minister may appoint another person to the office. If a vacancy occurs in the office of trust member that has been appointed by a constituent local government, the local government must appoint another of its councillors to the office within 30 days. Failure to meet this timeframe may result in the Minister providing a written notice requiring the local government to appoint a councillor within a reasonable period of at least 7 days. In the event there is non-compliance with the notice, the Minister may appoint a person to a vacancy whether or not that person is a councillor of the local government. A person appointed to a vacancy is appointed for the balance of the term of office of the person's predecessor.

New section 5B – Application of particular provisions of Local Government Act

New section 5B continues to apply particular provisions of the *Local Government Act 2009* for the purposes of the *River Improvement Trust Act 1940*.

New Division 2 Eligibility for membership

New section 5C – Eligibility for appointment as member

New section 5C provides new ineligibility criteria for membership of a trust. A person will be ineligible to be appointed where the person:

- is incapable of performing the member's function because of physical or mental incapacity
- is an insolvent under administration
- has been convicted of an indictable offence and the rehabilitation period for the offence has not expired or has been revived
- is the secretary, another officer, or an employee of the trust or
- is directly interested in an agreement with, or on behalf of, the trust.

In addition to criteria relating to a person's suitability for appointment new section 5C provides that a person is not eligible for appointment by a local government where that person is no longer a councillor.

New section 5D – Investigations about eligibility for appointment

New section 5D provides the chief executive with a new explicit power to investigate a person's eligibility for appointment, particularly in relation to the criminal history of a person.

New Section 5E – Criminal history is confidential document

New section 5E circumscribes the disclosure of a criminal history report obtained under new section 5D. In particular, an employee or agent of the department must not disclose this information to anyone else unless they have been authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act. A person who breaches this confidentiality may be liable for a fine of 100 penalty points. Additionally, the chief executive must destroy this information as soon as practicable after considering the persons eligibility.

New Division 3 Executive members

New section 5F – Chairperson

New section 5F requires a trust to elect a chairperson at its first meeting or within 30 days of a vacancy in the office of chairperson. This amendment is necessary as the provision for the current government representative chairperson is to be removed. New section 5F provides that the chairperson must be selected from the non-local government members of the trust. The Minister has the power to appoint a non-local government member to the office of the chairperson should there be only one non-local government member appointed to the trust, or if the trust fails to elect a chairperson.

New section 5G – Deputy chairperson

New section 5G modifies the current requirement for a trust to appoint one of its members as its deputy chairperson. Similar to new section 5F, this decision must be made during the first meeting of the trust and within 30 days after a vacancy in the office of the deputy chairperson. The Minister has the power to appoint a member of the trust as the deputy chairperson should the trust fail to elect a deputy chairperson. The deputy chairperson is to act as chairperson during a vacancy of this office or a period when the chairperson is absent from duty or cannot perform the functions of the office.

New section 5H – Term of office

New section 5H provides that a person holds office as the chairperson or deputy chairperson for the person's term of office as a member of a trust, and that they continue to hold office after their term is completed until a successor is appointed. However this continuation does

not apply if a local government member has completed their term of office as councillor and that office becomes vacant. A person appointed to fill a vacancy in the office of a member who was chairperson or deputy chairperson does not assume that office only because of the person's appointment.

New Division 4 Vacancies of office

New section 5I – Casual vacancy

New section 5I expands upon the current requirements regarding casual vacancies. The amendment provides that a casual vacancy occurs in the office of a member of a trust if the member dies during their term, resigns, or is removed by either the constituent local government or the Minister. A casual vacancy may also occur in the office of a chairperson or deputy chairperson if they are removed by a trust or the Minister under section 5L. The office of a local government member of a trust becomes vacant if their term of office as a councillor ends or otherwise become vacant.

New section 5I also takes account of the newly inserted power of the Minister to remove members under new section 5K.

New section 5J – Resignation

New section 5J provides the process by which a member of a trust, a chairperson and a deputy chairperson may resign from office. A member may resign from their office by signed notice of resignation to the chairperson. The chairperson may resign by signed notice to other members of the trust and a deputy chairperson may resign by signed notice to the chairperson. A person resigning from the office of chairperson or deputy chairperson may still continue to be a member of the trust.

New section 5K – Removal from office as member

New section 5K provides the local government or Minister with power to remove an appointee from a trust on specified grounds. A local government or the Minister may remove a person from office if they are ineligible to be appointed under section 5C; absent from three consecutive meetings without the trust's leave or a reasonable excuse; they decline to act as a member; or they are convicted of an offence against this Act.

New section 5L – Removal from office as chairperson or deputy chairperson

New section 5L provides grounds for removing from office a chairperson or deputy chairperson of a trust by the Minister or a trust. A trust or the Minister may remove a person from the office of chairperson or deputy chairperson if they are ineligible to be appointed under section 5C; absent from three consecutive meetings without the trust's leave or a

reasonable excuse; they decline to act as chairperson or deputy chairperson; they are convicted of an offence against this Act; or the person is prohibited under the *Corporations Act 2001* from being a director of a body corporate for a reason other than a person's age.

New section 5M – Removal of all trust members

New section 5M provides a new power for the Minister to remove all members of a trust from office if the trust does not meet at least twice a year or the trust does not comply with the *Financial Accountability Act 2009* for the preparation and submission of annual financial statements and annual reports under that Act. This amendment complements amendments to current section 5 which place a new requirement on trusts to meet at least twice a year and also provides the Minister with an option to replace trust membership where a trust has failed to comply with certain requirements of the *Financial Accountability Act 2009*.

New Division 5 Procedures

New section 5N – Times and places of meetings

New sections 5N specifies that meetings of a trust are to be held at the times and places decided by the trust. New section 5N also includes a new requirement that a trust meet at least twice a year.

New section 5O – Quorum

New section 5O provides that a quorum at a meeting of a trust is 2 of its members.

New section 5P – Presiding at meetings

New section 5P specifies that where the chairperson is present at a meeting it is the chairperson that is to preside. Where the chairperson is not in attendance at a meeting or the office of chairperson is vacant, the deputy chairperson is to preside. Additionally, in the absence of a chairperson and if the deputy chair cannot preside, the members present at the trust meeting choose a member to preside.

New Section 5Q – Conduct of meetings

New section 5Q details requirements for the conduct of meetings. In particular, a question at a meeting is decided by a majority of the votes of the members present and each member present at the meeting has a vote on each question to be decided and, in the event the votes are equal, the member presiding has a casting vote.

Under new section 5Q it will continue to be the case that if a member at a meeting fails to vote, the member is taken to have voted in the negative.

New Section 5R – Other procedures

New section 5R provides that, subject to the other requirements of Division 5, a trust must conduct its business including its meeting in the way prescribed under regulation or, where not prescribed, as the trust considers appropriate.

New Division 6 Other matters

New Section 5S – Validity of trust's acts, proceedings or decisions

New section 5S maintains the current stipulation that an act, proceeding or decision of a trust that has been determined by a quorum is not invalidated if, at that time, a vacancy in the membership of the trust had occurred or a defect is found in the qualification, appointment or membership of a trust member.

The clause also inserts a new heading 'Part 4 Officers and employees of trusts'.

Amendment of s 10 (Works which trust shall undertake or maintain)

Clause 190 provides that the chief executive may approve a program of works submitted by a trust, with or without changes. This amendment modifies the approval process for annual works programs by removing the requirement for ministerial endorsement prior to approval by the chief executive.

Insertion of new pt 9, div 2 and schedule 1

Clause 191 inserts a new division heading 'Division 2 Transitional provisions for the Land and Water and Other Legislation Amendment Act 2013'.

New Division 2 – Transitional provisions for Land and Water and Other Legislation Amendment Act 2013

New section 25 – Definition for div 2

The clause also inserts new sections 25 to 28 which provide transitional arrangements in relation to the amendments regarding membership, office holders and appointments.

New section 25 provides supporting definitions for the transitional provisions. In particular new section 25 defines 'commencement' to mean the commencement of the provision in which the word appears and defines 'previous' to mean the provision as in force immediately before the commencement.

New section 26 – Continuation of office of existing members, chairperson and deputy chairperson

New section 26 provides for the continuation of membership of current members and the offices of chairperson and deputy chairperson under the current section 5. The continuation ceases if the person's term of office ends or the person's successor is appointed. The chairperson continues in that role until they stop being a member of the trust, the person's term of office as chair ends or the office is sooner vacated. The deputy chairperson continues in that role until that person stops being a member of the trust or the office of deputy chair is sooner vacated.

New section 26 continues the application of the current section 5 to current members, chairperson and deputy chairperson and new sections 5I(3)(b), 5K and 5L, relating to the new power of removal from office as a member of chairperson or deputy chairperson do not apply.

New section 27 – Application of new membership requirements to existing trusts

New section 27 specifies the application of the new membership requirements to existing trusts. In particular section 5(1)(b) dealing with non-local government members of a trust applies to a trust existing at the time of commencement as if each member of the trust appointed by the Governor in Council had been appointed by the Minister. This continues only while the member is a member of the trust under former section 5.

New section 28 – Deferral of requirement to elect or appoint chairperson or elect deputy chairperson

New section 28 defers the requirement for trusts to elect or appoint chairperson or deputy chairperson under the conditions of new sections 5F and 5G until their term of office ends or the office is sooner vacated.

The clause also inserts a new heading 'Schedule 1 Dictionary'.

Division 3 Amendments commencing by proclamation

Insertion of new s 20B

Clause 192 inserts new section 20B which provides that the chairperson and other members of a trust are entitled to be paid the fees and allowances approved by the Minister. This amendment facilitates a shift in decision making around fees and allowances from Governor in Council by regulation to the Minister.

Amendment of s 22 (Regulation-making power)

Clause 193 omits section 22(2)(e) to complement the insertion of new section 20B. The Governor in Council will no longer make a regulation under this Act about the fees and allowances payable to the chairperson and other members of a trust.

Part 14 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Act amended

Clause 194 provides this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Amendment of s 53 (Delegation)

Clause 195 amends the timeframes for mandatory delegation of concurrence functions for a development application and compliance assessment functions by a Distributor-retailer to its relevant participating local government until the period ending 28 February 2014 or any other day prescribed under a regulation.

Amendment of s 99BJ (Requirement for SEQ service provider to have plan)

Clause 196 amends the timeframe for when a water netserv plan is required to 1 March 2014.

Amendment of s 99BL (Requirement for SEQ service provider to review plan)

Clause 197 amends the timeframes for when a SEQ service provider must review a water netserv plan to 1 March 2014.

Part 15 Amendment of Sustainable Planning Act 2009

Act amended

Clause 198 provides this part amends the *Sustainable Planning Act 2009*.

Amendment of s 755A (Definitions for pt 7A)

Clause 199 amends the definition for part 7A for development application (distributor-retailer) to mean a development application made on or after 1 July 2010 and to before 28 February 2014 or any other day prescribed by a regulation.

Amendment of s 755G (Compliance assessment-local government as compliance assessor)

Clause 200 amends the timeframe for a request for compliance assessment for the development, document or work made on or after 1 July 2010 and to before the end of 28 February 2014 or any other day prescribed under a regulation.

Amendment of s 755H (Compliance assessment-nominated entity as compliance assessor)

Clause 201 amends the timeframe for when a nominated entity as compliance assessor must refer to local government any request for compliance assessment of the development, document or work made on or after 1 July 2010 and to before the end of 28 February 2014 or any other day prescribed under a regulation.

Amendment of s 755I (Notice about compliance permits and compliance certificates)

Clause 202 amends the timeframes for when a participating local government for a distributor-retailer must give the distributor-retailer a copy of each compliance permit or certificate after 1 July 2010 and to before the end of 28 February 2014 or any other day prescribed under a regulation.

Insertion of new ch 10, pt 7

Clause 203 inserts a new transitional provision which provides that the power of the Governor in Council to further amend or repeal the Sustainable Planning Regulation 2009 is not affected by the *Land, Water and Other Legislation Amendment Act 2013* amending the regulation.

Part 16 Amendment of the Sustainable Planning Regulation 2009

Regulation amended

Clause 204 provides this part amends the Sustainable Planning Regulation 2009.

Amendment of sch 7 (Referral agencies and their jurisdictions)

Clause 205 amends the timeframes to 1 March 2014 for schedule 7, table 2, item 47 and table 3, item 26 column 1 to 1 March 2014.

Part 17 Amendment of Torres Strait Islander Land Act 1991

Act amended

Clause 206 provides that this part amends the *Torres Strait Islander Land Act 1991* and refers to minor amendments included in the schedule.

Amendment of s 10 (DOGIT land)

Clause 207 amends section 10(2) to provide that if a road within the external boundaries of a DOGIT is closed, then the closed road area is included into the 'DOGIT land' upon closure of that road. This results in the area of closed road being transferable land under the Act.
The clause also amends section 10(4) to the effect that if any area of land within the external boundaries of a DOGIT is opened as a road, then the new road area ceases being DOGIT land and as a result is not transferable land under the Act.

Amendment of s 11 (Torres Strait Islander reserve land)

Clause 208 amends section 11 to provide that if a road within the external boundaries of Aboriginal reserve land is closed, then the closed road area is included into the Aboriginal reserve land upon closure of that road. This results in the area of closed road being transferable land under the Act.

The clause also amends the section to the effect that if any area of land within the external boundaries of Aboriginal reserve land is opened as a road, then the new road area ceases being Aboriginal reserve land and as a result is not transferable land under the Act.

Replacement of s 43 (Cancellation of deed of grant in trust)

Clause 209 replaces section 47 to provide that a deed of grant in trust is cancelled to the extent that a new deed, under section 44, is granted over all or part of the deed of grant in trust. The new section 47 applies irrespective of who is the trustee of the deed of grant in trust.

Replacement of pt 14, div 2, hdg (Minister's power to appoint, remove or suspend members of land trusts)

Clause 210 replaces the heading of part 14, division 2 to reflect the amended purposes of part 20.

Amendment of s 156 (Minister may appoint member)

Clause 211 amends section 156 to reflect that all land trusts will have power to appoint members to their land trust.

Insertion of new s 156A

Clause 212 inserts a new section (section 156A) which provides a land trust with the power to appoint a person to be a member of the land trust and the process to be followed.

Replacement of pt 14, div 2, sdiv2, hdg (Removal or suspension of members)

Clause 213 replaces the heading of part 14, division 2, sdiv2, to better reflect the purposes of the subdivision.

Amendment of s 157 (Grounds for removal or suspension of member)

Clause 214 amends section 157 to provide that acting contrary to the best interests of the land trust is grounds for removal or suspension of a land trust member.

The section is also amended to reflect that all land trusts will have power to appoint members to their land trust.

Where a land trust cannot remove or suspend a member and a simple majority of the land trust requests the Minister in writing to either remove or suspend a member, then providing either subsections 1(a), (b) or (c) apply to the member, then this is grounds for the Minister to remove or suspend the member.

Amendment of s 158 (Show cause notice)

Clause 215 amends section 158 to provide that a show cause notice must state that if a member is removed from a land trust they are also removed from any other land trusts.

Amendment of s 161 (Removing or suspending member)

Clause 216 amends section 161 to remove the definition for an information notice from this section as this term is now included in the schedule 1 Dictionary.

Insertion of new s 161A

Clause 217 inserts a new section which provides that if a member who is removed by the Minister from a land trust, was also the member of any other land trust then they are also removed those land trusts.

Replacement of s 162 (Immediate removal or suspension of member)

Clause 218 replaces section 162 to clearly identify the grounds for the Minister to immediately suspend a member of a land trust, the process to be followed and the effect of such a decision.

Replacement of pt 14, div 2, sdiv3 (Other matters)

Clause 219 replaces subdivision 3 with a new subdivision that provides all land trusts with the power to appoint, remove, suspend or immediately suspend members of their trust and sets out the process to be followed.

The process includes the requirement to give a show cause notice to a member if action is proposed to be taken. The details of the show cause notice are detailed in the subdivision. The member is given the opportunity to make written responses to the show cause notice (within the stated period) outlining why the proposed action should not be taken.

Any suspension of a member is temporary unless a show cause process results in formal suspension or removal.

Insertion of new s 171A

Clause 220 inserts a new section to provide that an executive committee of a land trust can validly make a resolution without holding a meeting. To validly do so, a notice of the proposed resolution must be given to all members of the committee entitled to vote on the resolution; all voting members must vote and voting must be in writing. Voting in writing includes by way of a flying minute or signing the resolution.

Amendment of sch 1 (Dictionary)

Clause 221 inserts new defined terms into the dictionary.

Part 18 Amendment of Vegetation Management Act 1999

Act amended

Clause 222 provides that this part amends the *Vegetation Management Act 1999* and refers to minor amendments included in the schedule.

Amendment of s 11 (Minister must make regional vegetation management codes)

Clause 223 omits section 11(3). Removal of section 11(3) to improve regulatory simplification as the *Statutory Instruments Act 1992* provides for reference to documents and maps in statutory instruments such as regional vegetation management codes.

Insertion of new s 20ADA

Clause 224 inserts a new section 20ADA into the Act. The inclusion of section 20ADA clearly defines what the vegetation management watercourse map is and what it consists of.

The inclusion of Section 20ADA also provides clarity concerning who certified the vegetation management watercourse map. This provision does not change the extent of watercourses or how the map is currently used in the vegetation management framework but confirms the interpretation and practice that the department has openly applied since 2009.
The section 20ADA reference to the vegetation management watercourse map is consistent with the other vegetation management maps defined under the vegetation management framework.

Insertion of new pt 6, div 8

Clause 225 inserts a new part 6, division 8 into the Act which provides transitional provisions for the Land, Water and Other Legislation Amendment Bill 2013.

New section 109 – Validation for reliance on particular maps

New section 109 confirms that decisions made in the past concerning native vegetation clearing in watercourses were assessed under the codes using what is now consistently defined as the vegetation management watercourse map, but has been named differently in the past. This provision does not change the extent of watercourses used to assess vegetation clearing applications.

Amendment of schedule (Dictionary)

Clause 226 inserts a new definition of 'vegetation management map' into schedule 4 (Dictionary). The inclusion clarifies that the vegetation management watercourse map is a component on the vegetation management map package, which is referred to generically throughout the vegetation management framework.

Part 19 Amendment of the Water Act 2000

Division 1 Preliminary

Act amended

Clause 227 provides that this part amends the *Water Act 2000* and refers to minor amendments included in the schedule that also amends the *Water Act 2000.*

Division 2 Amendments commencing on assent

Amendment of s 20 (Authorised taking of, or interference with, water without water entitlement)

Section 20 of the *Water Act 2000* authorises the taking of, or interference with, water without a water entitlement. In doing so, section 20 provides the exceptions to the general rule that the State issues entitlements to take or interfere with water following a prescribed process.

Clause 228 inserts a new section 20(6B) into section 20 and a new definition of 'resource activity' into section 20(11). New subsection 6B is a new exemption and provides that diversion-type interference works, associated with a resource activity, are exempt from requiring a water licence if the works are authorised under an Environmental Authority granted under the *Environment Protection Act 1994*. Proponents undertaking resource activities, where a watercourse diversion is necessary to undertake the activity, will be required to provide information regarding the watercourse diversion as part of their Environmental Authority application. As part of the Environmental Authority process the impacts of the interference will be assessed and the Environmental Authority conditioned accordingly. For example, the Environmental Authority will authorise that water diversion works take place, subject to statements of compliance being given for both the design and the construction of the diversion. This is necessary to ensure that the design of the works maintains the environmental values of the site.

Replacement of ss 50 and 50A

Clause 229 omits sections 50 and 50A combining existing sections 50(1), 50(2) and 50A into a new section 50 (Preparing and approving final draft water resource plan). Sections 50 and 50A of the *Water Act 2000* provide for the finalisation of a final draft water resource plan. New section 50 provides that when preparing a final draft water resource plan all properly made submissions must be considered. The section further provides that to be effective, the final draft water resource plan must be approved by the Governor in Council as the water resource plan for the area. Before it is approved by the Governor in Council, a copy of the final draft water resource plan must be given to the chief executive.

Insertion of new ss 52A and 52B

Clause 230 inserts new sections 52A and 52B.

New section 52A – Effect of water resource plan

New section 52A provides for the expiry of water resource plans under the *Water Act 2000*. It provides that generally a water resource plan expires on 1 September 10 years after it commences, unless sooner repealed, postponed, or where replaced by a new water resource plan (i.e. a new water resource plan for the area).

New section 52A(6) exempts water resource plans from the provisions of part 7 of the *Statutory Instruments Act 1992*. Part 7 of the *Statutory Instruments Act 1992* provides for the staged expiry of subordinate legislation. From the commencement of this Bill the expiry of water resource plans will be managed under the *Water Act 2000*. This is necessary to provide more flexibility to the Minister in prioritising the review and replacement of water resource plans.

New section 52B – Postponement of expiry of water resource plan up to 20 years

Several water resource plans are due to expire over the coming years and will require the Department of Natural Resources and Mines to invest significant planning attention and resources. As a number of water resource plans are due to expire at the same time, the department's ability to focus resources on those water resource plans in need of review is restricted. To address this issue, new section 52B allows the Minister to postpone the expiry of a water resource plan for up to 10 years. In doing so, the Minister may postpone the expiry of a water resource plan more than once, provided that the water resource plan does not continue in force for more than 20 years.

New section 52B outlines the process the Minister must follow to postpone the expiry of a water resource plan. In particular, new section 52B(2) provides that if the Minister intends to postpone the expiry of a water resource plan, the Minister must first publish a notice stating

the Minister's intention to postpone the expiry, the reasons for the proposed postponement and the proposed new expiry date. The notice must also provide that submissions may be made about the proposal and submitted to the Minister by a set date no earlier than 20 business days after publication of the notice.
A copy of the notice must be forwarded to all local governments whose areas are included in all or part of the plan area. Local governments are required to make the notice available for public inspection.

In deciding whether to postpone the expiry of a water resource plan, the Minister must be satisfied the plan should be postponed and reasonably believe that the postponement will not adversely affect water entitlement holders or natural ecosystems. In making the decision the Minister must also consider the following:

- all properly made submissions about the proposal
- whether the water resource plan's outcomes are being achieved
- whether the water resource plan's objectives, or the strategies for achieving the plan's outcomes, continue to be appropriate for its plan area
- any periodic reports prepared on the plan, for example, the reports required to be prepared under section 53 of the *Water Act 2000*.

Consideration of the abovementioned criteria will also assist the Minister in deciding the new expiry date of the plan, enabling the Minister to prioritise the department's work program so that the department's resources may be focused on those water resource plans that have the highest priority for review.

If the Minister decides to postpone the expiry of a water resource plan, new section 52B(8) requires the Minister to publish a notice in the gazette stating the new expiry date of the plan. The notice is subordinate legislation and will be subject to disallowance by the Legislative Assembly. The notice will be published on the Office of Queensland Parliamentary Counsel's Queensland Legislation website.

Amendment of s 62 (Content of draft water use plans)

Clause 231 amends section 62 to remove a reference to land and water management plans.

Omission of ch 2, pt 3, div 3, sdivs 4-6

Clause 232 removes the triggers that require irrigators to prepare land and water management plans. Land and water management plans are no longer required as the existing water use plan framework provides a mechanism to manage land and water degradation risks as a result of irrigation water use. Water use plans are considered to be more efficient and effective at managing these risks because they apply on a landscape rather than property scale.

The Minister may prepare a water use plan for any part of Queensland where satisfied that water use in a particular area may cause negative effects on land and water resources. In essence, water use plans are intended to apply in areas identified to be of high risk. In other areas water use will be self-managed by irrigators. The removal of the requirement for a land and water management plan significantly reduces the regulatory burden placed on irrigators.

Amendment of s 106 (Minor or stated amendments of resource operations plan)

Section 106 of the *Water Act 2000* enables the Governor in Council to amend a resource operations plan without the notification process in sections 95 to 104 applying.

Clause 233 amends section 106 by providing that the Governor in Council can approve an amendment to a resource operations plan to ensure consistency with an existing water resource plan. This power is distinct to that found in section 105(3) which may be utilised when a proposed amendment to a water resource plan will create an inconsistency with a resource operation plan.

Replacement of ss 107A and 108

Clause 234 replaces section 107A (Authority to interfere with water) with new sections 107A to 107C. Section 107A currently provides the authority for the holder of a:

- resource operations licence (ROL) to take or interfere with water to the extent necessary to operate the water infrastructure to which the licence applies
- distribution operations licence (DOL) to distribute water under water allocations.

Section 107A also specifies that a ROL or a DOL may be held only by:

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

A DOL is an authority to take water or interfere with the flow of water necessary to operate water infrastructure for the purposes of distributing water allocations. For example, an owner of infrastructure that diverts water from a watercourse and distributes that water through its distribution network, for example, off stream channels, will be granted a DOL.

The replacement of section 107A provides for the transfer of functions from a water authority under Chapter 4 of the Water Act to a two tier structure such as a holding co-operative and a trading co-operative (two tier co-operative) by providing that the owner of the infrastructure may nominate an entity to be the DOL holder. The existing limitations on who may hold a ROL will remain.

New section 107A – Authority to interfere with water under resource operations licence

New section 107A will duplicate the provisions of the existing section 107A set out above as they relate to the holder of a ROL to reflect the fact that the policy in relation to ROL holders is not changing. Provisions in relation to DOL holders have been removed from section 107A. New sections 107B and 107C reflect the new policy in relation to DOL holders.

New section 107B – Authority to take or interfere with water under distribution operations licence

New section 107B duplicates the provisions of the existing section 107A set out above but also allow a DOL to be held by an entity nominated and approved to be the holder of the licence under new section 107C. This will enable the creation of a two tier structure such as a holding co-operative and a trading co-operative (two tier co-operative).

New section 107C – Nomination and approval of entity as distribution operations licence holder

New section 107C sets out the process for the nomination by an infrastructure owner (or the entity that is to be the owner on a future day) and subsequent approval by the chief executive of an entity to hold a DOL.

The chief executive will only approve the entity to hold the DOL if the chief executive is satisfied that the entity is suitable to hold the DOL and can carry out the activities and comply with the conditions of the DOL. In addition, in order to protect the water users being supplied under the DOL, the chief executive must be satisfied that either the infrastructure owner can take over the DOL or be capable of nominating an alternative entity to hold the DOL in the event that the arrangement with the nominated entity breaks down.

New section 108 – Granting resource operations licences and distribution operations licences

New section 108 provides for the granting of ROLs and DOLs and requires the chief executive, when granting a DOL, to give the owner of the infrastructure to which the licence applies notice of the granting of the licence to the nominee of the owner. This new section is consequential to the inclusion of new sections 107B and 107C which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Amendment of s 108A (Applying for a distribution operations licence other than under a resource operations plan)

Clause 235 amends section 108A which sets out the process for applying for a DOL other than under a resource operations plan, to cover the situation where an infrastructure owner nominates another entity to hold the related DOL. For example, where a category 2 water authority transitions to a holding co-operative (the infrastructure owner) and a trading co-operative which would hold the DOL (two tier co-operative), which is allowed under new section 107B.

In this circumstance, the application must, in addition to the normal requirements, also be supported by sufficient information to enable the chief executive to decide whether or not to approve the nominee under new section 107C.

Replacement of s 108B (Additional information may be required)

Clause 236 replaces section 108B which empowers the chief executive to seek additional information relating to an application for a DOL other than under a resource operations plan. The replacement section 108B will enable the chief executive to seek further information from the owner of infrastructure if the applicant is the nominee of the owner of the water infrastructure to which the licence is to apply if it is granted. This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

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

Clause 237 amends section 111 which provides for the process for amending a ROL or DOL for consistency with a water resource plan. The amendment will require the chief executive to give the owner of infrastructure notice that a DOL held by the nominee of the owner of the water infrastructure to which the licence applies has been amended. This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

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

Clause 238 amends section 111A which provides for the amendment of a ROL or DOL where a resource operations plan sets out the process for such amendment. The amendment to section 111A will require the chief executive to give the owner of infrastructure notice that a DOL held by the nominee of that owner of the water infrastructure has been amended. The notice must be provided within 30 business days after the chief executive amends the DOL. This amendment is consequential to the inclusion of a new section 107B which will enable

the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

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

Clause 239 amends section 112 which empowers the chief executive to amend the conditions of a ROL or DOL. The amendment will require the chief executive to give, for a DOL held by the nominee of the owner of the water infrastructure, notice to that owner of infrastructure of the amendment of a condition of a DOL where the DOL was granted because of a materially false or misleading representation or declaration. This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Amendment of s 113 (Minor, stated or agreed amendments of licence)

Clause 240 amends section 113 which empowers the chief executive to correct minor errors in a ROL or DOL or make other minor amendments. The amendment will require the chief executive to give the owner of infrastructure notice that a DOL held by the nominee of that owner of water infrastructure to which the licence applies has been amended. The notice must be provided within 30 business days after the chief executive amends the DOL. This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Replacement of ss 114 and 115

Clause 241 replaces sections 114 and 115 which provide the process for applying to transfer a ROL or DOL and empowers the chief executive to seek additional information about an application to transfer a ROL or DOL respectively.

New section 114 – Applying for transfer of licence

New section 114 will clarify that an application to transfer a DOL may only be made to transfer the DOL or a part of the DOL to another entity that can hold the licence. The provision is intended to prevent possible confusion given that, other amendments made by this Bill in regard to DOLs now refer to the transfer of the infrastructure. In this section it is necessary to be clear that the ‘transferor’ and ‘transferee’ refer to the licence not the infrastructure.

In addition, the reference to another entity 'that can hold the licence' refers the reader back to sections 107A and 107B. This clarifies that the transfer provisions will apply to a reversion of the DOL from a nominee to the nominating infrastructure owner.

This replacement section is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

New section 115 – Additional requirements for transfer of distribution operations licence to nominee

New section 115 provides that where a DOL is to be transferred from or to a nominee of the relevant infrastructure owner, the application must be accompanied by the owner's written consent to the transfer. In addition, if the proposed transferee is the nominee of the relevant infrastructure owner, the application must be supported by sufficient information to enable the chief executive to decide whether or not to approve the nominee under new section 107C. This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

New section 115A – Additional information may be required

New section 115A details who the chief executive may seek extra information from in relation to an application to transfer a ROL or DOL. Extra information may be sought from:

- the applicant;
- for an application to transfer all or part of a DOL held by the nominee of the owner of the water infrastructure to which the licence applies—the owner;
- for an application to transfer all or part of a DOL to the nominee of the person who is, or is to be, the owner of the water infrastructure to which the licence or part is to apply if the application is granted—the person (also the ***owner***).

The section provides that if the applicant or owner fails, without a reasonable excuse, to provide the extra information within the time specified, the application will lapse.

Replacement of s 117 (Approving application to transfer licence)

Clause 242 replaces section 117 which sets out the process for transferring a ROL or DOL. The section is being replaced to reflect that as well as providing information to the applicant, the amendments mean that, for the transfer of all or part of a DOL, the notice may also need to be sent to:

- the current infrastructure owner or incoming infrastructure owner where the transferor or transferee is the nominee of the infrastructure owner; or
- the incoming infrastructure owner where the transferee is the nominee of the incoming infrastructure owner.

This amendment is consequential to the inclusion of new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Amendment of s 118A (Amalgamating licences)

Clause 243 amends section 118A which relates to amalgamating ROLs or DOLs by providing that if the applicant is not the owner of infrastructure (i.e. the infrastructure owner's nominee) the applicant must include the owner's consent to the application.

Amendment of s 119 (Cancelling licence)

Clause 244 amends section 119 which empowers the chief executive to cancel a ROL or DOL by enabling the chief executive to cancel a DOL due to a breach of the section by either:

- the licence holder; or
- where the DOL is held by a nominee of the infrastructure owner, by the infrastructure owner.

This amendment is consequential to the inclusion of new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Amendment of s 119A (Procedure for cancelling licence)

Clause 245 amends section 119A which sets out the procedure for the cancellation of a ROL or DOL. The amendment will provide that where the chief executive is satisfied that a ground exists to cancel a DOL held by the approved nominee of the water infrastructure owner, the chief executive must provide a show cause notice to the water infrastructure owner as well as the licence holder. An information notice will then need to be issued to both the parties if the chief executive then decides to cancel the licence.

This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Amendment of s 119B (Cancelling licence no longer required)

Clause 246 amends section 119B which provides for cancelling a ROL or DOL that is no longer required to provide that where the chief executive decides to cancel a DOL held by the approved nominee of the water infrastructure owner, the chief executive must give notice of the decision to the water infrastructure owner as well as the licence holder. An information notice will then need to be issued to both the parties if the chief executive then decides to cancel the licence.

This amendment is consequential to the inclusion of a new section 107B which will enable the transfer of functions from an entity, for example a category 2 water authority to another entity such as a holding co-operative and a trading co-operative (two tier co-operative).

Replacement of s 119D (Access for conducting audit reports)

Clause 247 replaces section 119D which empowers an authorised person to gain access to water infrastructure to which a ROL or DOL applies for the purpose of conducting an audit. The replacement section will ensure that where a DOL is held by a nominee of a water infrastructure owner rather than by the infrastructure owner itself, access must be given to that infrastructure. It is an offence (maximum penalty – 200 penalty units) for the entity to fail to give an authorised person free and uninterrupted access to the water infrastructure and associated records for the purpose of conducting an audit.

Insertion of s 121A

Clause 248 inserts a new section 121A to convert forfeited or surrendered interim water allocations that are managed under a resource operations licence, to water allocations.

New section 121A – Converting particular forfeited or surrendered interim water allocations

New section 121A provides that the chief executive may, by gazette notice, convert a forfeited or surrendered interim water allocation managed under a resource operations licence. The provision sets out the information that must be provided in the conversion notice and provides a process for converting forfeited or surrendered interim water allocations managed under a resource operations licence to water allocations.

New section 121A also provides that, following conversion, the chief executive may do one of the following with the water allocation:

- transfer the water allocation to the resource operations holder
- transfer the water allocation to an entity prescribed under a regulation
- sell the water allocation by public auction, public ballot or public tender.

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

In general, the holder of a water allocation, managed under a resource operations licence, must have a supply contact with the resource operations licence holder. Section 122A provides that the chief executive may approve standard supply contracts that apply where the allocation holder does not have a supply contract with the resource operations licence holder. In such cases, the standard supply contract applies from the date the allocation is granted.

Clause 249 extends the operation of section 122A to include the conversion of interim water allocations under new section 121A. The clause also provides that if, on the day the allocation is converted, the allocation is held by the chief executive, then the standard supply contract for the area does not apply.

Amendment of s 132 (Public notice of application to change water allocation)

Clause 250 amends section 132 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Sections 130 to 135 of the *Water Act 2000* enable a water allocation holder to apply to make a change to a water allocation that is not mentioned in a ROP. As part of the application process, section 132 requires the chief executive to give the applicant a notice that the applicant must publish in the time and in the newspaper specified by the chief executive.

The amended section 132 will provide that the notice given to the applicant must specify the information to be published, how it should be published and the time in which it must be published. This will enable the chief executive to consider the intended audience of the notice and specify the best methodology for publishing information about the application to change a water allocation.

Amendment of s 181 (Public notice of application to amend interim resource operations licence)

Clause 251 amends section 181 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 181 of the *Water Act 2000* provides the publishing requirements associated with an application to amend an interim resource operations licence.

The amendment to section 181 will provide that the notice given to the applicant must specify the information to be published, how it should be published and the time in which it must be published.

Amendment of s 196 (Forfeiting an interim water allocation)

Clause 252 provides that the chief executive may deal with a forfeited interim water allocation (a) that is managed under a resource operations licence, by converting the forfeited interim water allocation through a conversion notice under new section 121A; or (b) that is managed under an interim resource operations licence, by cancelling, selling or transferring the forfeited interim water allocation under new section 197A.

Amendment of s 197 (Surrendering an interim water allocation)

Clause 253 provides that the chief executive may deal with a surrendered interim water allocation (a) that is managed under a resource operations licence, by converting the surrendered interim water allocation through a conversion notice under new section 121A; or (b) that is managed under an interim resource operations licence by cancelling, selling or the transferring the surrendered interim water allocation under new section 197A.

Insertion of new s 197A

Clause 254 inserts a new section 197A to deal with forfeited or surrendered interim water allocations that are managed under an interim resource operations licence.

New section 197A – Dealing with forfeited or surrendered interim water allocation managed under interim resource operations licence

New section 197A provides that the chief executive may, after consulting with the interim resource operations licence holder, deal with a forfeited or surrendered interim water allocation that is managed under an interim resource operations licence by:

- cancelling the forfeited or surrendered interim water allocation. If the chef executive decides to cancel a forfeited or surrendered interim water allocation the chief executive must notify the interim resource operations licence holder
- selling the forfeited or surrendered interim water allocation by public auction, public ballot or public tender
- transferring the forfeited or surrendered interim water allocation to the interim resource operations licence holder or to an entity prescribed under a regulation. However, before transferring the forfeited or surrendered interim water allocation the chief executive must notify the proposed transferee about the transfer. In order to

confirm the transfer the proposed transferee must make an application for the interim water allocation within 20 business days of receiving the notice.

Amendment of s 203 (Definitions for pt 6)

Clause 255 omits the definition of 'priority group' from section 203. The omission of this definition is consequential to the omission of section 206A (Additional requirements for application by petroleum tenure holder) and reflects amendments made the *Petroleum and Gas (Production and Safety) Act 2004* and the *Water Act 2000* to provide that it will no longer be necessary for a petroleum tenure holder to obtain a water licence in order to use associated water.

Amendment of s 206 (Applying for a water licence)

Clause 256 omits section 206(5) which sets out when a petroleum tenure holder may apply for a water licence in relation to associated water.

Associated water is defined in the *Petroleum and Gas (Production and Safety) Act 2004* as underground water that is taken or interfered with during the course of, or as a result from, carrying out an activity for a petroleum tenure. Essentially, associated water is the 'by product' water of petroleum activities. Currently the petroleum tenure holder may provide associated water to a landholder whose land overlaps the petroleum tenure without further authorisation under the *Water Act 2000*. However, a water licence is required if the water is provided to another landholder whose property does not overlap the tenure. Petroleum industry stakeholders have raised this requirement as an unnecessary regulatory burden.

The original rationale for requiring water licences is no longer valid due to the evolution of the adaptive management framework for petroleum activities. Potential impacts on groundwater systems from water extraction associated with petroleum operations are now addressed through chapter 3 of the *Water Act 2000*. In addition, the *Environmental Protection Act 1994* and the associated environmental authority for the operation, including approval requirements for coal seam gas water for beneficial use, appropriately addresses potential environmental impacts associated with the use of associated water.

Omission of s 206A (Additional requirements for application by petroleum tenure holder)

Clause 257 omits section 206A which provides additional requirements for the application for a water licence where the application is made by a petroleum tenure holder. These additional requirements are designed to allow persons, who had previously been refused a water licence as a direct result of a petroleum tenure holder's water extraction activities, an opportunity to make a first call on the use of the associated water. Such persons are referred to in the *Water Act 2000* as the 'priority group'.

Amendments being made to section 206 and to the *Petroleum and Gas (Production and Safety) Act 2004* mean that it will no longer be necessary for a petroleum tenure holder to apply for a water licence for the use of associated water off tenure. Accordingly, section 206A is no longer required.

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

Clause 258 amends section 208 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 208 of the *Water Act 2000* provides the publishing requirements associated with an application for a water licence. That is, that the chief executive must give the applicant a notice that the applicant must publish in the time and in the newspaper specified by the chief executive.

The amendments to section 208 provide that the notice given to the applicant must specify the information to be published, how it should be published and the time in which it must be published.

Amendment of ch 2, pt 6, div 2, sdiv 2 (Contents and conditions of water licence)

Clause 259 amends the heading of chapter 2, part 6, division 2, subdivision 2 to provide that the subdivision applies to the content, terms and conditions applicable to water licences.

Amendment of s 213 (Contents of water licence)

Clause 260 amends section 213(1)(a) to reflect the insertion of new section 213A which details the changes made to the expiry timeframes for water licences in Queensland. Section 213(1)(a) currently requires a water licence to be issued for a stated period (i.e. with a specified expiry date). To reflect the insertion of new section 213A, a water licence must now state the term of the licence.

Insertion of s 213A

Clause 261 inserts new section 213A into the Act.

New section 213A – Term of water licence

New section 213A provides that water licences generally expire on 30 June 2111. The exception to this general rule is where a water licence is granted through a water resource

plan, resource operations plan or wild river declaration. In these instances, the relevant instrument may state the day the licence expires.

Extending the term of all currently issued water licences will reduce the regulatory burden on licence holders as, in effect, section 213A removes the requirement to apply for a water licence to be renewed. As a result, the amendment will also deliver significant government savings.

Amendment of s 214 (Conditions of water licence)

Clause 262 amends section 214 to omit paragraph (2)(g) and subsection (3). Section 214 of the Water Act outlines the types of conditions that may be imposed on a water licence by the chief executive. These provisions set out the conditions that may apply to a water licence granted to a petroleum tenure holder. Amendments being made to section 206 and 206A of the *Water Act 2000* and to the *Petroleum and Gas (Production and Safety) Act 2004* mean that it will no longer be necessary for a petroleum tenure holder to apply for a water licence for use of associated water off tenure. Accordingly, these provisions are no longer required.

Amendment of s 223 (Other transfer of water licence)

Section 223 of the *Water Act 2000* provides for the transfer of a water licence (other than transfers made under section 222). Currently, section 223 makes a distinction between the transfer of water licences in a water resource plan area and the transfer of water licences outside of a water resource plan area. In particular, section 223(1) is currently limited in application such that a water licence that is not managed under a water resource plan can only be transferred to other land where provided for by regulation. In contrast, section 223(2) provides that water licences to which a water resource plan applies can be amended or amalgamated, as well as transferred where provided for by regulation.

In practice, the results of this distinction are noticeable when giving effect to a transfer. To give effect to a transfer, an applicant's existing licence may need to be amended. Similarly, the transferee may wish to amalgamate the transferred licence with their existing licence. However, as the section is currently drafted, an applicant whose water licence is not managed under a water resource plan is required to make a separate application to amend or amalgamate their existing licence with the transferred licence. This limitation was not intended and results in an additional regulatory burden.

Clause 263 removes this limitation, extending the current application of section 223 (as it applies to water licences to which a water resource plan applies) to water licences not managed under a water resource plan such that all or part of a water licence to take water not managed under a water resource plan can be transferred, amended or amalgamated where provided for by regulation. As a consequence, the distinction between water licences managed or not managed under a water resource plan has been removed as it is no longer relevant and section 223(1) has been redrafted to clarify its intended operation.

New section 223(1) provides that:

- a water licence may only be transferred, amended or amalgamated under section 223 where provided for by a regulation or resource operations plan
- all applications to transfer a water licence are dealt with under the process prescribed in the regulation (the process regulation).

This amendment will enable the department to give effect to the transfer of a water licence through a single application and assessment process, saving applicants the time and costs associated with a separate amendment and/or amalgamation application.

Omission of ch 2, pt 7 (Catchment areas)

Clause 264 removes chapter 2, part 7 which provides for the declaration of catchment areas (declared catchment areas as their role in preserving water quality is also provided for in planning instruments under the *Sustainable Planning Act 2009* and environmental approvals under the *Environmental Protection Act 1994*.

Amendment of s 382 (Public notice and copies of report)

Clause 265 amends section 382 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

This amendment provides the State with flexibility when determining the most suitable method for publishing a notice by removing the requirement for, and references to, newspaper publication.

The amendments to section 382 provide that the responsible entity (defined in section 368 of the *Water Act 2000*) must publish a notice about the proposed underground water impact report or final report in the way required by the chief executive. Section 382 of the *Water Act 2000* provides the publishing requirements associated with the preparation of an underground water impact report or final report.

Amendment of s 386 (Publishing approval and making report available)

Clause 266 amends section 386 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 386 of the *Water Act 2000* requires the responsible entity for an underground water impact report or final report to publish a notice about the chief executive's approval of the report in an appropriate newspaper, on the entity's website and by giving a copy of the notice to bore owners in the relevant area.

The amendments to section 386 remove these specific publishing requirements and provide that the responsible entity must publish the notice in the way required by the chief executive. This will enable to chief executive to consider the intended audience of the notice and specify the most suitable method for publishing information in the area.

Amendment of s 391 (Minor or agreed amendments of approved report)

Clause 267 amends section 391 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 391 of the *Water Act 2000* provides the publishing requirements associated with minor or agreed amendments to an approved underground water impact report or final report.

The amendments to section 391 provide that the chief executive may require the responsible entity to publish a notice of the amendment in a stated period and in a stated way. Section 391 of the *Water Act 2000* provides the publishing requirements associated with minor or agreed amendments to an approved underground water impact report or final report.

Amendment of s 393 (Other amendments)

Clause 268 amends section 393 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 393 of the *Water Act 2000* provides the publishing requirements associated with other amendments to an approved underground water impact report or final report (i.e. amendments not provided for in section 391 and 392).

The amendments to section 393 provide that the responsible entity must publish a notice about the amendment in the way required by the chief executive. Section 393 of the *Water Act 2000* provides the publishing requirements associated with other amendments to an approved underground water impact report or final report (i.e. amendments not provided for in section 391 and 392).

Amendment of s 552 (Public notice of proposal to establish a water authority)

Clause 269 amends section 552 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 552 provides the publishing requirements associated with a proposal to establish a water authority. Consistent with the changes to the definition of 'publish' made by this Bill, clause 269 amends section 552.

The amendments to section 552 provide that the chief executive must, in addition to publishing in the gazette, publish a notice about the proposed establishment of a water authority in another manner considered appropriate. In deciding the most appropriate method of publication the chief executive must consider the intended audience. Section 552 provides the publishing requirements associated with a proposal to establish a water authority.

Amendment of s 556 (Amending establishment regulation)

Water authorities are established by regulation (an establishment regulation). Before an establishment regulation can be prepared, the publishing requirements specified in section 552 must be satisfied.

Clause 270 amends section 556 to provide that the method of publication used to publish a notice about the amendment must be the same as that used to publish the proposal to establish the water authority under section 552. Section 556 provides the process that must be followed before amending an establishment regulation.

Amendment of s 598 (Composition of board for water authorities)

Clause 271 omits section 598(3) because it refers to section 599 of the *Water Act 2000*, which is being deleted by this Bill. Previously the board appointment process differed between the two Category 1 Water Authorities. This amendment assists in removing this inconsistency.

Amendment of s 598A (Changing the composition of a board)

Clause 272 amends section 598A to provide that the method of publication used to publish a notice about the proposal to establish a water authority (under section 552 of the *Water Act 2000*) must also be used when changing composition of the water authority.

Omission of s 599 (Composition of board for Gladstone Area Water Board)

Clause 273 omits section 599 which sets out the composition of the Gladstone Area Water Board and who the board is nominated by. This will now be dealt with by section 598(1). Previously the board appointment process differed between the two Category 1 Water Authorities. This amendment to assist in removing this inconsistency.

Amendment of s 601 (Chairperson)

Clause 274 replaces subsections (1) and (2) of section 601. The amendments will state the chairperson of a category 1 water authority is nominated by the chief executive. Previously the board appointment process differed between the two Category 1 Water Authorities. This amendment to assist in removing this inconsistency.

Amendment of s 609 (Removal of board)

Clause 275 omits section 609(c) to correct an incorrect reference to the Treasurer.

Section 609(c) states that the Governor in Council may remove all the directors of a water authority's board from office if the board has not complied with a joint direction given to it by the Minister and Treasurer. As the *Water Act 2000* no longer enables the Minister and Treasurer to give a joint direction it is necessary to remove the reference to the Treasurer. The removal of this incorrect reference will ensure the *Water Act 2000* is updated to reflect current functions.

Insertion of new ch 4, pt 7, div 1, sdiv 1 hdg

Clause 276 inserts a new subdivision heading into chapter 4, part 7, division 1. This minor amendment reflects structural changes to the division resulting from the insertion of section 695A and amendments to sections 696 and 703.

Subdivision 1 (incorporating sections 692, 693 and 694) provides general provisions for the proposed amalgamation or dissolution of water authorities while subdivision 2 details the additional requirements specific to the conversion of a water authority to an alternative institutional structure.

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

Clause 277 amends section 692 to adopt the new definition of 'publish' being inserted by this Bill which will provide the State with flexibility when determining the most suitable

method for providing information to the public and in general remove the specific requirement for newspaper publication.

Section 692 of the *Water Act 2000* provides the publishing requirements associated with a proposal to amalgamate water authorities/authority areas or dissolve a water authority/authority area.

The amendments to section 692 provide that the chief executive must, in addition to publishing in the gazette, publish a notice about the proposed amalgamation or dissolution in another manner considered appropriate. In deciding the most appropriate method of publication the chief executive must consider the intended audience. Section 692 of the *Water Act 2000* provides the publishing requirements associated with a proposal to amalgamate water authorities/authority areas or dissolve a water authority/authority area.

Insertion of new ch 4, pt 7, div 1, sdiv 2 hdg

Clause 278 inserts a new subdivision heading into chapter 4, part 7, division 1. This minor amendment reflects structural changes to the division resulting from the insertion of section 695A and amendments to sections 696 and 703.

Subdivision 2 (incorporating sections 695, 695A and 696) provides the additional procedures required for the conversion of a water authority to an alternative institutional structure.

Insertion of new s 695A

Clause 279 inserts new section 695A which creates the requirements necessary for a closed water supply agreement.

New s 695A – Closed water supply agreement

A type of alternative institutional structure into which a water authority may dissolve in accordance with section 691(1)(b) is a closed water supply agreement. A closed water supply agreement is a private contractual agreement between a small number of landholders for the purpose of supplying water amongst themselves.

This new section outlines the requirements an agreement must contain, that the agreement will only have effect upon dissolution of the water authority and water area, and the process for the registration of an agreement (replicating the process for registration of a private water supply agreement in section 1001).

Amendment of s 696 (Procedure before authority is dissolved to convert to alternative institutional structures)

Clause 280 amends section 696 to provide that a closed water supply agreement is only established as an alternative institutional structure if the parties have entered into the agreement and the registration requirements have been compiled with. Furthermore, the section clarifies that the State is able to obtain an indemnity or payment from the parties to the agreement.

Amendment of s 703 (Continuing legal proceedings)

Clause 281 amends section 703 to clarify that unfinished legal proceedings against a former water authority that has converted to a closed water supply agreement can be continued against one or more of the parties within the alternative institutional structure. This is reflected within section 703 but the new sections 703(3) and (4) remove any doubt as to the status of closed water supply agreements.

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

Clause 282 omits section 810 to remove the offence for using water contrary to an approved land and water management plan. This is a consequential amendment resulting from the removal of the requirement for a land and water management plan.

Amendment of s 966 (Additional criteria for assessing development applications)

Clause 283 amends section 966 to remove references to 'declared catchment areas'. This is a consequential amendment resulting from the removal of declared catchment areas by this Bill.

Amendment of s 967 (Development under Sustainable Planning Act 2009 relating to taking or interfering with water)

Clause 284 amends section 967 to clarify that a development approval issued under the *Sustainable Planning Act 2009* does not automatically qualify the holder for a water entitlement granted under the provisions of the *Water Act 2000*.

The grant of a water entitlement provides the authorisation to take, or interfere with, water, but does not authorise the construction of the associated infrastructure for taking or interfering with water. The construction of infrastructure may require a development approval under the *Sustainable Planning Act 2009*.

The clause also amends section 967 to reflect the changes made to section 20.

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

Clause 285 removes the requirement for the chief executive to give the registrar of titles notice of the grant of a water licence or interim water allocation. Similarly, the clause removes the requirement for the registrar to record the notices in the land register. This amendment is designed to reduce duplication as information about water licences and interim water allocations is publically available by searching the water entitlements registration database.

The clause also removes the requirement for the chief executive to give notice of the requirement for a land and water management plan to the registrar of water allocations and for the registrar to record that notice. This is a consequential amendment that reflects the removal of land and water management plans from the *Water Act 2000* framework. Land and water degradation risks resulting from irrigation water use will be managed under the existing water use plan framework. Records of approved water use plans are available for inspection and purchase by the public.

Amendment of s 1014 (Regulation-making power)

Clause 286 omits subsections (2)(ca) and (cb) to remove the ability for a regulation to prescribe organisations to provide accredited farm management systems and accredited farm management system programs. Farm management systems in this context have been used to meet the requirements of a land and water management plan under section 74(5). This is a consequential amendment that reflects the removal of land and water management plans from the Water Act framework.

Amendment of s 1162 (Grid customers)

Clause 287 amends section 1162(b) to note that Stanwell Corporation Limited is the successor to Tarong Energy Corporation Limited as listed in the section. This minor amendment updates the section to reflect a restructure of entities in 2011.

Insertion of new ch 9, pt 6

Clause 288 inserts transitional and validation arrangements for the Bill.

New Part 6 Transitional and validation provisions for Land, Water and Other Legislation Amendment Act 2013

New section 1235 – Term of existing water licence

New section 1235 provides that, subject to cancellation or surrender, the expiry dates stated on existing water licences are no longer relevant in determining the expiry of the licence. Instead, the expiry of existing water licences is governed by new section 213A. The effect of this provision is to extend the term of all currently issued water licences until 30 June 2111.

New section 1236 – Continuation of existing water resource plans

New section 52A provides that a water resource plan generally expires on 1 September 10 years after it commences, unless sooner repealed, postponed, or where replaced by a new water resource plan (i.e. a new water resource plan for the area). New section 52B provides the process the Minister must follow postpone the expiry of a water resource plan.

New section 1236 provides that new sections 52A and 52B apply to all water resource plans in force immediately before the commencement of this section. This ensures that the expiry of existing water resource plans will be dealt with under the *Water Act 2000* and will allow the Minister to establish a work program for the review and replacement of existing water resource plans.

However, new section 1236 also provides specific transitional arrangements for:

- existing water resource plans that have been in force for more than 10 years, that is, those water resource plans that are exempt from expiry under a regulation made under section 56A of the *Statutory Instruments Act 1992*.
- existing water resource plans that the Department of Natural Resources and Mines had proposed to exempt from expiry under a regulation made under section 56A of the *Statutory Instruments Act 1992*.
- existing water resource plans in the Murray-Darling Basin. The transitional provisions for water resource plans in the Murray-Darling Basin will enable their expiry to align with the planned introduction of the sustainable diversion limits under the Murray-Darling Basin Plan.

New section 1237 – Land and water management plans

New section 1237 ensures that irrigators do not need to wait on a decision regarding the approval or deferral of a land and water management application prior to using water for irrigation. All pending applications for land and water management plans will lapse on commencement of this Bill and any associated requirements in resource operations plans will have no effect. This transitional provision reflects the removal of land and water management plans from the *Water Act 2000*.

New section 1238 – Changes affecting category 1 water authority boards

New section 1238 continues the existing composition of the Gladstone Area Water Board until the composition of the board is changed under section 598A. Section 598A is being amended by this Bill to remove inconsistency in the board appointment process between the two Category 1 Water Authorities.

New section 1239 – Validation relating to Mount Isa Water Board

New section 1239 validates the appointment of a person as chairperson of the Mount Isa Water Board by the chief executive before commencement of this section. The appointment process is being amended by this Bill to remove inconsistency in the board appointment process between the two Category 1 Water Authorities.

New section 1240 – Removal of particular records from registries

The Bill makes a number of amendments to section 1007 to remove requirements for the registrar to record notices on the water allocation and land title registers.

New section 1240 reflects these changes, enabling the registrar to remove:

- records on land titles regarding the attachment of water licences or interim water allocations to land
- records on water allocations regarding land and water management plans.

New section 1241 – Amendment of subordinate legislation does not affect powers of Governor in Council

New section 1241 provides that the amendment of subordinate legislation by this Bill does not affect the power of the Governor in Council to further amend the legislation or to repeal it.

Amendment of sch 4 (Dictionary)

Clause 289 amends the dictionary to reflect changes made by the Bill.

Division 3 Amendments commencing by proclamation

Replacement of s 20 (Authorised taking of, or interference with, water without water entitlement)

Section 20 authorises the taking of, or interference with, water without a water entitlement. In doing so, section 20 provides the exceptions to the general rule that the State issues entitlements to take or interfere with water following a prescribed process.

Clause 290 amends section 20 to expand the application of some existing exemptions and provide a number of additional exemptions. In doing so, the clause restructures section 20 into four new sections and inserts a new division.

New Division 1A Authorised taking of, or interference with, water without water entitlement

New section 20 – General authorisations

Emergency situations and fire fighting
Section 20(2) currently provides that a person may take water in an emergency situation for a public purpose or to fight a fire destroying/threatening to destroy a house. New section 20 extends this authorisation to include taking water for fire fighting generally, taking water to test fire fighting equipment and taking or interfering with water to construct a bore to be used for fire fighting.

Camping and watering travelling stock
Section 20(5) currently authorises the taking of water for camping purposes and for watering travelling stock. These authorisations continue under new section 20(1)(e) and (f).

Interfering with overland flow
Section 20(6A) currently authorises interference with overland flow water. This authorisation continues under new section 20(1)(g).

Taking water
Section 20(6) currently authorises the take of overland flow water or the take or interference with sub artesian water for any purpose unless there is:

- a moratorium notice, water resource plan or wild river declaration that limits this right
- for sub artesian water only, the take of or interference with water is regulated by a regulation under section 1046.

These authorisations continue under new section 20(2) and (3).

New section 20(2) also provides a new authorisation for taking water where it is necessary to carry out an activity prescribed under a regulation. It is intended that the insertion of this new regulatory power will enable the regulation to prescribe additional low risk activities that may be undertaken without a water entitlement. For example, minor consumptive take associated with dairy wash downs, weed wash downs and the filling of chemical spray units.

Interfere with water by diversion
New section 20(4) is a new exemption and provides that diversion-type interference works, associated with a resource activity, are exempt from requiring a water licence if the works are authorised under an environmental authority granted under the *Environment Protection Act 1994*. Proponents undertaking resource activities, where a watercourse diversion is necessary to undertake the activity, will be required to provide information regarding the watercourse diversion as part of their environmental authority application. As part of the environmental authority process the impacts of the interference will be assessed and the environmental authority conditioned accordingly. For example, the environmental authority will authorise that water diversion works take place, subject to statements of compliance being given for both the design and the construction of the diversion. This is necessary to ensure that the design of the works maintains the environmental values of the site. New subsection 20(5) provides a definition of 'resource activity' for new subsection 20(4).

New section 20A – Land owners

Water for stock and domestic purposes in a dam across a watercourse or lake
New section 20A(1) provides an additional exemption, authorising an owner of land on which there is water collected in a dam across a watercourse or lake to take that water for stock or domestic purposes.

Riparian access for stock and domestic water
Section 20(3) currently provides that an owner of land adjoining a watercourse, lake or spring may take water from the watercourse, lake or spring for stock or domestic purposes. This authorisation, and the associated limitation in section 20(7), continues under new sections 20A(2) and (3).

Overland flow water
Section 20(4) currently authorises an owner of land on which there is overland flow water or overland flow water that has been collected into a dam to take the water for stock or domestic purposes. This authorisation continues under new section 20A(4).

Non-riparian access for stock and domestic water
New section 20A(5) provides an additional exemption, authorising the take of water for stock or domestic purposes from a watercourse, lake or spring, where provided for in either a water resource plan or, where there is no water resource plan, a regulation.
This authorisation is in addition to the existing stock and domestic exemptions provided for in sections 20(3), 20(4) and 20(6) and continued under the Bill.

New section 20B Aboriginal and Torres Strait Islander parties

Aboriginal and Torres Strait Islander access to water
New section 20B provides an additional exemption, authorising Aboriginal and Torres Strait Islander parties to take or interfere with water for traditional activities or cultural purposes.

New section 20C Particular entities

Construction of water observation bores and monitoring bores
New section 20C(1) is a new exemption and authorises petroleum tenure holders to take or interfere with water to construct water observation bores and water monitoring bores. The *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* currently authorise the taking of, or interference with, water in these bores.

Operation of public amenities
New section 20C(2) is a new exemption and authorises constructing authorities and water service providers to take water to operate pubic showers and toilets.

Water to construct or maintain infrastructure
Section 20(8), (9) and (10) currently provide for the take of water by constructing authorities for the construction or maintenance of infrastructure in particular circumstances. This authorisation, and the associated conditions, continues under new section 20C(3) and (4).

Amendment of s 26 (Moratorium notices)

Clause 291 omits reference to permits for levee bank construction under the *Local Government Act 2009* from the definition of works in section 26 of the *Water Act 2000*. This amendment is consequential to the removal of the power from the *Local Government Act 2009* for local governments to make local laws in relation to levees by clause 151 of the Bill. The power to make local laws about levees is being removed because it is being superseded by the provisions contained in this Bill. In accordance with the recommendations of the Queensland Floods Commission of Inquiry, the new provisions for regulating levees in this Bill will apply uniformly across Queensland, in contrast to the ad hoc approach of using local laws.

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

Clause 292 amends new section 20A(5) which authorises the take of water from a watercourse, lake or spring, for stock or domestic purposes, where provided for in a water resource plan.

Section 46 outlines the content of a draft water resource plan. The clause amends section 46 to reflect new section 20A(5). That is, to provide that a draft water resource plan may state

the location and way in which water from a watercourse, lake or spring may be taken for stock or domestic purposes.

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

Clause 293 amends section 266. The amendment provides that a riverine protection permit must be sought for the excavation or placing of fill in a watercourse, lake or spring. However, a riverine protection permit is no longer required to destroy vegetation in a watercourse, lake or spring, as the destruction of vegetation is no longer authorised under the *Water Act 2000*. Removal of the requirement to obtain a riverine protection permit to destroy vegetation in a watercourse, lake or spring does not remove a person's obligation to comply with other relevant legislation, for example, the *Vegetation Management Act 1999*.

Amendment of s 268 (Criteria for deciding application for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring)

Clause 294 changes the matters to be considered by the chief executive in deciding whether to issue a riverine protection permit in order to recognise the removal of the requirement for a riverine protection permit for the destruction of vegetation in a watercourse, lake or spring. However, the amendments to section 268 also recognise that vegetation may be destroyed as a necessary and unavoidable part of excavating or placing fill in a watercourse, lake or spring. As such, the chief executive must consider the type, quantity and/or position in the watercourse, lake or spring, of vegetation to be destroyed in order to consider the effects on the physical integrity of the watercourse, lake or spring.

Amendment of s 311 (Production of licence to authorised officer)

Under the *Water Act 2000*, it is an offence to drill a water bore without a water bore drillers licence. Where an authorised officer suspects that an individual is carrying out, or has just carried out, a water bore drilling activity in an area, the authorised officer may require the individual to produce their water bore driller's licence. It is an offence to fail to produce a valid licence when requested, without a reasonable excuse.

However, individuals carrying out an activity authorised under the *Petroleum Act 1923* or the *Mineral Resources Act 1989*, if that activity does not result in a functional water supply bore, are currently exempt from section 311.

Clause 295 extends the exemption from the requirement to produce a water bore driller's licence to individuals who are carrying out activities under the *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*, irrespective of whether the drilling activity will result in a functional water supply bore. This is because an individual, who does

not necessarily have a water bore driller's licence, may be authorised to carry out the drilling activities detailed under section 311 under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 313 (Records of water bores drilled)

Section 313 requires licensed water bore drillers to keep specified information about the bores they drill (i.e. records about the bores drilled).

Clause 296 changes the timeframe in which the licensed water bore driller must provide these records to the chief executive.

Prior to the commencement of this clause, records about each activity conducted by a licensed water bore driller were required to be given to the chief executive within 30 business days after completing the drilling of the water bore. Due to the difficulty in determining when the drilling of a water bore is completed, this clause provides for records about the drilling of a water bore to given within 60 business days from the start of the drilling of the water bore.

The period of 60 business days should be sufficient time for the drilling of a water bore to be completed.

Amendment of s 746 (Power to enter land to monitor compliance)

Clause 297 amends section 746 to remove the power of an authorised officer to enter land to calculate or measure the vegetation that has been destroyed, and to monitor compliance with the conditions of an authorisation to destroy vegetation. This is a consequential amendment resulting from the removal of the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring.

Amendment of s 748 (Power to enter land to search for unauthorised activities)

Clause 298 amends section 748 to remove the power of an authorised officer to enter land to find out, or confirm whether, vegetation is being taken without an authorisation. This is a consequential amendment resulting from the removal of the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring.

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

Clause 299 amends section 814 to remove the offence for destroying vegetation in a watercourse, lake or spring without a riverine protection permit and the situations when a permit was not required to destroy vegetation in a watercourse, lake or spring. These amendments have been made as a consequence of the removal of the requirement to obtain a

riverine protection permit to destroy vegetation in a watercourse, lake or spring. In removing the references to the destruction of vegetation in a watercourse, lake or spring, section 814 has been restructured as follows:

New reference	Current reference
814(2)(a)(i)	814(2)(a)(i)(A)
814(2)(a)(ii)	814(2)(a)(i)(B)
814(2)(b)	814(2)(a)(ii)
814(2)(c)	814(2)(a)(iii)
814(2)(d)	814(2)(a)(iv)
814(2)(e)	814(2)(a)(v)
814(2)(f)	814(2)(a)(vi)
814(2)(g)	814(2)(a)(vii)
814(2)(h)	814(2)(a)(viii)
814(2)(i)	814(2)(a)(ix)

Amendment of s 816 (Unauthorised water bore activities)

Clause 300 provides that an individual may carry out a water bore activity, detailed under section 816 of the *Water Act 2000*, without holding a water bore driller's licence if the individual is carrying out the activity under the authority of the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

Replacement of ch 8, pt 2

Clause 301 replaces chapter 8, part 2 of the *Water Act 2000* which relates to the relationship between the *Water Act 2000* and the *Sustainable Planning Act 2009*. The replacement part re-orders the existing chapter 8, part 2 in a more logical sequence and simplifies the numbering of the provision. The replacement part also contains new provisions dealing with levees.

New part 2 Relationship with Planning Act

New division 1 Development Applications

New subdivision 1 Additional provisions for making development applications

New section 966 – Applications for the removal of quarry material

New section 966 replaces existing section 969 of the *Water Act 2000*. The section provides that a development application for the removal of quarry material from land leased under the *Land Act 1994* must be supported by:

- the written consent of the lessee of the land to arrangements about the route the applicant may use across the lessee's land for the removal of the quarry material; or
- if the lessee and the applicant cannot agree on arrangements – arrangements decided upon by a Magistrates Court.

No change has been made from the existing section 966. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 967 – Applications for levees

New section 967 provides a power to make a regulation providing for development applications for the construction of a new levee or the modification of an existing levee. The regulation may, for example, prescribe matters that an applicant may, or must take into account in making the application, or state a code against which the development application may be assessed by the assessment manager.

New subdivision 2 Additional assessment criteria

New section 968 – Chief executive as assessing authority or advice agency

New section 968 replaces existing section 966 (1) to (4) of the *Water Act 2000* and provides for the assessment of a development application by the chief executive in relation to operational work for the taking or interfering with water; the removal of quarry material; and operational work in a drainage and embankment area. Section 968 provides criteria (additional to those under the *Sustainable Planning Act 2009* and associated regulation) against which a development application must be assessed where the chief executive is the assessing authority or advice agency. Those criteria relate to the purposes of the *Water Act 2000*.

No change has been made from the existing section 966, other than to reflect other changes made by the Bill, for example, the removal of declared catchment areas. Existing section 966(5) is provided for in new section 970. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 969 – New or existing levee

New section 969 details the criteria the chief executive must use where the chief executive is an assessing authority or referral agency for a development application for the proposed

construction of a new levee or the proposed modification of an existing levee. The criteria will take into account the impacts of the proposal on the catchment as a whole, the benefits and possible adverse impacts for the applicant and the community and the implications of the proposed construction or modification for land planning and emergency management procedures. In addition, the chief executive will consider whether any structural, land planning or emergency management measures could be taken to mitigate the possible adverse impacts of the proposed construction or modification.

New section 970 – Other assessment criteria and decision stage unaffected by subdivision

New section 970 replaces existing section 966(5) and provides that this subdivision does not limit section 282 or chapter, part 5, division 2 of the *Sustainable Planning Act 2009*.

New subdivision 3 Additional provisions for wild river areas

New section 971– Interfering with overland flow water in particular areas

New section 971 replaces existing section 966B of the *Water Act 2000* and provides that for an application for specified interference with overland flow water in a wild river floodplain management area or wild river special floodplain management area the assessing authority decision must comply with the applicable code mentioned in the wild river declaration for the area.

No change has been made from the existing section 966B. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972 – Operational work

New section 972 replaces existing section 966A of the *Water Act 2000* and provides that for an application for specified operational work in a wild river area the assessing authority must comply with the applicable code mentioned in the wild river declaration for the area.

No change has been made from the existing section 966A. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972A – Removal of quarry material

New section 972A replaces existing section 966C of the *Water Act 2000* and has the effect of prohibiting development in relation to the removal of in stream quarry material in a wild river area. Applications for any prohibited development are taken to not be properly made

applications for the *Sustainable Planning Act 2009* and accordingly the assessment manager must refuse to receive the application.

No change has been made from the existing section 966C. The section is merely being relocated to a more logical position in the part and its numbering updated.

New subdivision 4 Miscellaneous

New section 972B – When an applicant may appeal to Land Court

New section 972B replaces existing section 972 of the *Water Act 2000*. Section 972B applies when an applicant makes an application for a development application for prescribed assessable development that is related to an activity authorised under the *Mineral Resources Act 1989* and the applicant has applied under the *Mineral Resources Act 1989* for an authorisation to carry out that activity. In this circumstance any appeal by the applicant against a decision about the development application will be to the Land Court.

No change has been made from the existing section 972. The section is merely being relocated to a more logical position in the part and its numbering updated.

New division 2 Development permits and development approvals

New section 972C – Offence to take or interfere with water if development permit required

New section 972C replaces existing section 967(1) and (2) of the *Water Act 2000*. The section makes it an offence to take or interfere with water, where a development permit is required, unless that person has obtained the development permit.

No change has been made from the existing section 967, other than to reflect other changes made by the Bill that commence on assent. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972D – Additional rights for permits for operational work

New section 972D replaces existing section 967(4), (5) and (6) of the *Water Act 2000* and applies where a person is authorised to take or interfere with water and a development permit is required under the *Sustainable Planning Act 2009* for works associated with that taking or interfering. The section provides, in specified circumstances, a right to use and occupy the part of a watercourse or lake on which the relevant works are situated.

No change has been made from the existing section 967, other than to reflect other changes made by the Bill, for example, to update references to section 20. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972E – Restriction on development approval for operational work

New section 972E reflects the amendments to section 967 introduced by clause 284 of the Bill and commencing on assent.

New section 972F – Allocation of quarry material is subject to approval under Planning Act

New section 972F replaces existing section 970. No change has been made from the existing section 970. The section is merely being relocated to a more logical position in the part and its numbering updated.

New division 3 Directions by chief executive

New subdivision 1 Direction powers

New section 972G – Relationship with Planning Act

New section 972G replaces part of existing section 968(2) of the *Water Act 2000* and states that this subdivision applies despite the *Sustainable Planning Act 2009*.

New section 972H – Modification or removal of works

New section 972H replaces existing section 968(1), (2) and (3) of the *Water Act 2000* and applies in relation to works that are used, or could be used, for the taking or interfering with water and for which a development permit would be required under the *Sustainable Planning Act 2009*. Whilst the *Water Act 2000* separates the allocation of water from the works associated with the taking or interfering with water, this section provides a power under the *Water Act 2000* for the chief executive to direct such works to be removed or modified if necessarily required by the chief executive. Despite the *Sustainable Planning Act 2009*, the chief executive may issue a show cause notice as to why the works should not be modified or removed. If the chief executive is still satisfied that the works should be removed or modified, the chief executive may give the person a notice requiring removal or modification of the works. Section 972L provides that this direction from the chief executive is a compliance notice. The person may appeal against the compliance notice.

No change has been made from the existing section 968. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972I – Removal of quarry material

New section 972I replaces existing section 968A(1) and (2) of the *Water Act 2000*. Section 972I empowers the chief executive to give the holder of an allocation notice a show cause notice as to why the holder should not be required to change the way quarry material is removed. If the chief executive is still satisfied that the change should be made the chief executive may give the person notice requiring removal or modification of the works. Section 972L provides that this direction from the chief executive is a compliance notice. The person may appeal against the compliance notice.

No change has been made from the existing section 968A. The section is merely being relocated to a more logical position in the part and its numbering updated.

New section 972J – Modification or removal of levees

New section 972J empowers the chief executive to direct a levee, for which a development permit would be required under the *Sustainable Planning Act 2009*, to be modified or removed. Under the section the chief executive must first issue the owner of the land on which the levee is located a show cause notice. If, after considering any properly made submissions, the chief executive is still satisfied the levee should be modified or removed, the chief executive may give the person a notice requiring the person to modify or remove the levee. This provision only relates to levees constructed or modified after the commencement of this Bill.

New subdivision 2 – Effect of directions

New section 972K – Application of sdiv 2

New section 972K states that this subdivision applies to a direction given under subdivision 1.

New section 972L – Direction is a compliance notice

New section 972L provides that a direction given under subdivision 1 is taken to be a compliance notice. This continues the arrangements that currently exist under sections 968 and 968A of the *Water Act 2000*.

New section 972M – When direction takes effect

New section 972M replaces sections 968(5) and 968A(4) and provides that a direction given under subsection 1 takes effect at the end of the period to appeal against the direction or, if an appeal is made, when the appeal is decided (provided that the decision confirms the giving of the direction).

No change has been made from the existing sections 968(5) and 968A(4). These sections are merely being relocated to a more logical position in the part.

New section 972N – Effect on development permit

New section 972N replaces existing sections 968(4) and 968A(3) and provides that if a development permit has been given for the construction of works that are used for taking or interfering with water, the removal of quarry material or for the construction of a levee, a development permit is changed to the extent of any requirement given by the chief executive in a compliance notice.

New section 972O – Offence to fail to comply with direction

New section 972O provides that it is an offence for a person not to comply with a direction given under subdivision 1 without a reasonable excuse.

Amendment of s 1014 (Regulation-making power)

Clause 302 amends section 1014 to enable the making of a regulation to provide for the control and management of the construction of new levees and the modification of existing levees. The regulation could, for example be used to prescribe categories of levees or state a code against which development applications under the *Sustainable Planning Act 2009* may be assessed by an assessment manager under that Act.

Insertion of new ch 9, pt 6, div 1, hdg

Clause 303 inserts a new heading 'Miscellaneous transitional and validation provisions' for chapter 9, part 6, division 1. The insertion of the heading is consequential to the creation of new divisions 2 and 3 which also deal with transitional arrangements for the Bill.

Insertion of new s 1242

Clause 304 inserts a new section 1242 which provides a general transitional provision for the replacement of section 20 and enables references to section 20 in other Acts or documents to be taken to be references to the provision of chapter 2, part 2, division 1A that corresponds to the replaced provision.

Insertion of new ch 9, pt 6, divs 2 and 3

Clause 305 inserts transitional arrangements for the Bill.

New Division 2 Transitional provisions about the destruction of vegetation in a watercourse, lake or spring

New section 1243 – Definitions for div 2

Division 2 provides the transitional arrangements resulting from the removal of the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring.

New section 1243 provides the definitions for division 2.

Commencement means the commencement of the provision in which the term is used.

Destruction activity is the destruction of vegetation in a watercourse, lake or spring, but is not destruction of vegetation that is a necessary and unavoidable part of excavation or placing of fill authorised under a riverine protection permit granted under section 269(1) of the *Water Act 2000*.

Destruction permit is a riverine protection permit that has been granted under section 269(1) of the *Water Act 2000* for a destruction activity.

New section 1244 – Existing applications

New section 1244 provides that applications for riverine protection permits for the destruction of vegetation in a watercourse, lake or spring (other than destruction that is a necessary and unavoidable part of a proposed excavation or placing of fill) that are made before the commencement of this section lapse. Importantly, where, for example, an application relates to the destruction of vegetation and the placing of fill, only the part of the application relevant to the destruction of vegetation lapses. The remainder of the application may continue to be dealt with under the riverine protection permit framework in chapter 2, part 8 of the *Water Act 2000*.

New section 1245 – Existing permits

New section 1245 of the *Water Act 2000* transitions existing riverine protection permits for the destruction of vegetation (other than the destruction that is a necessary and unavoidable part of excavation or placing fill) into development permits where:

- the permit is currently in force
- the area of vegetation destroyed from within a watercourse, lake or spring is less than 0.5ha
- the holder of the permit has no development approval under the *Sustainable Planning Act 2009* for the destruction.

From the commencement of this section, a destruction permit is taken, until the expiry of the permit, to be assessable development for which a development approval, in the form of a development permit, has been granted under the *Sustainable Planning Act 2009*. The development approval attaches to the area of vegetation that has been authorised to be destroyed under a destruction permit and expires on the same day the destruction permit expires. Similarly, the conditions of the development permit are the same conditions as those attached to the destruction permit.

In effect, a destruction permit is taken to be a development permit. The transitioning of these destruction activities to development permits was necessary to ensure that persons currently authorised to destroy vegetation under a riverine protection permit were not:

- inadvertently placed into non-compliance with the *Sustainable Planning Act 2009* or *Vegetation Management Act 1999* as a result of changes introduced by the Bill
- required to obtain a new development permit for an activity that was previously assessed and authorised under the *Water Act 2000*.

The 0.5 ha size limit reflects the provisions of the Sustainable Planning Regulation 2009. In reviewing existing riverine protection permits the Department of Natural Resources and Mines identified that the small number of riverine protection permits that authorised the destruction of vegetation greater than 0.5 ha also held permits for the destruction under the *Sustainable Planning Act 2009* and the *Vegetation Management Act 1999* frameworks. As the riverine protection permit requirements duplicated these approvals they did not need to be transitioned.

The effect of transitioning destruction permits to development permits means that any future non-compliance with the permit will be managed under the *Sustainable Planning Act 2009*.

New section 1246 – Destruction of vegetation carried out under guidelines

Currently, the destruction of vegetation in a watercourse, lake or spring may be authorised by a riverine protection permit or undertaken in accordance with a guideline.

New section 1246 of the *Water Act 2000* applies to a person who is, immediately before the commencement of this section, destroying vegetation in a watercourse, lake or spring under one of the following documents approved by the chief executive (the activity guidelines):

- the document called 'Guideline—Activities in a watercourse, lake or spring carried out by an entity';
- the document called 'Guideline—Activities in a watercourse, lake or spring associated with a resource activity or mining operations';
- the document called 'Guideline—Activities in a watercourse, lake or spring carried out by a landowner';

- the document called 'Guideline—Activities in a watercourse or lake undertaken by a holder of an interim resource operations licence, resource operations licence or distribution operations licence; and
- the person does not have development approval or riverine protection permit/undecided application for a riverine protection permit for the destruction.

From the commencement of this section, the destruction of vegetation is taken to be assessable development for which development approval has been granted under the *Sustainable Planning Act 2009*. The development approval attaches to the area of vegetation that is being destroyed in accordance with one of the activity guidelines. The conditions of the development approval are the sections in the activity guidelines that must be complied with for a person to meet the requirements of the activity guideline.

New Division 3 Transitional provisions for existing levees

New section 1247 – Existing levees

New section 1247 provides that the provisions being inserted into the *Water Act 2000* by this Bill do not apply to existing levees, that is, a levee that was under construction when the part of this Bill that relates to levees commenced and that has not been modified since construction of the levee was completed or otherwise came to an end. The reason for this is that it is not intended to disadvantage a person who legally constructed a levee in accordance with the law as it stood at the time of construction.

New section 1248 References to particular provisions of this Act

New section 1248 provides a general transitional provision that enables references in other Acts or documents to provisions repealed by the Bill to be taken to be references to the provision of the Bill that corresponds to the repealed provision.

Amendment of sch 4 (Dictionary)

Clause 306 amends the dictionary to reflect changes made by the Bill.

The amendment provides a definition of levee for the purposes of the *Water Act 2000* in line with the intent of the Queensland Floods Commission of Inquiry's Final Report that flood mitigation levees to be regulated. The definition is designed to make it clear that a 'levee' is an artificial embankment or structure which prevents or reduces the flow of overland flow water onto or from land.

There are many other structures that may act as levees in certain circumstances but are not built for that purpose (i.e. roads) or are otherwise captured under other regulatory processes

that take floodplain management into account (i.e. an Environmental Impact Assessment). These other structures will not be captured by the proposed regulatory framework.

The principles that underpin the definition of a levee include:

- the structure is built outside the bed and banks of a watercourse – it is not a barrier, barrage, weir or anything that takes or interferes with water generally. Structures within a watercourse will already require approval under the *Water Act 200*0 and the *Sustainable Planning Act 2009*. The impacts of these structures can already be taken into account under these processes;

- the structure is used for short term water loading (e.g. floodwater) – it is not built for the purpose of storing water for the long term (e.g. ring tank or dam). Such structures are already regulated under the *Water Supply (Safety and Reliability) Act 2008*.

- the structure diverts or prevents the flow of floodwater

The definition of a levee includes works that *are associated with the building of a levee.*

The definition of a levee excludes the following:

1) certain agricultural activities such as laser levelling and contouring and irrigation infrastructure that is not associated with the construction or operation of a levee;

2) fill for the purposes of gardening, landscaping or beautification which is less than a prescribed volume;

3) works/structures used to defend against coastal hazards (e.g. sea walls; groynes[1]).

4) structures that are regulated under another Act or Regulation – for example and including:
   - emergency management levees which are already provided for in the provisions of the *Sustainable Planning Act 2009* that deal with emergency situations
   - structures constructed under an approved plan under the Soil Conservation Act 1986. The *Soil Conservation Act 1986* already contains appropriate rules around construction undertaken in accordance with that Act.

5) structures that are built where the primary design is not for flood mitigation but where flood mitigation considerations are included in the design. For example transport infrastructure (as defined by the *Transport Infrastructure Act 1994*) or mining infrastructure. There is currently legislative oversight or guidance of

[1] A low wall or sturdy timber barrier built out into the sea from a beach to check erosion and drifting.

designs for these types of infrastructure through, for example, the *Sustainable Planning Act 2009*, State Planning Polices or an Environmental Impact Statement.

The section also contains definitions of other key terms used in the definition of a levee, including 'irrigation infrastructure', 'prescribed farming activities' and 'levee related infrastructure'.

Part 20 Amendment of Water Supply (Safety and Reliability) Act 2008

Act amended

Clause 307 provides this part amends the *Water Supply (Safety and Reliability) Act 2008* and refers to minor amendments included in the schedule.

Amendment of s 12 (Register of service providers)

Clause 308 amends section 12 which provides that the regulator must keep a register of service providers and specifies the minimum information the register must contain. Subsection (3) is amended by replacing 'person' with 'entity' as a consequence of the amendment to section 20 made by the Bill.

Subsection (3) paragraphs (c) and (d) are replaced to clarify the register must contain details of the infrastructure operated by the service provider to supply the registered service and, if the service provider engages another entity to operate the infrastructure on its behalf, the other entity's name and contact details must be kept in the register.

Amendment of s 13 (Requirement for responsible entity to give information)

Clause 309 amends section 13 which allows the regulator to request information from 'responsible entities' as defined in the section, including service providers. The section is amended so that, if the service provider is a prescribed related entity, the regulator may require, by written notice, the relevant infrastructure owner to provide information that enables the regulator to perform its functions.

Amendment of s 20 (Who must apply for registration as a service provider)

Clause 310 amends section 20, which specifies who must apply for registration as a service provider before commencing to supply a water or sewerage service.
Section 20(1) currently requires specified 'persons' to be registered as service providers, including local governments that own infrastructure for the supply of a water or sewerage

service and water authorities established under the *Water Act 2000* (Water Act) that own infrastructure for the supply of a water or sewerage service. The term 'person' is replaced with 'entity' to allow for the possible future registration of an unincorporated body, such as a trust, which is identified as an 'alternative institutional structure' that a category 2 water authority may convert to under the statutory process set out in the Water Act.

Under current section 20(1)(c), each person who owns infrastructure for the supply of a water or sewerage service for which a charge is intended must also be registered or, if a person is nominated in a regulation as a related entity, the nominated entity must be registered. The section is amended to make it clear that only one entity—the infrastructure owner or the related entity—can be the registered service provider for a water or sewerage service. In most cases the infrastructure owner will also be the registered service provider. However, if the relevant infrastructure owner nominates another entity to operate the infrastructure for supplying a water or sewerage service and the nominated entity is prescribed under a regulation, then the prescribed related entity will be the service provider and must be registered. Under the amended section, nomination of a related entity can occur before or after an entity becomes the relevant infrastructure owner. This allows, for example, a new infrastructure owner under new section 25(2)(a) to nominate a related entity before infrastructure ownership is transferred.

Replacement of ss 21 and 22

Clause 311 inserts replacement sections 21 and 22 into the Act as well as a new subdivision 2 heading. Current sections 21 and 22 are replaced to make provision for a prescribed related entity to apply for registration as a service provider and, subject to the regulator being satisfied of specified criteria, be registered as a service provider.

New section 21 – Applying for registration as a service provider

New section 21 sets out the process by which a service provider may apply to the regulator to become registered. An application for registration must be made in the approved form, be supported by sufficient information to enable the regulator to decide the application, and be accompanied by the prescribed fee.

If the applicant is a prescribed related entity of the relevant infrastructure owner, the application must be accompanied by the relevant infrastructure owner's written consent to the registration of the prescribed related entity.

Under subsection (2), the regulator may require the applicant, as well as the relevant infrastructure owner (if the applicant is a prescribed related entity), to provide additional information about the application. Under subsection (3), the regulator may require the information contained in the application, or any additional information provided, to be verified by statutory declaration.

New section 22 – Registration as a service provider

New section 22 provides that the regulator must register an applicant in the service provider register for the service to which the application relates if the regulator is satisfied the applicant has complied with the requirements of new section 21.

If the applicant is a prescribed related entity of the relevant infrastructure owner, before registering the applicant in the service provider register, the regulator must be satisfied that:

- the prescribed related entity can exercise the powers of a service provider under the Act for supplying the water or sewerage service to which the application relates;
- the contractual arrangements between the prescribed related entity and the relevant infrastructure owner adequately provide for the prescribed related entity to operate the infrastructure to supply the water or sewerage service; and
- if the prescribed related entity were to stop supplying the water or sewerage service, or cease to be the service provider, the relevant infrastructure owner could nominate, within a reasonable period, another entity to operate the infrastructure to supply the water or sewerage service.

The regulator must give the applicant notice of the registration. If the applicant is a prescribed related entity of the relevant infrastructure owner, the regulator must also give the relevant infrastructure owner notice of the registration. Registration takes effect from the day the regulator registers the applicant in the service provider register.

Subdivision 2 Changing registration details

Amendment of s 23 (Applying to amend service provider's details of registration)

Clause 312 amends section 23 which provides an application process for a service provider to change its registration details by either adding or removing information about infrastructure or services relevant to the service provider's registration.

The heading of the section has been altered from 'amend' to 'change' to better reflect the intended purpose of the section.

The application must be made to the regulator in the approved form. If the service provider is a prescribed related entity of the relevant infrastructure owner, the application must be accompanied by the relevant infrastructure owner's written consent to the changes.

When the regulator receives the application, the regulator must record the changes in the register and give the service provider a copy of the service provider's details including the changes as registered. If the service provider is a prescribed related entity of the relevant

infrastructure owner, the regulator must also give the relevant infrastructure owner notice of the changed details.

Replacement of ss 24 and 25

Clause 313 replaces sections 24 and 25 with new sections and creates new subdivisions 3 and 4.

Subdivision 3 Transferring registration

New section 24 – Definitions for sdiv 3

New section 24 provides definitions for the new subdivision 3.

New section 25 – Application of sdiv 3

New section 25 provides that subdivision 3 applies in the following situations:

- if the infrastructure owner for a registered service intends to transfer service provider registration for the relevant service to a new (incoming) related entity; or
- if the infrastructure owner for a registered service intends to transfer ownership of the infrastructure for the relevant service to another entity (the new infrastructure owner) and registration as a service provider to either the new infrastructure owner or a prescribed related entity of the new infrastructure owner.

New subsection (3) makes it clear that the current infrastructure owner can transfer registration as a service provider under subsections (1) and 2(b) whether the current infrastructure owner or a prescribed related entity of the current infrastructure owner is the registered service provider.

New section 25A – Notice of transfer

New section 25A sets out the process by which the current infrastructure owner for a registered service (the relevant service) may give notice to the regulator to transfer only registration as a service provider, or transfer both infrastructure ownership and registration as the service provider. The transfer notice must be made in the approved form and accompanied by the prescribed fee.

Under subsection (3), the regulator may require additional information about the transfer from the current infrastructure owner and, if relevant to the proposed transfer, any of the following:

- the outgoing related entity of the current infrastructure owner;
- the incoming related entity of the current infrastructure owner;

- the new infrastructure owner; or
- the incoming related entity of the new infrastructure owner.

Under subsection (4), the regulator may require the information contained in the notice, or any additional information provided, to be verified by statutory declaration.

New section 25B – Registering new service provider for transferred service

New section 25B specifies the process the regulator must follow to cancel the existing service provider's registration and register a new service provider for the transferred service. To do this the regulator must be satisfied the requirements of new section 25A have been complied with. To register an incoming related entity of the current infrastructure owner, or a related entity of the new infrastructure owner, the regulator must also be satisfied that:

- the incoming related entity has been nominated under section 20(2) and prescribed as a related entity under section 20(1)(c)(ii);
- the prescribed related entity can exercise the powers of a service provider under the Act for supplying the relevant service;
- the contractual arrangements between the prescribed related entity and the relevant infrastructure owner adequately provide for the prescribed related entity to operate the infrastructure to supply the relevant service; and
- if the prescribed related entity were to stop supplying the water or sewerage service, or cease to be the service provider, the relevant infrastructure owner could nominate, within a reasonable period, another entity to operate the infrastructure to supply the relevant service.

If the regulator is satisfied of these matters, the regulator must cancel the outgoing service provider's registration for the relevant service and give notice of the cancellation to the current infrastructure owner. If the outgoing service provider was a prescribed related entity of the current infrastructure owner, the regulator must also give the outgoing related entity notice of the cancellation.

The regulator must also register the new service provider in the register for the relevant service. The new service provider registered for the relevant service will be one of the following:

- the incoming related entity of the current infrastructure owner for a transfer of service provider registration under new section 25(1);
- the incoming related entity of the new infrastructure owner for a transfer of infrastructure ownership and service provider registration under new section 25(2)(b)(ii); or

- the new infrastructure owner for a transfer of infrastructure ownership and service provider registration under new section 25(2) where the new infrastructure owner does not nominate a related entity to operate the infrastructure.

Finally, the regulator must give notice of the registration to the new service provider. If the new service provider is an incoming related entity of the current infrastructure owner, the regulator must give notice of the registration to the current infrastructure owner. If the new service provider is an incoming related entity of the new infrastructure owner, the regulator must also give notice of the registration to the new infrastructure owner.

Registration takes effect on a day no earlier than the day the regulator receives the transfer notice. However, registration may be on a later day if agreed in writing between the current infrastructure owner and either:

- the new service provider for a transfer of registration under new section 25(1); or
- the new infrastructure owner for a transfer of infrastructure ownership and service provider registration under new section 25(2).

New section 25C – Compliance notice taken to have been given to new service provider

New section 25C provides that, if the regulator has given a compliance notice under section 465 to the original service provider, which has not been complied with before the new service provider is registered under new section 25B(2)(c), then the new service provider is taken to have been given the compliance notice on the day it is registered.

However, the period stated in the compliance notice to remedy a contravention or comply with a requirement is taken to be an equivalent period starting on the day the new service provider is registered. While responsibility for the compliance notice transfers to the new service provider, the new service provider is given a period, equal to the original, to comply with the notice.

Subdivision 4 Cancelling registration other than for transfer

Amendment of s 26 (Notice of intention to stop operating as a service provider)

Clause 314 amends section 26 which requires service providers to inform the regulator if they are likely to stop supplying a registered service and there is no other entity willing to take over the operation of the service provider's infrastructure for the service.

The amended section provides for situations where the service provider is a prescribed related entity of the relevant infrastructure owner. If the service provider is a prescribed related entity and is likely to stop supplying a registered service, in addition to informing the regulator, the

service provider must notify the relevant infrastructure owner at least 60 business days prior to the possible stoppage.

Under subsection (4), the regulator may require either or both the service provider and the relevant infrastructure owner (if the service provider is a prescribed related entity) to give additional information about the notice. The regulator may require information contained in the notice, or any additional information provided, to be verified by statutory declaration.

If the service provider stops supplying the service, within five business days after stopping supply, the service provider must give notice of the stoppage to the regulator and, if the service provider is a prescribed related entity, also give notice to the relevant infrastructure owner.

Replacement of s 27 (Cancellation of registration)

Clause 315 replaces section 27.

New section 27 – Cancellation of registration if service provider stops supplying service

New section 27 provides for situations where the service provider is a prescribed related entity. If the regulator receives notice under section 26 that the service provider has stopped supplying a service, the regulator must cancel the service provider's registration for the infrastructure and services to which the notice relates and give notice of the cancellation to:

- the service provider; and
- if the service provider was a prescribed related entity, the relevant infrastructure owner.

Amendment of s 28 (Applying for cancellation of registration as service provider)

Clause 316 amends section 28 to provide for situations where the service provider is a prescribed related entity. Section 28 provides for a service provider to apply to the regulator to have their registration cancelled if they have not supplied, and do not intend to start supplying, the service for which they are registered. If the service provider is a prescribed related entity, the service provider must also give the relevant infrastructure owner notice of the application to cancel its registration.

If the regulator is satisfied the applicant has complied with the application requirements stated in the section, the regulator must cancel the service provider's registration as a service provider for the infrastructure and services to which the application relates and give notice of the cancellation to:

- the service provider; and
- if the service provider was a prescribed related entity, the relevant infrastructure owner.

Insertion of new ch 2, pt 3, div 1, sdiv 5 hdg

Clause 317 inserts a new subdivision 5 heading into chapter 2, part 3, division 1.

Subdivision 5 Other matters

Amendment of s 30 (Reviewing and changing service provider registration details)

Clause 318 amends section 30 to provide for situations where the service provider is a prescribed related entity of the relevant infrastructure owner. On receiving notice of a change in the service provider registration details the regulator must give the service provider a copy of the service provider's details, including the changes, as registered in the service provider register. Additionally, if the service provider is a prescribed related entity, the regulator must give a copy of the service provider's detail, including the changes, to the relevant infrastructure owner.

Section 30 is relocated to the new chapter 3, part 3, division 1, subdivision 2, as inserted by the Bill, and renumbered as section 23A.

Insertion of new ss 30 and 30A

Clause 319 inserts new sections 30 and 30A.

New section 30 – Operation of infrastructure by prescribed related entity

New section 30 applies to prescribed related entities. Subsection (2) ensures that a prescribed related entity is able to operate infrastructure for the service (owned by the relevant infrastructure owner) as if it were the owner of the infrastructure. Subsection (2) applies despite a contract, covenant or claim of right under a law of a State. The policy intent is that the prescribed related entity has all the powers of a registered service provider under the Act and can exercise those powers despite not being the infrastructure owner. This would include for example, being able to access infrastructure for supplying the registered service owned by the relevant infrastructure owner, including where the infrastructure is located on private land for which the relevant infrastructure owner is the grantee of an easement for that infrastructure. It would also include being able to access infrastructure for supplying the

registered service that is located on private land where no easement exists for the infrastructure.

New section 30A – Ownership and operation of service provider's infrastructure that is part of land

New section 30A provides that neither the ownership nor operation of a service provider's infrastructure is affected by the matters stated. Read in conjunction with the new definition for *'service provider's infrastructure'* inserted into schedule 3 (Dictionary) of the *Water Supply (Safety and Reliability) Act 2008*, this section ensures that service providers are able to continue operating the infrastructure relevant to the water or sewerage service they supply whether the infrastructure is or becomes part of any land.

In particular, section 30A will ensure that category 2 water authorities that convert to 'alternative institutional structures' under the *Water Act 2000* are able to operate the infrastructure for the service they provide despite not owning the land on which the infrastructure is located or holding easements for the infrastructure.

Amendment of s 31 (Definition for div 2)

Clause 320 amends section 31 to clarify the definition of 'place'. Place does not include a building or structure used for residential purposes. This amendment is needed to clarify an authorised person can enter residential land but not a building or structure used for residential purposes.

Amendment of s 49 (Liability of service providers for negligence)

Clause 321 amends the heading to section 49 to better reflect the scope of the provision.

The section is also amended to include two additional entities, namely an 'entity operating a service provider's infrastructure' and a 'relevant infrastructure owner', as subject to protection from liability in certain circumstances. An entity referred to in section 49 is not liable for an event or circumstance beyond their control, but only if, in relation to the event or circumstance, the party acted reasonably and without negligence.

The term 'relevant water infrastructure' is also changed to 'special infrastructure' to avoid confusion with other terms used in the Act.

Amendment of s 71 (Preparing strategic asset management plan)

Clause 322 amends section 71 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the strategic asset management plan must also be accompanied by the relevant infrastructure owner's written agreement to the plan when the plan is submitted to the regulator for approval.

Amendment of s 74 (Approving strategic asset management plan)

Clause 323 amends section 74 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity, the regulator must approve the strategic asset management plan, and give the service provider notice of the approval, unless the regulator is satisfied:

- the plan was not certified by a registered professional engineer; or
- the plan is inadequate in a material particular; or
- the plan was not accompanied by the relevant infrastructure owner's written agreement to the plan.

Amendment of s 75 (Refusing to approve strategic asset management plan)

Clause 324 amends section 75 to provide for situations where the service provider is a prescribed related entity. The section is amended to state that, if the regulator is satisfied the plan has not been certified by a registered professional engineer or was not accompanied by the written agreement of the relevant infrastructure owner, the regulator must return the plan to the service provider and give the service provider notice stating that the plan must be:

- certified by a registered professional engineer or accompanied by the written agreement of the relevant infrastructure owner, as relevant; and
- returned to the regulator within the reasonable period stated in the notice.

Amendment of s 76 (Changing strategic asset management plan)

Clause 325 amends section 76 to provide for situations where the service provider is a prescribed related entity. A service provider may make changes to its strategic asset management plan, after it is approved, with the agreement of the regulator. If the service provider is a prescribed related entity, the written agreement of the relevant infrastructure owner is also required.

Amendment of s 80 (Preparing system leakage management plan)

Clause 326 amends section 80 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the system leakage management plan must also be accompanied by the relevant infrastructure owner's written agreement to the plan, when the plan is submitted to the regulator for approval.

Amendment of s 87 (Approving system leakage management plan)

Clause 327 amends section 87 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity, the regulator must approve a system leakage management plan, and give the water service provider notice of the approval, if the regulator is satisfied:

- the plan was certified by a registered professional engineer;
- the plan is adequate in all material particulars; and
- the plan was accompanied by the relevant infrastructure owner's written agreement to the plan.

Amendment of s 88 (Refusing to approve system leakage management plan)

Clause 328 amends section 88 to provide for situations where the service provider is a prescribed related entity. The section is amended to state that, if the regulator is satisfied the plan has not been certified by a registered professional engineer or was not accompanied by the written agreement of the relevant infrastructure owner, the regulator must return the plan to the service provider and give the service provider notice stating that the plan must be:

- certified by a registered professional engineer or accompanied by the written agreement of the relevant infrastructure owner, as relevant; and
- returned to the regulator within the reasonable period stated in the notice.

Replacement of s 89 (Regulator may seek further information)

Clause 329 replaces section 89.

New section 89 – Additional information may be required

New section 89 provides that the regulator may request additional information, including from the relevant infrastructure owner where the service provider is a prescribed related entity. If the requested additional information is not provided within the reasonable period stated in the notice, the regulator must refuse to approve the system leakage management plan and give the service provider an information notice about the decision. A decision for which an information notice is given, is appealable.

Amendment of s 90 (Changing system leakage management plan)

Clause 330 amends section 90 to provide for situations where the service provider is a prescribed related entity. A service provider may make changes to its system leakage management plan, after it is approved, with the agreement of the regulator. If the service

provider is a prescribed related entity, the written agreement of the relevant infrastructure owner is also required.

Amendment of s 95 (Preparing drinking water quality management plan)

Clause 331 amends section 95 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the drinking water quality management plan must also be accompanied by the relevant infrastructure owner's written agreement to the plan, when the plan is submitted to the regulator for approval.

Amendment of s 96 (Additional information may be required)

Clause 332 amends section 96 to provide for situations where the service provider is a prescribed related entity. The section is amended to provide that the regulator may require, by notice, additional information about the drinking water quality management plan from either the drinking water service provider or, if the drinking water service provider is a prescribed related entity, the relevant infrastructure owner. If the required additional information is not provided within the reasonable period stated in the notice, the drinking water quality management plan is taken to have been withdrawn.

Amendment of s 100 (Amendment of drinking water quality management plan—application)

Clause 333 makes a minor amendment to section 100 to make clear that subsection (3) applies to both the application and the proposed amended drinking water quality management plan.

Amendment of s 101 (Amendment of drinking water quality management plan—requirement of regulator)

Clause 334 amends section 101 to provide for situations where the service provider is a prescribed related entity. Section 101 gives the regulator power to require a drinking water service provider to amend the provider's drinking water quality management plan if the regulator is satisfied the amendment is required to protect public health. But before taking such action, the regulator must give the service provider a show cause notice under subsection (2) about the proposed amendment and consider any properly made submissions before deciding:

- to require the service provider to amend the drinking water quality management plan; or
- that the proposed amendment should not be made.

If the plan should be amended and the regulator is satisfied the plan has been amended as required, the regulator must give the service provider notice that the drinking water quality management plan has been amended in the way required.

New subsection (8) is inserted to provide that if the drinking water service provider is a prescribed related entity, a copy of the show cause notice given under subsection (2) and notice of any decision under subsections (3), (5) or (7) must be given to the relevant infrastructure owner.

Amendment of s 107 (Changing plans following review)

Clause 335 amends section 107 to update cross references as a consequence of the amendments made by the Bill to the sections listed. The amendments also clarify that subsection (9) applies to both the application for approval of the amended drinking water quality management plan and the actual amended plan.

Amendment of s 112 (Access for conducting audit reports)

Clause 336 amends section 112 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the infrastructure owner must give access to an auditor for the purpose of carrying out the various audits mentioned in the section.

Amendment of s 115 (Preparing customer service standards)

Clause 337 amends section 115 to provide for situations where the service provider is a prescribed related entity. The section is amended to require that, if the service provider is a prescribed related entity of the relevant infrastructure owner, the service provider must give a copy of the customer service standard to the relevant infrastructure owner, as well as to the regulator and each customer of the service provider who does not have a service contract.

Amendment of s 119 (Revising customer service standard)

Clause 338 amends section 119 to provide for situations where the service provider is a prescribed related entity. Section 119 states that if the regulator, under section 118, requires the service provider to revise the customer service standard, the service provider must revise the standard having regard to the complaint. The section is amended to require that, if the service provider is a prescribed related entity of the relevant infrastructure owner, the service provider must give a copy of the revised customer service standard to the relevant infrastructure owner, as well as to the regulator and each customer of the service provider who does not have a service contract.

Amendment of s 120 (Reviewing customer service standard)

Clause 339 amends section 120 to provide for situations where the service provider is a prescribed related entity. Section 120 provides that relevant service providers must review the customer service standard each year. The section is amended to require that, if the service provider is a prescribed related entity of the relevant infrastructure owner, the service provider must give a copy of the new customer service standard, if changed as a result of the review, to the relevant infrastructure owner, as well as to the regulator and each customer of the service provider who does not have a service contract.

Amendment of s 123 (Preparing drought management plans)

Clause 340 amends section 123 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the drought management plan must include or be accompanied by the relevant infrastructure owner's written agreement to the plan.

Amendment of s 129 (Changing a drought management plan)

Clause 341 amends section 129 to provide for situations where the service provider is a prescribed related entity. A service provider may change its drought management plan, after it is registered. If the service provider is a prescribed related entity, the changed plan must include or be accompanied by the relevant infrastructure owner's written agreement when the changed plan is given to the regulator for registration. The plan as changed must also be certified under section 124.

Amendment of s 142 (Contents of annual report)

Clause 342 amends section 142 to provide for situations where the service provider is a prescribed related entity. If the service provider is a prescribed related entity of the relevant infrastructure owner, the annual report prepared under section 141 must include or be accompanied by the relevant infrastructure owner's written agreement to the report.

Amendment of s 190 (Supplying unauthorised services)

Clause 343 amends section 190 to reflect the changes to section 20 made by the Bill to recognise 'entities' rather than 'persons'.

Amendment of s 201 (Preparing particular plans)

Clause 344 amends section 201, which provides for the things that a recycled water management plan prepared by a recycled water provider, scheme manager or other declared entity, must state or include. The amendment removes the current broad reference to schemes which supply recycled water 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'. This broad reference is replaced with the newly defined term 'dual reticulation system'.

Amendment of s 250 (Application for exemption)

Clause 345 amends section 250 to remove the current broad reference to schemes which supply recycled water 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'. This broad reference is replaced with the newly defined term 'dual reticulation system'.

Amendment of s 274 (Public reporting requirement)

Clause 346 amends section 274 to remove the current broad reference to schemes which supply recycled water 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'. This broad reference is replaced with the newly defined term 'dual reticulation system'.

Amendment of s 301 (Making declaration)

Clause 347 amends section 301 to remove the current broad reference to schemes which supply recycled water 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'. This broad reference is replaced with the newly defined term 'dual reticulation system'.

Amendment of s 530 (Governor in Council may appoint administrator to operate infrastructure)

Clause 348 amends section 530 to make a minor change to provide for situations where the service provider has already stopped supplying a registered service.

Amendment of s 633 (Application of particular provisions—other schemes)

Clause 349 amends section 633 to remove the transitional period for recycled water schemes that commenced supply for irrigation of minimally processed food crops or to premises by way of a 'dual reticulation system' on or after 1 July 2009. The full extent of transitional provisions for these schemes is detailed in sections 631 and 632. Section 633 was never intended to apply to schemes that supply recycled water for irrigation of minimally processed food crops or to premises by way of a 'dual reticulation system'.

Given that the transitional period under section 631 and 632 has expired, the effect of these amendments is that schemes intending to supply recycled water for irrigation of minimally processed food crops or to premises by way of a 'dual reticulation system' will need an

approved recycled water management plan or a granted exemption from this requirement (if applicable) prior to supply commencing.

Insertion of new ch 10, pt 6

Clause 350 inserts a new chapter 10, part 6 into the Act.

New Part 6 Transitional provisions for the Land, Water and Other Legislation Amendment Act 2013

New Division 1 Transitional provisions relating to incoming and outgoing service providers

New section 652 – Definitions for div 1

New section 652 provides definitions for the new division 1 Transitional provisions relating to incoming and outgoing service providers.

New section 653 – Application of div 1

New section 653 provides transitional arrangements for water authorities that are service providers and convert to 'alternative institutional structures' under the *Water Act 2000*. In particular, the transitional provisions will facilitate the conversion of Pioneer Valley Water Board to a two tier co-operative structure. The proposed two tier co-operative structure involves a holding co-operative (which will own the water infrastructure as the relevant infrastructure owner) and a trading co-operative (which will provide water services to entitlement holders within the water supply scheme as the prescribed related entity).

Division 1 applies where a water authority (the outgoing service provider) is dissolved and converted under the *Water Act 2000* to two or more new entities and one of these entities becomes the relevant infrastructure owner for supplying the water service for which a charge is intended, and another entity becomes the prescribed related entity of the relevant infrastructure owner and is registered as the service provider for the water service.

Subsection (2) limits the application of division 1 to one year after the commencement of the section. The intent is that the transitional arrangements should only apply to Pioneer Valley Water Board and its conversion to 'alternative institutional structures'.

New section 654 – Continuation of strategic asset management plan

New section 654 provides for the transition and continuation of the outgoing service provider's strategic asset management plan.

From the changeover day the strategic asset management plan becomes the incoming service provider's strategic asset plan and the notice approving the plan given under section 74(1) to the outgoing service provider is taken to apply to the incoming service provider.
This will mean that Pioneer Valley Water Board's strategic asset management plan will continue in force as the strategic asset management plan of the incoming service provider.

New section 655 – Continuation of exemption from system leakage management plan

New section 655 provides for the transition and continuation of the outgoing service provider's exemption from preparing a system leakage management plan.

From the changeover day the exemption becomes an exemption of the same type for the incoming service provider from preparing a system leakage management plan until the end of the period for which the exemption was granted.

This will mean that Pioneer Valley Water Board's exemption from preparing a system leakage management plan will continue in force as an exemption for the incoming service provider for the period the exemption was granted. This section is subject to section 86 of the *Water Supply (Safety and Reliability) Act 2008* which gives the regulator power to cancel an exemption in specified circumstances.

New section 656 – Continuation of exemption from drought management plan

New section 656 provides for the transition and continuation of the outgoing service provider's exemption from preparing a drought management plan.

From the changeover day the exemption becomes an exemption for the incoming service provider from preparing a drought management plan.

This will mean that Pioneer Valley Water Board's exemption from preparing a drought management plan will continue in force as an exemption for the incoming service provider unless circumstances change as provided for in section 127. Section 127 of the *Water Supply (Safety and Reliability) Act 2008* gives the regulator power to amend or cancel an exemption in specified circumstances.

New section 657– Preparing relevant annual report

New section 657 provides transitional arrangements for the preparation of an annual report by the outgoing or incoming service provider. The effect of this section is detailed below.

For the 2012/13 financial year:

- if the changeover day is on or after 18 December 2013, the outgoing service provider (Pioneer Valley Water Board) is required to prepare the annual report because it would exist up until the time that it is required to prepare and submit the annual report under section 141 (that is, within 120 business days after the end of the financial year); or
- if the changeover day is before 18 December 2013, the incoming service provider is required to prepare the annual report unless the outgoing service provider has already prepared and submitted the report. If the incoming service provider prepares the annual report it must include details on the matters mentioned in section 142(1) relating to the strategic asset management plan or subsection (4) relating to the customer service standards for the registered service.

If the changeover day is within the 2013/14 financial year, the incoming service provider is required to prepare the relevant annual report for the 2013/14 financial year.

New section 658 – References to outgoing service provider

New section 658 provides that a reference to the outgoing service provider in a plan, exemption or other document may, if the context permits, be taken to be a reference to the incoming service provider.

New Division 2 Other transitional provision

New Section 659 – Application of particular provisions—relevant recycled water scheme

New section 659 provides that sections 631 and 632 do not apply, and are taken never to have applied, to a relevant recycled water scheme.

The definition of ‘relevant recycled water scheme’ covers those schemes that were inadvertently caught by the broad reference to dual reticulation but were not actually supplying recycled water by way of a ‘dual reticulation system’. That is, the schemes under which recycled water is or was supplied “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” but was not supplied by way of an actual ‘dual reticulation system’.

If a scheme was inadvertently caught by the broad reference to dual reticulation, but was not actually supplying recycled water by way of ‘dual reticulation system’, then the new subsection (2) provides that:

- section 633(2) applies, and is taken always to have applied, to a relevant recycled water schemes if recycled water was supplied under the scheme before 1 July 2008; and
- section 633(3) applies, and is taken always to have applied, to a relevant recycled water scheme if recycled water is supplied under the scheme for the first time on or after 1 July 2008.

New subsection (3) provides that the transitional period for relevant recycled water schemes ceases if a recycled water management plan is approved or an exemption is granted, as is the case for transitional arrangements under section 633.

These amendments are needed because those schemes inadvertently caught under subsections 631(1) and 632(1), by the broad reference to dual reticulation, were not eligible for the transitional period provided in section 633. The amendments ensure that section 633 applies as was intended to relevant recycled water schemes which were inadvertently caught by the broad reference to dual reticulation.

Amendment of sch 3 (Dictionary)

Clause 351 amends certain definitions in schedule 3 of the *Water Supply (Safety and Reliability) Act 2008* and introduces a number of new definitions for the purposes of the Bill.

Relevantly, a definition of *'service provider infrastructure'* is provided to clarify what is meant by the term and is defined to mean "the infrastructure operated by or for the service provider to supply a registered service, whether or not the infrastructure is owned by the service provider".

The amendments also insert a new definition of *'dual reticulation system'*. The new definition ensures that recycled water schemes are only captured as dual reticulation schemes where a network of pipes enables drinking water and recycled water to be supplied to premises from separate pipes, but only if the recycled water is provided for any of the following uses:

- toilet flushing
- connection to a cold water laundry tap for a washing machine at a residential premises
- irrigating lawns or gardens of a residential premises; or
- washing down external parts of a residential premises, including for example, a driveway.

Part 21 - Minor and consequential amendments

The schedule makes minor and consequential amendments.