

# Water Legislation Amendment Bill 2015

## Explanatory Notes

### Short title

The short title of the Bill is the Water Legislation Amendment Bill 2015.

### Policy objectives and the reasons for them

#### *Alignment of the Water Reform and Other Legislation Amendment Act 2014 with Government policy*

The objectives of the amendments to the *Water Reform and Other Legislation Amendment Act 2014* are to:

- align *Water Reform and Other Legislation Amendment Act 2014* provisions with Government policy and election commitments
- ensure provisions for water planning instruments appropriately transition existing instruments and processes into the new water planning framework and that the new framework can operate effectively.

The *Water Reform and Other Legislation Amendment Act 2014* was passed by the previous Queensland Parliament on 26 November 2014. A number of changes were included in the *Water Reform and Other Legislation Amendment Act 2014*, which were not supported by the current Government when in opposition. These changes included a new purpose of the *Water Act 2000* (Water Act) which does not include the principles of ecologically sustainable development and the introduction of a water development option for large-scale water infrastructure projects. These provisions have not commenced.

The Government's election commitments relating to the *Water Reform and Other Legislation Amendment Act 2014* include:

- act immediately to prevent the commencement of the Newman Government's water laws which will have a detrimental effect on the Great Barrier Reef catchment systems and allow for over allocation of Queensland's precious water resources
- return ecologically sustainable development principles to the Water Act and remove water development options in their entirety.

The proposed amendments to the *Water Reform and Other Legislation Amendment Act 2014* deliver on these commitments by including ecologically sustainable development principles in the purpose of the Water Act, removing the water development option provisions in their entirety and removing provisions to establish designated watercourses.

Amendments to some transitional provisions of the *Water Reform and Other Legislation Amendment Act 2014* are needed to ensure the clear transition of all existing water planning instruments and processes into the new water planning framework under the *Water Reform and Other Legislation Amendment Act 2014*, which has not commenced. A number of miscellaneous amendments are also necessary to enable the smooth implementation and operation of the *Water Reform and Other Legislation Amendment Act 2014*.

### *Lower Herbert Water Management Authority validation*

An amendment to the Water Act is necessary to provide that the amalgamation of four Category 2 Water Authorities to form the Lower Herbert Water Management Authority under the Water Regulation 2002 (Water Regulation) in 2005 is taken to have had effect as intended from when the amendment to the Water Regulation commenced. The amendments also ensure the validity of the actions of the Authority since its establishment.

### *River Improvement Trust Act 1940 amendments*

Amending the *River Improvement Trust Act 1940* will clarify provisions relating to the establishment and membership of river improvement trusts (trusts), and will clarify the powers and obligations of trusts in relation to the undertaking and maintenance of works.

## **Achievement of policy objectives**

### *Alignment of Water Reform and Other Legislation Amendment Act 2014 provisions with Government policy*

To achieve its objective in relation to aligning the *Water Reform and Other Legislation Amendment Act 2014* provisions with Government policy, the Bill:

- includes the principles of ecologically sustainable development in the purpose of the Water Act
- omits the water development option
- omits provisions that allow for designated watercourses.

Additionally the Bill makes minor amendments to ensure new provisions of the Water Act will operate effectively and to ensure existing water planning instruments and processes are appropriately transitioned into the water planning framework. Further detail is provided as follows.

### **Including the principles of ecologically sustainable development in the new purpose of the Water Act in relation to sustainable management**

The new purpose of the Water Act under the *Water Reform and Other Legislation Amendment Act 2014* does not expressly include the principles of ecologically sustainable development.

To address this, the purpose of the Water Act, contained in the *Water Reform and Other Legislation Amendment Act 2014*, will be amended to include the principles of ecologically sustainable development in describing 'sustainable management'.

The term "responsible and productive management" is replaced with "sustainable management" by the Bill throughout the *Water Reform and Other Legislation Amendment Act 2014* for consistency with the revised new purpose.

#### **Omitting the water development option**

The water development option provisions are not consistent with the government's position due to concerns of risks to the Great Barrier Reef, the potential over-allocation of water resources, and absence of public consultation prior to granting of a water development option.

To address this, the Bill omits the water development option provisions in the *Water Reform and Other Legislation Amendment Act 2014*.

#### **Omitting provisions to declare a designated watercourse**

The *Water Reform and Other Legislation Amendment Act 2014* expands on the existing suite of statutory authorisations for the take and interference with water by including provisions for the declaration of a designated watercourse. A person would not require a water licence or permit for the take or interference with water from a designated watercourse.

The Bill removes provisions which allow for the declaration of designated watercourses from the *Water Reform and Other Legislation Amendment Act 2014* to ensure transparency and continued appropriate regulation of water resources.

#### **Transitional provisions**

The Bill amends the transitional provisions to ensure all existing water planning instruments and processes are appropriately transitioned into the new framework.

#### **Miscellaneous amendments**

This Bill also amends other provisions in the *Water Reform and Other Legislation Amendment Act 2014* to ensure new provisions of the Water Act can operate effectively. These include amendments to:

- ensure rules for deciding an application to relocate a water licence can be included in a water plan
- ensure a water management protocol can state the criteria and process for deciding applications for a seasonal water assignment or for relocation of a water licence where the water plan allows
- provide for a water entitlement notice to grant a water licence or water allocation to replace a surrendered water allocation
- correct a cross-reference in the *Water Reform and Other Legislation Amendment Act 2014* to ensure all water allocations are registered on the water allocations register
- amend publishing requirements for water licence applications
- ensure that a decision on a water licence application must be consistent with a water entitlement notice

- allow the chief executive to deal with a resource tenure that is partly within and partly outside a declared cumulative management.

### *Validation of the Lower Herbert Water Management Authority*

When formed in 2005 under the Water Regulation, the Lower Herbert Water Management Authority was intended to be an amalgamation of four category 2 water authorities—the Foresthome Drainage Board, the Loder Creek Drainage Board, the Mandam Drainage Board and the Ripple Creek Drainage Board. However, the amalgamation, which was enacted on 16 December 2005 by the Water and Other Legislation Amendment Regulation (No.1) 2005, was not properly effected under the Water Act. The amalgamation ought properly to have been effected under section 690 of the Water Act, but was instead effected under section 548 of the Water Act.

To address this, the Bill includes a validation provision in the Water Act to provide that the formation of the water authority and the dissolution of the former water authorities are taken to have had effect from the date when the amendment regulation commenced. All of the actions of the water authority since that date are also taken to be valid, and to have always been valid.

### *Amendments to the River Improvement Trust Act 1940*

Minor amendments are also required to the *River Improvement Trust Act 1940* (River Improvement Trust Act) to:

- clarify provisions relating to the establishment and possible membership of river improvement trusts
- clarify the powers and obligations of trusts in relation to the undertaking and maintenance of works
- confirm the continuation from 19 December 2014 of all river improvement areas and trusts in existence immediately before that date
- confirm the validity of appointments to existing trusts made by the Minister consistently with the relevant provisions of the River Improvement Trust Act prior to 19 December 2014.

These amendments clarify changes to the River Improvement Trust Act that commenced 19 December 2014.

## **Alternative ways of achieving policy objectives**

The *Water Reform and Other Legislation Amendment Act 2014* must be amended to give effect to the Government's election commitment and to ensure commencing and transitional provisions can operate effectively. There is no alternative way of achieving the policy objectives.

## **Estimated cost for government implementation**

No costs to government are currently envisaged for the proposed amendments to the *Water Reform and Other Legislation Amendment Act 2014*, as these changes

are generally administrative in nature. However, if any operational costs do arise they will be met from existing agency budget allocations.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### *Clause 5*

*Clause 5* of the Bill includes a transitional provision in the *River Improvement Trust Act 1940* which operates retrospectively. As such the clause could be perceived as potentially breaching the principle that legislation should not adversely affect rights and liberties or impose obligations, retrospectively.

The transitional provision confirms the continuation from 19 December 2014 of all river improvement trust areas and trusts in existence immediately before that date, and confirms the validity of appointments to existing trusts made by the Minister in accordance with the relevant provisions of the River Improvement Trust Act prior to 19 December 2014.

Despite this retrospectivity, the provision does not appear to adversely affect any individual's rights and liberties, or impose obligations on any individual. This is because river improvement trusts and their members have continued to operate as though unaffected. This transitional provision simply puts the continued existence of trusts beyond doubt should the validity ever be questioned in the future. As such, it is argued that the fundamental legislative principles have not been breached in terms of the retrospectivity of the provisions.

### *Clause 8*

*Clause 8* of the Bill potentially breaches the principle that legislation should not adversely affect rights and liberties or impose obligations, retrospectively. The amendment to validate the establishment of the Lower Herbert Water Management Authority potentially breaches the principles that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

In this case, retrospectivity is justified to remove any doubt about the validity of actions taken by the water authority since its establishment in 2005. In doing so, the provision provides certainty for the authority and all entities having interacted with the authority, including water users.

### *Clause 16*

*Clause 16* of the Bill dealing with the declaration of cumulative management areas potentially breaches the principle that legislation should only make rights and liberties, or obligations, dependent on administrative power if the power is sufficiently defined and subject to appropriate review.

The amendment proposed allows the chief executive to decide, for a tenure that is partially within and partially outside a cumulative management area, whether the

tenure, or part of the tenure is a cumulative management area tenure. However the provision does not allow a tenure holder the right of appeal or review. In this case, not providing the right of appeal or review is justified as the tenure holder will be consulted as part of the decision-making process. Additionally, not giving the tenure holder the right of appeal or review is consistent with the approach taken for the remainder of the chapter 3 of the Water Act groundwater management framework provisions.

Furthermore, this amendment forms a subsection to section 365, which gives the chief executive the ability to declare a cumulative management area and give notice of this declaration to each cumulative management area tenure holder. There is no right of appeal or review given to cumulative management area tenure holders when a cumulative management area is declared under the Water Act. Consequently, it is considered inappropriate and inequitable to give this right to tenure holders whose tenure is partly in and partly outside the cumulative management area when this right is not given to cumulative management area tenure holders whose tenure is wholly within cumulative management area.

## **Consultation**

The Department of Natural Resources and Mines and Department of Environment and Heritage Protection met with key stakeholder groups that form the Water Engagement Forum on 1 and 4 June 2015, as well as 2 October 2015 to discuss proposed changes related to the *Water Reform and Other Legislation Amendment Act 2014*. Stakeholders included in the Water Engagement Forum are: AgForce, Association of Mining and Exploration Companies, Australian Bankers' Association, Australian Petroleum Production and Exploration Association Ltd, Environmental Defenders Office' Great Barrier Reef Marine Park Authority, Irrigation Australia, Local Government Association of Queensland, Local Management Arrangements for Irrigation Channel Schemes, Queensland Conservation Council, Queensland Farmers' Federation, Queensland Regional Natural Resource Management Groups Collective, Queensland Resources Council, State Council of River Trusts, Queensland Seafood Industry Association, Seqwater, SunWater, The Wilderness Society and the World Wide Fund for Nature Australia.

The majority of stakeholders support the amendments, including the reinstatement of ecologically sustainable development principles, omitting the water development option provisions and omitting provisions to declare designated watercourses.

The Office of Best Practice Regulation was consulted and confirmed that the amendments are excluded from further analysis under the Regulatory Impact Statement System.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and amends existing Queensland legislation.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* states that when enacted, the Bill will be cited as the *Water Legislation Amendment Act 2015*.

## Part 2 Amendment of River Improvement Trust Act 1940

*Clause 2* states that this part amends the *River Improvement Trust Act 1940*.

### Amendment of s 5 (Membership of trust)

*Clause 3* amends s 5 as follows:

- section 5(1) is amended to clearly distinguish between establishment of a trust under a regulation and provision for the membership of a trust
- section 5(1)(b) is amended for consistency with amendments to section 5(1)
- section 5(1A) is amended for consistency with amendments to section 5(1) and to clarify that membership of a trust may alternatively be provided for in a regulation
- section 5(1B) is amended for consistency with amendments to section 5(1A)
- section 5(2) is also amended for consistency with amendments to section 5(1A).

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

*Clause 4* amends s 10 as follows:

- section 10(1)(a) is amended to clarify the power of the chief executive to direct the trust not to undertake or maintain works
- section 10(1)(b) is amended to clarify the power of the chief executive to direct a trust to undertake or maintain any works for the purpose of achieving the object of the Act
- section 10(1)(c) inserts a new paragraph that clarifies the obligation of a trust to comply with any direction given by the chief executive to the trust about the undertaking or maintenance of works under sections 10(1)(a) or 10(1)(b)
- section 10(3) is amended to reflect that the power of a trust under section 10(1)(a) to undertake or maintain works is already subject to the direction of the chief executive under section 10(1) and that a trust is no longer required to seek the approval of the chief executive before undertaking or maintaining works
- section 10(4) is amended to clarify that this provision does not limit the power of the trust to enter into contracts under section 7(2).

### **Insertion of new pt 9**

*Clause 5* inserts a new pt 9 into the *River Improvement Trust Act 1940*.

#### **New Part 9 Transitional provision for Water Legislation Amendment Act 2015**

##### **New section 24 – Continuance of areas and trusts**

New section 24 confirms the continuation, from 19 December 2014 when amendments to the *River Improvement Trust Act 1940* commenced, of all river improvement areas and river improvement trusts in existence immediately before that date. Although no specific action has been taken to abolish any of the river improvement areas and their respective trusts, this section aims to clarify the intention that they continued from 19 December 2014.

Section 24 also clarifies, for the period 19 December 2014 until when the amendments proposed by the Bill take effect that membership of an existing river improvement trust under section 5(1) is valid despite being provided for independently of any regulation.

Amendments to section 5 commencing 19 December 2014 required certain membership matters to be stated in the regulation establishing the trust, however this was only intended to apply in relation to the establishment of specific trusts. The Bill removes this requirement, and this section simply clarifies that the trusts and their membership are taken to have continued, and are taken to be valid, despite a regulation not specifically providing for the membership of the trusts.

### **Part 3 Amendment of Water Act 2000**

#### **Act Amended**

*Clause 6* states that this part amends the *Water Act 2000*.

#### **Amendment of s 5AA (Watercourse etc. may be mapped)**

*Clause 7* amends section 5AA renumbering sections to reflect the omission of designated watercourse from this section.

#### **Insertion of new ch 9, pt 9**

*Clause 8* inserts a new ch 9, pt 9 into the *Water Act 2000*.

#### **New Part 9 – Validation provision for Water Legislation Amendment Act 2015**

##### **New section 1282 – Validation of formation and actions of Lower Herbert Water Management Authority**

New section 1282 validates the formation and actions of Lower Herbert Water Management Authority to remove any doubt as to the validity of its formation on 16 December 2005 under the Water and Other Legislation Amendment Regulation (No. 1) 2005 SL No. 334.



Under this part, the dissolution of Foresthorne Drainage Board, Loder Creek Drainage Board, Mandam Drainage Board and Ripple Creek Drainage Board (collectively the former authorities) and their amalgamation to form the Lower Herbert Water Management Authority on 16 December 2005 is confirmed and validated.

The dissolution on that date of the authority areas of the former authorities and the formation of the authority area of Lower Herbert Water Management Authority as shown on plan AP4064 is confirmed and validated.

The actions from that date of Lower Herbert Water Management Authority and the appointment, employment, engagement and actions of its office holders, employees and agents are confirmed and validated.

This provision is necessary as the amalgamation ought to have been effected under section 690 of the Water Act in 2005, but was instead effected under section 548 the Water Act.

**Amendment of sch 4 (Dictionary)**

*Clause 9* amends the Water Act to correct a section reference to the appropriate authorising provision for the dictionary.

**Part 4 Amendment of Water Reform and Other Legislation Amendment Act 2014**

**Act amended**

*Clause 10* states that this part amends the *Water Reform and Other Legislation Amendment Act 2014*, part 8, which ultimately amends the Water Act.

**Amendment of s 58 (Replacement of long title)**

*Clause 11* amends the replacement of the long title of the Water Act by section 58 of the *Water Reform and Other Legislation Amendment Act 2014* replacing 'responsible and productive' with sustainable. This ensures the long title is consistent with the new purpose of the Water Act as amended by the Bill.

**Amendment of s 59 (Replacement of s 2 (Commencement))**

*Clause 12* replaces section 59 of the *Water Reform and Other Legislation Amendment Act 2014*.

**New section 2 - Purposes of Act and their achievement**

*Clause 12* replaces section 59 of the *Water Reform and Other Legislation Amendment Act 2014* to include a purpose for the Water Act that, while based on section 59 of the *Water Reform and Other Legislation Amendment Act 2014*, removes the term 'responsible and productive management' and instead focusses on 'sustainable management', including the principles of ecologically sustainable development, in relation to the planning, allocation and use of water resources, quarry material and riverine protection in Queensland.

The section states the four main purposes of the Water Act. Each main purpose is intended to guide the relevant main chapters of the Water Act.

The first main purpose is to provide a framework for the sustainable management of water resources and quarry material by establishing a system for the planning, allocation and use of water, the allocation of quarry material and riverine protection. This first main purpose is intended to be primarily relevant to chapter 1A Water supply emergencies and restrictions, and chapter 2 Management and allocation of water.

The meaning of sustainable management is outlined as applicable to this main purpose. Sustainable management for the planning, allocation and use of water resources, quarry material and riverine protection is considered management that incorporates the principles of ecologically sustainable development, provides for economic, physical and social wellbeing, and facilitates community involvement. It recognises the importance of sustaining ecosystem health, water quality and water-dependent ecological processes and biological diversity associated with catchments, watercourses, lakes, springs, aquifers and other natural systems, provides fair, transparent and orderly processes and promotes the efficient use of water.

The concept of the efficient use of water is clarified in terms of how it is intended to be promoted. The efficient use of water is intended to be considered through the initial allocation of water rather than, for example, at each simple water licence dealing such as the subdivision of an existing water licence.

The second main purpose is provide for the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions. This purpose is intended to be primarily relevant to chapter 2A, Water supply and demand management. Section 340 of the Water Act provides additional context to the purpose of this chapter.

The third main purpose is to provide a framework for the management of potential impacts on underground water caused by the exercise of underground water rights by the resource sector. This purpose is intended to primarily be relevant to chapters 3 Underground water management and 3A, Office of Groundwater Impact Assessment. Section 361 provides additional context as to the purpose of the underground water management provision of the Water Act.

The fourth main purpose is to provide a framework for the effective operation of water authorities, which is primarily relevant to chapter 4, Water authorities. Section 542 of the Water Act provides additional context as to the purposes of this chapter.

The main purposes will also guide the implementation of the provisions of the supporting chapters of the Water Act. Chapter 5, Investigations, enforcement and offences, chapter 6, Reviews and appeals, chapter 7, Legal proceedings, chapter 8, Miscellaneous and chapter 9, Transitional provisions and repeals, operate to support the implementation of the main chapters of the Water Act, such as chapter 2, Management and allocation of water.

The provisions within these supporting chapters take on the main purpose/s of the primary chapter/s to which the provisions are supporting. For example, a provision about an offence for the breach of a water licence condition under chapter 5 would be relevant to chapter 2 which provides for water licences. As such, the purpose as it applies to chapter 2 would be relevant in this instance.

The main purposes will ensure that the Water Act remains contemporary, keeping pace with current water management best practice, government service delivery and technology.

#### **Amendment of s 64 (Insertion of new s 5AA)**

*Clause 13* amends section 64 of the *Water Reform and Other Legislation Amendment Act 2014* to remove a designated watercourse as something that may be identified on the chief executive's watercourse identification map. Under the provisions of the *Water Reform and Other Legislation Amendment Act 2014*, a water licence or permit is not required for the taking or interfering with water in a designated watercourse.

Designated watercourses are removed by the Bill to ensure transparency and appropriate regulation of water resources. The remainder of new section 5AA, which allows for the establishment of a watercourse identification map, commenced on 11 September 2015. Section 5AA of the Water Act is renumbered by clause 7 of the Bill to accommodate the changes made through this clause.

#### **Amendment of s 65 (Insertion of new s 6)**

*Clause 14* amends s 65 the *Water Reform and Other Legislation Amendment Act 2014* to include a new section 7 of the Water Act which provides the meaning of principles of ecologically sustainable development.

#### **New section 7 – Meaning of *principles of ecologically sustainable development***

New section 7 includes the principles of ecologically sustainable development which are an important element of the current purpose of chapter 2, Allocation and sustainable management, of the Water Act. The principles of ecologically sustainable development set out in subclauses (a) to (d) are the same as the principles of ecologically sustainable development in section 3A(a) to (d) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth.)*.

The principles in subclauses (e) and (f) are based on guiding principles contained in Australia's National Strategy for Ecologically Sustainable

Development, December 1992. The strategy defines ecologically sustainable development as: 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'.

**Amendment of s 68 (Insertion of new ch 2)**

Clause 15 amends section 68 of the *Water Reform and Other Legislation Amendment Act 2014* which inserts a new chapter 2 into the Water Act to provide for the management and allocation of water. This clause amends the following sections of the new chapter 2 as follows:

- (1) **Amendment of section 37 (Planning for the management of water)**  
Replaces the term responsible and productive with sustainable to ensure the purpose of water planning is consistent with the new purpose of the Water Act.
- (2) **Amendment of section 39(1) (Matters for regulation)**  
Replaces the term responsible and productive with sustainable to ensure regulations made under the Water Act are consistent with the new purpose of the Water Act.
- (3) **Amendment of section 39(2) (Matters for regulation)**  
Omits the requirement for a regulation that prescribes a processes for releasing unallocated water to only allow a release to proceed if the chief executive has first had regard to any water development options that relate to the unallocated water. This provision is no longer required as the Bill removes the ability to grant a water development option.
- (4) **Amendment of section 41 (What is a water plan)**  
This amendment replaces the term responsible and productive with sustainable to ensure that the purpose of a water plan is consistent with the purpose of the Water Act.
- (5&6) **Amendment of section 43 (Contents of a water plan)**  
Makes it clear that a water plan can state criteria and processes for deciding an application for a dealing with a water licence. This amendment is required as the existing provisions do not make it clear which water planning instrument water licence dealing rules should be located in. A related amendment to section 67 is also included in the Bill to make it clear if the water plan allows the criteria and process for seasonal water assignments and relocation of water licences can be included in a water management protocol.

The amendment also renumbers the section to reflect the insertion of this new subsection.

- (7) **Amendment of section 51(2)(c) (Preparing an amendment or replacement of water plan)**  
Omits a paragraph which would have provided that the consultation requirements do not apply to an amendment to a water plan to implement a water development option.
- (8) **Omission of section 52 (Amending a water plan to implement a water development option)**  
Omits section 52 which would have allowed for a water plan to be amended to implement a water development option.
- (9) **Amendment of section 58 (What is a water use plan)**  
This amendment replaces the term responsible and productive with sustainable to ensure that the purpose of a water use plan is consistent with the purpose of the Water Act.
- (10&11) **Amendment of section 67 (What is a water management protocol)**  
This amendment makes it clear that a water management protocol can state criteria and processes for deciding applications for a seasonal water assignment or for relocation of a water licence.
- The amendment also renumbers the section to reflect the insertion of this new subsection.
- (12) **Amendment of section 68 (Making a water management protocol)**  
This amendment corrects a typographical error.
- (13) **Amendment of section 69(3) (Amending or replacing a water management protocol)**  
Omits a paragraph that would have required the chief executive to amend a water management protocol if necessary to implement a water development option.
- (14) **Amendment of section 70(1)(b) (What is a water entitlement notice)**  
This amendment corrects an oversight to ensure that a water entitlement notice can replace a surrendered water allocation, consistent with section 162 of the new chapter 2 of the Water Act.
- Omits a reference to water development options.
- (15) **Amendment of section 73(1)(a) (Additional requirements for notices for draft water entitlement notices that establish water allocations)**  
Corrects an incorrect cross-reference to make it clear that water allocations granted under a water entitlement notice are required to be registered on the water allocations register.
- (16) **Omission of Chapter 2, part 2, division 7 (Water development options)**  
Omits entire division relating to water development options

The deleted division facilitated the concurrent environmental impact study and Water Act approvals processes, and provided proponents with an upfront provisional commitment over future access to water and exclusivity of access to that water for their project providing the project's bona fides were proven through an environmental impact assessment.

The water development option provisions are not consistent with the government's position due to concerns of risks to the Great Barrier Reef, the potential over-allocation of water resources, and absence of public consultation prior to granting of a water development option.

**(17) Amendment of section 101(1)(e) (Authorisation that may be altered or limited by water planning instrument)**

Removes the provision which provided an authorisation to take or interfere with water from a designated watercourse without the requirement for a water licence or permit. A designated watercourse is a watercourse identified by the chief executive on the watercourse identification map as a designated watercourse. Provisions for designated watercourses are removed by the Bill to ensure transparency and appropriate regulation of water resources.

**(18&19) Amendment of section 112 Public notice of application for water licence**

Provides an additional option for the chief executive when requiring an applicant for a water licence to publish a notice about the application to notify interested parties.

Currently, the notice published by the applicant must include all the information about the application and making submissions. This amount of information contributes significantly to costs for water licence applicants.

This amendment will allow the chief executive to require applicants to publish a short notice in a newspaper directing interested parties to the department's website for further information about the application and about making submissions in relation to the application.

Water licence applicants are required to provide evidence of the notice having been published. This may be either the information that was published or the notice referring to the information on the department's website.

**(20) Amendment of section 116(1) (Granting a water licence under a process in a plan or regulation)**

Omits the provision allowing the chief executive to grant a water licence to implement a water development option.

**(21) Amendment of section 126(1) (Application to relocate water licence etc.)**

Ensures that a water plan, water management protocol or regulation may state rules that allow for the relocation of a water licence.

- (22) **Amendment of section 129(1) (When chief executive must refuse application)**  
Corrects an oversight to make it clear that the chief executive must refuse a water licence application if it is inconsistent with a water entitlement notice.
- (23) **Amendment of section 130(c) (When dealing must be assessed as if it were a new water licence)**  
This is an amendment as a consequence of changes made to new section 126(1) and ensures that a change to the location of a water licence is excluded from a section 130 process where it is permitted under a water plan, a regulation or water management protocol.
- (24) **Amendment of section 147 (heading) (Granting water allocations under a process in a plan or to implement a water development option)**  
Omits a reference to water development option from the section heading.
- (25) **Amendment of section 147(1) (Granting water allocations under a process in a plan or to implement a water development option)**  
Omits a paragraph which would have allowed for the grant of a water allocation to implement a water development option.
- (26) **Amendment of section 180 (Chief executive may grant a resource operations licence or distribution operations licence without application)**  
Omits a paragraph which would have allowed the chief executive to grant a resource operations licence or distribution operations licence without application in order to implement a water development option.
- (27) **Amendment of section 182(2)(a) (Deciding application for resource operations licence or distribution operations licence)**  
Replaces the term responsible and productive with sustainable to ensure that the chief executive considerations for granting a resource operations licence or distribution operations licence are consistent with the purpose of the Water Act.

**Amendment of s 73 (Amendment of s 365 (Declaring cumulative management areas))**

*Clause 16* amends section 73 to allow the chief executive to deal with a tenure that is partially within and partially outside a cumulative management area. The *Water Reform and Other Legislation Amendment Act 2014* includes an amendment which states that for such a tenure, the declared cumulative management area is taken to include the whole of the tenure. However, this approach is not appropriate in all circumstances.

The amendment provides for the chief executive to make a decision whether such a tenure, or part of the tenure is a cumulative management tenure. In making this decision the chief executive will have regard to the impacts on underground water caused by, or likely to be caused by the exercise of underground water rights by the

resource tenure holder, advice from the Office of Groundwater Impact Assessment and advice from the relevant tenure holder.

**Amendment of s 188 (Replacement of s 1009 (Public inspection and purchase of documents))**

*Clause 17* amends section 188 to omit reference to a water development option from the list of documents that must be kept available for public inspection at offices of the department.

**Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals))**

*Clause 18* amends section 201 of the *Water Reform and Other Legislation Amendment Act 2014*. This section provides transitional arrangements for the transition to the new chapter 2 of the Water Act. This clause makes the following amendments to ensure the transitional arrangements will operate effectively on commencement of the *Water Reform and Other Legislation Amendment Act 2014*, as follows:

**(1) Amendment of section 1250 (Definitions for pt 8)**

Inserts a new definition for 'deferred aspect' to ensure that a deferred aspect under the unamended Water Act transitions following commencement of the *Water Reform and Other Legislation Amendment Act 2014*.

**(2) Amendment of section 1253(3) (Continuation under the amended Act of notices or documents published by Minister or chief executive)**

Replaces the example for section 1253 with two examples to make it more clear the scenarios for which this provision is intended to apply. These include:

- Where a statement of proposals to prepare a draft water resource plan has been released prior to commencement of the new chapter 2 of the *Water Reform and Other Legislation Amendment Act 2014*. In this circumstance, the operation of this section will mean the statement of proposals is taken to be a notice of proposal under the amended Act, and would lead to the release of a draft water plan under the amended Act.
- Where the Minister has published a notice about the intention to postpone the expiry of a water resource plan prior to commencement of the new chapter 2 of the *Water Reform and Other Legislation Amendment Act 2014*. In this circumstance, this section will allow the process to be continued under the amended Act, allowing the Minister to make a decision to postpone the expiry of the water plan.

**(3–6) Amendment of section 1256 (Water resource plans taken to be water plans)**

The amendments to section 1256 clarify the arrangements for transitioning water resource plans to water plans.

- Currently, section 1256 provides that if there is a notice published about a draft, amending or replacement resource operations plan,



then a water resource plan does not transition to become a water plan. It is not clear in the current drafting if this applies to the water resource plan that the resource operations plan is to implement or to all water resource plans. This amendment clarifies that it is only the relevant water resource plan that does not transition to become a water plan. Instead the relevant water resource plan becomes a water plan when the draft, amending or replacement resource operations plan that implements the water resource plan is approved by the Governor in Council.

- These amendments also clarify the arrangements for transition of a water resource plan when its relevant resource operations plan has a deferred aspect. It ensures that a deferred aspect under the unamended Water Act continues in existence until it is dealt with under the unamended Act. If there is a deferred aspect for the resource operations plan, both the relevant water resource plan and resource operations plan will not transition into the new framework until the deferred aspect has been dealt with (either cancelled or given effect through amendment to the resource operations plan).
- Additionally, an amendment also clarifies, for the transition of water resource plans to water plans, that if any provisions of a water resource plan have a specified date for commencement and have not yet commenced, those provisions remain uncommenced until the specified commencement date even after the provisions are transitioned to be included in a water plan.

**(7–9) Amendment of section 1259 (Stated provisions of a resource operations plan are taken to be, or are included in, or to be read and construed with, other documents)**

The amendments to section 1259 clarify the arrangements for transitioning the provisions of resource operations plans into the new water planning instruments under the new water planning framework:

- These amendments clarify the arrangements for transition of a resource operations plan for which there is a deferred aspect. It ensures that a deferred aspect under the unamended Water Act continues in existence until it is dealt with under the unamended Act. If there is a deferred aspect for a resource operations plan then the relevant water resource plan and resource operations plan will not transition into the new framework until the deferred aspect has been dealt with (either cancelled or given effect through amendment to the resource operations plan).
- An amendment also clarifies that if any provisions of a resource operations plan have a specified date for commencement and have not yet commenced at the time they transition to a new planning instrument, then those provisions remain uncommenced until the specified commencement date even after the provisions are transitioned to a new water planning instrument.

**(10&11) Amendment of section 1260 (Provisions of resource operations plan taken to be included in a resource operations licence)**

Makes it clear that environmental management rules transition from a resource operations plan to a resource operations licence, and not to the operations manual.

**(12&13) Amendment of section 1261 (Provisions of a resource operations plan taken to be an operations manual)**

Removes reference to environmental management rules to reflect that the environmental management rules are to transition from a resource operations plan to become part of the resource operations licence, rather than being included in an operations manual.

**(14&15) Amendment of section 1264(1) (Provisions of a resource operations plan taken to be an operations manual)**

This amendment clarifies that this transitional provision does not apply to processes for a seasonal water assignment or relocation of a water licence. It is intended that provisions of a resource operations plan that provide processes for seasonal water assignments or for relocation of a water licence would transition to a water management protocol in accordance with 1259(2)(f).

This amendment also corrects a paragraph numbering error.

**(16) Amendment to heading of section 1265 (Provisions of Burnett water resource plan taken to be included in operations manual)**

Ensures the heading of section 1265 is consistent with the section as amended by the Bill under subsection (17) below.

**(17) Amendment of section 1265 (Provisions of Burnett water resource plan taken to be included in operations manual)**

This amendment ensures that additional provisions in the Water Resource (Burnett Basin) Plan 2014 transition to appropriate water planning instruments under the new chapter 2 of the Water Act. It is intended where provisions for a water supply scheme, such as water sharing rules or environmental management rules, are provided for in the water resource plan, these would apply in the new planning instruments (resource operations licence and operations manual) for the water supply scheme. If there are equivalent provisions in the resource operations plan for the same water supply scheme, the provisions in the water resource plan for the water supply scheme would prevail, and the equivalent provisions in the resource operations plan would cease to exist in the new planning instruments.

This amendment updates the transitional provision to replace special arrangements that existed for provisions of the Water Resource (Burnett Basin) Plan 2014 that did not commence until 1 July 2015. As these provisions have now commenced, the transitional arrangements for dealing with these now commenced provisions need to be updated to ensure they appropriately transition in to the new water planning instruments.

This amendment makes it clear that the transition of water sharing rules from the water resource plan into the operations manual by operation of this section does not trigger an amendment of water allocations under section 63 of the water plan. Currently section 63 of the Water Resource (Burnett Basin) Plan 2014 requires water allocations to be amended if the elevation of Claude Wharton Weir is less than 94.4m AHD at the time the resource operations plan is first amended to include water sharing rules for the Upper Burnett Water Supply Scheme.

**(18) Amendment of section 1268(3) (Applications made but not decided before commencement)**

Section 1268 clarifies that this provision does not apply to a water licence application that is subject to section 1272. Section 1272 applies to applications about a water licence where a notice about the application has been published. Without this amendment, there was no relevant transitional provision that applied to water licence applications where a notice had not been published, or is not required to be published.

**(19) Omission of section 1276 (Unallocated water release process started before commencement)**

This section is omitted to reflect that the new process for release of unallocated water has already been commenced in the Water Regulation 2002 on 11 September 2015. As such this transitional provision is no longer required.

**Amendment of s 202 (Amendment of sch 4 (Dictionary))**

*Clause 19* amends section 202 by omitting the definition for designated watercourse, amending the definition of process to remove reference to a section that relates to water development options, and including a dictionary reference to the meaning of principles of ecologically sustainable development included by the Bill.