

# Water (Local Management Arrangements) Amendment Bill 2016

## Explanatory Notes

### Short title

The short title of the Act is the Water (Local Management Arrangements) Amendment Act 2016.

### Policy objectives

The objectives of the Bill are to amend the *Water Act 2000* to facilitate the restructure and transfer of a number of SunWater's channel irrigation schemes to local management arrangements (LMA). This will be achieved primarily by establishing a legislative transfer scheme, enabling a staged transition of potentially up to eight schemes.

SunWater is a government owned corporation (GOC) which was established under the *Government Owned Corporations Act 1993* on 1 October 2000 and transitioned to a company GOC under the *Corporations Act 2001* (Cwlth) on 1 July 2008.

SunWater manages a regional network of bulk water supply infrastructure that spans the length and breadth of Queensland supplying water to more than 5000 customers in the mining, power generation, industrial, local government and irrigated agriculture sectors. Currently, it owns and operates eight channel irrigation schemes located in regional areas of Queensland.

The channel irrigation schemes vary in size and complexity, amount of water distributed, crops grown and the number of customers. Channel irrigation infrastructure consists of mostly linear infrastructure – pipelines and channels located on a range of land tenures, including perpetual leases and freehold land. SunWater also holds various easements, licences, approvals and authorities necessary for carrying on the business of supplying an irrigation service.

### Reasons for the Policy Objectives

The Bill delivers on the Queensland Government's commitment to continue to support the transfer of SunWater's channel irrigation schemes to local management arrangements, where this is viable.

Local management arrangements have been introduced in a number of other states, including New South Wales, South Australia and Western Australia.

The National Water Initiative and its antecedent agreements support the investigation of alternative ownership and management arrangements for irrigation infrastructure (such as local management).

The LMA project has involved the comprehensive investigation into the potential transfer of the eight channel schemes to new legal entities, ultimately owned and controlled by the irrigators in each scheme.

To achieve the policy objectives, the Bill provides for a staged transition of potentially all eight channel schemes to local management, commencing with the Emerald, Eton, St George and Theodore channel schemes if agreement can be reached on the final terms of the transfer and there is sufficient support from scheme customers. The remaining four schemes may become part of the declared project following further investigations and subsequent Government decision on the viability of these schemes transitioning to local management – these include the Bundaberg, Burdekin-Haughton, Lower Mary and Mareeba-Dimbulah channel schemes.

Outside the legislative framework of the Bill, a number of special purpose vehicles (SPVs) are being established to facilitate transition of the Eton, Emerald, St George and Theodore channel schemes to local management arrangements. A fifth SPV is also being established as a procurement entity to provide advice and support to the transition schemes and to support the further investigations for the Bundaberg, Burdekin-Haughton, Lower Mary, and Mareeba-Dimbulah schemes.

The SPVs will be established as companies under the *Corporations Act 2001* (Cwlth) and will initially be owned by the Queensland Government..

The SPVs are transitional entities established specifically for the purposes of the LMA project. If local management proceeds to the formal transfer stage, the State will be divested of ownership in the entities once the transfers from SunWater have been completed. The Eton SPV proposes to subsequently transition into a cooperative, as this is the irrigators' preferred corporate form.

Four interim boards have also been established to undertake further investigations and development of revised business cases into the viability of the remaining four schemes transitioning to local management.

Currently irrigation revenues in the schemes do not cover the cost of operating the schemes. The gap between revenues and costs is funded by the Queensland Government through the payment of community service obligation payments to SunWater. Because the schemes are loss making it is necessary to ensure that the schemes transfer with sufficient capital (a separation payment) to remain financially viable, until they are able to increase revenue and reduce costs.

The final terms of the transfer will need to be agreed between the Government and the SPVs before the transfer of the schemes occur. In addition there will be a number of precedent conditions to the transfer which will include the SPVs demonstrating that they are operationally ready to take over operation of the scheme.

Consistent with similar transfers of State Government assets, the Bill also provides for an exemption from State taxes, fees and charges relating to any transfer of the business, assets and liabilities of SunWater to local management.

## **Achievement of policy objectives**

The Bill achieves the policy objectives by making provision for a declared project, establishing a transfer scheme; making provision for the transfer of SunWater assets, liabilities and employees to an irrigation entity and other matters.

Specifically, the Bill:

- establishes a declared project for:
  - the transfer of the businesses, assets and liabilities of SunWater in relation to a declared channel scheme to an irrigation entity;

- the divestment from the State of an irrigation entity;
- establishes a declared channel scheme;
- establishes a transfer scheme to, among other things:
  - enable the transfer of a business, asset or liability of SunWater to an irrigation entity;
  - make provision about the consideration for a business, asset or liability transferred;
  - grant, transfer and deal with interests in land;
  - grant, transfer and deal with licences, registrations, authorities, approvals and instruments; and
  - transfer of SunWater employees to an irrigation entity.
- provides exemption from State taxes, fees and charges associated with the transfer scheme.

The Minister's powers under the transfer scheme have been modelled on precedent projects, such as the institutional restructure of Queensland Rail under the *Queensland Rail Transit Authority Act 2013* (QRTA Act) and the transfer of assets to private operators under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (IIARD Act).

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

The policy objectives can only be effectively implemented through primary legislation. The Bill allows for the progress of Stage 3 of the LMA project. Regardless of the approach to achieve policy objectives, primary legislation would be needed.

## **Estimated cost for government implementation**

The Queensland Government has committed funds to the LMA project to meet transaction costs, further investigations and separation payments. In the 2016-17 State Budget the Government committed \$6.9 million to Stage 3 of the LMA project, taking total funding for the project to \$8.9 million.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the fundamental legislative principles under section 4 of the *Legislative Standards Act 1992*.

Legislation may be inconsistent with fundamental legislative principles where it does not have sufficient regard to the rights and liberties of individuals or to the institution of Parliament.

The Bill provides broad ranging powers for the Minister to enable an orderly and efficient transfer of the relevant channel irrigation schemes to local management.

In crafting the legislative scheme, the Bill has been modelled on previous schemes for restructure and sale of State owned assets, including the QRTA Act and the IIARD Act.

The following provisions of the Bill may not be consistent with or may breach the fundamental legislative principles. The potential breaches are necessary and unavoidable to achieve the policy objective to implement local management

arrangements in an efficient and timely manner, and to provide commercial and operational certainty to irrigators.

*Clause 4* inserts section 723 (transfer notices) – this section allows the Minister to take a wide range of actions to restructure SunWater and transfer assets, liabilities and obligations to the SPVs via transfer notices published in the gazette. The section also provides for the transfer notice to have effect despite any other law, and it may affect third parties. This is potentially inconsistent with fundamental legislative principles. However, given the complexity of the implementation of local management, and the need to provide the necessary commercial certainty to the SPVs who will be responsible for operating the schemes, the use of transfer notices is the most appropriate, efficient and cost effective means of implementing local management. It is also consistent with previous industry restructures with similar provisions used in section 105 of the *South-East Queensland Water (Restructuring) Act 2007* and section 78 of the QRTA Act.

*Clause 4* inserts section 738I (Supply contracts applying for particular allocations) – this section allows the creation of a new standard form contract based on the existing standard supply contract between SunWater and the irrigators, that will apply to all of a scheme's customers immediately at the point of transfer. This will ensure that there is a supply contract in place between the new scheme owner and the irrigation customers at the time of transfer. However, the customers and the schemes will be free to negotiate alternative contractual terms after the transfer day.

*Clause 4* inserts sections 738R (Confidentiality agreement with irrigation entity) and 738S (Disclosure and use of information for declared project) – section 738R will allow an irrigation entity to enter into a confidentiality agreement with the State for purpose of obtaining access to information in the possession or control of the State or SunWater. This section will allow for SunWater to provide confidential information to the State and for the State to disclose that confidential information to the SPVs for the purposes of the LMA project. This will ensure that the SPVs have access to all the relevant information when discussing the final terms of the transfer of the schemes.

Section 738S will allow a person to disclose information in the possession or control of the State or SunWater, for the purpose of a declared project. There are safeguards in place in that this disclosure is only for the purposes of the project, and only to persons involved in the project. The section provides that a person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use of the information. Without the protection afforded, a person could be subject to a number of consequences including disciplinary action.

*Clause 4* inserts sections 738ZD (Limitation of review) and 738ZF (Evidentiary aids) – taken together, these sections allow the Minister to issue conclusive certificates and ensure that decisions made under the legislation will not be reviewable and are final and conclusive. This will prevent transactions being delayed or disrupted as the transfer of schemes will take place under tight timeframes with significant assets being transferred simultaneously. Evidentiary challenges or judicial review could disrupt the transition process and cause operational difficulties as the schemes will need to continue operating throughout the transition process. If the schemes were unable to operate due to a judicial review or evidentiary challenge, there could be adverse impacts on the schemes' customers that rely on access to water for irrigation and impact the local economy. It may also have adverse financial impacts on the State and the SPVs. The provisions in the Bill are consistent with similar provisions in the *South-East Queensland*

*Water (Distribution and Retail Restructuring) Act 2009*, section 90 of the QRTA Act and sections 17 and 26 of the IIARD Act.

*Clause 4* inserts section 738ZI (Transitional regulation-making power for declared projects) – this section provides a power to make regulations to address a defect or omission in the Bill or provide for supplementing the Bill in order to facilitate the LMA project. It also allows for a regulation to be retrospective in operation, provided that any retrospective operation is not earlier than the date that the section commences. This power may vary the application of the Act and thus may not have sufficient regard to the institution of Parliament. However, the section and any transitional regulation made under it will expire one year after the section commences. This will ensure that if anything is identified during the further due diligence, which is not directly covered in the Bill, it can be addressed without delaying the LMA project.

While an FLP breach, this section is designed to provide a short term safety net to ensure the smooth implementation of local management and address anything which might be identified after the commencement of the legislation for which the Bill does not make provision for or sufficient provision for. Similar provisions were included in legislation for previous restructures and asset transfers, for example section 123 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and section 104 of the QRTA Act.

## **Consultation**

The Independent Project Team established for Stage 2 of the LMA project carried out substantial consultation with stakeholders including assessing the level of support for the implementation of local management by scheme customers.

## **Results of consultation**

### **Community and industry stakeholders**

The Independent Project Team that carried out stakeholder consultation concluded in its public report in September 2014 on Stage 2 of the LMA Project:

“Six of the eight schemes have satisfied the principle of strong customer support for moving to local management. In general, the larger commercial irrigators have demonstrated strongest support with smaller irrigators and hobby farmers being more ambivalent. In two schemes, Lower Mary and Mareeba-Dimbulah, customers support further investigation into local management. Across all schemes, out of a total of more than 3000 customers, only 40 have voted in opposition to local management. There is a high level of expectation amongst customers within the schemes that government will support a move to local management.

Support for local management is based on the proposals put forward by the interim boards. Where separation payments offered are less than the quantum requested in the business proposals the implications will need to be assessed by the transition boards and customers consulted prior to the finalisation of the transfer.

Maintaining customer engagement and support is essential to achieving successful transition and will be assisted by early advice on an intention to proceed to implementation of local management.

Further consultation will be carried out with scheme customers prior to the transfer of the schemes to local management in the Eton, Emerald, St George and Theodore schemes.

In the Bundaberg, Burdekin-Haughton, Lower Mary, and Mareeba-Dimbulah schemes, further customer consultation will be carried out as part of the next stage of the project.

### **Government**

All Queensland departments and agencies consulted support the Bill.

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

The Bill is not part of national scheme legislation.

## Notes on provisions

### 1 Short title

Clause 1 provides the short title of the Act is the *Water (Local Management Arrangements) Amendment Act 2016* (this Act).

### 2 Commencement

Clause 2 provides for commencement of this Act to be on a day fixed by proclamation.

### 3 Act Amended

Clause 3 provides that this Act amends the *Water Act 2000*.

### 4 Insertion of new ch 4A

Clause 4 inserts a new Chapter 4A into the Water Act.

## Chapter 4A Declared channel schemes

### Part 1 Preliminary

#### Section 718 Definitions for chapter

Section 718 provides definitions for new chapter 4A.

#### Section 719 What is a *declared project*

Section 719 provides that a 'declared project' is each of the following—

- the transfer of the businesses, assets and liabilities of SunWater in relation to a declared channel scheme to an irrigation entity;
- the divestment from the State of an irrigation entity.

Under subsection (2), the Minister may also, by gazette notice, declare a thing to be part of a declared project for this chapter if the Minister is satisfied it is appropriate to include the thing as part of a transfer or divestment or otherwise necessary to do so for the proper completion of the declared project.

#### Section 720 What is a *declared channel scheme*

Section 720(1) defines the term 'declared channel scheme' as each of the following schemes—

- Emerald channel scheme;
- Eton channel scheme;
- St George channel scheme;
- Theodore channel scheme;

- another channel scheme declared by regulation.

Subsection (1)(e) provides a mechanism to declare other channel schemes to be a declared channel scheme for the declared project, by regulation. The remaining SunWater channel irrigation schemes that could be declared under this provision are the Bundaberg, Burdekin-Haughton, Lower Mary, and Mareeba-Dimbulah schemes. Only SunWater's channel irrigation schemes are within the scope of the Bill. Seqwater operates a number of small channel irrigation schemes in South East Queensland, however those schemes are outside the scope of the LMA project.

Subsection (2) provides descriptions of the four declared channel schemes.

### **Section 721 What is an *irrigation entity***

Section 721 provides the definition of an 'irrigation entity' is a corporation, other than a GOC—

- that is established for the purposes of a declared project; and
- to which the State provides financial support, under a funding arrangement, for the corporation to undertake the project.

### **Section 722 Minister may declare transfer day for declared channel scheme**

Section 722 provides that the Minister may, by gazette notice, declare a day to be the transfer day for a declared channel scheme.

## **Part 2 Particular Ministerial powers relating to declared projects**

### **Section 723 Transfer notice**

Section 723 provides that the Minister may do a number of things for the purposes of the declared project by way of a transfer notice which must be published in the gazette to have legal effect.

The transfer notice is available to transfer a business, asset or liability of SunWater to an irrigation entity. A transfer notice can also grant, transfer and deal with interests in land; grant, transfer and deal with licences, registrations, authorities, approvals and instruments; transfer SunWater employees (other than under part 4) to an irrigation entity; or make provision about an incidental, consequential or supplemental matter the Minister considers necessary or convenient for effectively carrying out the declared project.

The Minister's powers under section 723 are limited to the purposes to the declared project.

### **Section 724 Project direction**

Section 724 provides that the Minister may give a direction to SunWater or an irrigation entity (each a 'relevant entity'), a relevant entity's board or a government agency requiring the entity, board or agency to do something necessary or convenient for effectively carrying out the declared project.



A relevant entity, their board or a government agency must comply with the direction. A relevant entity's board also has an obligation to ensure an entity complies with a direction given to it. In addition, the relevant entity's employees must help the entity or the entity's board to comply with a direction.

A project direction must be in writing and signed by the Minister.

## **Part 3                      Interests in land**

### **Section 725 Resource authorities unaffected**

Section 725 applies in the circumstances where a transfer notice provides for—

- a perpetual lease under the *Land Act 1994* that is held by SunWater or an irrigation entity to be varied or extinguished; or
- a perpetual lease under the *Land Act 1994* to be issued by the State to SunWater or an irrigation entity.

Subsection (2) provides that the variation, extinguishment or issue of the perpetual lease does not affect a resource authority held in relation to the land.

A 'resource authority' is defined by reference to section 10 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

### **726 Particular easements**

Section 726 applies if a transfer notice provides for the transfer of an easement held by SunWater and either acquired by SunWater or its predecessors in title under an acquisition Act or another Act stated in subsection (1), to an irrigation entity and the easement is—

- an easement taken by a gazette resumption notice under the *Acquisition of Land Act 1967* (a **resumption easement**); or
- a public utility easement under the *Land Act 1994* or the *Land Title Act 1994*.

This section makes provision about particular types of easements historically taken by SunWater and its predecessors, namely resumption easements and public utility easements, for the purpose of dealing with statutory and non-statutory rights that may be or have been exercisable in relation to the land.

Under repealed legislation, the commissioner had powers to compulsorily acquire an easement for water supply and irrigations purposes. Those provisions also gave the commissioner statutory powers in relation to the land subject to the easements. As the irrigation entities are neither statutory authorities nor the successor in law to SunWater, they will have the benefit of the easements when transferred but will have no authority to exercise any statutory powers in relation to the land.

### **727 Unregistered easements**

It is evident that a number of historical easements taken by SunWater's predecessors, although lawfully acquired, may never have been registered in the appropriate register of land.

Section 727 enables the registration of an easement, referred to in section 726(1)(b) and in a declared channel scheme, to be registered within two years of the transfer day.

However, before the registration can occur, the Minister must be satisfied of the following criteria—

- there is no outstanding issue of substance relating to the payment of compensation under the acquisition Act for the acquisition; and
- the particulars of the acquisition of the easement have never been recorded in the appropriate register for the land the subject of the easement; and
- the rights conferred, and the obligations imposed, by the easement have never been extinguished; and
- immediately before the transfer day for the declared scheme, infrastructure associated with the purposes for which the easement was taken is situated on the land.

If the Minister is satisfied these criteria are true in relation to a transferred easement, the Governor in Council may, within two years of the transfer day, declare that the easement is vested in the irrigation entity. Under subsection (4) the chief executive or the registrar of titles may rely on the gazette notice for amending the appropriate register for the land the subject of the easement to record the particulars of the easement in the register. An application for registration of the easement should be made pursuant to section 738X.

### **728 Compensation not payable to any person for action under s 727**

Section 728 declares that compensation is not payable to a person for deprivation of an interest in land, or for loss or damage of any kind, arising out of the recording of the particulars of an easement under section 727.

An easement registered pursuant to section 727, may only be registered if the Minister is satisfied there are no issues of substance relating to the payment of compensation under the acquisition Act for the acquisition.

### **729 Third party licences preserved**

Section 729 makes specific provision to enable the transfer of unregistered rights that have or may have been granted by SunWater, as the land owner, to third parties for access and use of the land, for example, to a farmer for locating irrigation pumps or to a grazier for grazing cattle.

As these rights may exist in relation to land within the area of a declared channel scheme, the benefits and obligations of such licences should be transferred.

As the *Land Act 1994* does not provide for licences to be issued over perpetual leases, the provision declares any such licences to be lawfully granted immediately before the transfer day.

This will ensure that the rights and obligations of such third party licences continue on their terms. It is also proposed to enable an irrigation entity in the future to grant such licences under new section 730 of the Bill, over land that is a transferred perpetual lease.

### **730 Subleases and licences under Land Act 1994**

To give the irrigation entities some flexibility in the way they manage the schemes, section 730 makes provision for an irrigation entity to deal with subleases and licences relating to land transferred.

Subsections (1) and (2) apply to dealings with subleases, enabling an irrigation entity to transfer a sublease, issue a sublease or amend a sublease.

Subsection (2) provides that for any of the dealings mentioned in subsection (1), the Minister's approval under the *Land Act 1994* is not required for the dealing or the registration of the document for the dealing.

However, any dealing affecting a sublease must be consistent with the purposes for which the perpetual lease was granted.

Subsections (3), (4) and (7) deal specifically with licences to access and use land within land that has been transferred to an irrigation entity.

The irrigation entity can, in relation to that land, grant a licence to a third party to enter and use the land. Any licence granted by the irrigation entity would need to be consistent with the purpose for which the perpetual lease was granted and is subject to any condition of the lease that prohibits or restricts the grant of a licence.

Subsection (7) declares that the Minister's approval under the *Land Act 1994* is not required for the grant of a licence under this section. However, a licence granted under this section, is not a registerable dealing.

To ensure there is no doubt, subsections (5) and (6) expressly state that the indemnity and insurance conditions under the Land Regulation 2009, schedule 10A, part 1, sections 1 and 2 apply as conditions of a sublease or licence under this section.

### **731 Disapplied mediation provisions**

Section 731 states the mediation provisions contained in the *Land Act 1994*, chapter 6, part 4, division 3A, do not apply to a sublease of a transferred lease. Given the Minister's approval is not required for an irrigation entity to deal with subleasing transferring land, it is not considered appropriate that the mediation provisions that may otherwise apply to resolve disputes between parties, do not apply.

### **732 Application of Land Act 1994 and registration**

Section 732 provides that, subject to part 3, the *Land Act 1994* applies to a sublease granted under section 730 as if it were granted under the *Land Act 1994*.

Subsection (2) provides that the chief executive of the department in which the *Land Act 1994* is administered may record the dealing effected for the sublease under section 730 in the leasehold land register.

### **733 Permits to occupy under Land Act 1994**

Section 733 makes provision about the transfer of any permit to occupy unallocated State land, a reserve or road under the *Land Act 1994* granted to SunWater and the permit to occupy is in the area of a declared channel scheme.

Subsection (2) declares that on the transfer day, the permit to occupy is taken to be a permit to occupy issued to the irrigation entity for the scheme.

However, the section does not limit or otherwise affect the power of the chief executive under the *Land Act 1994* to deal further with the permit to occupy.

Subsections (4) to (7) deal with the potential situation where SunWater has irrigation infrastructure located on a road under the *Land Act 1994* but there has been no permit to occupy issued under the Land Act provisions.

Subsection (5) declares that on the transfer day for the declared channel scheme, the irrigation entity for the scheme is taken to have been issued with a permit to occupy the road.

However, the deemed permit is for a period of one year only and is subject to section 180 of the *Land Act 1994*. Despite section 177(8) of the *Land Act 1994*, the permit need not be registered.

This means that unless otherwise cancelled pursuant to section 180 of the *Land Act 1994*, the permit will expire after one year. The irrigation entity will have one year to undertake the process to obtain permits to occupy, or other appropriate agreements with the relevant parties, for example, a local government for a local government controlled road.

### **734 Ancillary works and encroachments under Transport Infrastructure Act 1994**

Section 734 makes provision for the transfer of an approval under section 50(2) of the *Transport Infrastructure Act 1994* held by SunWater to conduct specified ancillary works and encroachments on a State-controlled road that is in the area of a declared channel scheme.

Subsection (2) provides that on the transfer day for the declared channel scheme, the approval is taken to be an approval given to the irrigation entity for the scheme.

### **735 Approvals for Transport Infrastructure Act 1994, s 255**

Section 734 makes provision for the transfer of an approval under section 255(1)(a) of the *Transport Infrastructure Act 1994*, held by SunWater, to interfere with a railway in the area of a declared channel scheme.

Subsection (2) provides that on the transfer day for the declared channel scheme, the approval is taken to be an approval given to the irrigation entity for the scheme.

### **736 Access across irrigation channels**

SunWater maintains a number of channel crossings that were constructed by its predecessor entities (e.g. the Irrigation Commission or the Water Resources Commission). These historical crossings were constructed to allow landholders access to their land when irrigation channels resulted in that land being denied access to by road. For example, under the repealed *Water Resources Act 1989*, the commissioner was required to construct and maintain a means of access where there was no access between a parcel of land and a road. SunWater as the successor in law is obliged to maintain those accesses.

While an irrigation entity will not be SunWater's successor in law, the obligation to maintain these accesses will transfer to them.

Section 736 therefore makes specific provision for this. Subsection (1) states that the section applies, if SunWater is required to construct or maintain a means of access across an irrigation channel from a parcel of land to a road that is in the area of a declared channel scheme.

Subsection (2) declares that on the transfer day—

- SunWater's rights and obligations in relation to constructing or maintaining a means of access across the irrigation channel end; and

- SunWater's rights and obligations in relation to constructing or maintaining a means of access across the irrigation channel become the rights and obligations of the irrigation entity for the scheme.

## **Part 4 Employees**

### **737 What is the *employee register* for a declared channel scheme**

Section 737 makes provision for an 'employee register' to be established, which is a register of the SunWater employees that are proposed to be transferred to the irrigation entity for the scheme and is prepared and approved by the chief executive of SunWater.

Under subsection (2) the chief executive has the power to approve the register and subsection (3) allows the chief executive to change the employee register to correct an omission or error in relation to the declared channel scheme at any time within one year of the transfer day.

### **738 Who is a *transferable employee***

Section 738 defines a 'transferable employee', as a person—

- who, immediately before the transfer day for a declared channel scheme, was an employee of SunWater; and
- whose name is stated in the employee register for the declared channel scheme as an employee to be transferred to the irrigation entity for the scheme.

### **738A Transfer of transferable employees**

Section 738A makes provision about the effect of a transfer of a transferable employee, including that on the transfer day for a declared channel scheme—

- a transferable employee for the declared channel scheme becomes an employee of the irrigation entity for the scheme; and
- a transferable employee for the declared channel scheme ceases to be an employee of SunWater; and
- the records of SunWater, to the extent they relate to the employment of transferable employees for the declared channel scheme, become records of the irrigation entity for the scheme.

Subsections (2) and (3) make provision about a transferable employee that transfers after the transfer day, or the person ceases to be a transferable employee because of a register correction for the declared channel scheme, respectively.

### **738B Preservation of rights of transferable employees**

Most SunWater employees are employed under an enterprise agreement pursuant to the *Fair Work Act 2009* (Cwlth). A small number of SunWater employees are subject to individual employee contracts.

Section 738B makes provision for the transfer of a transferable employee to occur without affecting the employee's current conditions of employment, remuneration, leave, superannuation and other benefits.

The section also declares that the transfer does not constitute a retrenchment or redundancy or termination of employment and does not require SunWater to make payment in relation to an employee's accrued rights to annual, sick or long service leave.

A transferable employee, who is a member of QSuper, will continue to be a member of that scheme, without disruption or change to the member's superannuation accounts including a defined benefit account.

### **738C Individual contracts of employment**

Section 738C makes provision about transferable employees that are not subject to the terms of a federal enterprise agreement and have individual contracts of employment.

Subsection (2) provides that the transferable employee's individual contract of employment with SunWater is, on the transfer day, taken to be an individual contract of employment between the employee and the irrigation entity for the declared channel scheme and applies with any necessary change to give effect to the contract.

This means that the employee will transfer from SunWater to the irrigation entity on the same employment terms.

## **Part 5 Water service provider provisions**

### **738D Application of part**

Section 738D provides that part 5 applies to a declared channel scheme from the transfer day for the scheme.

### **738E Irrigation entity becomes water service provider**

Under the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) a person must be registered as a service provider before that person can commence to supply a water or sewerage service. SunWater is a registered water service provider.

Section 738E makes provision for changes to the registration details for SunWater and the registration of an irrigation entity as a water service provider on the transfer day.

SunWater is taken to cease to be providing an irrigation service in the area of the declared channel scheme on the transfer day and the irrigation entity becomes the water service provider for the irrigation service.

However, the irrigation entity must, as soon as practicable, give the regulator the information mentioned in section 12 of the Water Supply Act.

This provision will enable a seamless transition of the service provider registrations and avoids doubt that an irrigation entity is a water service provider on and from the transfer day.

### **738F No notice to regulator required**

Section 738F states that the Water Supply Act, chapter 2, part 3 division 1, subdivision 3 (Transferring registration) does not apply to SunWater ceasing to be a water service provider for the irrigation service or to the irrigation entity's registration as a water service provider for the irrigation service as these requirements are dealt with in section 738E.

### **738G Migration of customers**

Section 738G provides for the migration of irrigation customers of SunWater to become customers of the irrigation entity for the declared channel scheme.

Subsection (2) provides that, on the transfer day, the person (a SunWater customer) becomes a customer of the irrigation entity for the scheme as a water service provider providing the irrigation service.

## **Part 6                      Distribution operations licences and water allocations**

### **738H Issuing of distribution operations licence to irrigation entity**

Section 738H makes provision about distribution operations licences (DOL) where a transfer notice provides for the issue of a DOL to the irrigation entity for a declared channel scheme.

Normally, a DOL would be issued to an entity pursuant to the process under the *Water Act 2000*. Because the DOLs for the irrigation entities will be issued under the transfer scheme, subsection (2) provides that chapter 2, part 4, division 3, subdivisions 1 and 1A of the *Water Act 2000* does not apply to the issuing of a DOL to the irrigation entity.

### **738I Supply contracts applying for particular water allocations**

Section 738I makes provision for a standard supply contract to apply between the irrigation entity and the irrigation customers on and from the transfer day.

Under the section, the irrigation entity is obligated to prepare a document (the *irrigation entity document*) based on the existing standard supply contract between SunWater and the irrigation customers for the supply of water under the resource operations licence (ROL) held by SunWater for the area of the declared channel scheme.

The irrigation entity must publish the document on the entity's website before the transfer day for the declared channel scheme.

On the transfer day, the irrigation entity document has effect as a contract (the *supply contract*) for the supply of water under the DOL between the irrigation entity and the holder of each water allocation to whom water—

- was supplied under the ROL immediately before the transfer day; and
- continues to be supplied under the DOL held by the irrigation entity.

Subsection (7) provides that the document also has effect as a supply contract between the irrigation entity and the holder of a new water allocation.

### **738J Power to charge fees for drainage services under supply contract**

Section 738J provides that a supply contract mentioned in section 738I may provide that the irrigation entity may charge a person bound by the contract a fee for providing drainage services under the contract.

Currently, SunWater has statutory powers under the *Water Act 2000* to charge landowners drainage rates prescribed by regulation, regardless of whether those landowners are customers of the schemes.

As private entities, the irrigation entities will not have a statutory power to charge drainage rates for drainage services to landowners within the a drainage area, however this provision allows for the irrigation entities to charge irrigation customers only (and not all landholders) drainage fees via contractual arrangements.

## **Part 7                    Other authorities**

### **738K Environmental authorities**

SunWater holds a number of certificates of registration (as a suitable operator) for an environmental authority for a prescribed ERA under the *Environmental Protection Act 1994* (EP Act), within the area of a declared channel scheme.

Section 738K makes provision about environmental authorities if a transfer notice transfers an environmental authority to an irrigation entity for a prescribed ERA under the EP Act. In order to effect a transfer however, it is proposed that where SunWater holds an environmental authority that covers multiple schemes, the licence will first be unbundled enabling it to be transferred to the relevant irrigation entity.

Subsection (2) provides that the irrigation entity is taken to be a suitable operator under the EP Act for the carrying out of the prescribed ERA under the environmental authority.

While the EP Act contains provisions for transferring an environmental authority to 'suitable operators', the timeframes involved in transitioning to local management arrangements make it preferable to deem the irrigation entities to be a suitable operator to ensure there is no delay to the transition process.

### **738L Licensing as a ground distribution contractor under Agricultural Chemicals Distribution Control Act 1966**

SunWater is the holder of a ground distribution contractor licence pursuant to 16B of the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) but it is 'bundled' in that it applies to a number of channel schemes. Thus new licences may need to be issued for the relevant declared channel schemes. SunWater may also need to retain a part of its licence for activities not related to the declared channel schemes.

Section 738L makes provision about a ground distribution contractor licence, if a transfer notice provides for the issuing of a licence to the irrigation entity for a declared channel scheme.

Subsections (2) and (3) provide that the ground distribution contractor licence is taken to have been granted under section 16 of the ACDC Act, on the same conditions as that part of the SunWater licence that applied to the declared channel scheme.

However, the chief executive under the ACDC Act is not prevented from further dealing with the licence.



## **Part 8                      Divestment**

### **738M Application of part**

Section 738M states that part 8 applies to an irrigation entity from the day the State is divested of the entity.

### **738N Providing irrigation services not a monopoly business activity**

SunWater is declared under the *Queensland Competition Authority Act 1997* (QCA Act) to be a monopoly business activity.

Section 738N provides that an irrigation entity for the declared channel scheme is taken not to be a monopoly business activity for the QCA Act in providing an irrigation services.

However, the section does not limit or otherwise restrict the powers of the Minister or the Governor in Council to declare an irrigation entity is carrying on a monopoly business activity under the QCA Act subsequent to the divestment.

### **738O Application of Cooperatives Act 1997**

The irrigation entity for the Eton channel scheme proposes to subsequently transition into a cooperative, as this is the irrigators' preferred corporate form. The *Cooperatives Act 1997* prescribes a number of procedural and documentation requirements which must be met for an existing corporation to be registered as a cooperative. To facilitate a timely transition, it is desirable that some of the procedural requirements are dispensed with or modified.

Section 738O makes provision about the transition of an irrigation entity to a cooperative by stating, for example, that section 23 of that Act does not apply to the application or the registration of the proposed cooperative and section 268 does not apply to the transfer of the irrigation entity's assets and liabilities to the cooperative.

### **738P Notifiable event for Auditor-General Act 2009**

Section 33 of the *Auditor-General Act 2009* requires notice to be given to the Treasurer and the Auditor-General when a public sector entity stops being a public sector entity – a notifiable event.

Section 738P provides that where an irrigation entity stops being a public sector entity, i.e. after divestment of the entity by the State, the Minister is taken to have complied with section 33(3) of the *Auditor-General Act 2009* despite not giving written notice to the Treasurer and Auditor-General.

## **Part 9                      Other matters for declared project**

### **738Q Duty to facilitate declared projects**

Section 738Q is an overarching provision that states SunWater and an irrigation entity must do all acts and things necessary or desirable for the purpose of the declared project. This obligation is in addition to anything required of SunWater or an irrigation entity under a project direction under section 724.

### **738R Confidentiality agreement with irrigation entity**

During the transitional period the irrigation entities will need to work closely with SunWater to establish the relevant operational systems and develop the capacity to take over the operation of the schemes.

Section 738R provides that an irrigation entity may enter into a confidentiality agreement with the State for the purpose of obtaining access to information in the possession or control of the State or SunWater.

If an agreement is made, it must state—

- the information to which access may be given; and
- the employees or agents of the irrigation entity to whom the access may be given; and
- any conditions of the agreement.

### **738S Disclosure and use of information for declared project**

Section 738S provides that a person may disclose information in the possession or control of the State or SunWater for the purpose of a declared project.

Subsection (1) limits disclosure to those persons who are involved with the project or have entered into a confidentiality agreement under section 738R, or an irrigation entity, or employee or agent of an irrigation entity.

Subsection (2) provides that SunWater or its board must comply with a request by the Minister for the disclosure of information under subsection (1).

Because information to be disclosed to an irrigation entity may be of a commercial, confidential, sensitive or personal nature, this provision also provides appropriate protections for persons who, acting honestly, disclose or use information against civil, criminal, and administrative actions. Without this protection, persons could otherwise be subject to a number of consequences including disciplinary action.

### **738T Non-liability for State taxes, charges or fees**

Section 738T provides that SunWater or an irrigation entity is not liable to pay a range of State taxes, charges or fees that would otherwise apply, for example, State duty on the transfer of property or fees for registration in the freehold or leasehold land registers.

Specifically, subsection (1) provides that SunWater or an irrigation entity is not liable to pay any of the following relating to anything done under a transfer notice or any other instrument for the purpose of a declared project—

- (a) a tax under the *Duties Act 2001* or another Act;
- (b) a charge or fee under the *Water Act 2000*, the *Land Act 1994*, *Land Title Act 1994*, *Transport Operation (Road Use Management) Act 1995* or another Act.

Any subsequent dealings in land, transfers, approvals etc. post the transfer and divestment will not be exempt from State taxes, charges or fees and the relevant entities would be liable to meet those costs.

### **738U Disposal of public records**

Section 738U makes provision about the disposal of public records, where a transfer notice or project direction results in the disposal of a public record. In the circumstances, the public record is taken to be disposed of under legal authority, justification or excuse for the purposes of section 13 of the *Public Records Act 2002*.

### **738V Application of instruments**

Section 738V applies if a transfer notice provides for an 'instrument' that applied to SunWater to apply to an irrigation entity in place of SunWater.

Subsection (2) makes specific provision as to the effect of the instrument being transferred in a range of circumstances but does not limit the application of the transfer notice under section 723.

An 'instrument' is defined broadly under the Bill to include:

- an oral agreement; and
- an application or authority under an Act.

### **738W Documents applying to SunWater and an irrigation entity**

Section 738W applies if a transfer notice provides for a 'document' that applied to SunWater to apply to an irrigation entity for a declared channel scheme to the extent that the document is relevant to the scheme.

Subsection (2) makes specific provision as to the effect of the document being transferred but does not limit the application of the transfer notice under section 723.

For example, for an approved document, the approval is taken to be for the balance of the period of approval. For this section 'approval' includes authorisation.

### **738X Registering authority to note transfer or other dealing**

Section 738X provides that the registrar of titles or other registering authority must, on written application by an irrigation authority, register or record in the appropriate way the transfer or other dealing affecting an asset or liability under a transfer notice.

Subsection (2) places an obligation on the relevant irrigation entity to comply with any relevant procedures required by the registering authority for the purpose of registering or recording the transfer or other dealing affecting an asset or liability under a transfer notice, such as completing and submitting a particular form.

Subsection (3) defines a 'registering authority' for the section as the registrar of titles or another person required or authorised by law to register or record transactions affecting assets or liabilities.

### **738Y Act applies despite other laws and instruments**

Section 738Y provides that a thing may be done under chapter 4A despite any other law or instrument to ensure that things done under the chapter have full legal effect.

The following example is provided—

A transfer notice may transfer a trustee lease under the *Land Act 1994* without the written approvals that would otherwise be required for a transfer under section 58 of that Act.

### **738Z Excluded matter for Corporations Act**

The irrigation entities are being established under the *Corporations Act 2001* (Cwlth) and SunWater became a Corporations Act company in 2008. The Minister has powers under the Bill to give directions to SunWater and to an irrigation entity.

To remove the risk that the Minister is considered a director or officer of those companies and subject to the relevant duties imposed by the Corporations Act, section 738Z is a displacement provision for the purposes of section 5F of the Corporations Act, which allows a State law to exclude the operation of all or specified provisions of the Corporations Act.

Section 738Z provides that anything done by the Minister under chapter 4A is an excluded matter for the Corporations Act in relation to chapter 2D of the Corporations Act (Officers and employees).

### **738ZA Effect on legal relationships**

Section 738ZA protects the State and other relevant entities from liability for, among other things, a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty for things done under chapter 4A. A relevant entity includes—

- the State or an employee or agent of the State; or
- SunWater or an employee or agent of SunWater; or
- an irrigation entity or an employee or agent of the irrigation entity.

### **738ZB Approval under *Government Owned Corporations Act 1993*, s 139**

Section 139 of the *Government Owned Corporations Act 1993* (GOC Act) provides that a GOC may dispose of any of its main undertakings only with prior written approval of the shareholding Ministers.

Section 738ZB provides that, for section 139 of the GOC Act, an approval is taken to have been given for the disposal, for the purpose of a declared project, of any of SunWater's main undertakings.

### **738ZC Things done under chapter**

Section 738ZC declares, to remove doubt that a thing is taken to be done under chapter 4A if it is done by, or in compliance with, a transfer notice or project direction, even if the thing includes taking steps under another Act.

### **738ZD Limitation of review**

Section 738ZD provides that the *Judicial Review Act 1991*, part 4, does not apply to a decision under chapter 4A and the decision is—

- final and conclusive; and
- cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

However, part 5 of the *Judicial Review Act 1991* applies to a decision to the extent it is affected by jurisdictional error.

This provision will prevent the transaction being delayed or disrupted as the transfers will take place under tight timeframes with significant assets being transferred simultaneously. Evidentiary challenges or judicial review could disrupt the transition process and cause operational difficulties as the schemes will need to continue operating throughout the process.

### **738ZE Severability**

Section 738ZE provides that, if a provision of chapter 4A, or a transfer notice, is found to be beyond power, invalid or unenforceable by a court or judge, the provision is disregarded or severed and the remaining provisions of the chapter or transfer notice continue to have effect and be valid.

Subsection (2) declares that the section does not affect the operation of the *Acts Interpretation Act 1954*, section 9, in any way; section 9 deals with the interpretation of an Act in relation to Parliament's legislative power.

## **Part 10                    Miscellaneous**

### **738ZF Evidentiary aids**

Section 738ZF allows the Minister to issue conclusive certificates to ensure that decisions made under the legislation will not be reviewable and are final and conclusive.

### **738ZG Delegations**

The Minister may delegate a power of function under chapter 4A, other than in relation to the sections listed in section 738ZG.

### **738ZH References to SunWater**

Section 738ZH provides that references to SunWater in various documents and in an Act are, in relation to a declared channel scheme, from the transfer day for the scheme and if the context permits, taken to be a reference to the irrigation entity for the scheme.

## **Part 11                    Transitional regulation-making power**

### **738ZI Transitional regulation-making power for declared projects**

Section 738ZI provides a power to make regulations to address a defect or omission in the Bill or provide for supplementing the Bill in order to facilitate the LMA project.

It also allows for a regulation to be retrospective in operation, provided that any retrospective operation is not earlier than the date that the section commences.

This section, and any transitional regulation made under it, will expire one year after the section commences. This will ensure that if anything is identified during the further due diligence, which is not directly covered in the Bill, it can be addressed without delaying the LMA project.

This section is designed to provide a short-term mechanism to ensure the smooth implementation of local management and address anything which might be identified after the commencement for which the Bill does not make provision for or sufficient provision for.

## **Part 12                      Expiry and savings provisions**

### **738ZJ Expiry of chapter**

Section 738ZJ provides that chapter 4A expires 10 years after the commencement.

### **738ZK Savings of operation of chapter**

Section 738ZK declares that chapter 4A is to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.

Section 20A of that Act deals with the circumstances in which the repeal does not end saving, transitional or validating effect etc. of provisions.

### **Amendment of schedule 4 (Dictionary)**

*Clause 5* amends schedule 4 to insert definitions for chapter 4A.