

# **Water and Other Legislation Amendment Bill 2010**

## **Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Stephen Robertson MP**

### **Title of the Bill**

Water and Other Legislation Amendment Bill 2010

### **Objectives of the Amendments**

The amendments to be moved during consideration have been made to correct errors and omissions in the amendments to the *Water Act 2000* (Water Act), *South-East Queensland (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* contained in the *Water and Other Legislation Amendment Bill 2010*.

### **Achievement of the Objectives**

Three amendments are needed to ensure the effective operation of the amendments.

### **Alternative Ways of Achieving Policy Objectives**

Legislative amendments are the only means of achieving the policy objectives.

### **Estimated Cost for Government Implementation**

The amendments do not change the estimated cost for government implementation.

### **Consistency with Fundamental Legislative Principles**

The amendments do not conflict with Fundamental Legislative Principles.

## Consultation

### Government

Department of Premier and Cabinet have been consulted on the amendments.

The Office of Parliamentary Counsel has advised that it is necessary to make these amendments to ensure the new provisions achieve their intended policy objective.

## Notes on Provisions

**Amendment 1 Amendment of clause 65 (Amendment of s 2 (Definitions))** addresses an incorrect cross reference in the definition of underground water obligations.

Currently the definition of underground water obligations provides the following example of another obligation under the Water Act, chapter 3 with which the holder may be required to comply:

- giving an underground water impact report under section 368 of that Act.

The reference to section 368 of the Water Act in this example is amended to be a reference to section 370 of the Water Act.

**Amendment 2 Amendment of clause 65 (Amendment of s 2 (Definitions))** addresses two incorrect cross references in the definition of underground water obligations.

Currently the definition of underground water obligations provides the following example of another obligation under the Water Act, chapter 3 with which the holder may be required to comply:

- preparing and complying with a baseline assessment plan under sections 393 and 396 of that Act.

The reference to section 393 and 396 of the Water Act in this example is amended to be a reference to section 397 and 400 of the Water Act.

**Amendment 3 Amendment of clause 92 (Amendment of sch 2 (Dictionary))** addresses an incorrect cross reference in the definition of underground water obligations.

Currently the definition of underground water obligations provides the following example of another obligation under the Water Act, chapter 3 with which the holder may be required to comply:

- giving an underground water impact report under section 368 of that Act.

The reference to section 368 of the Water Act in this example is amended to be a reference to section 370 of the Water Act.

**Amendment 4 Amendment of clause 92 (Amendment of sch 2 (Dictionary))** addresses two incorrect cross references in the definition of underground water obligations.

Currently the definition of underground water obligations provides the following example of another obligation under the Water Act, chapter 3 with which the holder may be required to comply:

- preparing and complying with a baseline assessment plan under sections 393 and 396 of that Act.

The reference to section 393 and 396 of the Water Act in this example is amended to be a reference to section 397 and 400 of the Water Act.

**Amendment 5 Amendment of clause 155 (Insertion of new ch4, pt 3A)** replaces the existing 99AA on page 105, line 20 and replaces that with s99AAA. The existing legislation already contains a section 99AA (Application of pt 4) which applies interim customer service standards and other measures which apply until the making of the Customer Water and Wastewater Code (the Code). Once the Code is made, the section will no longer apply. Clause 155 of the Bill sought to introduce a new s94AA (Distributor-retailer to give report to commission), but at a time when there would already have been another s99AA in operation. This would have meant that there would be two s99AA's until the Code was made. Clause 5 renumbers what would have been 99AA (Distributor-retailer to give report to commission) as 99AAA to ensure that there are not two provisions with the same numbering.

**Amendment 6 and 7 Amendment of clause 161 (Insertion of new s99AF)** replaces the existing 99AF on page 107, lines 18 and 22 and replaces those with s99AFA. The existing legislation already contains a section 99AF which was the offence provision for Part 4 of Chapter 4

(Obligation to comply with part). The new 99AF (Distributor-retailer may accept meter reading by customer) is about allowing for meter reads to be done by the customer in certain circumstances. As the existing 99AF (Obligation to comply with part), will continue to exist in its present form, until the Code is made, at which time it will be renumbered as 99AB under clause 160 of the bill. Until that time, there would be two s99AF's (one as an offence provision and the other as a customer meter read provision). Clause 6 and 7 change the new s99AF (which is about customer meter reads) to s99AFA to avoid there being two 99AF's while the Code is not made.

**Amendment 8 Amendment of clause 162 (Amendment of s99AH (Methods of charging))** replaces s99AF on page 108, line 29 with 99AFA. Section 99AH is generally about how and when a distributor-retailer can give estimated meter reads instead of actual meter reads. The amendment clarifies that the section is dealing with the new s99AFA (Distributor-retailer may accept customer meter reading by customer) and not the existing s94AF (Obligation to comply with part).

**Amendment 9 Amendment of clause 175 (Amendment of sch 1 (Prohibited development))** Clauses 175(3) and (6) of the Bill amend items 10 and 11 of schedule 1 of the *Sustainable Planning Act 2009*. For consistency, the amendments extend the existing prohibitions [for high preservation area and floodplain management area] relating to an extraction environmentally relevant activity to also apply in a wild river special floodplain management area.

It was identified that the existing clause 175(6) was not required as clause 175(3) already deals with an extraction environmentally relevant activity in a special floodplain management area.

Clause 175(4) expands the existing exemption from the existing prohibitions (for high preservation area's) in item 10 of schedule 1 relating to an environmentally relevant activity to extract quarry material to meet the needs of essential development.

Consequently under the amendments as they were, the level of prohibition for an extraction environmentally relevant activity would have been higher in a floodplain management area than in a high preservation area and there would be inconsistent prohibitions in a special floodplain management area.

The amendment will ensure that the level of prohibition for an extraction environmentally relevant activity is consistent across all parts of a wild rivers area.

**Amendment 10 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in clause 195 of the Bill which inserts the new section 365 of the Water Act.

It was intended that under section 365(4)(b) the chief executive would be required to publish a map showing the declared cumulative management area on the department's website.

An amendment to new section 365(4)(b) will address a typographical error by omitting the term 'its' and replacing it with 'the department's'.

**Amendment 11 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in clause 195 of the Bill which inserts the new section 367 of the Water Act.

New section 367 provides the following example of what using best endeavours means for this section:

- a search of a database of information relevant to underground water management kept by the department administering this Act.

An amendment will address incorrect grammar by omitting the words 'a search of' and replacing them with 'searching'.

**Amendment 12 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in clause 195 of the Bill which inserts the new section 367 of the Water Act.

New section 367 provides the following example of what using best endeavours means for this section:

- a search of a database of information relevant to underground water management kept by the department administering this Act.

An amendment will address a minor error by omitting the words 'administering this Act'. It is necessary to make this amendment as the Minister administers the Act, not the department.

**Amendment 13 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in clause 195 of the Bill which inserts the new section 373 of the Water Act.

An amendment to section 373(1)(b) will omit the words 'under that section' as they are not necessary.

**Amendment 14 Amendment of clause 195 (Insertion of new ch 3)** addresses an inconsistency in terminology.

New section 377(1)(a) currently requires a final report to include an estimate of the volume of water mentioned in section 376(a)(ii).

Section 376(a)(ii) provides that an underground water impact report must include (for the area of the report) the quantity of water produced or taken from the area because of the exercise of any previous relevant underground water rights.

An amendment to section 377(1)(a) will omit the word ‘volume’ and replace it with ‘quantity’ to ensure consistency between these two sections.

**Amendment 15 Amendment of clause 195 (Insertion of new ch 3)** addresses an incorrect cross reference in new section 392(6).

An amendment to section 392(6) will omit a reference to section ‘385(5)’ and replace it with a reference to section ‘385(6)’.

Section 385(6) provides for the day an approved underground water impact report takes effect.

**Amendment 16 Amendment of clause 195 (Insertion of new ch 3)** addresses a drafting error.

Section 409(2) lists the make good obligations of a petroleum tenure holder for a water bore other than an immediately affected area.

An amendment to section 409(2)(c) will insert ‘and’ at the end of this item on the list to ensure that it is clear that ALL of those obligations listed apply.

**Amendment 17 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor grammatical error.

New section 427(6) provides that if an Alternative Dispute Resolution (ADR) is called for, sections 430 and 433 apply to the ADR as if a reference in the section to a conference were a reference to an ADR.

An amendment to section 427(6) will correct a singular reference to ‘section’ to be plural.

**Amendment 18 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in section 441(4)(a).

New section 441(4) provides a definition of relevant entry provisions for this section.

Paragraph(4)(a) is amended to clarify that references to ‘parts 6H, 6I, 6J and 6K’ are all references to parts in the Petroleum Act 1923.

**Amendment 19 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in section 441(4)(b).

New section 441(4) provides a definition of relevant entry provisions for this section.

Paragraph (4)(b) is amended to clarify that references to ‘chapter 5, parts 2, 3, 4 and 5’ are all references to parts in the *Petroleum and Gas (Production and Safety) Act 2004*.

**Amendment 20 Amendment of clause 195 (Insertion of new ch 3)** makes a minor drafting change to the heading of new section 442.

The heading of new section 442 is amended to omit reference to ‘ch 3’ and replace this with reference to ‘this chapter’.

**Amendment 21 Amendment of clause 195 (Insertion of new ch 3)** makes a minor drafting change to new section 442 to omit reference to ‘chapter 3’ and replace this with reference to ‘this chapter’.

**Amendment 22 Amendment of clause 195 (Insertion of new ch 3)** addresses a minor error in new section 445 to ensure that the lead in words of subsection 445(2) are relevant for each paragraph to follow.

**Amendment 23 Amendment of clause 195 (Insertion of new ch 3)** amends new section 453(6) to ensure it is consistent with section 453(5)(f).

Section 453(5)(f) provides that a cost recovery notice may state that if the holder does not pay the amount to the chief executive within 30 days after the day the notice is given, the chief executive may recover the amount and any interest payable on the amount from the holder as a debt.

The amendment to new section 453(6) will ensure that the chief executive may recover the amount and any interest payable on the amount from the holder as a debt as was originally intended.

**Amendment 24 Amendment of clause 206 (Amendment of sch 4 (Dictionary))** corrects a minor drafting error. It simply replaces the incorrect numbering of paragraph (a)(a), to paragraph (a)(i).

**Amendment 25 Amendment of clause 206 (Amendment of sch 4 (Dictionary))** corrects a minor drafting error. It simply replaces the incorrect numbering of paragraph (a)(b), to paragraph (a)(ii).

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