

Water and Other Legislation Amendment Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Rachel Nolan MP

Title of Bill

Water and Other Legislation Amendment Bill 2011

Objectives of the amendments

The objectives of the amendments are to clarify a drafting ambiguity and correct errors and omissions made in the Water and Other Legislation Amendment Bill 2011 (the Bill), as well as to expand upon the amendments to the *Wild Rivers Act 2005* contained within the Bill to achieve security of employment for wild river rangers.

The Bill also proposes amendments to the Waste Reduction and Recycling Act 2011 to clarify the application of provisions regarding the delivery of unsolicited advertising material in relation to newspapers.

The objective of the amendments is to ensure that newspapers are not unsolicited advertising material unless the owner or occupier or premises has notified the publisher or the distributor that they do not wish to receive the newspaper.

Drafting ambiguity

An amendment is proposed to correct a drafting ambiguity in a proposed amendment to the *Water Act 2000*. The Bill proposes an amendment to section 213 of the *Water Act 2000* to provide that a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to an artesian aquifer for stock or domestic purposes, attaches only to the land on which the water is being taken. The current wording of the amendment could be interpreted as meaning that entities, such as water authorities, who can currently hold water licences not

attached to land, would need to have a licence attached to a parcel of land. That is not the policy intent behind the clause. The Environment, Agriculture, Energy and Resources Committee recommended that the amendment be redrafted to more clearly reflect its policy intent.

Errors and omissions

An amendment is proposed to correct a minor error in a proposed amendment to the *Water Act 2000*. The Bill proposes an amendment made to section 812A of the *Water Act 2000* to provide for the holder of a water allocation, interim water allocation, water licence, seasonal water assignment notice or water permit (an authorisation) to be responsible, in the absence of evidence to the contrary, for the unauthorised taking of water. The current drafting of the evidentiary presumption is not consistent with the Government's policy intent and amendments are proposed to address this.

Wild river rangers

Amendments are also proposed to the *Wild Rivers Act 2005* to further deliver on the Premier's commitment to provide security of employment for wild river rangers. As canvassed in the *Water and Other Legislation Amendment Bill 2011 Explanatory Notes*:

- the Queensland Government has 40 Indigenous rangers contracted in Northern Queensland who care for, and promote the world-class natural values of Queensland's wild rivers;
- most wild river rangers are Traditional Owners of the land on which they work, and are employed by local Indigenous entities (host organisations) with funding provided by the Queensland Government;
- the Department of Environment and Resource Management was in the process of developing a discussion paper to undertake full consultation with wild river rangers on preferred option/s for employment security, as mandated by the Premier.

Consultation with wild river rangers has been finalised, and accordingly, the proposed amendment expands upon the recognition of the Wild River Rangers program to include two types of employment agreements which provide security of tenure for wild river rangers employed within the Wild River Rangers program.

Achievement of the objectives

The objectives of the amendments are achieved by amendments to the Bill.

Alternative ways of achieving policy objectives

Legislative amendment is 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

Whether legislation reverses the onus of proof in criminal proceedings without adequate justification- Legislative Standards Act 1992, s 4(3)(d)

Clause 88 of the Bill (Amendment of s 812A (Liability for unauthorised taking of water)) is contrary to section 4(3)(d) of the *Legislative Standards Act 1992* as the amendment arguably reverses the onus of proof in criminal proceedings without adequate justification. As amended in the Bill, under section 812A of the *Water Act 2000*, if the holder of an authorisation contravenes any condition of the authorisation, the holder is taken to have contravened the condition in the absence of evidence to the contrary. Additionally, if the holder of an authorisation has contravened section 808(1), the holder is taken to have taken or supplied the water without authority in the absence of evidence to the contrary.

The proposed amendment to clause 88 of the Bill (Amendment of s 812A (Liability for unauthorised taking of water)), which has been made to more accurately state the range of purported contraventions caught under the evidentiary presumption in section 812A, still continues to reverse the onus of proof in criminal proceedings. The amendment is justified because it will clarify the application of section 812A and ensure that the extension of the application of this section appropriately achieves its intended policy objective. It will avoid a potential situation where the holder of an entitlement would be unable to responsibly transfer liability for the offence, in circumstances where it can be proven the holder did not have physical control over or responsibility for the works associated with the contravention.

In addition, section 812A(1) provides that the section applies if there is evidence that water has been taken either in contravention of section 812 or without any authority (section 808(1)). At this point, it is peculiarly within the knowledge of the holder of the relevant authorisation why the water was taken and what authority that person believed the water was being taken under.

Consultation

Industry

News Limited has been consulted on the proposed amendments to the *Waste Reduction and Recycling Act 2011*.

Community

On 6 September 2011, a discussion paper outlining two options for improving the security of wild river ranger positions was provided to all wild river ranger host organisations. The options included:

- Wild river ranger positions be prescribed by regulation under the *Wild Rivers Act 2005*.
- Wild river rangers become permanent public service employees but continue to work for wild river ranger host organisations under an interchange arrangement.

During September and October 2011, staff from the Department of Environment and Resource Management undertook field consultation about the two options with all wild river ranger communities. Consultation was carried out by face to face meeting or by phone.

On September 22, 2011, the Premier released a ministerial media statement stating that Wild River Rangers will now have a choice of becoming Queensland Government employees or continuing to be employed by host organisations.

A draft of the proposed changes to the *Wild Rivers Act 2005* was provided to all wild river ranger host organisations on Wednesday 19 October. Follow up discussions occurred with those host organisations that requested consultation on the proposed legislation amendments.

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 the amendments to ensure intended policy objectives are achieved.

Notes on Provisions

Amendment 1

Amendment 1 introduces Part 3A to amend the Waste Reduction and Recycling Act 2011.

Clause 7A states that the purpose of this part is to amend the Waste Reduction and Recycling Act 2011.

Clause 7B states that the purpose of this part is to omit the current section 106(2). It replaces with a new subsection (2) that provides that -

- a newspaper delivered to premises is not unsolicited advertising material unless the owner or occupier of premises has notified the publisher or distributor that they do not wish to receive the newspaper.

This new provision would be simpler and would make all the rules regarding whether a person has paid for the material, or whether the material was in the name of a previous owner unnecessary. It would also remove ambiguity that currently exists with the term "implied consent".

Clause 7C and 7D amend sections 107 and 108 to remove any doubt that the sections do not apply to the delivery of newspapers unless the newspaper is unsolicited advertising material.

Clause 7E amends section 112 of the Act to ensure that it does not apply to the delivery of newspapers unless the newspaper is unsolicited advertising material. The amendment also replaces the example with a new example that provides guidance on what constitutes taking reasonable steps to ensure the advertising material does not become waste. Example of reasonable steps is the delivery of advertising material in a way that is consistent with the Distribution Standards Board code of practice.

Clause 7F includes the definition of newspaper in the dictionary.

Amendment 2

Amendment 2 amends clause 63 (Amendment of s 213 (Contents of water licence)) to clarify that a water licence (other than a water licence that is not required to be attached to land, such as a water licence held by a water authority) attaches only to the parcel of land on which the water is being taken in circumstances where the licence is to take:

- artesian water for stock purposes; or
- subartesian water from an aquifer connected to an artesian aquifer for stock or domestic purposes,

The clause requires amendment because, as currently worded, the clause could be interpreted as meaning that entities such, as water authorities, who currently can hold water licences not attached to land would need to have a licence attached to a parcel of land. That is not the policy intent behind the clause.

Amendment 3

Amendment 3 amends clause 88 (Amendment of s 812A (Liability for unauthorised taking of water)) to amend the heading of section 812A to better reflect the expanded application of the section following the amendments made by this Bill.

Amendment 4

Amendment 4 amends clause 88 (Amendment of s 812A (Liability for unauthorised taking of water)) to clarify the presumption that the holder of an authorisation is assumed to have illegally taken or supplied water for breaches of section 808(1) (unauthorised take or supply of water) where that unauthorised take or supply occurs:

- using works owned by, or in possession or control of, the holder of the authorisation; or
- the water is taken from a place on land owned by the holder of the authorisation; or

- the water is taken onto or used on land owned by the holder of the authorisation

The clause requires amendment because, as currently worded, the presumption would only apply if there is evidence the holder of an authorisation has taken or supplied the water in contravention of section 808(1). This is ineffective and does not reflect the policy intent because if there were evidence that the holder committed the breach, there would be no need for a presumption that the holder committed the breach.

Amendment 5

Amendment 5 omits clause 95 (Insertion of new s 8A) to reflect the relocation of sections about the wild river rangers program to a more appropriate location in the *Wild Rivers Act 2005*. The matters that were to be included under new section 8A are now dealt with by clause 98 through new sections 47C and 47D.

This amendment is required because it is no longer appropriate for this provision, which provides for the recognition of the Wild River Rangers program, to be situated within part 2, division 1 of the *Wild Rivers Act 2005* as this division deals with the declaration of wild river areas.

Amendment 6

Amendment 6 amends the heading of clause 98 (Insertion of new pt 5, div 1 and div 2 hdg) to reflect the relocation of provisions providing for the recognition of the Wild River Rangers program, which has created an additional division within Part 5 - Miscellaneous of the *Wild Rivers Act 2005*.

Amendment 7

Amendment 7 amends clause 98 (Insertion of new pt 5, div 1 and div 2 hdg) to insert new division 2 and division 3 in part 5 of the *Wild Rivers Act 2005*. New division 2 relocates provisions for the recognition of the Wild River Rangers program and the purposes of the program to a more appropriate location within the *Wild Rivers Act 2005*. A new provision is inserted within division 2 to establish security of tenure for wild river rangers employed within the Wild River Rangers program.

New Division 2 Wild River Rangers program

New section 47C Application of div 2

New section 47C clarifies that division 2 will apply to the community based Wild River Rangers program for wild river areas. This section acknowledges that there is an ongoing commitment to the preservation of the Wild River Rangers program. This amendment delivers on a government commitment to recognise the significant role the Wild River Rangers program has in the protection of wild river areas.

New section 47D Purposes of Wild River Rangers program and achievement of purposes

New section 47D provides the purposes of the Wild River Rangers program and sets out how the purposes are to be principally achieved by activities carried out by wild river rangers. The purposes of the Wild River Rangers program are identical to those already provided in the Bill, however relocated to a more appropriate location in the *Wild Rivers Act 2005*. The purposes include, but are not limited to, contributing to:

- the preservation of the natural values of rivers in wild river areas; and
- the development of a resource management economy in wild river areas.

The purposes of the Wild River Rangers program are to be achieved by the wild river rangers carrying out certain activities. An example is provided of the type of activities wild river rangers will undertake to achieve the purposes of the program in a wild river area.

New section 47E Entering into agreements for employment

New section 47E provides for the chief executive, on behalf of the State, to enter into, and give effect to, agreements to provide for the employment of wild river rangers in the Wild River Rangers program. Such agreements are entered into for maintaining the Wild River Rangers program. The numbers and location of the wild river rangers are to be prescribed under a regulation. Locations include local government areas, generally in Northern Queensland, in which wild river rangers will be situated to achieve the purposes of the Wild River Rangers program.

New section 47E recognises that the obligation to enter into an agreement for employment of wild river rangers can be achieved in two ways. Agreements will be entered into by the chief executive, on behalf of the State, with an entity, which includes a person or unincorporated association.

The first type of agreement is an interchange arrangement which provides for a wild river ranger as an employee of a department to perform work under the Wild River Rangers program in another entity. The second type of agreement is a grant agreement between the State and an entity which makes provision for wild river rangers to perform duties under the wild river rangers program for the entity.

New Division 3 Other matters

A new division 3 is created to accommodate other matters within Part 5 - Miscellaneous of the *Wild Rivers Act 2005*.

Amendment 8

Amendment 8 amends clause 99 (Amendment of schedule (Dictionary)) to correct a reference in the schedule (Dictionary) for the definition of wild river ranger.

This clause is amended due to the relocation of the section providing the definition of a wild river ranger to a more appropriate location in the *Wild Rivers Act 2005*.

Amendment 9

Amendment 9 amends clause 99 (Amendment of schedule (Dictionary)) to insert a reference in the schedule (Dictionary) for the definition of Wild River Rangers program.

This clause is amended to include the term *wild river rangers program* in the schedule (Dictionary) of the *Wild Rivers Act 2005*.

Amendment 10

Amendment 10 amends the Long title, after ‘*River Improvement Trust Act 1940*,’ and **insert the *Waste Reduction and Recycling Act 2011***.

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