



South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Reprinted as in force on 4 November 2009

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Reprint No. 0B

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to omit provisions that are no longer required (s 40).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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Queensland

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

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South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

[as amended by all amendments that commenced on or before 4 November 2009]

An Act to further restructure the water industry in south-east Queensland

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

2 Commencement

- (1) Sections 108 to 110 commence on the day after the date of assent of this Act.
- (2) Sections 111 and 112 commence on the day after the repeal of the *Integrated Planning Act 1997* under the *Sustainable Planning Act 2009*.

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Part 2 Purposes and application of Act

3 Purposes of Act

The purposes of this Act are to do the following for the SEQ region—

- (a) improve water supply coordination and management;
- (b) deliver improved and more efficient water services and wastewater services to customers;
- (c) improve the management of water and wastewater infrastructure.

4 Achievement of purposes

(1) The purposes are achieved by—

- (a) continuing the SEQ region water industry restructure started under the 2007 restructuring Act; and
- (b) providing for the making of a customer water and wastewater code for the provision of water services and wastewater services to customers in the SEQ region.

(2) This Act provides for the continued restructure by—

- (a) creating new integrated retail and distribution authorities (called ‘distributor-retailers’) to deliver the services to customers within a particular area for each (called its ‘geographic area’); and

Note—

The following authorities have already been created under the 2007 restructuring Act—

- Queensland Bulk Water Supply Authority
- Queensland Bulk Water Transport Authority
- Queensland Bulk Water Manufactured Water Authority
- SEQ Water Grid Manager.

- (b) providing for particular matters relating to distributor-retailers to be fixed by agreement with the local governments for their geographic area (called their ‘participating local governments’); and
- (c) facilitating the transfer to distributor-retailers of the infrastructure and functions of their participating local governments as service providers for the services.

Part 3 Interpretation

Division 1 Key definitions

5 Who are a distributor-retailer’s *participating local governments*

A distributor-retailer’s *participating local governments* are—

- (a) for the Northern SEQ Distributor-Retailer Authority—Sunshine Coast Regional Council and Moreton Bay Regional Council; and
- (b) for the Central SEQ Distributor-Retailer Authority—Brisbane City Council, Ipswich City Council, Scenic Rim Regional Council, Lockyer Valley Regional Council and Somerset Regional Council; and
- (c) for the Southern SEQ Distributor-Retailer Authority—Gold Coast City Council, Redland City Council and Logan City Council.

6 What is a distributor-retailer’s *geographic area*

A distributor-retailer’s *geographic area* is the area that consists of the local government areas of all of its participating local governments.

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Division 2 Dictionary

7 Dictionary

The dictionary in the schedule defines particular words used in this Act.

Chapter 2 New authorities for water distribution and retailing

Part 1 Establishment, functions and powers

8 Establishment

The following (each a *distributor-retailer*) are established—

- (a) the Northern SEQ Distributor-Retailer Authority;
- (b) the Central SEQ Distributor-Retailer Authority;
- (c) the Southern SEQ Distributor-Retailer Authority.

9 Legal status

A distributor-retailer—

- (a) is not a body corporate; and
- (b) is not constituted by its board or participants; and
- (c) does not represent the State.

10 Expiry

- (1) A distributor-retailer expires at the end of 99 years after its

establishment.

- (2) When a distributor-retailer expires—
 - (a) its assets and liabilities become the assets and liabilities of its participants; and
 - (b) the participants become the successor in law of the assets and liabilities rateably in accordance with their participation rights under the distributor-retailer's participation agreement.
- (3) A regulation may provide for any matter necessary or convenient to give effect to this section, including, for example, a provision about all or any of the following when a distributor-retailer expires (the *former entity*)—
 - (a) the process concerning the distribution of its assets and liabilities;
 - (b) the transfer of the employment of the former entity's employees and of their rights;
 - (c) the application of instruments relating to the former entity;
 - (d) the former entity's records;
 - (e) the performance of the former entity's functions immediately before the expiry.

11 Functions

- (1) A distributor-retailer's primary functions are to do the following for its geographic area—
 - (a) purchase water from the water grid manager under the 2007 restructuring Act;
 - (b) distribute water;
 - (c) provide the following services (*relevant services*) to customers—
 - (i) water services;

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- (ii) wastewater services;
 - (d) charge customers for relevant services;
 - (e) manage customer enquiries, service requests and complaints;
 - (f) anything else likely to complement or enhance a function mentioned in paragraphs (a) to (e).
- (2) The primary functions are a distributor-retailer's *geographic area functions*.
- (3) A distributor-retailer may perform business or other functions it considers appropriate.

12 Powers

- (1) A distributor-retailer has all the powers of an individual and may, for example—
- (a) enter into contracts; and
 - (b) acquire, hold, dispose of and deal with property; and
 - (c) employ staff; and
 - (d) appoint agents and attorneys; and
 - (e) engage consultants; and
 - (f) fix charges and other terms for services and other facilities it supplies; and
 - (g) do anything else necessary or convenient to be done for its functions.
- (2) Without limiting subsection (1), a distributor-retailer has the powers given to it under an Act.
- (3) Despite subsections (1) and (2), a distributor-retailer's powers are subject to any limitations under the Acts mentioned in part 2.
- (4) However, an exercise of a power in contravention of a limitation or restriction under an Act does not invalidate or otherwise affect the exercise of the power.

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- (5) A distributor-retailer may sue and be sued in the name it is given under section 8.

13 Powers and functions in or out of Queensland

A distributor-retailer may perform its functions or exercise its powers inside or outside Queensland.

Part 2 Application of particular other Acts to distributor-retailers

14 Statutory Bodies Financial Arrangements Act 1982

- (1) A distributor-retailer is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* (the **SBFA**).
- (2) The SBFA, part 2B sets out the way in which a distributor-retailer's powers under this Act are affected by that Act.
- (3) Despite the SBFA, section 31(2) a distributor-retailer may operate an account with an overdraft facility without the Treasurer's approval under the SBFA.

15 Financial Accountability Act 2009

- (1) A distributor-retailer is a statutory body under the *Financial Accountability Act 2009* (the **FAA**).
- (2) However, the provisions of a standard under the FAA about resource management do not apply to a distributor-retailer.

Editor's note—

See the *Financial and Performance Management Standard 2009*, part 2, division 4 (General resource management).

- (3) For applying the FAA, a reference in that Act to a statutory body reporting to a Minister is taken to be a reference to the

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distributor-retailer reporting, in the way provided for under its participation agreement, to its participating local governments who are also participants in the distributor-retailer.

- (4) However, subsection (3) does not apply if the reporting is for the purpose of tabling in the Legislative Assembly.
- (5) Any operational or strategic planning requirements under a standard under the FAA are taken to have been complied with by a distributor-retailer if the distributor-retailer complies with its planning and reporting requirements.

16 Crime and Misconduct Act 2001

A distributor-retailer is a unit of public administration under the *Crime and Misconduct Act 2001*.

17 Right to information Act 2009

A distributor-retailer is taken to be an agency under the *Right to Information Act 2009*.

18 Land Act and Land Title Act

For the Land Act and the Land Title Act, a distributor-retailer is taken to be a person authorised by law to provide a public utility service.

19 Deletion of commercially sensitive matters from annual report

- (1) This section applies if under another Act, an annual report relating to a distributor-retailer must be made public.
- (2) The board may ask the relevant Minister to delete from the copies of the annual report a matter that is of a commercially sensitive nature.
- (3) Despite the other Act, the Minister may delete the matter from the copies of the annual report that are laid before the

Legislative Assembly or otherwise made public.

(4) In this section—

annual report includes any documents accompanying the report.

Part 3 Participation agreements for distributor-retailers

20 Requirement for agreement

(1) A distributor-retailer must, as soon as practicable after the date of assent of this Act, enter into an agreement (a *participation agreement*) with its participating local governments about the following matters concerning the distributor-retailer—

(a) the persons who are to have the right to participate in its profits;

Note—

For the distribution of assets and liabilities when the distributor-retailer expires, see section 10(2) (Expiry).

(b) the way in which distributions of its profits are to be approved for section 43;

(c) its internal management;

(d) its corporate planning requirements;

(e) its requirements about reporting to its participants;

(f) the proportions in which the local governments are to receive tax equivalents the distributor-retailer pays under section 100;

(g) any other matter concerning distributor-retailers prescribed under a regulation.

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- (2) Rights mentioned in subsection (1)(a) are the *participation rights* in the distributor-retailer.
- (3) Those who hold the participation rights are the distributor-retailer's *participants*.
- (4) The requirements mentioned in subsection (1)(d) and (e) are the distributor-retailer's *planning and reporting requirements*.

21 Planning and reporting requirements

- (1) A distributor-retailer's participation agreement must—
 - (a) require the distributor-retailer to prepare a plan about its future direction, goals and priorities for at least 5 years after the agreement takes effect; and
 - (b) state the matters that the plan must provide for; and
 - (c) ensure the distributor-retailer's participating local governments who are also participants in the distributor-retailer are given enough information to allow them to make an informed assessment of the distributor-retailer's operations; and
 - (d) state the types of information that must be given to comply with paragraph (c).
- (2) Subsection (1) does not limit what may be provided for under the distributor-retailer's planning and reporting requirements.

22 Particular matters agreement may provide for

Without limiting section 20(1), the participation agreement for a distributor-retailer may provide for all or any of the following—

- (a) the issuing, registration and transfer of its participation rights;

Note—

See however, section 29 (Ministerial approval required for change in particular matters).

- (b) classes of participants;
- (c) the obligations of participants in their capacity as participants;
- (d) the voting rights of participants;
- (e) the membership, powers and procedures of its board.

23 Minister's default power to make agreement

- (1) This section applies if a distributor-retailer and its participating local governments have not complied with section 20 by 30 April 2010.
- (2) The Minister may make a participation agreement for the distributor-retailer.

Note—

See also section 104 (Interim participation agreement).

24 When agreement takes effect

- (1) A participation agreement, other than one under section 23, takes effect only on the latest of the following days—
 - (a) the day the Minister gives the parties to the agreement a notice that the Minister has approved it;
 - (b) if the agreement states a later day of effect—the later day.
- (2) A participation agreement made under section 23 takes effect according to its terms.

25 Tabling of agreement

- (1) If the Minister approves or makes a participation agreement, the Minister must within 14 sitting days, table a copy of the

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agreement in the Legislative Assembly.

- (2) A failure to comply with subsection (1) does not stop the agreement taking effect.

26 Effect as a contract

- (1) When a participation agreement for a distributor-retailer takes effect, it has effect as a contract between all of the following entities from time to time—
 - (a) the parties to the agreement;
 - (b) all other entities who are or become participants in the distributor-retailer;
 - (c) each member of the board.
- (2) The entities are taken to have agreed to observe and perform the contract so far as it applies to them.

27 Act prevails over agreement

If a provision of a participation agreement is inconsistent with a provision of this Act, the provision of this Act prevails to the extent of the inconsistency.

28 General power to amend by agreement

- (1) Subject to section 29, a participation agreement for a distributor-retailer may be amended—
 - (a) by agreement between all of its participants; or
 - (b) if the participation agreement provides for another way in which it can be amended—in accordance with the other way.
- (2) If a local government is a participant, it may agree to the amendment only if it has passed a resolution to that effect.

-
- (3) If a participation agreement is amended under subsection (1), the distributor-retailer must give the Minister a copy of the amended agreement as soon as practicable.

29 Ministerial approval required for change in particular matters

- (1) A change to a participation agreement about a restricted matter concerning a distributor-retailer has no effect unless the Minister has—
- (a) been given a copy of the proposed amended agreement; and
 - (b) by notice to the distributor-retailer approved the change.
- (2) A person can not become a participant in a distributor-retailer unless—
- (a) the distributor-retailer's participation agreement or a change to the agreement approved under subsection (1), provides for the person to be, or to become, a participant; or
 - (b) the Minister has approved the person to be a participant in the distributor-retailer and the person's proposed participation rights in it.
- (3) In this section—
- restricted matter***, concerning a distributor-retailer, means—
- (a) the participants in the distributor-retailer, including—
 - (i) who may become a participant; and
 - (ii) any change in participants; and
 - (iii) who may cease to be a participant; or
 - (b) the participation rights in the distributor-retailer or how the rights may be transferred or otherwise dealt with; or
 - (c) any provision of its participation agreement that provides for how it can be amended other than by agreement between all of the distributor-retailer's

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- participants; or
- (d) its planning and reporting requirements.

30 Tabling of amended agreement

- (1) This section applies if the Minister—
- (a) under section 28, is given an amended participation agreement; or
- (b) gives an approval under section 29(1)(b).
- (2) The Minister must within 21 sitting days, table a copy of the amended agreement in the Legislative Assembly.
- (3) A failure to comply with subsection (2) does not stop the amended agreement from taking effect.

Part 4 Boards of distributor-retailers

Division 1 Establishment, membership and related matters

31 Requirement to have board

Each distributor-retailer must have a board.

32 Role of boards

- (1) The board is responsible for the way the distributor-retailer performs its functions and exercises its powers.
- (2) The board's role includes—
- (a) deciding the strategies and the operational, administrative and financial policies to be followed by the distributor-retailer; and

- (b) ensuring the distributor-retailer performs its functions and exercises its powers in a proper, effective and efficient way; and
- (c) ensuring, so far as practicable, the distributor-retailer complies with its planning and reporting requirements.

33 Appointment of members

- (1) A board is to consist of at least 3 members.
- (2) The members must be appointed by the distributor-retailer's participants.
- (3) A person can not be appointed as a member if the person—
 - (a) is a public service employee; or
 - (b) is a councillor of a participating local government for the distributor-retailer (a *relevant local government*); or
 - (c) is a member of the Queensland Water Commission; or
 - (d) is an insolvent under administration; or
 - (e) has a conviction, other than a spent conviction, for an indictable offence; or
 - (f) is a member of a board of—
 - (i) another distributor-retailer; or
 - (ii) a new water entity under the 2007 restructuring Act.
- (4) At least 3 of the members must be persons who are not associated employees.
- (5) No more than 2 associated employees may be members.
- (6) An associated employee may be appointed as a member only if all relevant local governments have by resolution agreed to the appointment.
- (7) Subject to section 36, a member holds office for the term

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stated in the member's appointment.

- (8) If otherwise qualified, a member is eligible for reappointment.

34 Criteria for appointment

- (1) In considering whether to appoint a person as a member of a board, regard must be had to the person's previous experience and ability to—
- (a) contribute to the carrying out of the board's role under section 32; and
 - (b) contribute to the strategic oversight of the distributor-retailer's functions; and
 - (c) bring an independent judgment to bear on the board's decision-making.
- (2) Subsection (1) does not limit the matters that may be considered.

35 Chairperson

- (1) A distributor-retailer must have a member of its board as its chairperson.
- (2) The chairperson must be—
- (a) appointed in the way provided for under the distributor-retailer's participation agreement; or
 - (b) if the participation agreement does not provide for how the appointment is to happen—elected by the board.
- (3) However, the chairperson can not be an associated employee.

36 Terms and ending of appointments

- (1) This section applies to a person's appointment to the office of a member of a board or chairperson of a board.
- (2) The person holds the office on the terms of appointment provided for under the relevant distributor-retailer's

participation agreement, subject to this Act.

- (3) Except as provided for under the participation agreement, the person is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—
 - (a) by way of remuneration as holder of the office; or
 - (b) in connection with retirement from the office or other ending of the office.
- (4) The appointment ends if the person becomes someone who, under section 33(3), can not be appointed as a member.

Division 2 Business

37 Conduct of business

Subject to this division, a board may conduct its business, including its meetings, in the way it considers appropriate.

38 Time and place of meetings

- (1) Board meetings are to be held at the times and places the board decides.
- (2) The chairperson of a board may at any time call a meeting of the board.
- (3) The chairperson of a board must call a meeting of the board if asked in writing to do so by at least 2 members of the board.

39 Presiding at meetings

- (1) The chairperson of a board is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting, including because of a vacancy in the office, a member chosen by the members present is to preside at the meeting.

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40 Conduct of meetings

- (1) If the membership of a board includes associated employees, a quorum of the board must include at least 1 person who is not a associated employee.
- (2) A question at a board meeting is decided by a majority of the votes of the members present when the question is decided.
- (3) Each member present at the meeting has a vote on each question to be decided and if the votes are equal the member presiding also has a casting vote.
- (4) A board may hold meetings or allow members to take part in its meetings by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

- (5) A member who takes part in a meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by a board even if it is not passed at a board meeting, if—
 - (a) notice of the resolution is given under procedures approved by the board; and
 - (b) a majority of the board members give written agreement to the resolution.

41 Minutes

- (1) A board must keep minutes of its meetings.
- (2) A board must keep a record of any resolutions made under section 40(6).

42 Disclosure of interests

- (1) This section applies to a member of a board (the *interested member*) if—

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- (a) the member has an interest in an issue being considered or about to be considered by the board; and
 - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a board meeting.
 - (3) Unless the board otherwise directs, the interested member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board about the issue.
 - (4) The interested member must not be present when the board is considering whether to give a direction under subsection (3).
 - (5) If there is another person who must under subsection (2) also disclose an interest in the issue, the other person must not—
 - (a) be present when the board is considering whether to give a direction under subsection (3) about the interested member; or
 - (b) take part in making the decision about giving the direction.
 - (6) If—
 - (a) because of this section a board member is not present at a board meeting for considering or deciding an issue or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the member were present; the remaining members present are a quorum of the board for considering or deciding the issue or for considering or deciding whether to give the direction at the meeting.
 - (7) If there are no members who may remain present for considering or deciding an issue, the distributor-retailer's

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participants may, by each signing consent to a proposed resolution, consider and decide the issue.

- (8) A disclosure under subsection (2) must be recorded in the board's minutes.

Division 3 Financial management

43 Approval required for profit distribution

A distributor-retailer must not distribute any of its profits unless the distribution has been approved in the way provided for under its participation agreement.

Part 5 Chief executive officer

44 Appointment of chief executive officer

- (1) Each distributor-retailer must have a chief executive officer.
- (2) The chief executive officer is to be appointed by the board.
- (3) The chief executive officer is an employee of the distributor-retailer.

45 Term of appointment

- (1) Subject to this section, the chief executive officer holds office for the term stated in his or her contract of employment.
- (2) If otherwise qualified, the chief executive officer is eligible for reappointment.
- (3) The board may at any time end the appointment for any reason or none.
- (4) The ending of the appointment under subsection (3) does not affect any rights to compensation to which the chief executive

officer is entitled under the contract of employment.

- (5) The chief executive officer may resign by giving a signed notice of resignation to the board at least the required period before the notice is to take effect.
- (6) The chief executive officer's appointment ends if he or she stops being qualified to be the chief executive officer.
- (7) In this section—

required period means the period stated in the chief executive's contract of employment or otherwise agreed with the board.

46 Conditions of appointment

For matters not provided for under this Act or stated in the contract of employment, the chief executive officer holds office on the terms of appointment decided by the board.

47 Qualifications for appointment

A person can not be appointed or continue in office as the chief executive officer if the person—

- (a) is an insolvent under administration; or
- (b) has a conviction, other than a spent conviction, for an indictable offence; or
- (c) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (d) is named in the register held by ASIC under the Corporations Act, section 1274AA.

48 Chief executive officer's responsibilities

A distributor-retailer's chief executive officer is, under its board, responsible for managing the distributor-retailer's affairs under this Act and other relevant legislation and the board's policies.

Part 6 Reserve powers of participating local governments

49 Reserve power to give directions in public interest

- (1) A distributor-retailer's participating local governments may give it a written direction (a *local government direction*) about the way the distributor-retailer is to perform its functions.
- (2) However, the direction may be given only if—
 - (a) it has been decided to be given by—
 - (i) all of the local governments; or
 - (ii) the type of majority of them (the *required majority*) required under the distributor-retailer's participation agreement; and
 - (b) all of the local governments or the required majority—
 - (i) are satisfied the direction is necessary and in the public interest of the distributor-retailer's geographic area and the SEQ region; and
 - (ii) have asked the board to advise all of the local governments whether, in the board's opinion, complying with the direction is consistent with the performance of the distributor-retailer's functions.
- (3) The board must ensure the direction is complied with.

50 Publication of directions

The participating local governments that give a local government direction must within 21 days after the direction is given ensure a copy—

- (a) is given to the Minister; and
- (b) is open to inspection at the local government's public

offices; and

- (c) is published in a newspaper circulating in all of the distributor-retailer's geographic area.

51 Local government directions relevant to duty

In deciding, for this Act or any other relevant law, whether or not a board member has exercised an appropriate degree of care and diligence in discharging the member's duties, regard must be had to any relevant local government direction.

Part 7 Miscellaneous provisions

52 Authentication of documents

A document made by a distributor-retailer is sufficiently made if it is signed by—

- (a) its chief executive officer; or
- (b) the chairperson of its board; or
- (c) another person authorised by its board.

53 Delegation

- (1) A distributor-retailer may delegate any of its functions to a member of its board, its chief executive officer or any of its appropriately qualified employees.
- (2) However, a function can not be delegated under subsection (1) to a person to whom a circumstance mentioned in section 47 applies.
- (3) A board may delegate any of its functions to—
 - (a) a committee of members of the board; or
 - (b) the distributor-retailer's chief executive officer.

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- (4) The chief executive officer of a distributor-retailer may delegate his or her functions to an appropriately qualified employee of the distributor-retailer.

Note—

For general laws about delegation, see the *Acts Interpretation Act 1954*, section 27A.

- (5) In this section—

appropriately qualified includes having qualifications, experience or standing appropriate for the functions.

functions includes powers.

Chapter 3 Transfer from local governments to distributor-retailers

Part 1 Transfer schemes

Division 1 Making of transfer schemes

54 Power to make transfer scheme

- (1) A distributor-retailer and its participating local governments may enter into an agreement or agreements (each a *transfer scheme*) about—
- (a) the transfer of assets, employees, instruments or liabilities of any of the following to allow the distributor-retailer to perform its geographic area functions—
- (i) the local governments;

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- (ii) a joint local government under the *Local Government Act 1993* or the *Local Government Act 2009* all or part of the area of which includes the SEQ region;
 - (iii) the Metropolitan Water Supply and Sewerage Board constituted under the *Metropolitan Water Supply and Sewerage Act 1909*; and
- (b) any other incidental, consequential or supplemental matter the distributor-retailer and the local governments consider necessary for the transfer.
- (2) However, a transfer scheme has no effect unless it has been approved by the Minister and has taken effect under division 2.
- (3) The matters mentioned in subsection (1) are the *transition* to a distributor-retailer from its participating local governments.

55 Period of transfer schemes

- (1) A transfer scheme can not take effect after 30 September 2010.
- (2) However, subsection (1) does not affect the giving of effect to a transfer scheme after 30 September 2010 or anything done under a transfer scheme before or after that date.

56 Particular matters scheme may provide for

- (1) A transfer scheme may provide for all or any of the following—
- (a) the joint transfer to a distributor-retailer of an asset or liability of any of its participating local governments and the terms of the joint transfer;
 - (b) the following for trust land for which any of the local governments is a trustee—
 - (i) the removal of the local government as the trustee;

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- (ii) the appointment of the distributor-retailer as the trustee or of the distributor-retailer and local government as joint trustees;
 - (iii) changing the purpose for which the trust land was reserved or granted in trust, including to a purpose other than a community purpose;
- (c) whether and, if so, the extent to which the distributor-retailer is the successor in law of all or any of the local governments;
- (d) a legal proceeding that is being or may be taken by or against all or any of the local governments to be continued or taken by or against the distributor-retailer;
- (e) the application of instruments to the distributor-retailer, including—
 - (i) whether the distributor-retailer is a party to an instrument; and
 - (ii) whether an instrument is taken to have been made by the distributor-retailer or given to, by or in favour of the distributor-retailer or all or any of the local governments; and
 - (iii) whether a reference to an authorisation in an instrument is a reference to the distributor-retailer or all or any of its participating local governments; and
 - (iv) whether under an instrument, an amount is or may become payable to or by the distributor-retailer or other property is or may be transferred to or by the distributor-retailer or all or any of the local governments;
- (f) the transfer to the distributor-retailer of an employee of all or any of the local governments and the employees's work entitlements and conditions of employment;
- (g) subject to part 4, matters about employees of a local government transferred under paragraph (f) and their

-
- rights;
- (h) the records of the distributor-retailer or the local governments.
- (2) A transfer scheme may transfer an asset attached to land without transferring the land, even though the asset would otherwise be a part of the land.
- (3) This section does not limit section 54.
- (4) In this section—
- authorisation* includes accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.
- instrument* includes an application or authority under an Act.
- trust land* includes land dedicated as a reserve, or granted in fee simple in trust, under the Land Act, chapter 3, part 1.

Division 2 Approval of transfer scheme

57 Request for approval

- (1) A distributor-retailer's participating local governments may ask the Minister for approval of a transfer scheme for the distributor-retailer.
- (2) The request must be written and accompanied by—
- (a) a copy of the scheme; and
- (b) a certification made by all of the local governments that complies with section 58.

58 Requirements for certification statement

- (1) The certification must be in the approved form and state—
- (a) that the local governments have carried out a due diligence process directed at identifying—

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- (i) all of their essential assets, liabilities and instruments relating to the provision of water services and wastewater services to customers in the distributor-retailer's geographic area (the *functions*); and
- (ii) whether anything proposed to be done under the transfer scheme would materially prejudice the interests of a third party; and
- (b) that the transfer scheme—
 - (i) only transfers assets, liabilities and instruments identified under the process relating to the performance of the functions; and
 - (ii) transfers all of the essential assets, liabilities and instruments of the local governments identified under the process that—
 - (A) are necessary to perform the functions; and
 - (B) can be lawfully and practically transferred under a transfer scheme; and
 - (iii) identifies any assets that are to be jointly owned by the distributor-retailer and any of the local governments; and
 - (iv) does not to the local governments' knowledge materially prejudice the interests of any third party, or if it does, that party's consent to the prejudice has been obtained; and
 - (v) does not transfer an employee inconsistently with section 83 or the staff support framework; and
- (c) that the local governments have consulted with the State archivist about the way in which records are to be dealt with under the scheme; and
- (d) either—
 - (i) that the transfer scheme does not depart in any substantial way from any model transfer scheme

prepared by the Minister and notified on the website of the Queensland Water Commission; or

- (ii) if there is a substantial departure from the model—that the departure is necessary for the transition to the distributor-retailer from the local governments; and
 - (e) the reasons for any departure mentioned in paragraph (d)(ii).
- (2) For subsection (1)(b)(iv), a third party's interests are not materially prejudiced merely because of a transfer to the distributor-retailer.
 - (3) The consultation with the State archivist may be carried out by a representative for all of the local governments.

59 Deciding request

- (1) The Minister must consider the request and decide whether or not to approve the transfer scheme.
- (2) The Minister may approve the transfer scheme only if it complies with division 1.

60 Notice and taking effect of approved scheme

- (1) If the Minister approves the transfer scheme, the Minister must within 21 days publish a gazette notice about the approval.
- (2) The notice must state where information about the transfers under the scheme may be obtained.
- (3) However, the notice need not state where information may be obtained if the Minister considers that there is a need to protect confidentiality or privacy relating to the information.
- (4) The transfer scheme takes effect on the day the notice is gazetted or, if a later day is stated in the notice, on that day.

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Division 3 Miscellaneous provision

61 Discharge of liabilities by transfer scheme

- (1) The transfer of a liability of a local government under a transfer scheme discharges the local government from the liability to the extent provided for under the transfer scheme.
- (2) Subject to section 64(2), a transfer scheme has effect despite any other law or other instrument.

Part 2 Ministerial powers for transition

62 Transfer notice

- (1) The Minister may, by gazette notice (a *transfer notice*), do any of the following for the transition to a distributor-retailer from its participating local governments—
 - (a) anything that may be done by any of them under a transfer scheme;
 - (b) rectify or undo anything the Minister considers a transfer scheme ought not to have done or ought to have done differently.

Example for paragraph (b)—

transfer back to a participating local government an asset the Minister considers ought not to have been transferred under a transfer scheme

- (2) A transfer notice may include conditions applying to something done under the notice.
- (3) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may

provide for the matter by including a reference in the transfer notice to another document that is—

- (a) signed by the Minister; and
 - (b) kept available at a place stated in the transfer notice for inspection by the persons to whom the matter relates.
- (4) A transfer notice has effect on the day it is published in the gazette or a later day stated in it.

63 Period of transfer notices

- (1) A transfer notice can not take effect before 1 July 2010 or after 30 June 2011.
- (2) However, subsection (1) does not affect the giving of effect to a transfer scheme after 30 June 2011 or anything done under a transfer scheme before or after that date.

64 Effect of transfer notice

- (1) The transfer under a transfer notice of a liability discharges the person from whom the liability is transferred from the liability to the extent provided for under the transfer notice.
- (2) A transfer notice has effect despite any other law, transfer scheme or other instrument.

65 Transfer direction

- (1) The Minister may give a direction (a *transfer direction*) to any of the following (a *relevant entity*) to do anything the Minister considers necessary to achieve the transition to a distributor-retailer from its participating local governments—
 - (a) the distributor-retailer;
 - (b) the board;
 - (c) any of the distributor-retailer's participating local governments.

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- (2) Without limiting subsection (1), a transfer direction may be about—
- (a) executing an instrument; or
 - (b) disclosing information; or
 - (c) for the distributor-retailer, according particular terms and conditions of employment to its employees affected by the transfer during a stated period after its establishment consistent with the staff support framework; or
 - (d) anything the Minister considers necessary to remedy a contravention of the staff support framework.
- (3) A transfer direction must be in writing and signed by the Minister.
- (4) If a relevant entity is given a transfer direction—
- (a) the entity must comply with the direction; and
 - (b) if the entity is the distributor-retailer—its board must take the action necessary to ensure the distributor-retailer complies with the direction.
- Maximum penalty—1000 penalty units.
- (5) In this section—
- board** includes, for a local government, its councillors.

Part 3 Provisions facilitating transition

Division 1 General provisions

66 Chapter applies despite other laws and instruments

A thing may be done under this chapter despite any other law or instrument.

Example—

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

67 Decisions not reviewable

(1) A decision under this chapter—

- (a) is final and conclusive; and
- (b) can not be challenged, appealed against, reviewed, quashed, set aside or called into 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
- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) In this section—

decision includes a decision or conduct leading up to or forming part of the process of making a decision.

68 Effect on legal relationships

(1) Nothing done under this chapter including a thing done by or in compliance with, a transition document—

- (a) makes a relevant entity liable for a civil wrong or a

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- contravention of a law or for a breach of a contract or confidence; or
- (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (c) is taken to fulfil a condition that—
 - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
 - (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iii) requires any money to be paid before its stated maturity; or
 - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this chapter, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

Example—

A contract entered into by a local government provides that it agrees not to transfer a particular asset without a particular person's consent and that if the consent is given, it may be subject to particular conditions.

If the asset is transferred to a distributor-retailer under a transfer scheme or transfer notice, the consent required under the contract is taken to have been given unconditionally.

- (3) If apart from this Act, giving notice to a person would be necessary to do something under this chapter, the notice is taken to have been given.
- (4) In this section—
relevant entity means—

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- (a) the State or an employee or agent of the State; or
 - (b) a participating local government for a distributor-retailer or any of the local government's councillors, employees or agents; or
 - (c) a distributor-retailer, a member of a board or an employee or agent of a distributor-retailer.

69 Disclosure and use for transition of information

- (1) A person may disclose information in the possession or control of a local government for the purpose of the transition to its distributor-retailer to—
 - (a) a person involved in the transition; or
 - (b) a member of the board or an employee or agent of the distributor-retailer.
- (2) A distributor-retailer or its board must comply with a request by the Minister for the disclosure of information under subsection (1) to a person.
- (3) A person may use information in the possession or control of a distributor-retailer for the purpose of the transition from its participating local governments.
- (4) Also, to remove any doubt, it is declared that a person may disclose or use information in compliance with a transition document.
- (5) 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.

70 Registering authority to register or record transfer

- (1) A registering authority must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset, liability or instrument under a transfer scheme or transfer notice to the transferee entity.

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- (2) A regulation may exempt the transferee entity or the transferor to the transferee entity from complying with a relevant procedure required by the registering authority or under another law for the purpose of registering or recording the transfer.

Example of what may be a relevant procedure—

The registering authority may require the transferee entity to complete and submit a particular form.

- (3) Subject to subsection (2) the transferee entity must comply with the procedures.
- (4) In this section—

registering authority means the registrar or another entity required or authorised by law to register or record transactions affecting or relating to assets, liabilities or instruments.

transferee entity means the entity to which an asset, liability or instrument is transferred under a transfer scheme or transfer notice.

71 Non-liability for State taxes, charges or fees

- (1) A local government or distributor-retailer is not liable to pay any of the following relating to anything done under a transition document—
- (a) a tax under the *Duties Act 2001* or another Act;
 - (b) a charge or fee under the Land Act, Land Title Act, *Transport Operations (Road Use Management) Act 1995*, Water Act or another Act.
- (2) In this section—
- tax*** includes duty, impost and levy.

Division 2 Provisions for other laws and instruments

Subdivision 1 Acquisition of Land Act

72 Existing acquisitions

- (1) This section applies to land acquired by a local government as a constructing authority under the Acquisition of Land Act.
- (2) If the land is transferred to a distributor-retailer under this chapter, the distributor-retailer is, for section 41 of that Act, taken to be the constructing authority that acquired that land on the day it was acquired.

73 Acquisitions interrupted by transfer scheme or notice

- (1) This section applies if—
 - (a) a participating local government of a distributor-retailer has—
 - (i) served a notice of intention to resume to take land as a constructing authority under the Acquisition of Land Act; or
 - (ii) entered into an agreement to take land; and
 - (b) because of a transfer scheme or transfer notice, the local government can not continue the taking.
- (2) The distributor-retailer may by notice given to each affected person decide to continue the taking.
- (3) The notice must state—
 - (a) that the distributor-retailer has become the constructing authority for the taking; and
 - (b) its address for service of documents.
- (4) On the giving of the notice, for the Acquisition of Land Act—

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- (a) the distributor-retailer becomes the constructing authority for the taking; and
 - (b) the local government's rights and obligations concerning the taking end.
- (5) However, the purpose of the taking does not change.
- (6) In this section—
- affected person*, for the taking, means—
- (a) each person—
 - (i) on whom the local government served a notice of intention to resume the land; or
 - (ii) with whom the local government has entered into an agreement to take the land; and
 - (b) anyone else the distributor-retailer considers is financially affected by the taking.

74 Provisions for distributor-retailer becoming constructing authority

- (1) This section applies if under section 73, a distributor-retailer becomes the constructing authority for the taking of land instead of a local government.
- (2) The local government must give the distributor-retailer the documents relating to the taking.
- (3) Despite the Acquisition of Land Act, section 12(1) the land taken under a gazette resumption notice under that Act vests in the distributor-retailer.
- (4) The distributor-retailer—
 - (a) has for the taking the same powers and obligations under the Acquisition of Land Act as the local government; and
 - (b) does not represent the State for section 12 of that Act.
- (5) The right under the Acquisition of Land Act of a person who

was served with a notice to take or who entered into an agreement to take the land does not change.

- (6) A reference to the local government in a document relating to the taking is, if the context permits, taken to be a reference to the distributor-retailer.
- (7) Without limiting subsection (6), if the local government was taking the land under an agreement to take—
 - (a) a reference in the agreement to the local government is taken to be a reference to the distributor-retailer; and
 - (b) the agreement gives rise to the same rights and liabilities as would have arisen if the local government were a party to the agreement.

Subdivision 2 Land Act

75 Terminating trust land and granting freehold interest

- (1) This section applies if—
 - (a) a transferred asset is attached to land that is trust land under the Land Act; and
 - (b) the Land Act Minister is satisfied the part of the land on which the transferred asset is situated is of adequate area to be allocated as freehold land, having regard to the location of the transferred asset and the use made of the adjoining land.
- (2) The Land Act Minister may under that Act, on application to the Land Act chief executive by the distributor-retailer to whom the transferred asset was transferred—
 - (a) if the land is a reserve—revoke all or part of the reserve; or
 - (b) if the land is a deed of grant in trust—require the trustee to surrender all or part of the deed of grant in trust.
- (3) If the Land Act Minister acts under subsection (2), the

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Governor in Council may under the Land Act, issue a deed of grant for the land to the distributor-retailer.

- (4) For the purposes of the Land Act, chapter 4, part 1, division 2, freehold title may be granted without competition.
- (5) An evaluation under the Land Act, section 16 is not required for the allocation of the land.
- (6) The Land Act Minister must decide the purchase price for the land.
- (7) Before approving a plan of subdivision identifying the area of the revocation, the Land Act Minister may require the distributor-retailer and the trustee of the reserve to agree to a plan of subdivision to define the boundaries of the land.
- (8) The following provisions of the Land Act do not apply to a revocation of all or part of a reserve—
 - (a) sections 34A, 34B and 34E;
 - (b) section 34H relating to an improvement that is a transferred asset.
- (9) In this section—

transferred asset means an asset transferred under a transfer scheme or transfer notice without the transfer of land to which the asset is attached or a change in the trusteeship.

76 Granting Land Act lease

- (1) This section applies if—
 - (a) a transferred asset is attached to land that is a reserve or unallocated State land; and
 - (b) the Land Act Minister is satisfied the part of the land on which the transferred asset is situated (the *relevant part*) is not of adequate area to be allocated as freehold land, having regard to the location of the transferred asset and the use made of the adjoining land.
- (2) The Land Act Minister may, on application to the Land Act

chief executive by the distributor-retailer to whom the transferred asset was transferred, grant under the Land Act to the distributor-retailer a lease over the relevant part.

- (3) If the land is a reserve and the Land Act Minister grants a State lease over the relevant part, that Minister may, before granting the lease, require the distributor-retailer and the trustee of the reserve to agree to a plan of survey identifying the relevant part.
- (4) If the Land Act Minister decides to grant a lease under this section, it must be for the maximum term permitted under the Land Act.
- (5) For the Land Act, chapter 5, part 1, division 1, the annual rent for the lease is the minimum rent applicable for the category of the lease.
- (6) An evaluation under the Land Act, section 16 is not required for the allocation of the land.
- (7) In this section—

transferred asset means an asset transferred under a transfer scheme or transfer notice without the transfer of land to which the asset is attached or a change in the trusteeship.

Subdivision 3 Development approvals and infrastructure agreements

77 Matters relating to the Integrated Planning Act 1997

- (1) This section applies to the transfer of development infrastructure under this chapter from a local government to a distributor-retailer.
- (2) The transfer does not affect the validity of any of the following done before the transfer relating to the development infrastructure—
 - (a) an infrastructure charge or cost levied by the local government under IPA, chapter 5, part 1;

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- (b) a condition imposed by the local government under IPA, chapter 5, part 1 or section 6.1.31;
 - (c) any other decision, charge, condition, contribution or agreement (each a *relevant action*) made, levied or imposed by the local government under IPA.
- (3) A relevant action is enforceable by—
- (a) the local government; or
 - (b) the distributor-retailer as if it were the local government.
- (4) An amount payable to the local government under a relevant action continues to be payable to it as if the development infrastructure had not been transferred.
- (5) A legal proceeding that could have been started or continued by or against the local government relating to the relevant action may be started or continued by or against the local government as if the development infrastructure had not been transferred.
- (6) In this section—
- development infrastructure* see IPA, schedule 10.
- IPA* means the *Integrated Planning Act 1997*.

Subdivision 4 Reconfigurations

78 Reconfiguring a lot after transfer scheme or notice takes effect

- (1) This section applies if a transition document transfers or requires the transfer from a local government to a distributor-retailer of—
- (a) part of a lot, as described in a plan of subdivision for reconfiguring the lot, on which a transferred asset is situated; or
 - (b) part of a lot that is transferred land as described in a plan of subdivision for reconfiguring the lot; or

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- (c) part of a lot that is adjacent to transferred land as described in a plan of subdivision for reconfiguring the lot.
- (2) The distributor-retailer may lodge in the land registry under the Land Title Act the plan of subdivision for reconfiguring the lot to give effect to the transfer or requirement.
- (3) The following do not apply to the reconfiguring of the lot—
- (a) *Integrated Planning Act 1997*;
 - (b) a State planning regulatory provision.
- (4) Despite the Land Title Act, section 50 the plan of subdivision for reconfiguring the lot does not require the agreement, approval or consent of any entity.
- (5) In this section—

reconfiguring a lot see the *Integrated Planning Act 1997*, section 1.3.5.

State planning regulatory provision see the *Integrated Planning Act 1997*, schedule 10.

transferred asset means an asset transferred under a transition document without the transfer of land to which the asset is attached.

transferred land means land transferred under a transition document.

Part 4 Workforce provisions

Division 1 Staff support framework

79 Staff support framework

- (1) The industrial relations Minister may approve a framework (a

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staff support framework) directed at ensuring—

- (a) the proper transition of employees transferred under a transfer scheme or transfer notice to a distributor-retailer; and
 - (b) the appropriate and fair treatment of other employees affected by the transition to a distributor-retailer from its participating local governments.
- (2) As soon as practicable after the approval of a staff support framework, the Minister administering this Act (the **Act Minister**) must—
- (a) notify the making of the approval; and
 - (b) give a copy of the framework to each affected entity; and
 - (c) publish a copy of the framework in the way the Act Minister considers appropriate.

Example—

The Act Minister may publish the framework on the department's website.

- (3) The notice made under subsection (2)(a) (the **approval notice**) is subordinate legislation.
- (4) When the approval notice is gazetted, the staff support framework is taken to have had effect from the date the framework states that it commences (the **date of effect**).
- (5) The approval notice must state the date of effect.
- (6) Subsection (4) applies despite the *Statutory Instruments Act 1992*, section 34.
- (7) It is the responsibility of the affected entity to ensure, to the extent the staff support framework applies to the entity, that the entity acts in conformity with the framework.
- (8) In this section—

affected entity, for a staff support framework, means all of the following—

- (a) a distributor-retailer or local government to which the framework applies;
- (b) an industrial organisation that represents the employees of an entity mentioned in paragraph (a).

industrial relations Minister means the Minister administering the *Industrial Relations Act 1999*.

80 Staff support framework prevails over transfer scheme or notice

If a provision of a staff support framework is inconsistent with a provision of a transfer scheme or transfer notice, the provision of the framework prevails to the extent of the inconsistency.

Division 2 Preservation of rights of employees

81 Application of div 2

This division applies to the transfer of an employee of a local government (the *former employer*) to a distributor-retailer (the *new employer*) under a transition document.

82 Continuity of employment

- (1) The transfer does not—
 - (a) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service; or
 - (b) constitute a termination of employment by the former employer or a retrenchment or redundancy; or
 - (c) entitle the employee to a payment or other benefit because he or she is no longer employed by the former employer; or

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- (d) require the former employer to make any payment for the employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the former employer and the employee.
- (2) The transfer has effect despite any other law, contract or other instrument.

83 Preservation of rights of transferred employees during transitional period

- (1) This section applies, subject to a staff support framework, for the period (the *transitional period*) from an employee's transfer to the new employer until whichever of the following happens first—
 - (a) the employee becomes covered by a new agreement made under IRA that provides that it replaces some or all of the transferred conditions;
 - (b) if the employee's transferred conditions are not derived from a prescribed industrial instrument—a new contract of employment is agreed between the new employer and the employee that provides that it replaces the transferred conditions.
- (2) Subject to subsection (3), the employee's terms and conditions of employment during the transitional period—
 - (a) are the same terms and conditions (the *transferred conditions*) as applied to the employee immediately before the transfer; and
 - (b) are not decided by reference to any other law or instrument about minimum terms and conditions of employment.
- (3) During the transitional period—
 - (a) if the employee has transferred conditions derived from any of the following, the employee may enforce the transferred conditions as if they were derived from an industrial instrument under IRA—

-
- (i) a prescribed industrial instrument;
 - (ii) a notional agreement preserving State award derived only from a State law;
 - (iii) a transitional minimum wage instrument or transitional national minimum wage order under FWTCOA;
 - (iv) a national minimum wage order under FWA;
 - (v) the NES;
 - (vi) the Queensland minimum wage under IRA; and
- (b) if the employee has transferred conditions derived from a prescribed industrial instrument—
- (i) the employee is taken to be employed by the new employer under an industrial instrument for IRA, chapter 3; and
 - (ii) the transferred conditions are taken to include any dispute resolution clause that, under any relevant transfer scheme or transfer notice, applies to the new employer and the employee during the period.
- (4) The dispute resolution clause applies to the exclusion of any other provision about dispute resolution that would otherwise apply under the transferred conditions.
- (5) In this section—

FWA means the *Fair Work Act 2009* (Cwlth).

FWTCAA means the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

IRA means the *Industrial Relations Act 1999*.

NES means the National Employment Standards under FWA.

notional agreement preserving State award see FWTCOA.

prescribed industrial instrument means any of the following—

- (a) an industrial instrument under IRA, including a

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- substitute State instrument under IRA, chapter 20, part 7;
- (b) a continuing schedule 6 instrument under FWTCOA;
 - (c) a fair work instrument under FWA;
 - (d) an agreement-based transitional instrument under FWTCOA;
 - (e) the following award-based transitional instruments under FWTCOA—
 - (i) a notional agreement preserving State awards derived from a State award;
 - (ii) an award.

Part 5 Provisions for separate transfers of land and attached assets

84 Application of pt 5

- (1) This part applies if—
 - (a) a local government owns land or is the trustee of trust land to which an asset is attached; and
 - (b) the land or asset is transferred or the local government is removed as trustee for the trust land and a distributor-retailer is appointed as trustee under a transfer scheme or transfer notice; and
 - (c) after the transfer or change in the trusteeship, one entity (the *asset owner*) owns the asset and another entity (the *land owner*) owns or occupies the land to which the asset is attached.
- (2) To remove any doubt, it is declared that this part applies to

anyone who owns or occupies the land at any time after the transfer.

85 References to land with asset attached

A reference in this part to land to which an asset is attached is a reference to the parcel of land for which there is an instrument of title that includes the particular area covered by the asset.

86 Entry to and use of land and structures by asset owner

- (1) This section applies for the following places—
 - (a) the land to which an asset is attached (the *relevant land*);
 - (b) any other land owned or occupied by the land owner that forms a contiguous parcel of land with the relevant land;
 - (c) any structure on the relevant land.
- (2) An employee or agent of the asset owner may enter the place at all reasonable times if the entry is—
 - (a) necessary to do something relating to the asset for the performance of the asset owner's functions as a distributor-retailer; or
 - (b) necessary for the continued use of the asset in a way it was lawfully used before the transfer.

Examples of things for which entry may be necessary—

- carrying facilities into, through, across or under the land
 - performing work on the land
 - inspecting, operating, changing, maintaining, removing, repairing or replacing the asset
- (3) Also, the asset owner may allow other persons to enter the place at the times stated and as otherwise provided for in the transfer scheme or transfer notice.
 - (4) This section does not apply to the entry of a structure or the

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part of a structure used for residential purposes.

- (5) To remove any doubt, it is declared that this section does not limit the making of other agreements between the asset owner and land owner about entry to or use of the place.

87 Compensation to land owner for entry and use

If the land owner incurs loss or damage because of the asset owner's exercise of a power under section 86, the land owner is entitled to be paid compensation by the asset owner—

- (a) as worked out under the transfer scheme or transfer notice; or
- (b) as otherwise agreed between them.

88 Land owner's obligations for asset

The land owner can not, without the asset owner's written consent—

- (a) interfere with the asset; or
- (b) take any step to change the use of the land to which the asset is attached; or
- (c) carry out material works or make material improvements to the land; or
- (d) grant rights to anyone else relating to the land that are inconsistent with the asset owner's rights under section 86 or use of the asset.

Maximum penalty—50 penalty units.

89 Registration of information about asset

- (1) The asset owner may give a written request to the registrar to record the following information—
- (a) that this part applies to the land to which the asset is attached;

-
- (b) a description of the asset;
 - (c) the name of the asset owner.
- (2) On receiving the request, the registrar must make a record in a way that a search of a relevant register kept by the registrar under the Land Act or the Land Title Act will show the information.
- (3) On written request from the asset owner, the registrar must cancel the record.

Part 6 Provisions for easements

90 Application of pt 6

- (1) This part applies if—
- (a) a participating local government for a distributor-retailer is the grantee under an easement; and
 - (b) the purpose for which the easement was created includes water supply or sewerage purposes.
- (2) In this section—
- easement* includes a public utility easement under the Land Act or the Land Title Act.

91 Rights, liabilities and obligations under easement

- (1) To the extent the easement relates to the purposes, the distributor-retailer—
- (a) may exercise the same rights as the local government; and
 - (b) is subject to the same liabilities and obligations as the local government.
- (2) However, the rights may be exercised only for the

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construction, installation, repair, replacement or removal of infrastructure relating to the purposes.

- (3) This section does not remove or otherwise affect the local government's rights, liabilities and obligations under the easement.
- (4) The distributor-retailer and the local government may make an agreement about the joint use of the easement.

92 Registration of information about easement

- (1) The local government or the distributor-retailer may give a written request to the registrar to record the following information—
 - (a) that this part applies to the easement;
 - (b) an identifying number of the easement;
 - (c) the distributor-retailer's name.
- (2) On receiving the request, the registrar must make a record in a way that a search of a relevant register kept by the registrar under the Land Act or the Land Title Act will show the information.
- (3) On written request from the local government or the distributor-retailer, the registrar must cancel the record.

Chapter 4 Customer water and wastewater code

Part 1 General provisions about code

93 Minister's power to make code

- (1) Subject to part 2, the Minister may make a customer water and

wastewater code to provide for rights and obligations of distributor-retailers and their customers.

- (2) The code does not have effect until it has been approved by the Governor in Council.
- (3) The code is subordinate legislation.

94 Particular matters code may provide for

- (1) The code may provide for all or any of the following—
 - (a) rights and obligations of distributor-retailers and their customers relating to the availability of water services and wastewater services;
 - (b) minimum and guaranteed service standards for water services and wastewater services;
 - (c) the imposition of a civil penalty for failure to comply with the service standards of no more than the monetary amount of 20 penalty units;
 - (d) the terms of supply contracts for the services;
 - (e) the marketing conduct of distributor-retailers relating to customers;
 - (f) meters and metering;
 - (g) dispute resolution processes for customers;
 - (h) an entity to administer the code.
- (2) In this section—

meter includes equipment related to the meter for measuring and recording the taking of water or interfering with water within the meaning of the Water Act.

Part 2 Process for making or amending code

95 Public notice about availability of draft code

- (1) If the Minister proposes to make the code, the Minister must—
 - (a) prepare a draft of the proposed code; and
 - (b) publish a notice about the draft in a newspaper circulating in all of the SEQ region; and
 - (c) give each distributor-retailer and each local government in the SEQ region a copy of the notice.
- (2) The notice must state—
 - (a) where copies of the draft may be inspected and on payment of a fee, purchased; and
 - (b) that written submissions may be made by anyone about the draft; and
 - (c) a day (the *final submission day*) by which submissions must be made, and the person to whom, and the place where, the submissions must be made.
- (3) The final submission day must not be earlier than 28 days after the day the notice is published.
- (4) The Minister must, from the publication of the notice to the final submission day, cause the draft to be published on the department's website.

96 Preparing and approving final code

In preparing the final code to be made, the Minister must consider all submissions about the draft code made under section 95 before the final submission day stated in the notice published under that section.

97 Amendment of code

- (1) The Minister may amend the code.
- (2) Sections 95 and 96 apply to the amendment as if a reference in the sections to the code were a reference to the amending code.
- (3) However, the sections do not apply if—
 - (a) the amending code is only to—
 - (i) correct a minor error in the code; or
 - (ii) make another change that is not a change of substance; or
 - (b) the code states that an amendment of a stated type may be made to the code without complying with the sections and the amendment is of the stated type.

98 No regulatory impact statement for code

A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for making or amending the code.

Part 3 Review of code

99 Review

- (1) The Minister must within 3 years after the code commences start a review of the code.
- (2) The review may be carried out in the way the Minister considers appropriate.
- (3) However, the process for the review must involve public submissions.
- (4) The review must start by the Minister publishing a notice in a

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newspaper circulating in all of the State—

- (a) explaining the process that the Minister has decided for the review; and
- (b) stating requirements for making submissions for the review.

Chapter 5 Miscellaneous provisions

100 Liability for Commonwealth and State tax equivalents

- (1) The Treasurer may issue a manual (the *tax equivalents manual*) that—
 - (a) fixes tax equivalents to be paid by a distributor-retailer to its participating local governments, in full or in a stated part; and
 - (b) appoints a person to be the tax assessor under the tax equivalents manual.
- (2) Without limiting subsection (1), the tax equivalents manual may provide for all or any of the following—
 - (a) rulings by the tax assessor on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax;
 - (b) the lodging of returns by distributor-retailers;
 - (c) assessing returns;
 - (d) the functions and powers of the tax assessor;
 - (e) objections and appeals against assessments and rulings.
- (3) A distributor-retailer must, as required under the tax equivalents manual, pay tax equivalents to its participating local governments in the proportions provided for under its participation agreement.
- (4) The Treasurer must table a copy of the tax equivalents

manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

- (5) The tax equivalents manual may be made together with or form part of a tax equivalents manual issued by the Treasurer under an Act about local government.
- (6) In this section—

government tax means tax imposed under a Commonwealth Act or a State Act.

tax equivalents, to be paid by a distributor-retailer to its participating local governments, means amounts representing the value of benefits the distributor-retailer derives because it is not liable to pay a government tax that it would be liable to pay if it were not a distributor-retailer.

Treasurer means the Minister administering the 2007 restructuring Act.

101 Approved forms

The commissioner under the Water Act may approve forms for use under this Act.

102 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) apply a provision of the Corporations Act to a distributor-retailer, with or without change; and
 - (b) provide, in relation to distributor-retailers, boards, officers or employees of distributor-retailers, for any matter that the Corporations Act provides for corporations; and
 - (c) provide for any matter for which a participation agreement, transfer scheme, transfer direction or the

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code may provide.

- (3) A regulation mentioned in subsection (2)(b) may provide for the matter with or without change from the way the matter is dealt with under the Corporations Act.
- (4) A regulation may prescribe a penalty of no more than 20 penalty units for contravention of a regulation.

Chapter 6 Transitional provisions

103 Appointment of first chief executive officer

- (1) Despite section 44(2), a distributor-retailer's participating local governments may appoint its first chief executive officer.
- (2) If the participating local governments act under subsection (1), this Act applies to the appointee as if he or she had been appointed under section 44.

104 Interim participation agreement

- (1) Until 1 July 2010, a distributor-retailer's participating local governments may make an agreement (the *interim agreement*) about the following matters for the distributor-retailer—
 - (a) who are to be its participants;
 - (b) who are to be the members of its board;
 - (c) a process for making board decisions;
 - (d) any other matter for which a participation agreement may or must provide that the participating local governments consider is appropriate.
- (2) The participating local governments must give the Minister a copy of the interim agreement as soon as practicable after making it.

-
- (3) The interim agreement takes effect as the distributor-retailer's participation agreement until the earlier of the following—
 - (a) 1 July 2010;
 - (b) a participation agreement for the distributor-retailer takes effect under section 23 or 24.
 - (4) Chapter 2, part 3, does not apply to the making of the interim agreement.
 - (5) Despite section 33, the interim agreement may provide for—
 - (a) the board to have only 2 members; or
 - (b) an appointment to the board that contravenes section 33(4) to (6).
 - (6) However, a person appointed under the interim agreement as a board member ceases to hold office on 30 June 2010.
 - (7) Subsection (6) does not stop the person from being appointed as a board member from 1 July 2010 if the person is eligible to be so appointed under this Act and the participation agreement for the distributor-retailer.
 - (8) Sections 38 to 40 and 42 do not apply to a board appointed under the interim agreement.

105 Application of customer service standards until code commences

- (1) This section applies only if the code has not commenced.
- (2) From 1 July 2010 a distributor-retailer must comply with any relevant customer service standards as if it were the service provider that made them.
- (3) In this section—

relevant customer service standards, for a distributor-retailer, means any customer service standards under the Water Supply Act relating to the distributor-retailer's geographic area.

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106 Provision for market rules

- (1) This section applies only until 1 July 2010.
- (2) A distributor-retailer is not a grid participant under the market rules under the Water Act.

107 Amendment under Act of Statutory Bodies Financial Arrangements Regulation 2007

The amendment of the *Statutory Bodies Financial Arrangements Regulation 2007* under this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Chapter 7 Amendment of Acts and a regulation

Part 1 Amendment of this Act

Editor's note—

Sections 111 and 112 had not commenced on or before the reprint date.

111 Amendment of s 77 (Matters relating to the Integrated Planning Act 1997)

- (1) *Section 77, heading, 'Integrated Planning Act 1997'—
omit, insert—
'Sustainable Planning Act 2009 or the repealed Integrated Planning Act 1997'.*
- (2) *Section 77(2)(a), (b) and (c)—
omit, insert—*

-
- (a) *an infrastructure charge or cost levied by the local government under SPA, chapter 8, part 1 or repealed IPA, chapter 5, part 1;*
- (b) *a condition imposed by the local government under SPA, chapter 8, part 1 or section 848 or repealed IPA, chapter 5, part 1 or section 6.1.31;*
- (c) *any other decision, charge, condition, contribution or agreement (each a **relevant action**) made, levied or imposed by the local government under SPA or repealed IPA.’*
- (3) *Section 77(6), definition development infrastructure, ‘IPA, schedule 10’—*
omit, insert—
‘SPA, schedule 3’.
- (4) *Section 77(6), definition IPA—*
omit, insert—
‘repealed IPA means the repealed Integrated Planning Act 1997.
SPA means the Sustainable Planning Act 2009.’.

112 Amendment of s 78 (Reconfiguring a lot after transfer scheme or notice takes effect)

- (1) *Section 78(3)(a)—*
omit, insert—
‘(a) Sustainable Planning Act 2009;’.
- (2) *Section 78(5), definition reconfiguring a lot, ‘Integrated Planning Act 1997, section 1.3.5’—*
omit, insert—
‘Sustainable Planning Act 2009, section 10(1)’.
- (3) *Section 78(5), definition State planning regulatory provision, ‘Integrated Planning Act 1997, schedule 10’—*

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omit, insert—

‘Sustainable Planning Act 2009, schedule 3’.

Schedule Dictionary

section 7

2007 restructuring Act means the *South East Queensland Water (Restructuring) Act 2007*.

Acquisition of Land Act means the *Acquisition of Land Act 1967*.

agreement to take, for land, means an agreement to take the land made under the Acquisition of Land Act, section 15.

approved form means a form approved under section 101.

asset owner, for chapter 3, part 5, see section 84(1)(c).

associated employee, for a provision about a distributor-retailer, or a board, means an employee of a participating local government for the distributor-retailer.

board—

- (a) generally, means a distributor-retailer's board; and
- (b) for a provision about a particular distributor-retailer, means that distributor-retailer's board; and
- (c) for a chief executive officer, means the board of the distributor-retailer of which he or she is, or is being appointed to be, the chief executive officer.

code means the customer water and wastewater code in effect under chapter 4.

customer means a person who receives or wants to receive a supply of water from a water service or the benefit of a wastewater service.

distributor-retailer—

- (a) generally—see section 8; and
- (b) for a provision about a local government—means the distributor-retailer for which the local government is a participating local government.

former employer, for chapter 3, part 4, division 2, see section 81.

geographic area, for a distributor-retailer, see section 6.

geographic area functions, for a distributor-retailer, see section 11(2).

indictable offence includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

insolvent under administration see the Corporations Act, section 9.

instrument includes an oral agreement.

Land Act means the *Land Act 1994*.

Land Act chief executive means the chief executive of the department in which the Land Act is administered.

Land Act Minister means the Minister administering the Land Act.

land owner, for chapter 3, part 5, see section 84(1)(c).

Land Title Act means the *Land Title Act 1994*.

local government direction see section 49(1).

new employer, for chapter 3, part 4, division 2, see section 81.

notice means a notice in writing.

participants, for a distributor-retailer, see section 20(3).

participating local governments, for a distributor-retailer, see section 5.

participation agreement means a participation agreement made under section 20 or 23.

participation rights, for a distributor-retailer, see section 20(2).

planning and reporting requirements, for a distributor-retailer, see section 20(4).

record includes any document.

registrar means the registrar of titles under the Land Title Act or another person responsible for keeping a register for dealings in land.

SEQ region see the Water Act, section 341.

service provider see the Water Supply Act, schedule 3.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

staff support framework see section 79(1).

transfer direction see section 65(1).

transfer notice see section 62(1).

transfer scheme see section 54(1).

transition, to a distributor-retailer from its participating local governments, see section 54(3).

transition document means a transfer scheme, transfer notice or transfer direction.

wastewater includes sewage.

wastewater service means any of the following—

- (a) a sewerage service under the Water Supply Act, schedule 3;
- (b) services relating to trade waste as defined under the Water Supply Act.

Water Act means the *Water Act 2000*.

water service see the Water Supply Act, schedule 3.

Water Supply Act means the *Water Supply (Safety and Reliability) Act 2008*.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 November 2009. Future amendments of the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| num | = numbered | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2002 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments included | Effective | Notes |
|-------------|---------------------|-----------------|-------|
| 0A | none | 3 November 2009 | |
| 0B | 2009 Act No. 46 | 4 November 2009 | |

5 List of legislation

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 No. 46 (prev South-East Queensland Water (Distribution and Retail Restructuring) and Natural Resources Provisions Act 2009)

date of assent 3 November 2009

ss 1–2 commenced on date of assent

ss 108–110 commenced 4 November 2009 (see s 2(1))

Endnotes

ss 111–112 commence the day after the repeal of the Integrated Planning Act 1997 by the Sustainable Planning Act 2009 No. 36 s 764 (see s 2(2))

remaining provisions commenced on date of assent

amending legislation—

South-East Queensland Water (Distribution and Retail Restructuring) and Natural Resources Provisions Act 2009 No. 46 ss 1–2, ch 7 pt 1

date of assent 3 November 2009

ss 108–110 commenced 4 November 2009 (see s 2(1))

ss 111–112 commence the day after the repeal of the Integrated Planning Act 1997 by the Sustainable Planning Act 2009 No. 36 s 764 (see s 2(2))

remaining provisions commenced on date of assent

6 List of annotations

CHAPTER 7—AMENDMENT OF ACTS AND A REGULATION

PART 1—AMENDMENT OF THIS ACT

Act amended

s 108 om R0B (see RA s 40)

Amendment of long title

s 109 om R0B (see RA s 40)

Amendment of s 1 (Short title)

s 110 om R0B (see RA s 40)

PART 2—AMENDMENT OF LAND ACT 1994

pt 2 (ss 113–115) om R0A (see RA ss 7(1)(k) and 40)

PART 3—AMENDMENT OF LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

pt 3 (ss 116–117) om R0A (see RA ss 7(1)(k) and 40)

PART 4—AMENDMENT OF SOUTH EAST QUEENSLAND WATER (RESTRUCTURING) ACT 2007

pt 4 (ss 118–121) om R0A (see RA ss 7(1)(k) and 40)

PART 5—AMENDMENT OF STATUTORY BODIES FINANCIAL ARRANGEMENTS REGULATION 2007

pt 5 (ss 122–125) om R0A (see RA ss 7(1)(k) and 40)

PART 6—AMENDMENT OF VALUATION OF LAND ACT 1944

pt 6 (ss 126–128) om R0A (see RA ss 7(1)(k) and 40)

PART 7—AMENDMENT OF WATER ACT 2000

pt 7 (ss 129–132) om R0A (see RA ss 7(1)(k) and 40)

PART 8—AMENDMENT OF WATER SUPPLY (SAFETY AND RELIABILITY) ACT 2008

pt 8 (ss 133–154) om R0A (see RA ss 7(1)(k) and 40)

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