



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

Reprinted as in force on 28 October 2011

Reprint No. 1G

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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 28 October 2011]

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*.

[s 3]

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 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; and
 - (d) providing for all distributor-retailers to become service providers on and from 1 July 2010; and
 - (e) the inclusion of particular provisions about the performance of the functions of distributor-retailers as service providers.

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.

[s 6]

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.

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—

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- (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;
 - (ii) wastewater services;
 - (d) charge customers for relevant services;
 - (e) manage customer enquiries, service requests and complaints;
 - (f) on and from 1 July 2010—
 - (i) perform functions under this Act and the Water Supply Act relating to trade waste and seepage water as a sewerage service provider; and
Note—
See section 53AA (Distributor-retailers become service providers).
 - (ii) perform particular planning and development assessment functions under the Planning Act;
 - (g) anything else likely to complement or enhance a function mentioned in paragraphs (a) to (f).
- (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.
- (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**).

[s 15]

- (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 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*.

17A Information Privacy Act 2009

A distributor-retailer is taken to be an agency under the *Information Privacy 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.

18A Penalties and Sentences Act 1992

A distributor-retailer is taken to be a corporation for the *Penalties and Sentences Act 1992*.

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.
- (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.

[s 23]

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 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.

[s 30]

- (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 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.

30A Publication of participation agreement etc.

- (1) This section applies if—
- (a) a distributor-retailer or local government enters into a participation agreement; or
 - (b) the Minister makes a participation agreement for a distributor-retailer; or
 - (c) a participation agreement entered into by a distributor-retailer or a local government or made by the Minister is amended.
- (2) The distributor-retailer or local government must, within 30 days after the agreement is entered into or the amendment takes effect, publish on its website—
- (a) a copy of the participation agreement or amendment; and
 - (b) a brief summary of the agreement, or the agreement as amended, that complies with subsection (3).

Maximum penalty—200 penalty units.

- (3) As a minimum, the summary must refer to each of the matters mentioned in section 20(1).

[s 31]

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

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- (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 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.

[s 35]

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.

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.

[s 41]

- (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—
 - (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 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.

[s 44]

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

- (1) A distributor-retailer's chief executive officer is—
 - (a) responsible for managing its affairs under this Act, other relevant legislation and the board's policies; and
 - (b) for the following provision or Acts, taken to be its principal officer—
 - the *Evidence Act 1977*, section 134A
 - the *Right to Information Act 2009*
 - the *Information Privacy Act 2009*.
- (2) However, performance of the responsibility under subsection (1)(a) is subject to the board's directions.

[s 49]

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.

[s 53]

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

Note—

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

- (5) Without limiting subsection (1)—
- (a) a distributor-retailer must, for the period ending 30 June 2013, delegate—
- (i) its functions as a concurrence agency for a development application to its relevant participating local government; and
- (ii) its functions under the Planning Act, chapter 9, part 7A, division 4 to its relevant participating local government; and
- (b) a distributor-retailer may delegate its functions under the Planning Act, chapter 9, part 7A, division 5 to its relevant participating local governments; and
- (c) a distributor-retailer may delegate to its participating local governments its functions as a service provider under the Water Supply Act relating to approving connections to, disconnections from or changes to connections to, its water infrastructure.
- (6) A relevant participating local government may subdelegate a function delegated to it under subsection (5) to an appropriately qualified officer or employee of the local government.
- (7) A delegation under subsection (5)(a) can not be revoked, in whole or in part, by the distributor-retailer.
- (8) A function delegated under subsection (5)(a) can not be performed or exercised by the distributor-retailer.
- (9) Subsection (8) does not stop the distributor-retailer giving advice to a participating local government about the

performance or exercise of a function delegated under subsection (5)(a).

(10) Subject to subsections (7) and (8), the *Acts Interpretation Act 1954*, section 27A applies to a delegation under subsection (5)(a).

(11) In this section—

concurrency agency see the Planning Act, section 251.

functions includes powers.

relevant participating local government, for a function of a distributor-retailer, means the distributor-retailer's participating local government for the local government area in relation to which the function is performed or exercised.

Chapter 2A General provisions for distributor-retailers as service providers

Part 1 Provisions for distributor-retailers to become service providers

Division 1 General provisions

53AA Distributor-retailers become service providers

- (1) On and from 1 July 2010 all distributor-retailers become service providers for their geographic area functions.
- (2) The Water Supply Act, section 20 does not apply to a distributor-retailer.

[s 53AB]

- (3) A distributor-retailer continues to be a service provider from 1 July 2010 and subject to the Water Supply Act.
- (4) A distributor-retailer must give the regulator the information mentioned in the Water Supply Act, section 12 about the distributor-retailer as a service provider as soon as practicable after 1 July 2010.

53AB Participating local governments cease being service providers

On 1 July 2010, each distributor-retailer's participating local governments cease to be a service provider.

53AC Notice to regulator not required for transfer under transition document

The Water Supply Act, sections 24 and 25 do not apply to a transfer under a transition document.

53AD Existing customers

- (1) This section applies to a person who, immediately before 1 July 2010, was a customer of any of a distributor-retailer's participating local governments.
- (2) On 1 July 2010 the person becomes a customer of the distributor-retailer.

53AE Provision for market rules

- (1) On and from 1 July 2010, a distributor-retailer is taken to be a registered grid participant in the grid customer and distribution service provider categories under the market rules under the Water Act.
- (2) On and from 1 July 2010, all participating local governments of all distributor-retailers cease to be grid customers under the market rules.

Division 2 Existing trade waste approvals

53AF Existing trade waste approvals

- (1) On and from July 2010 all trade waste approvals given by a distributor-retailer's participating local governments are taken to have been given by the distributor-retailer.
- (2) If before 1 July 2010—
 - (a) a local government was required under the Water Supply Act, section 185(2) to give an approval holder a notice amending the holder's trade waste approval; and
 - (b) the local government has not given that notice;the distributor must give the notice as soon as practicable after it becomes aware of the requirement.

53AG Power to amend existing trade waste approvals for particular purposes

- (1) This section applies for a trade waste approval that under section 53AF(1) is taken to have been given by a distributor-retailer (each an *existing trade waste approval*).
- (2) Subject to section 53AH, the distributor-retailer may amend the trade waste approval to ensure the consistency of all trade waste approvals given for its geographic area (a *consistency amendment*).
- (3) However, a consistency amendment can not be made after 30 June 2012.
- (4) The distributor-retailer may, by notice, also amend the trade waste approval to make any change necessary to reflect the change from the approval being given by it instead of a participating local government.

[s 53AH]

53AH Requirements for making consistency amendment

- (1) Before a distributor-retailer makes a consistency amendment of a trade waste approval, it must give the approval holder a show cause notice about the proposed amendment.
- (2) If, after considering any properly made submissions by the approval holder, the distributor-retailer is still satisfied the amendment should be made, it may make the amendment by notice to the approval holder.
- (3) Within 30 business days after making a decision under subsection (2), the distributor-retailer must give the approval holder an information notice about the decision.
- (4) If, after considering any properly made submissions by the approval holder, the distributor-retailer is not satisfied the amendment should be made, it must give the approval holder a notice about the decision.
- (5) A decision under subsection (2), takes effect on the later of the following—
 - (a) the day the information notice is received by the approval holder;
 - (b) the day stated in the notice.
- (6) In this section—

show cause notice means a notice that complies with the Water Supply Act, section 463.

Division 3 Provision of information

53AI Authorised exchange of information

- (1) A distributor-retailer and its participating local governments may exchange information with each other if the exchange is necessary or desirable for the distributor-retailer to perform its geographic area functions.

-
- (2) However, information can not be exchanged under subsection (1) after 1 July 2013.
 - (3) This section is subject to the *Information Privacy Act 2009* and the *Right to Information Act 2009*.

Part 2 Application of particular Water Supply Act provisions to distributor-retailers

Division 1 Preliminary

53AJ Purpose of pt 2

The purpose of this part is to provide for matters about the application of particular provisions of the Water Supply Act in relation to the carrying on of a water service or wastewater service by a distributor-retailer after 1 July 2010.

53AK Application of pt 2

This part does not limit or otherwise affect the application of the Water Supply Act to a distributor-retailer other than to the extent stated in division 2.

Division 2 Application of provisions

53AL Provision about plans under the Water Supply Act—generally

- (1) On and from 1 July 2010, the following provisions of the Water Supply Act do not apply to a distributor-retailer—

[s 53AM]

- (a) sections 106 to 109, other than to the extent the sections provide for any matter about the distributor-retailer's drinking water quality management plan under that Act;
 - (b) chapter 2, part 4, division 6.
- (2) The following provisions of the Water Supply Act do not apply to a distributor-retailer that has a water netserv plan—
- (a) chapter 2, part 4, divisions 1 and 2;
 - (b) chapter 2, part 4, division 4, other than to the extent the division provides for any matter about the distributor-retailer's drinking water quality management plan under that Act.

53AM Provision about strategic asset management plan

- (1) This section applies to a distributor-retailer—
- (a) on 1 July 2010; and
 - (b) until the day the distributor-retailer has a water netserv plan.
- (2) For the Water Supply Act, chapter 2, part 4, division 1, the existing strategic asset management plans for the registered services of a participating local government for the distributor-retailer are taken to be the distributor-retailer's approved strategic asset management plans.
- (3) The Water Supply Act, sections 73 and 74 do not apply to the distributor-retailer.
- (4) In this section—

approved strategic asset management plan means an approved strategic asset management plan under the Water Supply Act.

existing strategic asset management plan, for a registered service of a participating local government, means an approved strategic asset management plan of the local government in effect immediately before 1 July 2010.

53AN Provision about system leakage management plan

- (1) This section applies to a distributor-retailer—
 - (a) on 1 July 2010; and
 - (b) until the day the distributor-retailer has a water netserv plan.
- (2) For the Water Supply Act, chapter 2, part 4, division 2, the existing system leakage management plan for the water service of a participating local government for the distributor-retailer is taken to be the distributor-retailer's approved system leakage management plan.
- (3) The Water Supply Act, sections 82 and 87 do not apply to the distributor-retailer.
- (4) In this section—

approved system leakage management plan means an approved system leakage management plan under the Water Supply Act.

existing system leakage management plan, for a water service of a participating local government, means the approved system leakage management plan of the local government in effect immediately before 1 July 2010.

53AO Provision about drinking water service

- (1) This section applies to a distributor-retailer—
 - (a) on 1 July 2010; and
 - (b) until the earlier of the following—
 - (i) 1 July 2011;
 - (ii) the day the distributor-retailer has an approved drinking water quality management plan.
- (2) For the Water Supply Act, chapter 2, part 4, division 3, subdivision 1, the existing drinking water plan for a drinking water service of a participating local government for the

[s 53AP]

distributor-retailer is taken to be the distributor-retailer's approved drinking water quality management plan.

(3) In this section—

approved drinking water quality management plan means an approved drinking water quality management plan under the Water Supply Act.

existing drinking water plan, for a drinking water service of a participating local government, means the approved drinking water quality management plan of the local government in effect immediately before 1 July 2010.

53AP Provision about service areas—before water netserv plan is in effect

- (1) This section applies to a distributor-retailer until the day the distributor-retailer has a water netserv plan.
- (2) On 1 July 2010, the service area for a distributor-retailer as a service provider under the Water Supply Act, chapter 2, part 5, consists of the existing service areas of its participating local governments.
- (3) The distributor-retailer may amend the service area by adding an area to, or removing an area from, the service area.
- (4) If the distributor-retailer amends the service area, the distributor-retailer must publish a notice of the amendment in a newspaper circulating generally throughout its geographic area.
- (5) In this section—

existing service area, of a participating local government, means the local government's service areas under the Water Supply Act immediately before 1 July 2010 that relate to the distributor-retailer's water service or wastewater service.

53AQ Provision about service areas—after water netserv plan is in effect

- (1) This section applies to a distributor-retailer on and from the day the distributor-retailer has a water netserv plan.
- (2) The Water Supply Act, chapter 2, part 5, division 2 does not apply to the distributor-retailer.
- (3) For applying the Water Supply Act, chapter 2, part 5, divisions 3 to 5, a reference in the divisions to a service area is, for a distributor-retailer, taken to be a reference to a connection area of the distributor-retailer.

53AR Provision about recycled water management plan

- (1) This section applies to a distributor-retailer on 1 July 2010.
- (2) For the Water Supply Act, chapter 3, part 2, the existing recycled water management plan for a recycled water scheme of a participating local government for the distributor-retailer is taken to be the distributor-retailer's approved recycled water management plan under that Act.
- (3) In this section—

approved recycled water management plan means an approved recycled water management plan under the Water Supply Act.

existing recycled water management plan, for a recycled water scheme of a participating local government, means the approved recycled water management plan of the local government in effect immediately before 1 July 2010.

[s 53ARA]

Part 3 **Charges for water services and wastewater services and other matters**

Division 1 **Restriction on charges in capped prices period**

Subdivision 1 **Preliminary**

53ARA Definitions for div 1

In this division—

2010-11 financial year means the financial year ending 30 June 2011.

2011-12 financial year means the financial year ending 30 June 2012.

2012-13 financial year means the financial year ending 30 June 2013.

base year see section 53ARF(b).

bulk water component means the charge for bulk water services included in a distributor-retailer's charge.

capped charge see section 53ARB(1).

capped prices period means both the 2011-12 financial year and the 2012-13 financial year.

charged premises see section 53ARB(1).

relevant services see section 53ARB(3).

relevant year see section 53ARF(a).

small business customer, of a distributor-retailer for water services or wastewater services, means a customer (other than

a residential customer) of the distributor-retailer for the services if—

- (a) the customer uses or, if connected to the distributor-retailer's water service or wastewater service, would be likely to use no more than 100kL of drinking water a year; or
- (b) the customer is of a type of customer that ordinarily uses no more than 100kL of drinking water a year; or
- (c) the customer has advised the distributor-retailer in writing, and the distributor-retailer is satisfied, that the customer is likely to use no more than 100kL of drinking water a year.

variable measures, for the relevant services, includes a measure based on—

- (a) the amount of water supplied or wastewater discharged from the charged premises; or
- (b) the number of pedestals or urinals on the charged premises.

53ARB Application of div 1

- (1) This division applies to a charge (a *capped charge*) for water services or wastewater services provided by a distributor-retailer to premises (the *charged premises*)—
 - (a) in the capped prices period; and
 - (b) for a customer who—
 - (i) is a residential customer or a small business customer of the distributor-retailer for the services; or
 - (ii) is a customer of the distributor-retailer for the services who passes on the charge to a person occupying the charged premises or a part of the premises for residential purposes; or

[s 53ARC]

Examples of a customer for subparagraph (ii)—

- the owner of a retirement village
- a body corporate for a community titles scheme under the *Body Corporate and Community Management Act 1997*

(iii) is a customer of the distributor-retailer for the services who passes on the charge to a person who—

- (A) occupies the charged premises or a part of the premises to conduct a business; and
- (B) would, if the person were a customer of the distributor-retailer for the services, be a small business customer of the distributor-retailer.

(2) However, this division does not apply to—

- (a) a charge for the discharge of trade waste or seepage water, or the supply of recycled water; or
- (b) an overdue charge relating to a charge mentioned in paragraph (a).

(3) The water services or wastewater services to which a capped charge relates are the *relevant services*.

(4) This division applies despite any other provision of this Act or a participation agreement.

Subdivision 2 Caps

53ARC Cap for 2011-12 financial year

(1) The amount (the *cap*) of a capped charge for the relevant services for the 2011-12 financial year can not be more than the amount worked out by using the formula—

$$C = (2010-11 \text{ BC} - 2010-11 \text{ RS}) + 2011-12 \text{ I} + 2011-12 \text{ BW}$$

where—

C means the cap.

2010-11 BC (an abbreviation for 2010-11 base component) means the sum of the following for the relevant services for the 2010-11 financial year—

- (a) the fixed access charges mentioned in section 99AV(2) for the relevant services relating to the 2010-11 financial year;
- (b) the customer's charge rate for water consumption or wastewater disposal based on variable measures for the 2010-11 financial year as applied to the customer's water consumption or wastewater disposal in the 2011-12 financial year.

2010-11 RS means the amount of any rebate or subsidy for the relevant services for the 2010-11 financial year provided by the participating local government.

2011-12 I means the CPI increase for the 2011-12 financial year worked out under the formula in subsection (2).

2011-12 BW means the bulk water component of the charge for the relevant services for the 2011-12 financial year.

- (2) For subsection (1), the formula for the CPI increase is—

$$\mathbf{2011-12 I = (2010-11 BC - 2010-11 RS) \times CPI}$$

- (3) For subsection (2)—
- (a) *CPI* means 3.6%; and
 - (b) other variable symbols have the same meaning as under subsection (1).
- (4) To remove any doubt, it is declared that the 2010-11 base component does not include the bulk water component of the charge for the relevant services for the 2010-11 financial year.
- (5) This section applies subject to subdivision 3.

[s 53ARD]

53ARD Cap for 2012-13 financial year

- (1) The amount (the *cap*) of a capped charge for the relevant services for the 2012-13 financial year can not be more than the amount worked out by using the formula—

$$C = (2011-12 \text{ BC} - 2011-12 \text{ RS}) + 2012-13 \text{ I} + 2012-13 \text{ BW}$$

where—

C means the cap.

2011-12 BC (an abbreviation for 2011-12 base component) means the sum of the following for the relevant services for the 2011-12 financial year—

- (a) the fixed access charges mentioned in section 99AV(2) for the relevant services relating to the 2011-12 financial year;
- (b) the customer's charge rate for water consumption or wastewater disposal based on variable measures for the 2011-12 financial year as applied to the customer's water consumption or wastewater disposal in the 2012-13 financial year.

2011-12 RS means the amount of any rebate or subsidy for the relevant services for the 2011-12 financial year provided by the participating local government.

2012-13 I means the CPI increase for the 2012-13 financial year worked out under the formula in subsection (2).

2012-13 BW means the bulk water component of the charge for the relevant services for the 2012-13 financial year.

- (2) For subsection (1), the formula for the CPI increase is—

$$2012-13 \text{ I} = (2011-12 \text{ BC} - 2011-12 \text{ RS}) \times \text{CPI}$$

- (3) For subsection (2)—

- (a) **CPI** means the CPI figure from the Australian Bureau of Statistics' capital cities comparison for Brisbane relating to the annual period from one March quarter to the next March quarter published by that bureau

- immediately before the start of the 2012-13 financial year; and
- (b) other variable symbols have the same meaning as under subsection (1).
- (4) To remove any doubt, it is declared that the 2011-12 base component does not include the bulk water component of the charge for the relevant services for the 2011-12 financial year.
- (5) This section applies subject to subdivision 3.

53ARE Caps not affected by rebate or subsidy change

To remove any doubt, it is declared that a cap under this subdivision is not affected by a change in any local government rebate or subsidy for the 2011-12 financial year or the 2012-13 financial year.

Subdivision 3 Provisions for no or partial base year

53ARF Application of sdiv 3

This subdivision applies if—

- (a) this division started to apply to a capped charge for the customer on the start of or during the 2011-12 financial year or the 2012-13 financial year (the *relevant year*); or
- (b) the relevant services were not provided by the distributor-retailer to the charged premises during all the preceding financial year (the *base year*) or were provided for only part of the base year.

53ARG Notional base component required for working out cap

For subdivision 2, the distributor-retailer must work out the cap as if—

[s 53ARH]

- (a) this division had applied to the capped charge for the customer during all of the base year; and
- (b) the relevant services had been provided to the customer for all of the base year.

53ARH Criteria if no base year

- (1) This section applies if—
 - (a) this division started to apply to a capped charge for the customer on the start of the relevant year; or
 - (b) the relevant services were not provided by the distributor-retailer to the charged premises during any of the base year.
- (2) In working out the cap under section 53ARG, the distributor-retailer must consider the charges imposed on similar customers for premises similar to the charged premises during the base year.

53ARI Criteria if partial base year

- (1) This section applies if—
 - (a) this division started to apply to a capped charge for the customer after the start of, but during, the base year; or
 - (b) the relevant services were provided by the distributor-retailer to the charged premises for only part of the base year.
- (2) In working out the cap under section 53ARG, the distributor-retailer must consider the charges it actually imposed on the customer for the charged premises during the base year.

Division 2 Overdue charges

53AS Application of div 2

(1) This division applies if a distributor-retailer is owed all or any of the following for premises—

- (a) a charge for water services or wastewater services provided by a distributor-retailer to the premises;
- (b) costs the distributor-retailer may recover for the premises under the Water Supply Act, section 165;

Editor's note—

Water Supply Act, section 165 (Recovering cost of giving access to registered service)

- (c) a charge under the Planning Act, section 755K;
- (d) a charge under an agreement under the Planning Act, section 755L or 755M;
- (e) a liability mentioned in section 77I that is an infrastructure charge—
 - (i) owed to distributor-retailer under section 77J; or
 - (ii) the benefit of which is, under section 77K, shared with a participating local government of the distributor-retailer.

Editor's note—

Planning Act, sections 755K (Funding trunk infrastructure—levying charge before standard charge day), 755L (Agreements about, and alternatives to, paying infrastructure charge) and 755M (Agreements about, and alternatives to, paying regulated infrastructure charge)

(2) The amount owed for a matter mentioned in subsection (1) is the ***overdue charge***.

[s 53AT]

53AT Interest

- (1) The distributor-retailer may charge interest on the overdue charge.
- (2) The rate of the interest can not be more than the rate of interest local governments may charge for late payment of rates.
- (3) The interest must be calculated—
 - (a) on daily rests, and as compound interest; or
 - (b) in another way the distributor-retailer decides, if an equal or lower amount will be obtained.

53AU Overdue charge is owing by any owner of the premises

- (1) The overdue charge is payable by anyone who from time to time owns the premises.
- (2) Subsection (1) applies whether or not the owner received the benefit of the services.
- (3) Subsection (1) does not apply to any interest on the overdue charge.

53AV Charge on premises for overdue charge, CPI indexation and costs ordered

- (1) The total of the following is a charge on the premises (the *distributor-retailer's charge*)—
 - (a) the overdue charge, as CPI indexed under section 53AW;
 - (b) if, in a proceeding to recover the overdue charges, the court orders costs to be paid to distributor-retailer from the owner of the premises—the costs.
- (2) The distributor-retailer's charge does not include a power to sell the premises.
- (3) The distributor-retailer's charge does not secure any interest imposed under section 53AT.

-
- (4) This section does not limit any other remedy the distributor-retailer has to recover the amount.

53AW Quarterly CPI indexation for distributor-retailer's charge

- (1) For section 53AV the overdue charge is taken to be CPI indexed for all quarters during which all or any part of the overdue charge continues to be owing.
- (2) However, if the amount provided for under subsection (1) is an amount that is or includes a fraction of a dollar, the amount is taken to be the amount that is the nearest dollar, rounded up.
- (3) For subsection (1), payments relating to the overdue charge are taken to be made first in reduction of the overdue charge before any interest on it.
- (4) In this section—

CPI means—

- (a) the all groups index for Brisbane published by the Australian Bureau of Statistics; or
- (b) if the index ceases to be published, another similar index prescribed under a regulation.

CPI indexed, for a quarter (the *relevant quarter*), means the addition of any amount that equates to any percentage increase in the CPI between the following quarters—

- (a) the relevant quarter;
- (b) the quarter immediately before the relevant quarter.

53AX Registration of charge and effect of registration

- (1) The distributor-retailer may register the distributor-retailer's charge by lodging the following documents with the registrar—
- (a) a request to register the charge, in the appropriate form;

[s 53AXA]

- (b) a certificate signed by the chief executive officer that states the distributor-retailer's charge exists over the premises.
- (2) After the charge is registered over the premises, the charge has priority over any other encumbrances over the premises, other than encumbrances in favour of—
- (a) the State; or
 - (b) a public entity.
- (3) If the amount that the charge secures is paid, the distributor-retailer must lodge the following documents with the registrar—
- (a) a request to release the charge over the premises, in the appropriate form;
 - (b) a certificate signed by the chief executive officer stating the amount has been paid.

Part 3A Personal details requirements

53AXA Application of pt 3A

This part applies if an authorised person appointed by a distributor-retailer—

- (a) finds a person committing an infringement notice offence; or
- (b) finds a person in circumstances that lead the authorised person to reasonably suspect a person has just committed an infringement notice offence; or
- (c) has information that leads the authorised person to reasonably suspect a person has just committed an infringement notice offence.

53AXB Power to require name and residential address

- (1) The authorised person may require the person to state the person's name and residential address.
- (2) When making the requirement, the authorised person must give the person an offence warning.
- (3) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—35 penalty units.

53AXC Power to require evidence of name or residential address

- (1) The authorised person may also require the person to give evidence of the correctness of the stated name or residential address if, in the circumstances, it would be reasonable to expect the person to—
 - (a) be in possession of evidence of the correctness of the stated name or residential address; or
 - (b) otherwise be able to give the evidence.
- (2) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—35 penalty units.

53AXD Exception if infringement notice offence not proved

The person does not commit an offence under this part if—

- (a) the requirement was made because the authorised person suspected the person has committed an infringement notice offence; and
- (b) the person is not proved to have committed the offence.

Chapter 2B Water infrastructure provisions for distributor-retailers

Part 1 Preliminary

53BB What is *water infrastructure* and *water infrastructure work*

- (1) *Water infrastructure* is infrastructure for a water service or wastewater service.
- (2) *Water infrastructure work* is the installation, operation, maintenance, repair, alteration or removal of water infrastructure.

53BC What is a *public entity*

- (1) A *public entity* is—
 - (a) a local government; or
 - (b) a government company or part of a government company; or
 - (c) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
 - (d) a department or a division, branch or other part of a department; or
 - (e) a GOC Act entity; or
 - (f) a government entity prescribed under a regulation under the GOC Act, section 4.
- (2) In this section—

[s 53BD]

government company means a corporation incorporated under the Corporations Act all the stock or shares in the capital of which is or are beneficially owned by the State.

GOC Act means the *Government Owned Corporations Act 1993*.

GOC Act entity means an entity established under a regulation under the GOC Act.

53BD Publicly-controlled places and their public entities

- (1) A **publicly-controlled place** is—
- (a) a State-controlled road; or
 - (b) a place for which a public entity is responsible that—
 - (i) the public is entitled to use; or
 - (ii) is open to members of the public; or
 - (iii) is used by the public, whether or not on payment of money.

Example for paragraph (b)—

a road

- (2) However, **publicly-controlled place** does not include any of the following under the Transport Infrastructure Act—
- (a) busway land;
 - (b) light rail land;
 - (c) a railway;
 - (d) rail corridor land.

Note—

For provisions relevant to water infrastructure work for places mentioned in subsection (2), see the Transport Infrastructure Act, chapter 6 (Road transport infrastructure), chapter 9, part 4, divisions 4 (Public utility plant) and 5 (Use of busway or busway transport infrastructure) and chapter 10, part 4, divisions 3 (Public utility plant) and 4 (Use of light rail or light rail transport infrastructure).

- (3) The *public entity* for a publicly-controlled place is the public entity immediately and primarily responsible for the place.

53BE What is a *road* and a *State-controlled road*

- (1) A *road* is any of the following other than to the extent it is, or includes, a public thoroughfare easement—
- (a) an area of land dedicated to public use as a road;
 - (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles;
 - (c) a bridge, culvert, ferry, ford, tunnel or viaduct;
 - (d) a pedestrian or bicycle path;
 - (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d).
- (2) A *State-controlled road* is a road or land, or part of a road or land, declared under the Transport Infrastructure Act, section 24 to be a State-controlled road.

53BF What are *road works*

- (1) *Road works* are—
- (a) works done for—
 - (i) constructing roads or things associated with roads;
or
 - (ii) maintaining roads or things associated with roads (other than public utility plant); or
 - (iii) facilitating the operation of infrastructure relating to roads; or
 - (b) works declared under a regulation under the Transport Infrastructure Act to be road works.
- (2) In this section—

[s 53BG]

plant includes any of the following—

- (a) a conduit or cable;
- (b) an electrical installation under the *Electricity Act 1994*;
- (c) an overhead conveyor.

public utility plant means plant permitted under an Act or a Commonwealth Act to be on a road.

works includes activities.

53BG Meaning of *location* on a road

The **location** of water infrastructure on a road includes the line, level and boundary of the water infrastructure in or on the road.

Part 2 Carrying out water infrastructure work on publicly-controlled places

Division 1 When work may be carried out

53BH Right to carry out work on publicly-controlled place

Subject to sections 53BI and 53BR and division 2, a distributor-retailer may carry out water infrastructure work on a publicly-controlled place if the carrying out of the work is relevant to the performance of its geographic area functions.

53BI Requirements for carrying out work

- (1) A distributor-retailer may carry out water infrastructure work on a publicly-controlled place only if—

-
- (a) the public entity has given its written approval for the carrying out of the work (a **public entity approval**); or
- Note—*
- See also section 108 (Public entity approvals taken to be given for existing water infrastructure work).
- (b) the carrying out of the work is necessary because of an emergency.
- (2) If the work is carried out because of an emergency, the distributor-retailer must, as soon as practicable, give the entity notice of the work.

53BJ Obtaining public entity's approval

- (1) The distributor-retailer may, in writing, apply to the public entity for a public entity approval for water infrastructure work.
- (2) The application must—
- (a) describe the work and how it is proposed to be carried out; and
- (b) give particulars of the location of the proposed work; and
- (c) be supported by other relevant information, reasonably required by the entity, to enable it to consider the application.
- (3) The entity must, within 20 business days after receiving the information mentioned in subsection (2)(c), decide to grant or refuse the approval.
- (4) The entity must not unreasonably refuse to grant the approval.

53BK Conditions of approval

- (1) The public entity may impose conditions on the approval it considers are reasonable.

[s 53BL]

Example of a possible condition—

a condition that, to minimise interference with public access to the place, the work may be carried out only on stated days or at stated times

- (2) However, a condition about an alignment for water infrastructure on, or proposed to be built on, a road must ensure the alignment is—
 - (a) located to ensure reasonable protection for the infrastructure; and
 - (b) if practicable, on the footpath or verge of the road.

Division 2 Obligations in carrying out work

53BL Application of div 2

This division applies if a distributor-retailer is carrying out water infrastructure work on a publicly-controlled place.

53BM Guarding

- (1) This section applies if the distributor-retailer has opened or broken up (the *interference*) the place, or any part of the place.
- (2) The distributor-retailer must, at all times while the interference continues, ensure—
 - (a) the interference is barricaded and guarded; and
 - (b) signs and lights sufficient to warn and guide the public are set up and maintained against or near the interference.
- (3) If required by the public entity, the distributor-retailer must also set up and maintain against or near the interference additional warning or protection devices to safeguard the public while the interference continues.
- (4) The requirement may be made—

- (a) before or during the carrying out of the work; and
- (b) as well as any condition imposed under section 53BK.

53BN Warning signs on roads

If the work is carried out on a road, lights and signs set up or maintained to safeguard the public must be the appropriate official traffic signs under the *Transport Operations (Road Use Management) Act 1995*.

53BO General obligations in carrying out work

- (1) The distributor-retailer must—
 - (a) complete the work as soon as practicable; and
 - (b) restore, as nearly as practicable, the relevant part of the place to the condition it was in before the work started; and
 - (c) remove any rubbish or surplus earth caused by the work; and
 - (d) comply with—
 - (i) the conditions of any relevant public entity approval; and
 - (ii) any relevant provisions of the Water Supply Act and any other relevant law.
- (2) If, in carrying out the work, the distributor-retailer causes damage to the place, the distributor-retailer must fix the damage as soon as practicable.

53BP Maintenance

- (1) This section applies if the distributor-retailer has opened or broken up the place or any part of it and has, under section 53BO, restored the place or part.

[s 53BQ]

- (2) The distributor-retailer must carry out maintenance to ensure the place or part of it is kept in good repair until the later of the following periods to end—
 - (a) the period that ends 3 months after the restoration was finished;
 - (b) if, because of the carrying out of the work or the restoration, the ground at the place or part subsides within the 3 months, the period that ends on the earlier of the following—
 - (i) the day the subsidence ends;
 - (ii) the first anniversary of the day the restoration was finished.
- (3) The maintenance must be carried out in the way agreed between the public entity and the distributor-retailer.

Division 3 Work directions

53BQ Power to give work direction

- (1) This section applies if—
 - (a) a distributor-retailer is carrying out, or has carried out, water infrastructure work on a publicly-controlled place; and
 - (b) the public entity reasonably considers work should be, or should have been, carried out to ensure compliance with a condition imposed under section 53BK or an obligation under division 2.
- (2) The entity may give the distributor-retailer a notice (a *work direction*) directing the distributor-retailer to carry out stated work to comply with the condition or obligation within a stated reasonable period.
- (3) The work direction must—
 - (a) identify the condition or obligation; and

- (b) include, or be accompanied by, an information notice about the decision to give the direction.

53BR Compliance with work direction

- (1) A distributor-retailer to whom a work direction has been given must comply with the direction to the reasonable satisfaction of the public entity that gave the direction.
- (2) If the distributor-retailer does not comply with subsection (1), the entity may carry out the relevant work.
- (3) In carrying out the work, the entity must comply with any relevant provisions of the Water Supply Act and any other relevant law.

53BS Costs of carrying out directed work

- (1) A distributor-retailer to whom a work direction has been given must bear the costs of complying with the direction.
- (2) If, under section 53BR(2), the public entity has carried out the relevant work, it may recover from the distributor-retailer as a debt the amount of its reasonable costs of carrying out the work.

Part 3 Public entity work

53BT Application of pt 3

This part applies if a public entity for a publicly-controlled place proposes to do work (*public entity work*) that is likely to affect the safety, location or operation of a distributor-retailer's water infrastructure.

[s 53BU]

53BU Requirement to consult if water infrastructure affected

- (1) The public entity must give the distributor-retailer a notice stating—
 - (a) details of the proposed public entity work; and
 - (b) that the distributor-retailer may, within a stated period, make written submissions to the entity about the proposal.
- (2) The stated period must not end before 30 business days after the notice is given.
- (3) Before deciding to make the change, the entity must consider any written submission made by the distributor-retailer within the stated period.

Note—

See also section 53CF (Obligation to give public entity information).

53BV Power to require consequential work

- (1) This section applies if—
 - (a) the public entity has complied with section 53BU; and
 - (b) to carry out the public entity work, it is reasonably necessary for any of the following work to be done (*consequential work*)—
 - (i) changing the position of the water infrastructure;
 - (ii) carrying out other work relating to the water infrastructure.
- (2) The entity may, by notice (a *consequential work requirement*), require the distributor-retailer to do the consequential work within a stated reasonable period.

53BW Compliance with consequential work requirement

- (1) A distributor-retailer of whom a consequential work requirement has been made must comply with the requirement

to the reasonable satisfaction of the public entity that made the requirement.

- (2) If the distributor-retailer does not comply with subsection (1), the entity may carry out the relevant consequential work.
- (3) In carrying out the work, the entity must comply with any relevant provisions of the Water Supply Act and any relevant law.

53BX Costs of carrying out required consequential work

- (1) A public entity must bear the costs of complying with any consequential work requirement it makes.
- (2) If the relevant distributor-retailer has complied with section 53BW(1), the distributor-retailer may recover from the entity as a debt the amount of the distributor-retailer's reasonable costs of carrying out the work.

Part 4 Water infrastructure interfering with publicly-controlled place

53BY Application of pt 4

This part applies if a distributor-retailer's water infrastructure on a publicly-controlled place interferes with the use of the place by the public entity or the public.

53BZ Remedial action by public entity in emergency

If, because of an emergency, it is necessary to take action (*remedial action*) to ensure the water infrastructure ceases to interfere with the use of the place, the public entity may take the remedial action.

[s 53CA]

53CA Power to require remedial action

The public entity may, by notice (a *remedial action requirement*), require the distributor-retailer to take remedial action within a stated reasonable period.

53CB Compliance with remedial action requirement

- (1) If the distributor-retailer is given a remedial action requirement, the distributor-retailer must comply with the requirement to the reasonable satisfaction of the public entity.
- (2) If the distributor-retailer does not comply with subsection (1), the entity may take the relevant remedial action.
- (3) In taking the remedial action, the entity must comply with any relevant provisions of the Water Supply Act and any other relevant law.

53CC Costs of taking required remedial action

- (1) The distributor-retailer must bear the costs of complying with a remedial action requirement.
- (2) If, under section 53CB(2), the public entity takes the remedial action, it may recover from the distributor-retailer as a debt the amount of the entity's reasonable costs of taking the action.

Part 5 Water infrastructure work and roads

53CD Application of pt 5

This part applies for particular water infrastructure that a distributor-retailer has or constructs, augments, alters or maintains on a road.

53CE Record obligation

The distributor-retailer must prepare records that adequately define the location of the water infrastructure on the road.

53CF Obligation to give public entity information

- (1) If the public entity for the road asks, the distributor-retailer must, within a reasonable period, give the public entity information that adequately defines the location of the water infrastructure on a stated part of the road.
- (2) A request under subsection (1) is an *information request*.

53CG Exclusion of liability for particular damage by public entity to water infrastructure

- (1) This section applies if—
 - (a) the public entity for the road causes damage to the water infrastructure and has not agreed to be liable for the damage; and
 - (b) before the damage happened the public entity made an information request to the distributor-retailer.
- (2) The public entity is not liable for the damage if—
 - (a) either—
 - (i) the request was not complied with within a reasonable period before the damage happened; or
 - (ii) information given in response to the request did not adequately define the location of the water infrastructure; and
 - (b) the damage would not have happened had the request been complied with or had the information given adequately defined the location.

[s 53CH]

53CH Liability for additional public entity road work expenses

- (1) This section applies if—
 - (a) the public entity for the road carries out road works in or on the road; and
 - (b) it made an information request of the distributor-retailer before carrying out the road works.

Note—

See however section 109 (Deferral of distributor-retailer's liability for additional public entity road work expenses).

- (2) The distributor-retailer is liable to pay the public entity any additional expense the public entity incurred in carrying out the road works because of the location of the water infrastructure if—
 - (a) either—
 - (i) the request was not complied with within a reasonable period before the road works were carried out; or
 - (ii) information given in response to the request did not adequately define the location; and
 - (b) the additional expense would not have been incurred had the request been complied with or had the information given adequately defined the location.
- (3) However, subsection (2) does not apply if—
 - (a) the road works were not provided for in a plan by the public entity given to the distributor-retailer within a reasonable period before the road works were carried out; and
 - (b) the public entity gave a public entity approval for all water infrastructure work for the water infrastructure; and
 - (c) the distributor-retailer has not contravened any condition of the approval.

Note—

See also section 108 (Public entity approvals taken to be given for existing water infrastructure work).

53CI Distributor-retailer and public entity may share costs

- (1) The distributor-retailer may arrange with the public entity for the road to share the cost of all or any of—
 - (a) acquisition of land associated with the water infrastructure; or
 - (b) construction, augmentation, alteration or maintenance of the water infrastructure; or
 - (c) construction of road works affected by the water infrastructure.
- (2) The arrangement may include all necessary preliminary costs associated with the acquisition, construction, augmentation, alteration or road maintenance.

Part 6 Miscellaneous provision

53CJ Compensation

- (1) This section applies if a person (a *claimant*) suffers a cost, damage or loss because of the exercise, or purported exercise, of a power under this part by a distributor-retailer.
- (2) However, this section does not apply for a public entity for a publicly-controlled place if the power relates to the place for which it is the public entity.
- (3) Compensation for the cost, damage or loss is payable by the distributor-retailer to the claimant.

[s 53CK]

- (4) The compensation may be claimed and ordered in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

Chapter 2C Trade waste and seepage water provisions for distributor-retailers

Part 1 General provisions about discharge officers

53CK Appointment and other provisions

- (1) This section applies if, under the Water Supply Act, a distributor-retailer, as a service provider, appoints a person as an authorised person.
- (2) The distributor-retailer may also appoint the person as a discharge officer under this Act.
- (3) However, if a regulation prescribes qualifications or other requirements for the appointment of discharge officers, the person may be appointed only if the person complies with the requirements.
- (4) The Water Supply Act, sections 45 to 48 apply for the appointment as a discharge officer and the discharge officer's office as if—
 - (a) a reference in the sections to an authorised person were a reference to a discharge officer; and
 - (b) the reference in section 48 to exercising a power under the Water Supply Act included a reference to exercising a power under this part; and

- (c) with other necessary changes.
- (5) The service provider may issue the appointee 1 identity card for both appointments.

53CL Functions

A discharge officer's functions are to help the distributor-retailer to do the following as a sewerage service provider—

- (a) consider and decide applications for a trade waste approval or seepage water approval;
- (b) monitor and enforce compliance with the following provisions of the Water Supply Act—
 - (i) chapter 2, part 6;
 - (ii) chapter 2, part 7, to the extent that part relates to trade waste and seepage water, and the distributor-retailer's infrastructure as a sewerage service provider;
- (c) take discharge compliance action.

Part 2 Powers of discharge officers

Division 1 General powers for entering places

53CM General powers of entry

- (1) A discharge officer may enter a place to perform the officer's functions if—
 - (a) it is a place of business the subject of a trade waste approval or seepage water approval and the place is—
 - (i) open for carrying on the business; or

[s 53CN]

- (ii) otherwise open for entry; or
 - (b) an occupier of the place consents to the entry; or
 - (c) it is a public place and the entry is made when it is open to the public; or
 - (d) the entry is authorised by a warrant.
- (2) For section (1)(a), a place of business does not include a part of the place where a person resides.
- (3) To remove any doubt, it is declared that this section does not limit or otherwise affect a discharge officer's powers as an authorised person.
- (4) In this section—

seepage water approval includes a seepage water approval the subject of suspension under the Water Supply Act.

trade waste approval includes a trade waste approval the subject of suspension under the Water Supply Act.

Division 2 Entry to take discharge compliance action

53CN Power to enter

- (1) This section applies if a distributor-retailer may take discharge compliance action.

Note—

See section 53DM (Action distributor-retailer may take if discharge compliance notice contravened).

- (2) A discharge officer may enter the place the subject of the relevant trade waste approval or seepage water approval at any reasonable time to take the action for the distributor-retailer.
- (3) However, the discharge officer can not under subsection (2) enter any part of the place where a person resides.

Division 3 **Approved inspection programs**

53CO Power to enter place subject to approved inspection program

- (1) A discharge officer may, under an approved inspection program, enter a place at any reasonable time of the day or night without the consent of the occupier of the place.
- (2) However, a discharge officer can not under an approved inspection program enter any part of a place where a person resides.
- (3) To remove any doubt, it is declared that—
 - (a) the power under subsection (1) does not limit or otherwise affect any other power under this chapter; and
 - (b) a discharge officer may inspect places other than as provided for under the program.

53CP Approving an inspection program

- (1) A distributor-retailer may, by a board resolution, approve a program under which a discharge officer may enter and inspect places in the distributor-retailer's geographic area to perform a discharge officer's functions.
- (2) An approved inspection program may—
 - (a) allow a discharge officer to enter and inspect all places, or all places of a particular type, in the distributor-retailer's geographic area (a *systematic inspection program*); or
 - (b) allow a discharge officer to enter and inspect those places in the distributor-retailer's geographic area that have been selected in accordance with objective criteria stated in the resolution (a *selective inspection program*).
- (3) The resolution must state the following for the program—
 - (a) its purpose;

[s 53CQ]

- (b) when it starts;
 - (c) for a systematic inspection program that allows a type of place to be entered and inspected, a description of the type of place;
 - (d) for a selective inspection program, objective criteria for selecting the places to be entered and inspected;
 - (e) the period (the *program period*) over which it is to be carried out.
- (4) The program period can not be more than 6 months or another period prescribed under a regulation.
 - (5) The distributor-retailer must give public notice of the approval of an inspection program in the way required under section 53CQ.
 - (6) The public notice must be given for a period at least 14 days, but no more than 28 days, before the program starts.

53CQ Content of public notice and access requirements

- (1) The notice required under section 53CP(5) must be published—
 - (a) in a newspaper circulating in all of the distributor-retailer's geographic area; and
 - (b) on the distributor-retailer's website.
- (2) The notice must state the following—
 - (a) the distributor-retailer's name;
 - (b) the purpose and scope of the approved inspection program, in general terms;
 - (c) when the program starts;
 - (d) the program period;
 - (e) that the public may inspect a copy of the resolution that approved the program at the distributor-retailer's public office until the end of the program;

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- (f) that a copy of the resolution that approved the program may be purchased at the distributor-retailer's public office until the end of the program;
 - (g) the price (the *stated price*) of a copy of the resolution.
- (3) The stated price can not be more than the cost to the distributor-retailer of making the copy available for purchase.
 - (4) From when the notice is published until the program ends—
 - (a) the public may inspect a copy of the resolution at the distributor-retailer's public office; and
 - (b) copies of the resolution must be available for purchase at the distributor-retailer's public office at the stated price.

Division 4 Obtaining warrants

53CR Application for warrant

- (1) A discharge officer may apply to a magistrate for a warrant for a place.
- (2) The discharge officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the discharge officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

[s 53CS]

53CS Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of a discharge offence; and
 - (b) the evidence is at the place, or, within the next 7 days, may be at the place.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated discharge officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for the entry; and
 - (ii) exercise the discharge officer's powers under this chapter; and
 - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and
 - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the extent of re-entry permitted; and
 - (h) the date, within 14 days after the warrant's issue, the warrant ends.
- (3) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.

53CT Application by electronic communication and duplicate warrant

- (1) An application under section 53CR may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the discharge officer reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the discharge officer's remote location.
- (2) The application—
 - (a) may not be made before the discharge officer prepares the written application under section 53CR(2); but
 - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the discharge officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the discharge officer the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the discharge officer must complete a form of warrant, including by writing on it—
 - (A) the magistrate's name; and

[s 53CT]

- (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (6) The discharge officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 53CR(2) and (3); and
 - (b) if the discharge officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 53CR.
- (10) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

53CU Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 53CR, 53CS or 53CT, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 53CT(5).

Division 5 Procedure for entries

53CV Entry with consent

- (1) This section applies if a discharge officer intends to ask an occupier of a place to consent to the officer or another discharge officer entering the place under section 53CM(1)(b).
- (2) For the purpose of asking an occupier of a place for consent to enter, a discharge officer may, without the occupier's consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the discharge officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) Before asking for the consent, the discharge officer must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (4) If the consent is given, the discharge officer may ask the occupier to sign an acknowledgment of the consent.
- (5) The acknowledgment must state—

[s 53CW]

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the discharge officer consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.
- (6) If the occupier signs the acknowledgment, the discharge officer must immediately give a copy to the occupier.
- (7) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (5) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

53CW Entry under warrant

- (1) This section applies if a discharge officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the discharge officer must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the discharge officer's identity card or other document evidencing the officer's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the discharge officer is permitted by the warrant to enter the place;

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- (d) give the person an opportunity to allow the discharge officer immediate entry to the place without using force.
 - (3) However, the discharge officer need not comply with subsection (2) if the officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
 - (4) In this section—
warrant includes a duplicate warrant mentioned in section 53CT(5).

53CX Other entries

- (1) This section applies if a discharge officer proposes to enter a place other than with consent of its occupier or by a warrant.
- (2) Before entering the place, the discharge officer must do or make a reasonable attempt to do the following things—
 - (a) comply with the Water Supply Act, section 48, as applied under section 53CK(4), for any occupier of the place who is present at the place;
Editor's note—
Water Supply Act, section 48 (Producing and displaying identity card)
 - (b) tell the occupier the purpose of the entry;
 - (c) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.
- (3) Also, if the entry is under an approved inspection program, the discharge officer must give the occupier details of the program.

[s 53CY]

Division 6 Powers after entry

53CY Application of div 6

- (1) This division applies to a discharge officer who enters a place under this part.
- (2) However, if a discharge officer enters a place to get the occupier's consent to enter the place, this division applies to the officer only if the consent is given or the entry is otherwise authorised.

53CZ General powers after entry

- (1) The discharge officer may do all or any of the following—
 - (a) search any part of the place;
 - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
 - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
 - (d) copy a document at the place or take the document to another place to copy it;
 - (e) take into or onto the place any person, equipment and materials the discharge officer reasonably requires for the exercise of a power under this part;
 - (f) require a person at the place to give the discharge officer reasonable help to exercise the officer's powers under paragraphs (a) to (e);
 - (g) require a person at the place to give the discharge officer information to help the officer find out whether this Act and the Water Supply Act is being or has been complied with.
- (2) When making a requirement under subsection (1)(f), the discharge officer must warn the person it is an offence to fail

to comply with the requirement unless the person has a reasonable excuse.

- (3) If a discharge officer takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

53DA Failure to help discharge officer

- (1) A person required to give reasonable help under section 53CZ(1)(f) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) If the person is an individual, it is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

Division 7 Personal details requirements

53DB Application of div 7

This division applies if a discharge officer—

- (a) finds a person committing a discharge offence; or
- (b) finds a person in circumstances that lead the officer to reasonably suspect a person has just committed a discharge offence; or
- (c) has information that leads the officer to reasonably suspect a person has just committed a discharge offence.

53DC Power to require name and residential address

- (1) The discharge officer may require the person to state the person's name and residential address.
- (2) When making the requirement, the discharge officer must give the person an offence warning.

[s 53DD]

- (3) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—35 penalty units.

53DD Power to require evidence of name or residential address

- (1) The discharge officer may also require the person to give evidence of the correctness of the stated name or residential address if, in the circumstances, it would be reasonable to expect the person to—

- (a) be in possession of evidence of the correctness of the stated name or residential address; or
(b) otherwise be able to give the evidence.

- (2) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—35 penalty units.

53DE Exception if discharge offence not proved

The person does not commit an offence under this division if—

- (a) the requirement was made because the discharge officer suspected the person has committed a discharge offence; and
(b) the person is not proved to have committed the offence.

Division 8 Safeguards

53DF Duty to avoid damage

In performing a function or exercising a power under this part, a discharge officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable.

53DG Notice of damage

- (1) This section applies if—
 - (a) a discharge officer damages property when exercising or purporting to exercise a power under this part; or
 - (b) a person (the *other person*) acting under the direction or authority of a discharge officer damages property.
- (2) The discharge officer must immediately give notice of particulars of the damage to a person who appears to the officer to be an owner of the property.
- (3) If the discharge officer believes the damage was caused by a latent defect in the property or circumstances beyond the officer's or other person's control, the officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the discharge officer must leave the notice where the damage happened in a conspicuous position and in a reasonably secure way.
- (5) This section does not apply to damage the discharge officer reasonably believes is trivial.
- (6) In this section—

owner, of property, includes a person in possession or control of it.

53DH Content of notice of damage

- (1) A notice of damage under section 53DG must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 53DI.
- (2) If the discharge officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or other person's control, the officer may state the belief in the notice.

[s 53DI]

53DI Compensation from distributor-retailer to owner or occupier

- (1) If a person incurs loss or expense caused directly by the exercise or purported exercise of a power under this part, the person may claim compensation from the distributor-retailer.
- (2) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

Part 3 Discharge compliance notices

53DJ Who may give a discharge compliance notice

- (1) This section applies if a discharge officer reasonably believes—
 - (a) the approval holder—
 - (i) is contravening the holder's trade waste approval or seepage water approval; or
 - (ii) has contravened the holder's trade waste approval or seepage water approval in circumstances that make it likely the contravention will continue or be repeated; and
 - (b) a matter relating to the contravention is reasonably capable of being rectified; and
 - (c) it is appropriate to give the approval holder an opportunity to rectify the matter.
- (2) The discharge officer may give the approval holder a notice (a ***discharge compliance notice***) requiring the holder to remedy the contravention.

53DK Requirements for discharge compliance notice

- (1) A discharge compliance notice must state the following—
 - (a) that the discharge officer reasonably believes the approval holder—
 - (i) is contravening a provision of the holder's trade waste approval or seepage water approval; or
 - (ii) has contravened the holder's trade waste approval or seepage water approval in circumstances that make it likely the contravention will continue or be repeated;
 - (b) the provision the discharge officer believes is being, or has been, contravened;
 - (c) briefly, how it is believed the provision is being, or has been, contravened;
 - (d) that the approval holder must remedy the contravention within a stated reasonable period;
 - (e) that it is an offence to fail to comply with the notice unless the approval holder has a reasonable excuse;
 - (f) that, within 30 business days after the notice is given, the person may apply for an internal review of the decision to give the notice;
 - (g) how the person may apply for the review.
- (2) A discharge compliance notice may also state—
 - (a) the reasonable steps that the discharge officer is satisfied are necessary to remedy the contravention, or avoid further contravention, of the provision; or
 - (b) performance outcomes to show that the contravention has been remedied or the further contravention will be avoided.
- (3) If a discharge compliance notice requires the approval holder to do an act involving the carrying out of work, it also must give details of the work involved.

[s 53DL]

- (4) If a discharge compliance notice requires the approval holder to refrain from doing an act, it also must state—
 - (a) a period for which the requirement applies; or
 - (b) that the requirement applies until further notice.
- (5) A discharge compliance notice may be accompanied by, or included in, any of the following under the Water Supply Act given for the approval holder's trade waste approval or seepage water approval—
 - (a) a show cause notice mentioned in section 183(1);
 - (b) an information notice mentioned in section 184(3).

53DL Offence to contravene discharge compliance notice

- (1) An approval holder to whom a discharge compliance notice is given must comply with the notice unless the holder has a reasonable excuse.

Maximum penalty—100 penalty units.

Note—

See also section 100F (Application of Water Supply Act enforcement provisions for particular offences).

- (2) A proceeding for an offence against subsection (1) does not prevent or limit the cancellation, suspension or amendment of the approval holder's trade waste approval or seepage water approval under the Water Supply Act, sections 183 to 185.

53DM Action distributor-retailer may take if discharge compliance notice contravened

- (1) This section applies if an approval holder contravenes a discharge compliance notice by not doing something.
- (2) The distributor-retailer may do the thing or take any other action (*discharge compliance action*) it reasonably believes is necessary to prevent or minimise the impact of the contravention.

53DN Recovery of costs of discharge compliance action

- (1) If a distributor-retailer incurs expense because of the taking of discharge compliance action, it may give the approval holder a notice stating the amount of the expense incurred.
- (2) Any reasonable expenses incurred by the distributor-retailer in taking the discharge compliance action may be recovered by the distributor-retailer from the approval holder as a debt.
- (3) In this section—
expenses, incurred by the distributor-retailer, includes the cost of services that the distributor-retailer provides for itself.

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;

[s 56]

- (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.

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;
 - (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;

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- (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 or transfer of an instrument to a distributor-retailer, including—
 - (i) whether a distributor-retailer holds, or is a party to, an instrument; and
 - (ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of, a distributor-retailer; and
 - (iii) whether a reference to an entity in an instrument is a reference to a distributor-retailer; and
 - (iv) whether, under an instrument, an amount is or may become payable to or by a distributor-retailer or other property is, or may be, transferred to a distributor-retailer; and
 - (v) whether a right or entitlement under an instrument is held by a distributor-retailer;
 - (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.

[s 56A]

- (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.

56A Period of transfer schemes

- (1) A transfer scheme can not take effect after 30 September 2010.
- (2) However, a transfer scheme may take effect for a matter mentioned in section 56(1)(f) before 1 July 2012.
- (3) This section does not affect the giving of effect to a transfer scheme or anything done under a transfer scheme before or after the dates mentioned in subsection (1) or (2).

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—
 - (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

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- (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); and
 - (f) that the local governments have given third parties notice of the following by a notice published in a newspaper circulating in all of the SEQ region—
 - (i) that the local governments and the distributor-retailer propose to ask the Minister for approval of the transfer scheme to allow the distributor-retailer to provide water services and wastewater services;
 - (ii) how third parties may obtain information about the transfer scheme from the local governments, other than private or confidential information concerning others; and
 - (g) that the local governments have, since the publication of the notice, made information mentioned in paragraph (f)(ii) available to third parties who have asked for it.
- (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.

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 2012.

- (2) However, subsection (1) does not affect the giving of effect to a transfer scheme after 30 June 2012 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.
- (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.

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- (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 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.

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- (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—

- (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, or for the distributor-retailer to perform its geographic area functions, to—
- (a) a person involved in the transition; or
 - (b) a member of the board or an employee or agent of the distributor-retailer; or

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- (c) another participating local government 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.
- (6) This section is subject to the *Information Privacy Act 2009* and the *Right to Information Act 2009*.

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.
- (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—

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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) the purpose of the proposed resumption relates to the distributor-retailer's geographic area functions.
- (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—
 - (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

[s 74]

- (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 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.

[s 76]

- (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.

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- (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 Infrastructure agreements

77 Application of sdiv 3

- (1) This subdivision applies if—
 - (a) a participating local government of a distributor-retailer is a party to an infrastructure agreement; and
 - (b) either of the following apply—
 - (i) a transition document transfers to the distributor-retailer water infrastructure subject to the infrastructure agreement;
 - (ii) the infrastructure agreement provides for water infrastructure in the distributor-retailer's geographic area.
- (2) This subdivision applies subject to any transition document relating to the distributor-retailer.
- (3) If the infrastructure agreement relates to both the water infrastructure and another type of infrastructure, the agreement is a *bundled agreement*.

[s 77A]

77A Novation for unbundled agreements

- (1) This section applies if the agreement relates only to the water infrastructure and not to any other type of infrastructure.
- (2) The distributor-retailer—
 - (a) is taken to be a party to the agreement instead of the local government; and
 - (b) assumes all of the local government's rights and liabilities under the agreement.
- (3) The agreement may be enforced by the distributor-retailer as if it were the local government.
- (4) The local government ceases to be bound by the agreement and is discharged from any further liability under it.

77B Bundled agreements—terms relating solely to water aspects

- (1) This section applies if—
 - (a) the agreement is a bundled agreement; and
 - (b) a term of the agreement solely relates to either or both of the following (each a *water aspect*)—
 - (i) the water infrastructure;
 - (ii) the carrying out of water infrastructure work.
- (2) The distributor-retailer assumes the following under the term—
 - (a) the local government's rights against another party to the agreement (each an *assumed right*);
 - (b) the local government's liabilities to another party to the agreement (each an *assumed liability*).
- (3) An assumed right—
 - (a) may be discharged only by the discharging of it to the distributor-retailer; and

- (b) may only be enforced by the distributor-retailer.
- (4) An assumed liability—
 - (a) may be discharged only by the discharging of it by the distributor-retailer; and
 - (b) may be enforced only against the distributor-retailer.

77C Bundled agreement—mixed rights

- (1) This section applies if—
 - (a) the agreement is a bundled agreement; and
 - (b) a term of the agreement gives a right to the local government; and
 - (c) the right relates, or may relate, to—
 - (i) a water aspect; and
 - (ii) another matter.
- (2) The right may be discharged only by the discharging of it to the local government.

Example—

The term requires another party to the agreement to give the local government security for the general performance of that party's liabilities under the agreement. The term does not provide for any particular amount for water aspects. The security must be given to the local government.

- (3) Only the local government may enforce the right.

Example—

The term requires another party to the agreement to construct infrastructure to a particular standard. The standard is capable of applying to the water infrastructure and to other types of infrastructure. Only the local government may enforce the requirement.

- (4) However, the local government must, at the distributor-retailer's request, enforce the right to the extent it relates to water aspects.

[s 77D]

- (5) For any enforcement by the local government under subsection (3), any cost, damage or loss of the distributor-retailer relating to water aspects is taken to be a cost, damage or loss of the local government.

77D Bundled agreement—mixed liabilities

- (1) This section applies if—
- (a) the agreement is a bundled agreement; and
 - (b) a term of the agreement imposes a liability on the local government; and
 - (c) the liability relates, or may relate, to—
 - (i) a water aspect; and
 - (ii) another matter.
- (2) The liability—
- (a) may be discharged only by the discharging of it by the local government; and
 - (b) may be enforced only against the local government.
- (3) For the enforcement of a liability against the local government under subsection (2), any interest or right of the distributor-retailer relating to water assets is taken to be an interest or right of the local government.

77E Negotiation about mixed rights and liabilities

- (1) The local government and the distributor-retailer (each a *negotiation party*) must negotiate in good faith about the extent to which each of them are to share the following—
- (a) rights to which section 77C applies;
 - (b) liabilities to which section 77D applies;
 - (c) costs incurred because of enforcement mentioned in section 77C;

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- (d) any costs, damage, liability or loss the local government incurs because of section 77D(2).
 - (2) If, after the negotiation, the negotiation parties are in dispute about a matter mentioned in subsection (1), either negotiation party may refer the dispute to the Minister.
 - (3) The Minister may resolve the dispute in any way the Minister considers appropriate that affords natural justice to the negotiation parties.
 - (4) The Minister's decision on the resolution of the dispute binds the negotiation parties.
 - (5) The Minister may delegate the Minister's functions and powers under subsection (3) to an appropriately qualified public service officer.

77F Other necessary changes to be made for transition

- (1) This section applies subject to the other provisions of this subdivision.
- (2) References in the agreement to the local government are taken to be changed to reflect any necessary changes for the transition from the local government to the distributor-retailer.

77G Other party's rights and liabilities not affected

To remove any doubt, it is declared that this subdivision does not create any greater right for, or impose any greater liability on, a party to the agreement other than the local government or the distributor-retailer.

Note—

See also section 68 (Effect on legal relationships).

[s 77H]

77H Provision for things done under agreement before the transfer

The transfer of the water infrastructure under the transition document does not affect the validity of any of the following done before the transfer—

- (a) an infrastructure charge or cost levied by the local government under the Planning Act, chapter 8, part 1 or the repealed *Integrated Planning Act 1997* (**repealed IPA**), chapter 5, part 1;
- (b) a condition imposed by the local government under the Planning Act, 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 made, levied or imposed by the local government under the Planning Act or repealed IPA.

Subdivision 3A Other matters under Acts about planning

77I Application of sdiv 3A

- (1) This subdivision applies for a relevant action by a participating local government of a distributor-retailer if—
 - (a) under the relevant action a liability to the local government has accrued to it, or may at any time accrue to it; and
 - (b) all or part of the liability is for—
 - (i) water infrastructure constructed or to be constructed in the distributor-retailer's geographic area; or
 - (ii) a charge for the provision of water services or wastewater services.

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- (2) This subdivision applies subject to any transition document relating to the distributor-retailer.
- (3) In this section—
- relevant action** means any of the following—
- (a) a compliance permit, development approval, decision, charge, condition or contribution under the Planning Act decided, made, levied or imposed before 1 July 2010;
 - (b) a development approval under the Planning Act decided after 1 July 2010 if the relevant development application was made before 1 July 2010;
 - (c) a compliance permit under the Planning Act decided after 1 July 2010, if the relevant request for compliance assessment under that Act was made before 1 July 2010;
 - (d) an approval of a plan under the repealed *Integrated Planning Act 1997*, chapter 3, part 7, as continued in force under the Planning Act, section 815.

77J Transfer of liability in particular circumstance

If all of the liability is for water infrastructure or for the charge for water services or wastewater services, the liability is taken to be a liability to the distributor-retailer instead of the local government.

77K Provisions for sharing benefit of liability not solely for water infrastructure

- (1) This section applies if—
- (a) the liability is for the water infrastructure; and
 - (b) under the relevant action there is also a liability for infrastructure other than water infrastructure; and
 - (c) the terms of the relevant action do not attribute a specific part of the liability to the water infrastructure.

[s 77L]

- (2) The local government and the distributor-retailer (each a *negotiation party*) must negotiate in good faith about the extent to which each of them is to share the benefit of the liability.
- (3) If, after the negotiation, the negotiation parties are in dispute about how to share the liability, either negotiation party may refer the dispute to the Minister.
- (4) The Minister may resolve the dispute in any way the Minister considers appropriate that affords natural justice to the negotiation parties.
- (5) The Minister's decision on the resolution of the dispute binds the negotiation parties.
- (6) The Minister may delegate the Minister's functions and powers under this section to an appropriately qualified public service officer.

77L Changes in references under relevant action

- (1) A reference in the relevant action to the carrying out of water infrastructure work by the local government is taken to be a reference to the distributor-retailer carrying out the work.
- (2) A reference in the relevant action to the person who bears the liability to do something relating to the local government concerning the water infrastructure is taken to be a reference to the person doing that thing relating to the distributor-retailer.
- (3) Other references in the relevant action to the local government are taken to be changed to reflect any necessary changes for the transition from the local government to the distributor-retailer.

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
 - (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) *Sustainable Planning Act 2009*;
 - (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 *Sustainable Planning Act 2009*, section 10(1).

State planning regulatory provision see the *Sustainable Planning Act 2009*, schedule 3.

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

[s 78A]

transferred land means land transferred under a transition document.

Subdivision 5 Planning schemes and declared master planned areas

78A Application of planning schemes for development in SEQ region

- (1) This section applies if under a regulation made under section 102(2)(f) a stated provision of a stated planning scheme is declared not to have effect for the assessment of a development application for development in the SEQ region.
- (2) Despite the Planning Act, for the assessment of the development application under that Act the stated provision has no effect.

78B Distributor-retailer is participating agency

- (1) This section applies for a declared master planned area that—
 - (a) is in the SEQ region; and
 - (b) immediately before 1 July 2010, is identified in a master planned area declaration under the Planning Act.
- (2) The distributor-retailer for the geographic area in which the declared master planned area is located is, on 1 July 2010, taken to be a participating agency for the structure plan for the declared master planned area.
- (3) The distributor-retailer's jurisdiction as a participating agency under IDAS for the structure plan is the effects of development on a water service or wastewater service of a distributor-retailer.
- (4) The distributor-retailer may be identified in the structure plan as a participating agency for a master plan application for a master plan required to be assessed by the State.

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- (5) For assessing a master plan application, the Planning Act, section 173 applies as if section 173(1)(b) included a reference to the following—
- (a) an infrastructure agreement entered into by the distributor-retailer for its water service or wastewater service;
 - (b) the distributor-retailer's water netserv plan;
 - (c) the SEQ design and construction code.
- (6) This section applies despite the Planning Act, section 133 and schedule 3, definition *participating agency*.
- (7) In this section—

declared master planned area see the Planning Act, section 132(4).

IDAS is the system detailed in the Planning Act, chapter 6, for integrating State and local government assessment and approval processes for development.

master plan see the Planning Act, section 151.

master plan application see the Planning Act, section 159.

structure plan see the Planning Act, section 137.

Part 4 Workforce provisions

Division 1 Staff support framework

79 Staff support framework

- (1) The industrial relations Minister may approve a framework (a *staff support framework*) directed at ensuring—

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- (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—

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- (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

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;

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- (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

[s 92]

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 and other customer service provisions

Part 1 General provisions about code

93 Minister's power to make code

- (1) Subject to part 2, the Minister may make a code (a *customer water and wastewater code*) to provide for rights and obligations of distributor-retailers and their customers.
- (2) The code is not 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) compensation for failure to comply with the service standards and—
 - (i) the amount of the compensation or how it is to be worked out; and
 - (ii) how the compensation may be recovered;
 - (d) the terms of supply contracts for the services;
 - (e) the marketing conduct of distributor-retailers relating to customers;
 - (f) meters and metering;

[s 94AA]

- (g) dispute resolution processes for customers;
- (h) an entity to administer the code.

Note—

Disputes arising between particular customers and a distributor-retailer about a function or obligation of the distributor-retailer under the code may be referred to the energy and water ombudsman under the *Energy and Water Ombudsman Act 2006*, section 18A.

- (2) The code may be limited in its application to particular types of customers and particular types of water services and wastewater services.
- (3) Subsection (2) does not limit the *Statutory Instruments Act 1992*, section 24 or 25.
- (4) The code may impose additional requirements to those mentioned in part 4.

94AA Gazettal and taking of effect of code

- (1) The Minister must, as soon as practicable after making the code, publish a gazette notice stating the Minister has made the code and where it may be inspected.
- (2) The code takes effect on the later of the following days—
 - (a) a day of effect stated in the gazette notice;
 - (b) if no day of effect is stated in the notice—the day the notice is gazetted.

94AB Tabling of code

- (1) Within 21 sitting days after the code takes effect, the Minister must table a copy in the Legislative Assembly.
- (2) The copy is tabled for information only.
- (3) A failure to table the copy does not affect the code's ongoing effect.

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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.

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 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.

Part 3A Code administration

99A Commission to advise Minister

The commission may advise the Minister about matters relating to the code, including—

- (a) the contents of the code; or
- (b) matters the commission considers should be dealt with in the code.

99AAA Distributor-retailer to give report to commission

A distributor-retailer must, in the way required under a regulation, give the commission a report about complaints received by the distributor-retailer relating to matters mentioned in the code.

Maximum penalty—100 penalty units.

[s 99AB]

Part 4 Other customer service provisions

Division 1 General provisions about standards of customer service

99AB Obligation to comply with part

- (1) A distributor-retailer must not, without reasonable excuse, contravene a provision of this part.

Maximum penalty—1665 penalty units.

- (2) A proceeding relating to an offence under subsection (1) may be prosecuted even though the code, or an order under the *Energy and Water Ombudsman Act 2006*, provides for the payment of compensation relating to matters relevant to the offence.

99AC Application of complaints standard

- (1) The complaints standard applies to a distributor-retailer for the handling of complaints by its customers.
- (2) In this section—

complaints standard means AS ISO 10002—2006 Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002:2004, MOD).

99AD Customer service charter

- (1) Each distributor-retailer must make a customer service charter that—
 - (a) summarises its customers' rights and obligations under the customer water and wastewater code and this part; and
 - (b) states the distributor-retailer's policies about—

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- (i) customer hardship because of inability to pay accounts; and
 - (ii) the payment of accounts by instalments.
- (2) The customer service charter must be written in plain English.

99AE Updating of and access to customer service charter

- (1) A distributor-retailer must update its customer service charter as soon as practicable to take account of the provisions of the customer water and wastewater code or this part.
- (2) After the first code is made and the distributor-retailer updates its customer service charter under subsection (1), the distributor-retailer must include a copy of the updated customer service charter—
- (a) with the first account given to each customer after the code is made; or
 - (b) with a later account agreed to by the Minister.
- (3) A distributor-retailer must give a person a copy of its customer service charter, free of charge, if—
- (a) the person asks for a copy; and
 - (b) the person has not previously been given a copy of the customer service charter under this section.

Division 2 Meters

Subdivision 1 General provisions

99AFA Distributor-retailer may accept meter reading by customer

If asked by a customer to do so in a particular case, a distributor-retailer may accept the reading supplied by the customer of the meter recording the customer's water

[s 99AG]

consumption as the water consumption of the customer for a particular period.

99AG Meters must be read annually

Each distributor-retailer must take reasonable steps to ensure each meter recording each of its customers' water consumption is read at least once each year.

Note—

For the power of a distributor-retailer to install and read meters, see the Water Supply Act, sections 35 and 37.

99AH Methods and basis of charging

- (1) A distributor-retailer may use methods of charging for water supplied or sold by it to its customers the distributor-retailer considers appropriate, including, for example—
 - (a) giving an account based on meter readings; and
 - (b) giving an estimated account.
- (2) However, a distributor must not give an estimated account to a customer for 2 or more consecutive periods.

Example—

It may be a reasonable excuse for an offence under section 99AB relating to a contravention of subsection (2) that reasonable access was not available to the meter at the customer's premises.

- (3) Subsection (4) applies if the distributor-retailer gives the customer an estimated account.
- (4) The estimated account must be calculated—
 - (a) if the distributor-retailer has previously given the customer an account for water services or waste water services for premises the subject of the account—having regard to the most recent account the distributor-retailer has given the customer for water services or wastewater services for the premises; or

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- (b) if paragraph (a) does not apply and the customer and the distributor-retailer agree about the basis on which the estimated account is to be calculated—on the agreed basis; or
 - (c) if paragraphs (a) and (b) do not apply—on another reasonable basis decided by the distributor-retailer.
- (5) Despite subsection (1), the first account a distributor-retailer gives a customer for water services or wastewater services for particular premises must be based on a meter reading under section 99AFA or 99AG conducted specifically for the premises.

99AI Special meter readings

- (1) A customer of a distributor-retailer may ask it for a reading of the meter for the customer's premises to work out the amount of water consumed at the premises since the last meter reading for the premises.
- (2) The distributor-retailer may require a fee for the reading.
- (3) The fee must be no more than the actual cost of the reading.
- (4) Subject to any payment required under subsection (2), the distributor-retailer must cause the reading to be carried out.

Subdivision 2 Meter tests

99AJ Meter accuracy test at customer's request

- (1) A customer of a distributor-retailer may ask the distributor-retailer to test the accuracy of the distributor-retailer's meter installed on the customer's premises—
 - (a) by a test carried out for the distributor-retailer (a *distributor-retailer test*); or

[s 99AK]

- (b) to refer the meter for testing to an independent person (the *independent tester*) accredited by the National Association of Testing Authorities (an *independent test*).
- (2) The distributor-retailer or independent tester may require the customer to pay the following before carrying out the test—
 - (a) for a distributor-retailer test—a charge for water or another amount owing by the customer to the distributor-retailer for water services or wastewater services; and
 - (b) the fee for testing each meter to be tested.
- (3) The fee must be the reasonable, but no more than the actual, cost of each test.
- (4) Subject to any payment required under subsection (2), the distributor-retailer or independent tester must cause the test to be carried out.
- (5) The distributor-retailer or independent tester must tell the customer when and where the test is to be carried out.
- (6) The customer, or customer's nominee, may be present during the test.

99AK When meter taken to register accurately

- (1) A meter registers incorrectly only if it registers outside the prescribed margin of the correct amount of water supplied, whether greater or less.
- (2) The prescribed margin is 5%.

99AL Extent of inaccuracy

If a properly conducted test shows a meter registers incorrectly, it is taken to be registering incorrectly only to the extent to which the registration falls outside the prescribed margin.

99AM Notice of test results

- (1) If a distributor-retailer test or independent test is carried out, the person who carried out the test must give the customer who requested the test notice of the test results as soon as practicable.
- (2) If the test shows the meter is registering incorrectly, the notice must state the extent to which the registration falls outside the prescribed margin.

99AN Refund and adjustment if inaccuracy

- (1) If a distributor-retailer test or independent test shows the meter tested is registering incorrectly, it must—
 - (a) refund the customer who requested the test any test fee paid by the customer for the test; and
 - (b) adjust the customer's previous relevant accounts to reflect the actual or a reasonable estimation of the water supplied to the customer.
- (2) However, subsection (1)(b) does not apply for accounts issued for more than 1 year.

99AO Using testing instruments

- (1) A distributor-retailer or independent tester who uses a testing instrument for a test under this division must ensure it is—
 - (a) appropriate for the test; and
 - (b) accurate and in proper working order.
- (2) The distributor-retailer or independent tester must keep a record of each test under subsection (1)(b) for at least 2 years.

[s 99AP]

Division 3 Security and charges

Subdivision 1 Restrictions on requesting security

99AP Security may only be requested if subdivision complied with

A distributor-retailer may ask a customer for security for the payment of accounts from it to the customer only if this subdivision is complied with to the extent it is relevant to the distributor-retailer.

99AQ Residential customers

- (1) A distributor-retailer may ask a residential customer of the distributor-retailer to give security only if it reasonably considers the customer has an unsatisfactory credit history.
- (2) For subsection (1) a customer is a residential customer only if—
 - (a) the customer is a customer of the distributor-retailer for the water services and wastewater services; and
 - (b) the services are provided to premises at which someone lives (the *resident*); and
 - (c) no-one other than the resident is a customer of the distributor-retailer for water services and wastewater services provided to the premises.

99AR Non-residential customers

- (1) A distributor-retailer may ask a non-residential customer of the distributor-retailer to give security only if the distributor-retailer reasonably considers the customer does not have—
 - (a) a satisfactory credit rating; or

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- (b) a satisfactory water services payment history.
 - (2) For subsection (1) a customer is a non-residential customer only if—
 - (a) the customer is a customer of the distributor-retailer for the water services and wastewater services; and
 - (b) the customer is not a residential customer of the distributor-retailer for the water services and wastewater services; and
 - (c) no-one else is a customer of the distributor-retailer for water services and wastewater services provided to the premises.
 - (3) For section (1)(b), a non-residential customer's water services payment history is taken to be unsatisfactory if the distributor-retailer has evidence that the customer has not paid an account for water services within the past year.
 - (4) Subsection (3) applies no matter who the account was from.

99AS Maximum security that may be requested

The distributor-retailer can not ask for security that is more than—

- (a) if the customer is billed monthly—2.5 times the customer's actual or estimated quarterly bills used to work out the security; or
- (b) otherwise—1.5 times the customer's actual or estimated quarterly bills used to work out the security.

99ASA Annual notice of security

- (1) This section applies if a customer has given security to a distributor-retailer.
- (2) The distributor-retailer must give the customer an annual statement containing the following details—
 - (a) the amount of security held;

[s 99AT]

- (b) the difference between the security given by the customer and the amount mentioned in paragraph (a);
- (c) any other matter—
 - (i) prescribed under a regulation; or
 - (ii) required under the customer water and wastewater code.

Subdivision 2 Restricting water supply

99AT Restricting water supply for not paying charges or giving security

- (1) This section applies if—
 - (a) premises are connected to a distributor-retailer's water service; and
 - (b) a residential customer or non-residential customer of the distributor-retailer does not—
 - (i) pay a charge for the service; or
 - (ii) give security requested under subdivision 1 for the service; and
 - (c) the distributor-retailer has given the customer at least 1 month's notice to pay the charge or give the security; and
 - (d) the customer continues not to pay the charge or give the security.
- (2) The distributor-retailer may reduce the water supply to the premises to the minimum level necessary for the customer's health and sanitation purposes.
- (3) However, the distributor-retailer must not completely shut off the water supply to the premises.
- (4) This section applies to a distributor-retailer instead of the Water Supply Act, section 169.

Editor's note—

Water Supply Act, section 169 (Restricting domestic water supply in particular circumstances)

Subdivision 3 Publication of, and exemption from, charges

99ATA Publication etc. of charges

- (1) A distributor-retailer must publish and maintain on its website details of its charges relating to its water services and wastewater services for the current financial year.
- (2) The details of the charges must be published under subsection (1) by 30 June of the financial year preceding the financial year to which the charges relate.
- (3) Also, a distributor-retailer must publish and maintain on its website details of its proposed charges relating to the financial year immediately after the current financial year.
- (4) The details of the proposed charges must be published under subsection (3) by 31 March of the financial year preceding the financial year to which the proposed charges relate.
- (5) As soon as practicable after the distributor-retailer publishes details of charges or proposed charges under subsections (1) to (4), the distributor-retailer must publish a notice about the charges in a newspaper circulating in the SEQ region.
- (6) The notice must state—
 - (a) that details of charges that apply, or are proposed to apply, have been published on the distributor-retailer's website; and
 - (b) the address of the website; and
 - (c) that a copy of a document showing the charges is available, free of charge, from the distributor-retailer; and

[s 99ATB]

- (d) where and how the copy may be obtained.
- (7) A distributor-retailer must give a person a document showing the distributor-retailer's charges relating to its water services and wastewater services for a particular financial year, free of charge, if the person asks for, and has not previously been given, a document showing the charges.

99ATB Exemption from charges

- (1) This section applies in relation to water services or wastewater services provided by a distributor-retailer to premises if the premises are—
 - (a) land that is exempted from rates under the *Local Government Act 2009*, section 93(3)(a), (b), (c), (d), (e), (f), (g) or (j); or
 - (b) prescribed under a regulation.
- (2) The distributor-retailer must not issue an account to an entity for providing the water services or wastewater services to the premises unless the entity has asked for the services to be provided.

99ATC Local government must provide information to distributor-retailer

- (1) Each participating local government for a distributor-retailer must—
 - (a) as soon as practicable after the commencement of this section, give the distributor-retailer details sufficient to identify all land mentioned in section 99ATB(1)(a) that is in the local government's local government area; and
 - (b) as soon as practicable after land in the local government's local government area becomes land mentioned in section 99ATB(1)(a), give the distributor-retailer details sufficient to identify the land; and

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- (c) as soon as practicable after land in the local government's local government area stops being land mentioned in section 99ATB(1)(a), give the distributor-retailer details sufficient to identify the land.

Maximum penalty—1665 penalty units.

- (2) This section applies despite section 53AI.

Division 4 Accounts

99AU Application of div 4

This division applies for any account from a distributor-retailer to a customer for water services and wastewater services.

99AV Matters required to be stated in account

- (1) The account must state all of the following—
- (a) the customer's name and the customer's premises at which the water services and wastewater services were provided;
 - (b) the period of the account;
 - (c) whether the account is based on an actual reading of a meter or an estimate of what a meter would read;
 - (d) the bulk water component;
 - (e) an entry called 'distribution and retail';
 - (f) an enquiries telephone number;
 - (g) the total charge;
 - (h) the methods by which the account may be paid;
 - (i) the charge under the most recent account from the distributor-retailer to the customer;

[s 99AW]

- (j) any concessions, discounts or rebates applied in working out the amount charged under the account;
 - (k) any interest to be charged under section 53AT for late payment of the account;
 - (l) a comparison with the consumption of other customers;
 - (m) if the customer is a residential customer—a comparison with the consumption of other residential customers (whether actual or estimated);
 - (n) any matter prescribed under a regulation for this section.
- (2) The entry called ‘distribution and retail’ must include the amount charged for—
- (a) water services and wastewater services; and
 - (b) being able to be provided with the service (called a ‘fixed access charge’).
- (3) The entry called ‘distribution and retail’ must be included in the account under a separate heading called ‘Local Government distributor-retailer price’.
- (4) The bulk water component must be included in the account under a separate heading called ‘State bulk water price’.
- (5) In this section—

bulk water component means the component of the account that represents the amount of any charge for bulk water services under the Water Supply Act passed on to the customer in the account.

99AW Requirements for accounts included in rates notice

- (1) If the account is included in a rates notice to the customer, the account must—
- (a) be on a separate page; and
 - (b) be clearly identified as an account to the customer from the distributor-retailer.

- (2) In this section—

rates notice means an account or other notice from a participating local government requiring the payment of rates under the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Division 5 Miscellaneous provision

99AX New owner's obligation to notify distributor-retailer

- (1) This section applies if, after a transfer of premises, a person starts to receive a supply of water from a water service or the benefit of a wastewater service from a distributor-retailer.
- (2) The person must, as soon as practicable, tell the distributor-retailer, or give the distributor-retailer notice, that the person has become the owner of the premises, unless the person has a reasonable excuse.

Maximum penalty—1 penalty unit.

- (3) However, the person is not required to comply with subsection (2) if the following are given to the registrar—
- (a) an application for registration of the transfer;
 - (b) a properly completed property transfer information form.
- (4) If a property transfer information form is given under subsection (3), the distributor-retailer may be given the same information from the form that, under the *Local Government Act*, can be given to a local government.
- (5) In this section—

Local Government Act means the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

property transfer information form means a form that—

- (a) gives information about a change of ownership required under another Act; and

[s 99AY]

(b) may be given to the registrar.

transfer includes transmission.

Chapter 4A SEQ design and construction code

Part 1 General provisions about code

99AY What is the *SEQ design and construction code*

The *SEQ design and construction code* is an instrument—

- (a) made jointly by all the distributor-retailers; and
- (b) that provides for technical standards relating to the design and construction of water infrastructure in the SEQ region.

99AZ Requirement to have code

The distributor-retailers must, on and from 1 July 2013, have an SEQ design and construction code.

99BA Particular matters for code

- (1) The SEQ design and construction code may provide for design and construction standards for water infrastructure and water infrastructure works, including, for example, standards about any of the following—
 - (a) meters and connections to water infrastructure;
 - (b) gravity and pressure pipelines;
 - (c) demand and peaking factors for flow of water and wastewater;

[s 99BC]

- (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) Each distributor-retailer must, from the publication of the notice to the final submission day, cause the draft to be published on its website.

99BC Preparing final code

In preparing the final SEQ design and construction code to be adopted, the distributor-retailers must consider all submissions about the draft code made under section 99BB(2).

99BD Adopting code

The final SEQ design and construction code must be adopted by the board of each distributor-retailer.

99BE When code has effect

- (1) As soon as practicable after the SEQ design and construction code is adopted by the distributor-retailers, the Minister must, by gazette notice, notify the adoption of the code.
- (2) The code has effect on and from the day its adoption is notified in the gazette.

99BF Amendment of code

- (1) The distributor-retailers may amend the SEQ design and construction code.
- (2) Sections 99BB and 99BC 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.

Part 3 **Minister's powers in relation to code**

99BG Power of Minister to direct distributor-retailer to take action about code

- (1) This section applies if the Minister is satisfied it is necessary to give a direction to a distributor-retailer to ensure the SEQ design and construction code—
- (a) is adopted under part 2; or
 - (b) appropriately provides for design and construction standards for water infrastructure and water infrastructure works in the SEQ region.
- (2) The Minister may direct a distributor-retailer to take action in relation to the SEQ design and construction code or the proposed code.
- (3) The direction must—
- (a) be in writing; and
 - (b) state the reasonable period in which the distributor-retailer must comply with the direction.

[s 99BH]

- (4) The direction may be as general or specific as the Minister considers appropriate.
- (5) Without limiting subsection (2), the direction may require a distributor-retailer to—
 - (a) prepare and adopt the code under part 2; or
 - (b) include provisions in the code about matters the Minister considers appropriate for the code; or
 - (c) review or amend the code in a way required by the Minister.

99BH Power of Minister if distributor-retailer does not comply with direction

- (1) If a distributor-retailer does not comply with the Minister's direction under section 99BG within the reasonable period stated in the direction, the Minister may take the action the Minister directed the distributor-retailer to take.
- (2) Anything done by the Minister under subsection (1) is taken to have been done by the distributor-retailer and has the same effect as it would have had if the distributor-retailer had done it.
- (3) An expense reasonably incurred by the Minister in taking an action under subsection (1) may be recovered from the distributor-retailer as a debt owing to the State.

Part 4 Miscellaneous

99BI Commission to keep copies of code available for inspection

The commission must keep copies of the SEQ design and construction code, as in force from time to time, available for inspection, free of charge—

- (a) at its head office; and
- (b) on its website.

Note—

Under section 99BU, each distributor-retailer must keep the SEQ design and construction code available for inspection and purchase.

Chapter 4B Water netserv plans

Part 1 General provisions

99BJ Requirement for distributor-retailer to have plan

A distributor-retailer must, from 1 July 2013, have a plan (a *water netserv plan*) about its water and wastewater networks and providing its water service and wastewater service.

99BK Plan to be consistent with SEQ regional plan and planning assumptions

A distributor-retailer must ensure its water netserv plan is consistent with—

- (a) the SEQ regional plan; and
- (b) the planning assumptions for the distributor-retailer's geographic area.

99BL Requirement for distributor-retailer to review plan

- (1) A regulation may prescribe circumstances under which a water netserv plan must be reviewed to ensure the plan—
 - (a) is consistent with—
 - (i) the SEQ regional plan; and

-
- (b) to provide planning for the delivery of infrastructure for supplying the distributor-retailer's water services and wastewater services for at least 20 years;
 - (c) to ensure the provision of safe, reliable and secure water services and wastewater services by distributor-retailers;
 - (d) to integrate land use planning and planning for infrastructure for the distributor-retailer's water services and wastewater services;
 - (e) to provide for the management of the distributor-retailer's water services and wastewater services in a way that seeks to achieve ecological sustainability.

99BN Form of plan

Each water netserv plan must include—

- (a) a separate part (*part A*) containing the matters mentioned in section 99BO(1); and
- (b) a separate part (*part B*) containing the matters mentioned in section 99BP(1).

99BO Content of part A of plan

- (1) Part A of a distributor-retailer's water netserv plan must—
 - (a) state, for the distributor-retailer's geographic area, the planning assumptions on which the plan is based; and
 - (b) include information outlining the distributor-retailer's infrastructure networks for its water service and wastewater service, including information about the capacity of each network to service existing and proposed customers; and
 - (c) include information outlining any proposed increases in the capacity of the infrastructure networks, including information about the areas into which the networks are

[s 99BO]

to be extended and time frames for increasing the capacity; and

- (d) state the desired standard of service for infrastructure used to provide the distributor-retailer's water service and wastewater service; and

Examples for paragraph (d)—

- standards about water supply pressure and volume for particular areas
- rates of removal of sewage for particular areas

- (e) include information outlining the distributor-retailer's strategy for demand management for water; and

- (f) state the distributor-retailer's policy for connections to its infrastructure networks for its water service and wastewater service (the ***connections policy***), including—

- (i) the areas (each a ***connection area***) in which the distributor-retailer guarantees to provide connection to its water service or wastewater service; and
- (ii) the circumstances in which the distributor-retailer may approve connection outside a connection area; and
- (iii) the distributor-retailer's criteria for providing connection, with or without conditions, to its water service or wastewater service; and

Example of a condition for subparagraph (iii)—

Connecting a new housing development to a water service or wastewater service might be subject to the construction of specific infrastructure by the proponent of the development.

- (g) include a schedule (a ***charges schedule***) containing details of—

-
- (i) charges to connect customers to the distributor-retailer's water service and wastewater service; and
 - (ii) charges for a customer's use of the services; and
 - (iii) charges relating to providing infrastructure for the services; and
- (h) indicate how the distributor-retailer proposes to achieve effective outcomes for the provision of water services and wastewater services in—
- (i) its geographic area; and
 - (ii) the SEQ region; and
- (i) include any other matters prescribed under a regulation.
- (2) The areas, mentioned in subsection (1)(c), into which infrastructure networks are to be extended must be consistent with the priority infrastructure areas of the participating local governments for the distributor-retailer.
- (3) Subsection (1) does not limit the matters the water netserv plan may contain.
- (4) In this section—
- demand management*, for water, see the Water Supply Act, schedule 3.
- priority infrastructure area*, for a local government, see the Planning Act, schedule 3.

99BP Content of part B of plan

- (1) Part B of a distributor-retailer's water netserv plan must—
- (a) include information outlining the distributor-retailer's existing and proposed infrastructure for providing its services, indicating how the distributor-retailer proposes—

[s 99BP]

- (i) to meet performance targets and service standards for assets relating to the operation, maintenance and replacement of existing infrastructure; and
 - (ii) to provide new infrastructure to meet expected future development and future growth in its geographic area; and
- (b) indicate the measures proposed to minimise—
 - (i) water losses caused by leakage from infrastructure for supplying the distributor-retailer's water service; and
 - (ii) sewerage overflows; and
- (c) include information outlining the drinking water quality management measures the distributor-retailer will take to protect public health; and
- (d) include information about how the plan provides for total water cycle management for water and wastewater in the geographic area; and

Examples of information for paragraph (d)—

- details of the collection, treatment and recycling of wastewater and other water sources
 - information about the integration of water use
 - information for each of its wastewater treatment plants about effluent management, wastewater recycling, sewerage system overflows and biosolid management
- (e) indicate how the distributor-retailer seeks to achieve ecological sustainability in undertaking its functions; and
 - (f) include information about the management of trade waste entering the distributor-retailer's wastewater service; and

Examples of information for paragraph (f)—

- requirements for waste prevention, treatment and recycling before trade waste can be discharged to a sewer

-
- impacts of trade waste on the infrastructure, the receiving environment and the health and safety of persons working on the wastewater service
 - regular reviews of trade waste
- (g) include information about the management of recycled water by the distributor-retailer under a recycled water scheme; and
- Examples of information for paragraph (g)—*
- information about infrastructure to produce or supply recycled water from any recycled water scheme
 - information about risks to the quality of recycled water and measures to address the risks
 - information about monitoring programs
- (h) include any other matters prescribed under a regulation, including, for example, matters included in a plan prepared by a service provider under the Water Supply Act.
- (2) Subsection (1) does not limit the matters the water netserv plan may contain.

Part 3 Particular provisions about plans

99BQ Matters distributor-retailer must have regard to in making plan

- (1) In making its water netserv plan, a distributor-retailer must have regard to the following—
- (a) documents that—
 - (i) are relevant to the provision of water services and wastewater services in the SEQ region; and

[s 99BQ]

- (ii) the chief executive has advised the distributor-retailer in writing are documents relevant to the making of its plan;

Examples of documents—

- SEQ water strategy made under the SEQ regional plan
 - SEQ infrastructure plan and program under the SEQ regional plan
 - SEQ regional water security program, for the SEQ region, under the *Water Act 2000*
 - sub-regional total water cycle management plans under the SEQ regional plan
- (b) the most efficient cost asset cycle planning for the distributor-retailer's business;
- (c) the total water cycle management plans of each participating local government for the distributor-retailer;
- (d) any guidelines relevant to the making of the plan and prepared by the commission under section 100C;
- (e) the customer water and wastewater code.
- (2) In this section—

total water cycle management plan, of a participating local government, means the local government's total water cycle management plan under the *Environmental Protection (Water) Policy 2009*.

[s 99BT]

- (a) stated components of the plan to be approved by a stated public sector entity; and
 - (b) certification by an appropriately qualified person of stated components of the plan as being appropriate for the distributor-retailer's infrastructure and services.
- (3) Subsections (1) and (2) do not limit the matters for which the regulation may provide.
- (4) In this section—
- public sector entity*** means—
- (a) a department or part of a department; or
 - (b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose; or
 - (c) a government owned corporation.

Chapter 5 Miscellaneous provisions

Part 1 Public access to information

99BT Meaning of *available for inspection and purchase*

A document mentioned in section 99BU(1) is ***available for inspection and purchase*** if the document or a certified copy of the document is held in the distributor-retailer's office and any other place decided by the distributor-retailer.

99BU Keeping particular documents available for inspection and purchase

- (1) A distributor-retailer must keep available for inspection and purchase a copy of each of the following—

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- (a) part A of the distributor-retailer's water netserv plan;
 - (b) each annual capital works program prepared by the distributor-retailer under section 100B;
 - (c) a map showing the limits of the distributor-retailer's connection areas;
 - (d) the SEQ design and construction code;
 - (e) a register (the *infrastructure charges register*) of all charges for infrastructure levied by the distributor-retailer;
 - (f) each infrastructure agreement to which the distributor-retailer is a party;
 - (g) each approved inspection program.

Note—

For access to a distributor-retailer's customer service charter, see section 99AE.

- (2) The documents mentioned in subsection (1)(a), (c) and (d) must also be kept available on the distributor-retailer's website.
- (3) The infrastructure charges register must, for each charge levied, include each of the following—
 - (a) the real property description of land to which the charge applies;
 - (b) the schedule under which the charge was levied;
 - (c) the amount of the charge levied;
 - (d) the amount of the charge unpaid;
 - (e) the number of units of demand charged for;
 - (f) if the charge was levied as a result of a development approval or compliance permit under the Planning Act—the approval or permit reference number and the day the approval or permit will lapse;

[s 99BV]

- (g) if infrastructure was to be provided instead of paying the charge—details of any infrastructure still to be provided.
- (4) Also, the infrastructure charges register must include—
 - (a) the charge rate, stated in the charges schedule, for each charge levied;
 - (b) if the charge has been adjusted for inflation—details of how it was adjusted and the adjusted charge rate.
- (5) If a document is available for inspection and purchase, a person may—
 - (a) inspect the document free of charge at any time the office in which the document is held is open for business; and
 - (b) obtain a copy of the document, or part of the document, from the distributor-retailer.

Note—

The *Copyright Act 1968* (Cwlth) overrides this Act and may limit the copying of material subject to copyright.

99BV Distributor-retailer may charge for copies of documents

- (1) The distributor-retailer may charge a person for supplying a copy of a document or part of a document.
- (2) The charge must not be more than the cost to the distributor-retailer of—
 - (a) making the copy available to the person; and
 - (b) if the person asks for the material to be posted—the postage.

Part 2 Participating local government price mitigation documents

99BW Price mitigation plans

- (1) Each participating local government for a distributor-retailer must, by the resolution day—
 - (a) adopt by resolution a written plan (a *price mitigation plan*) about how the local government proposes to mitigate the impact on customers for relevant charges after the capped prices period ends; and
 - (b) give the Minister a copy of the plan.
- (2) A price mitigation plan must include information about the following—
 - (a) an initial price path for the introduction of increases in the charges that will moderate the impact of the increases on customers;
 - (b) the policies the participating local government intends to adopt to help particular customers, including, for example, aged pensioners;
 - (c) how the participating local government intends to keep the community informed about the increases;
 - (d) the extent to which a distributor-retailer's profits that are paid to the participating local government are to be used to provide subsidies or rebates to users of water services or wastewater services.
- (3) Subsection (2) does not limit the matters that may be included in the price mitigation plan.
- (4) The participating local government must, as soon as practicable after the publication day—
 - (a) publish a copy of its price mitigation plan on its website; and

[s 99BX]

- (b) publish a notice about the plan in a newspaper circulating in its local government area; and
 - (c) ensure a copy of the plan is available for inspection at its public offices.
- (5) The notice must state the local government has adopted the price mitigation plan and where copies of it may be obtained.
- (6) The participating local government must take all reasonable steps to ensure it implements its price mitigation plan.
- (7) In this section—

publication day means—

- (a) 1 September 2011; or
- (b) if the Minister notifies a later day by gazette notice—the later day.

relevant charges means charges for water services or wastewater services provided by the distributor-retailer in the local government's area.

resolution day means—

- (a) 1 July 2011; or
- (b) if the Minister notifies a later day by gazette notice—the later day.

99BX Final price paths

- (1) Each participating local government for a distributor-retailer must do the following by 1 March 2013—
- (a) adopt by resolution a written final price path for relevant charges under section 99BW relating to the period from 1 July 2013 to 30 June 2019;
 - (b) give the Minister a copy of the final price path;
 - (c) publish a notice about the final price path in a newspaper circulating in its local government area;
 - (d) publish a copy of the final price path on its website;

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- (e) ensure a copy of the final price path is available for inspection at its public offices.
 - (2) The final price path must state graduated price increases for the charges during the period.
 - (3) The graduated price increases must moderate the effect of the increases on customers.
 - (4) The notice must state the local government has adopted the final price path and where copies of it may be obtained.
 - (5) The distributor-retailer must take all reasonable steps to ensure it implements the final price path.

Part 3 Portability of long service leave

99BY Definition for pt 3

In this part—

accrued right to long service leave, for a person, means the person's entitlement to take long service leave after having completed a minimum period of employment with an employer.

99BZ Application of pt 3

This part applies if—

- (a) a person is employed (the *new employment*) by a distributor-retailer (the *new employer*); and
- (b) the person was previously employed (the *former employment*) by another distributor-retailer (the *former employer*); and
- (c) the period between ending the former employment and beginning the new employment is not longer than 1 year; and

[s 99BZA]

- (d) the person did not receive a payment from the former employer of an amount as a cash equivalent for accrued long service leave.

99BZA Continuation of accrued rights to long service leave

- (1) The person's accrued right to long service leave in relation to the former employment is continued in relation to the new employment as an accrued right to long service leave as an employee of the new employer.
- (2) From the start of the new employment, the new employer has the same obligations in relation to the person's accrued right to long service leave as the former employer had in relation to the person at the end of the former employment.

Example—

If a person was entitled to take 11 weeks long service leave at the time the former employment ended, the person continues to be entitled to take 11 weeks long service leave after the start of the new employment. The entitlement would not be subject to completing any further period of employment with the new employer.

- (3) However, after the start of the new employment, the person continues to accrue rights to long service leave only under the same conditions as an employee of the new employer who is not a person to whom this part applies.

99BZB Recognition of previous periods of employment

- (1) This section applies when deciding the person's accrued right to long service leave in relation to the new employer.
- (2) The person's period of employment with the former employer, in addition to the person's period of employment with the new employer, is taken to be the person's period of employment with the new employer.

Example—

A person is taken to have completed a period of employment of 10 years with a new employer if the person completed a period of employment of

6 years with a former employer and a period of employment of 4 years with the new employer.

99BZC Payment by former employer to new employer towards long service leave entitlements accrued with former employer

- (1) The former employer must pay the new employer an amount for the number of days of long service leave that the person—
 - (a) is entitled to take because of the person's period of employment with the former employer; or
 - (b) would have been entitled to take, because of the person's period of employment with the former employer, if there was no minimum period of employment to be completed before the entitlement is accrued.
- (2) The amount is the amount the former employer would have been required to pay the person if the person had taken the long service leave.
- (3) The amount must be paid within a reasonable period after being requested by the new employer.
- (4) A former employer of the person must provide the person's new employer with the following information about the person—
 - (a) the length of accrued long service leave;
 - (b) any special leave taken without salary;
 - (c) any long service leave taken by the person or any amount paid to the person instead of long service leave;
 - (d) any undertaking given in relation to long service leave.

[s 100]

Part 4 Other matters

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.

100A Trade waste management plans and plans for managing wastewater services

- (1) Subsections (2) and (3) apply to a distributor-retailer—
 - (a) on 1 July 2010; and
 - (b) until the day the distributor-retailer has a water netserv plan.
- (2) The existing trade waste management plan of a participating local government for a distributor-retailer is taken to be the distributor-retailer's trade waste management plan under the Water Policy, section 22.
- (3) In managing its wastewater service, the distributor-retailer must have regard to the provisions about the matters that, under the Water Policy, section 20, are included in the existing total water cycle management plans of its participating local governments.
- (4) On and from the day a distributor-retailer has a water netserv plan, the Water Policy, section 22 does not apply to the distributor-retailer as a sewerage service provider.
- (5) On and from 1 July 2010, the Water Policy, section 20, does not apply to a participating local government.
- (6) In this section—

existing, for a trade waste management plan or total water cycle management plan of a participating local government,

[s 100B]

means the local government's environmental plan about trade waste management or total water cycle management plan developed under the Water Policy and in effect immediately before 1 July 2010.

Water Policy means the *Environmental Protection (Water) Policy 2009*.

100B Distributor-retailer to prepare statement about capital works

(1) A distributor-retailer must, for each financial year starting on 1 July 2013 and before the start of the financial year, prepare an annual capital works program for the financial year.

(2) In this section—

annual capital works program, for a financial year, means a program outlining the distributor-retailer's proposed program for—

- (a) constructing or acquiring plant and equipment; and
- (b) adding to or replacing its existing plant and equipment.

100C Commission may make guidelines

The commission may make guidelines to provide guidance to distributor-retailers about—

- (a) preparing a water netserv plan; or
- (b) matters appropriate for inclusion in a water netserv plan, including, for example, matters required to be included in a plan a service provider must have under the Water Supply Act.

Examples of plans—

- strategic asset management plan
- system leakage management plan

100D Application of Water Supply Act internal and external review provisions for decisions under Act

- (1) This section applies for a decision to—
 - (a) give a work direction; or
 - (b) give a discharge compliance notice; or
 - (c) make a consistency amendment of a trade waste approval.
- (2) The Water Supply Act, chapter 7 (other than part 4), applies—
 - (a) as if the decision were an original decision under that Act; and
 - (b) as if the affected entity had been given an information notice mentioned in section 510(1)(c) of that Act; and
 - (c) as if the affected entity were the interested person for the original decision; and
 - (d) as if a reference in the chapter to the reviewer were a reference to the relevant chief executive; and
 - (e) with other necessary changes.
- (3) For the Water Supply Act, section 517(1), as applied under subsection (1), the right of appeal against, or to apply for an external review of, the review decision is to QCAT.
- (4) In this section—

affected entity means—

 - (a) if the decision is to give a work direction—the distributor-retailer to whom the direction was given; or
 - (b) if the decision is to give a discharge compliance notice or make a consistency amendment—the approval holder.

relevant chief executive means—

 - (a) if the decision is to give a work direction—the chief executive of the public entity that gave the direction; or

[s 100DA]

- (b) if the decision is to give a discharge compliance notice or make a consistency amendment—the chief executive officer of the distributor-retailer.

100DA Requirement for distributor-retailer to give information

- (1) The commission may by notice given to a distributor-retailer require the distributor-retailer to give the commission, within a reasonable period stated in the notice, stated information the commission reasonably requires relating to the administration of this Act.
- (2) When making the requirement, the commission must warn the distributor-retailer it is an offence to fail to comply with the requirement unless the distributor-retailer has a reasonable excuse.
- (3) The distributor-retailer must comply with the requirement unless the distributor-retailer has a reasonable excuse.

Maximum penalty—200 penalty units.

100E Offences against Act are summary

An offence against this Act is a summary offence.

100F Application of Water Supply Act enforcement provisions for particular offences

- (1) This section applies for the following provisions—
 - (a) section 53DL;
 - (b) sections 30A, 99AB and 113;
 - (c) a provision, prescribed under a regulation, of a regulation that creates an offence.
- (2) The Water Supply Act, chapter 5, part 9 applies—
 - (a) as if a reference to the commission of an offence against that Act were a reference to an offence against the provision; and

- (b) with other necessary changes.
- (3) For the Water Supply Act, section 475(2) and (3), as applied under subsection (2), a proceeding for an enforcement order in relation to an offence against the provision may be started only by—
 - (a) for an offence against section 53DL—the distributor-retailer for whom the notice was issued; or
 - (b) for sections 30A, 99AB and 113—the commission; or
 - (c) for a provision prescribed under subsection (1)(c)—the entity prescribed under a regulation.

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 customer water and wastewater code may provide; and
 - (d) provide for a right to compensation for a contravention of any of the following and how the compensation may be recovered—
 - (i) a provision applied under paragraph (a);

[s 103]

- (ii) a matter provided for under paragraph (b); and
 - (e) provide for any matter connected with charges for water services and wastewater services, including, for example—
 - (i) concessions; and
 - (ii) the process for recovering overdue charges for water services and wastewater services; and
 - (f) declare that a stated provision of a stated planning scheme has no effect for the assessment of a development application for development in the SEQ region, if the matters to which the provision relates are matters provided for under a water netserv plan.
- (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

Part 1 Transitional provisions for Act No. 46 of 2009

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.

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.

Part 2

**Transitional provisions for
South-East Queensland Water
(Distribution and Retail
Restructuring) and Other
Legislation Amendment Act
2010**

108 Public entity approvals taken to be given for existing water infrastructure work

- (1) This section applies to water infrastructure of a participating local government for a distributor-retailer that—
- (a) existed before the commencement of this section; and
- (b) under a transfer document, becomes the distributor-retailer's property; and

-
- (c) is on a publicly-controlled place.
- (2) Any of the following granted, imposed or done before the commencement are taken to be a public entity approval (a *relevant approval*) by the public entity for the publicly-controlled place for water infrastructure work for the water infrastructure—
- (a) an approval (however called) under another Act by the public entity to carry out the work if all conditions of the approval have been complied with;
 - (b) requirements imposed by the public entity under the Transport Infrastructure Act or another Act on the carrying out of the work;
 - (c) for a road that is not a State-controlled road—the carrying out of the infrastructure work by a local government.
- (3) Also, if requirements mentioned in subsection (2)(b) were not imposed before the commencement, the public entity is taken to have given the relevant approval.

109 Deferral of distributor-retailer’s liability for additional public entity road work expenses

Section 53CH does not apply to a distributor-retailer until 1 July 2015.

110 Existing authorised persons

If—

- (a) immediately before 1 July 2010, a person held an appointment as an authorised person from a participating local government of a distributor-retailer; and
- (b) under a transition document, the person becomes an employee of a distributor-retailer on 1 July 2010;

[s 111]

on 1 July 2010, the person is taken to be appointed as an authorised person of the distributor-retailer.

Part 3

Transitional provisions for the Water and Other Legislation Amendment Act 2010

111 Definition for pt 3

In this part—

commencement means commencement of the provision in which the term is used.

112 Amendments to ss 53AE and 53AS

Sections 53AE and 53AS, as amended under the *Water and Other Legislation Amendment Act 2010*, are taken to have been in force from 1 July 2010.

113 Publication of participation agreement etc.

- (1) Subsection (2) applies if, before the commencement—
 - (a) a distributor-retailer or local government entered into a participation agreement; or
 - (b) a participation agreement entered into by a distributor-retailer or a local government has been amended.
- (2) The distributor-retailer or local government must, within 30 days after the commencement, publish on its website—
 - (a) a copy of the participation agreement or amendment; and

-
- (b) a brief summary of the agreement as in force at the commencement that complies with subsection (3).

Maximum penalty—200 penalty units.

- (3) As a minimum, the summary must refer to each of the matters mentioned in section 20(1).

114 Refund of certain charges

- (1) This section applies if—
- (a) before the commencement, a distributor-retailer charged an entity for providing water services or wastewater services to premises; and
 - (b) at the time the charge was imposed, the premises were premises mentioned in section 99ATB(1); and
 - (c) the entity has paid the amount of the charge to the distributor-retailer.
- (2) If asked by the entity to do so, the distributor-retailer must refund the amount paid to the entity within 30 days after receiving the request.
- (3) An amount payable by the distributor-retailer under subsection (2) is a debt due by it to the entity.

115 Matters relating to first making of code

- (1) This section applies to the draft of the first code prepared under section 95.
- (2) It is declared that the draft always could have been prepared on the basis of this Act, and the *Energy and Water Ombudsman Act 2006*, as amended, or proposed to be amended, by the *Water and Other Legislation Amendment Act 2010*.

Part 4

Transitional provisions for Fairer Water Prices for SEQ Amendment Act 2011

116 Application of s 99ATA for charges applying in capped prices period

- (1) Section 99ATA(2) applies to a distributor-retailer in relation to charges for its water services and wastewater services for the 2011-12 financial year as if the reference in that subsection to ‘30 June of the financial year preceding the financial year to which the charges relate’ were a reference to ‘31 July of the 2011-12 financial year’.
- (2) Section 99ATA(3) and (4) does not apply to a distributor-retailer in relation to charges for its water services and wastewater services for the 2012-13 financial year.

117 Application of s 99AV to accounts for charges

Section 99AV(3) and (4), as inserted under the *Fairer Water Prices for SEQ Amendment Act 2011*, does not apply to an account from a distributor-retailer to a customer for water services or wastewater services until 1 July 2012.

Part 5

Transitional provision for amendments under Waste Reduction and Recycling Act 2011

118 Trade waste officers

- (1) This section applies to a person appointed by a distributor-retailer as a trade waste officer (the *existing*

appointment) under pre-amended section 53CK whose appointment was in force immediately before the commencement.

- (2) On the commencement, the person becomes a discharge officer subject to any conditions of the existing appointment in force immediately before the commencement.
- (3) Chapter 2C applies to the person as if the person had been appointed as a discharge officer.
- (4) In this section—

commencement means the commencement of this section.

condition, of an appointment, includes a suspension of the appointment.

pre-amended section 53CK means section 53CK as in force before the commencement.

Schedule Dictionary

section 7

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

2010-11 financial year see section 53ARA.

2011-12 financial year see section 53ARA.

2012-13 financial year see section 53ARA.

accrued right to long service leave, for chapter 5, part 3, see section 99BY.

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.

appropriately qualified, for the performance of a function or exercise of a power, includes having the qualifications, experience and competence to perform the function or exercise the power.

approval holder—

- (a) generally—means the holder of a trade waste approval or seepage water approval; or
- (b) for a provision about a particular trade waste approval or seepage water approval—means the holder of that approval; or
- (c) for a provision about a discharge compliance notice—means the holder of the trade waste approval or seepage water approval to whom the notice was, or is to be, given.

approved form means a form approved under section 101.

approved inspection program means an inspection program approved under section 53CP of which notice has been given as required under that section.

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.

authorised person means an authorised person under the Water Supply Act.

available for inspection and purchase see section 99BT.

base year see section 53ARF(b).

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.

bulk water component, for chapter 2A, part 3, division 1, see section 53ARA.

bundled agreement, for chapter 3, part 3, division 2, subdivision 3, see section 77(3).

capped charge see section 53ARB(1).

capped prices period see section 53ARA.

charged premises see section 53ARB(1).

charges schedule see section 99BO(1)(g).

code means—

- (a) for chapter 4A—the SEQ design and construction code; or
- (b) otherwise—the customer water and wastewater code.

commission means the Queensland Water Commission under the Water Act.

connection area see section 99BO(1)(f)(i).

connections policy see section 99BO(1)(f).

consequential work see section 53BV(1)(b).

consequential work requirement see section 53BV(2).

consistency amendment, of a trade waste approval, see section 53AG(2).

customer see the Water Supply Act, schedule 3.

customer water and wastewater code see section 93(1).

development application see the Planning Act, schedule 3.

discharge compliance action see section 53DM(2).

discharge compliance notice—

- (a) generally—see section 53DJ(2); and
- (b) for a provision about an approval holder—means the approval holder to whom the discharge compliance notice was given.

discharge offence means an offence against—

- (a) section 53DL; or
- (b) the Water Supply Act, chapter 2, part 6; or
- (c) the Water Supply Act, chapter 2, part 7, to the extent that part relates to trade waste or seepage water and a distributor-retailer's infrastructure as a sewerage service provider.

discharge officer means—

- (a) generally—a person who holds appointment as a discharge officer under section 53CK; and
- (b) for a provision about a distributor-retailer—a discharge officer appointed by the distributor-retailer.

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; and

- (c) for a provision about a discharge officer—means the distributor-retailer that appointed the officer; and
- (d) for a provision about a discharge compliance notice—means the distributor-retailer that gave the notice.

distributor-retailer's charge, for chapter 2A, part 3, division 2, see section 53AV(1).

distributor-retailer test see section 99AJ(1)(a).

drinking water see the Water Supply Act, schedule 3.

ecological sustainability means ecological sustainability within the meaning of the Planning Act.

former employer—

- (a) for chapter 3, part 4, division 2, see section 81; or
- (b) for chapter 5, part 3, see section 99BZ(b).

former employment see section 99BZ(b).

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

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

independent test see section 99AJ(1)(b).

independent tester see section 99AJ(1)(b).

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

information notice, for a decision, means a notice—

- (a) stating the following—
 - (i) the decision;
 - (ii) the reasons for the decision;
 - (iii) the name and address of any other person who was given the notice;

- (iv) that the person to whom the notice is given may apply for an internal review of the decision, within 30 business days after the notice is given;
- (v) how to apply for the internal review; and
- (b) including a copy of the relevant internal review provisions of the Water Supply Act.

information request see section 53CF(2).

infrastructure agreement means any of the following—

- (a) an infrastructure agreement under the Planning Act, schedule 3;
- (b) an infrastructure agreement under the repealed *Integrated Planning Act 1997* mentioned in the Planning Act, section 840;
- (c) an infrastructure agreement under the repealed *Local Government Planning and Environment Act 1990* to which the Planning Act, section 855 applies;
- (d) an agreement to which the Planning Act, section 856 applies.

Editor's note—

Planning Act, section 856 (Rezoning agreements under previous Acts)

infringement notice offence means an offence prescribed under the *State Penalties Enforcement Act 1999* to be an infringement notice offence for this Act or the Water Supply Act.

insolvent under administration see the Corporations Act, section 9.

instrument—

- 1 An *instrument* is a document of any type or an oral agreement.

Example—

an infrastructure agreement

- 2 A reference to an instrument includes a reference to any part of the instrument.

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).

location, of water infrastructure on a road, see section 53BG.

meter means a device, including equipment related to the device, for measuring the volume of water supplied to premises and installed on infrastructure that supplies a water service at the premises.

new employer—

- (a) for chapter 3, part 4, division 2, see section 81; or
- (b) for chapter 5, part 3, see section 99BZ(a).

new employment see section 99BZ(a).

non-residential customer means a customer who is a non-residential customer under section 99AR(2).

notice means a notice in writing.

offence warning, for a provision about a requirement, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement was made not to comply with the requirement.

overdue charge, for chapter 2A, part 3, division 2, see section 53AS(2).

part A, of a water netserv plan, see section 99BN(a).

part B, of a water netserv plan, see section 99BN(b).

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 Act means the *Sustainable Planning Act 2009*.

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

planning assumptions, for a distributor-retailer's geographic area, means—

- (a) the assumptions about the type, scale, location and timing of future development and future growth for any part of the area stated in the distributor-retailer's participating local governments' priority infrastructure plans under the Planning Act; or
- (b) if the distributor-retailer, a participating local government and the Planning Minister agree that assumptions about a matter mentioned in paragraph (a) and stated in a proposed priority infrastructure plan for the local government are appropriate for preparing or reviewing a water netserv plan—the agreed assumptions.

Planning Minister means the Minister administering the Planning Act.

planning scheme see the Planning Act, section 79.

premises means—

- (a) a lot as defined under the Planning Act, section 10(1); or
- (b) for a lot under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*—the common property for the lot.

prescribed margin, for a meter test, means the prescribed margin under section 99AK(2).

program period, for a provision about an approved inspection program, see section 53CP(3)(e).

public entity—

- (a) generally—see section 53BC; and
- (b) for a publicly-controlled place—see section 53BD(3).

public entity approval see section 53BI(1)(a).

public entity work see section 53BT.

publicly-controlled place see section 53BD.

public thoroughfare easement means a public thoroughfare easement under either of the following provisions, if the easement is in favour of the State—

- (a) the Land Act, chapter 6, part 4, division 8;
- (b) the Land Title Act, part 6, division 4.

quarter means a whole period of 3 months ending at the end of 31 March, 30 June, 30 September or 31 December.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means to suspect on grounds that are reasonable in the circumstances.

record includes any document.

recycled water see the Water Supply Act, schedule 3.

recycled water scheme see the Water Supply Act, schedule 3.

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

regulator see the Water Supply Act, section 10.

relevant action, for chapter 3, part 3, division 2, subdivision 3A, see section 77I(3).

relevant services, for chapter 2A, part 3, division 1, see section 53ARB(3).

relevant year see section 53ARF(a).

remedial action see section 53BZ.

remedial action requirement see section 53CA.

residential customer means a customer who is a residential customer under section 99AQ(2).

road see section 53BE(1).

road works see section 53BF.

seepage water see the Water Supply Act, schedule 3.

seepage water approval means a seepage water approval under the Water Supply Act, section 180(1) and includes a condition of a seepage water approval.

SEQ design and construction code see section 99AY.

SEQ region see the Water Act, section 341.

SEQ regional plan means the regional plan for the SEQ region under the Planning Act.

service provider see the Water Supply Act, schedule 3.

sewerage service provider see the Water Supply Act, schedule 3.

small business customer see section 53ARA.

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).

State-controlled road see section 53BE(2).

trade waste means water-borne waste from business, trade or manufacturing premises, other than—

- (a) waste that is a prohibited substance under the Water Supply Act, schedule 1; or
- (b) human waste; or
- (c) stormwater.

trade waste approval means a trade waste approval under the Water Supply Act, section 180(1) and includes a condition of a trade waste approval.

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.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

variable measures see section 53ARA.

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 aspect, for chapter 3, part 3, division 2, subdivision 3, see section 77B(1)(b).

water infrastructure see section 53BB(1).

water infrastructure work see section 53BB(2).

water netserv plan see section 99BJ.

water service see the Water Supply Act, schedule 3.

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

work direction see section 53BQ(2).

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 28 October 2011. 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	majority of provs commenced
0B	2009 Act No. 46	4 November 2009	ss 108–110 commenced
1	2009 Act No. 46	19 December 2009	ss 111–112 commenced
1A	2010 Act No. 20	23 May 2010	
1B	2010 Act No. 20	1 July 2010	
1C rv	2010 Act No. 53	1 December 2010	
1D rv	2010 Act No. 53	1 January 2011	
1E	2011 Act No. 21	27 June 2011	
1F	2011 Act No. 21	1 July 2011	
1G	2011 Act No. 31	28 October 2011	

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))

ss 111–112 commenced 19 December 2009 (see s 2(2) and 2009 SL No. 281)

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 commenced 19 December 2009 (see s 2(2) and 2009 SL No. 281)

remaining provisions commenced on date of assent

South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010 No. 20 ss 1–2(1)(a)–(c), pt 2

date of assent 23 May 2010

ss 1–2 commenced on date of assent

ss 9 (to the extent it ins ch 2A, pt 1, div 2, ch 2A, pts 3 and 4, ch 2B and 2C), 16–20, 21 (other than to the extent it ins ss 99AD and 99AE), 22, 23, 25–27 commenced 1 July 2010 (see s 2(1)(a)–(c))

remaining provisions commenced on date of assent

Water and Other Legislation Amendment Act 2010 No. 53 ss 1–2(1), pt 11

date of assent 1 December 2010

ss 1–2 commenced on date of assent

ss 147, 149, 151, 156–157, 160, 170 commenced 1 January 2011 when the customer water and wastewater code first made under the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009, s 93 takes effect (see s 2(1) and gazette notice pubd Queensland Government Gazette No. 120, 24 December 2010 p 1183)

remaining provisions commenced on date of assent

Fairer Water Prices for SEQ Amendment Act 2011 No. 21 ss 1, 2(b)–(e), pt 3

date of assent 27 June 2011

ss 8, 13, 15 (to the extent it ins new ch 5 pt 3), 17 commenced 1 July 2011 (see s 2(b)–(e))

remaining provisions commenced on date of assent

Waste Reduction and Recycling Act 2011 No. 31 s 1, ch 16 pt 8

date of assent 28 October 2011

commenced on date of assent

6 List of annotations

Long title amd 2009 No. 46 s 109

Short title

s 1 amd 2009 No. 46 s 110

Achievement of purposes

s 4 amd 2010 No. 20 s 4; 2010 No. 53 s 139

Functions

s 11 amd 2010 No. 20 s 5; 2011 No. 31 s 351

Information Privacy Act 2009

s 17A ins 2010 No. 20 s 6

Penalties and Sentences Act 1992

s 18A ins 2010 No. 20 s 7

Publication of participation agreement etc.

s 30A ins 2010 No. 53 s 140

Chief executive officer's responsibilities

s 48 sub 2010 No. 53 s 141

Delegation

s 53 amd 2010 No. 20 s 8

CHAPTER 2A—GENERAL PROVISIONS FOR DISTRIBUTOR-RETAILERS AS SERVICE PROVIDERS

ch hdg ins 2010 No. 20 s 9

PART 1—PROVISIONS FOR DISTRIBUTOR-RETAILERS TO BECOME SERVICE PROVIDERS

pt hdg ins 2010 No. 20 s 9

Division 1—General provisions

div hdg ins 2010 No. 20 s 9

Distributor-retailers become service providers

s 53AA ins 2010 No. 20 s 9

Participating local governments cease being service providers

s 53AB ins 2010 No. 20 s 9

Notice to regulator not required for transfer under transition document

s 53AC ins 2010 No. 20 s 9

Existing customers

s 53AD ins 2010 No. 20 s 9

Provision for market rules

s 53AE ins 2010 No. 20 s 9
amd 2010 No. 53 s 142

Endnotes

Division 2—Existing trade waste approvals

div 2 (ss 53AF–53AH) ins 2010 No. 20 s 9

Division 3—Provision of information

div 3 (s 53AI) ins 2010 No. 20 s 9

**PART 2—APPLICATION OF PARTICULAR WATER SUPPLY ACT
PROVISIONS TO DISTRIBUTOR-RETAILERS**

pt hdg ins 2010 No. 20 s 9

Division 1—Preliminary

div 1 (ss 53AJ–53AK) ins 2010 No. 20 s 9

Division 2—Application of provisions

div 2 (ss 53AL–53AR) ins 2010 No. 20 s 9

**PART 3—CHARGES FOR WATER SERVICES AND WASTEWATER SERVICES
AND OTHER MATTERS**

pt hdg ins 2010 No. 20 s 9
amd 2010 No. 53 s 143

Division 1—Restriction on charges in capped prices period

div hdg ins 2011 No. 21 s 9

Subdivision 1—Preliminary

prov hdg ins 2011 No. 21 s 9

Definitions for div 1

s 53ARA ins 2011 No. 21 s 9

Application of div 1

s 53ARB ins 2011 No. 21 s 9
amd 2011 No. 31 s 352

Subdivision 2—Caps

sdiv 2 (ss 53ARC–53ARE) ins 2011 No. 21 s 9

Subdivision 3—Provisions for no or partial base year

sdiv 3 (ss 53ARF–53ARI) ins 2011 No. 21 s 9

Division 2—Overdue charges

div hdg ins 2011 No. 21 s 9

Application of div 2

prov hdg amd 2011 No. 21 s 10(1)
s 53AS ins 2010 No. 20 s 9
amd 2010 No. 53 s 144; 2011 No. 21 s 10(2)

Interest

s 53AT ins 2010 No. 20 s 9
amd 2010 No. 53 s 145

Overdue charge is owing by any owner of the premises

s 53AU ins 2010 No. 20 s 9

Charge on premises for overdue charge, CPI indexation and costs ordered

s 53AV ins 2010 No. 20 s 9

Quarterly CPI indexation for distributor-retailer's charge

s 53AW ins 2010 No. 20 s 9
amd 2011 No. 21 s 11

Registration of charge and effect of registration

s 53AX ins 2010 No. 20 s 9

PART 3A—PERSONAL DETAILS REQUIREMENTS

pt 3A (ss 53AXA–53AXD) ins 2010 No. 53 s 146

PART 4—MISCELLANEOUS PROVISIONS

pt hdg ins 2010 No. 20 s 9

Authority to acquire land

s 53AY ins 2010 No. 20 s 9

Code supersedes customer service standards

s 53AZ ins 2010 No. 20 s 9
om 2010 No. 53 s 147

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s 109 prev s 109 om R0B (see RA s 40)
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s 110 prev s 110 om R0B (see RA s 40)
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def “**appropriately qualified**” ins 2010 No. 20 s 28(2)

def “**approval holder**” ins 2010 No. 20 s 28(2)

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- def “**base year**” ins 2011 No. 21 s 17(2)
- def “**bulk water component**” ins 2011 No. 21 s 17(2)
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- def “**new employer**” sub 2011 No. 21 s 17(1)–(2)
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