



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

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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

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*.

### 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—

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- (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
  - (b) providing for the following to, subject to this Act, deliver the services to customers in their local government areas from 1 July 2012—
    - (i) the Gold Coast City Council;
    - (ii) the Logan City Council;
    - (iii) the Redland City Council; and
  - (c) 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
  - (d) facilitating the transfer to distributor-retailers of the infrastructure and functions of their participating local governments as service providers for the services; and
  - (e) providing for all distributor-retailers to become service providers on and from 1 July 2010; and

- 
- (f) 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*

- (1) A distributor-retailer's *participating local governments* are—
- (a) for the Northern SEQ Distributor-Retailer Authority—Sunshine Coast Regional Council, Noosa Shire 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.
- (2) In a provision about a board, a reference to a participating local government is a reference to a participating local government under subsection (1) for the board's distributor-retailer.

#### 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.

## **Division 3                      Functions**

### **7A                      References to functions**

In this Act—

- (a) a reference to a function includes a reference to a power or jurisdiction; and
- (b) a reference to performing a function includes a reference to exercising a power or jurisdiction.

# **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.

*Notes—*

- 1 For the authority mentioned in paragraph (c), see chapter 3A (Replacement of Allconnex by councils), part 9 (Dissolution of Allconnex).
- 2 Under section 92AP, that authority will only have limited functions from 1 July 2012.

## 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;

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- (d) the former entity's records;
- (e) the performance of the former entity's functions immediately before the expiry.

## 11 Functions

- (1) A distributor-retailer's primary functions are to do the following for its geographic area—
  - (a) purchase water;
  - (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 Functions**

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



**16 Crime and Corruption Act 2001**

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

**18B Joint government activity power for LGA 2009 and CBA 2010**

For LGA 2009, section 10 and CBA 2010, section 12, a reference to a local government is taken to include a reference to a distributor-retailer.

**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.



- 
- (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, including, for example, the term of office of its councillor-members or additional requirements to those under section 34 for their appointment or removal.

## **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.

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## **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 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) However, a participation agreement for a distributor-retailer can not be amended to allow anyone other than a participating

local government for the distributor-retailer to become a participant in it.

- (3) If a local government is a participant, it may agree to the amendment only if it has passed a resolution to that effect.
- (4) If a participation agreement is amended under subsection (1), the distributor-retailer must give the Minister a copy of the amended agreement as soon as practicable.

## **29 Ministerial approval required for change in particular matters**

- (1) A change to a participation agreement about a restricted matter concerning a distributor-retailer has no effect unless the Minister has—
  - (a) been given a copy of the proposed amended agreement; and
  - (b) by notice to the distributor-retailer approved the change.
- (2) A person can not become a participant in a distributor-retailer unless—
  - (a) the distributor-retailer's participation agreement or a change to the agreement approved under subsection (1), provides for the person to be, or to become, a participant; or
  - (b) the Minister has approved the person to be a participant in the distributor-retailer and the person's proposed participation rights in it.
- (3) In this section—

***restricted matter***, concerning a distributor-retailer, means—

  - (a) the participants in the distributor-retailer, including—
    - (i) who may become a participant; and
    - (ii) any change in participants; and
    - (iii) who may cease to be a participant; or



- 
- (b) the participation rights in the distributor-retailer or how the rights may be transferred or otherwise dealt with; or
  - (c) any provision of its participation agreement that provides for how it can be amended other than by agreement between all of the distributor-retailer's 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

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- (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).

## **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            Membership in general**

- (1) A board is to consist of at least 5 members but can not consist of—

- 
- (a) more than the following number of councillor-members—
- (i) if the distributor-retailer has more than 3 participating local governments—1 for each participating local government;
  - (ii) otherwise—3; and
- (b) more councillor-members than independent members.
- (2) The members must be appointed under this division by the distributor-retailer’s participants.
- (3) In this section—

***councillor-member*** means a member of the board who is a councillor of a participating local government for the distributor-retailer.

***independent member*** means a member of the board who is not a councillor-member.

## 34 Councillor-members

- (1) Unless the participation agreement provides otherwise, a board’s councillor-members can not be—
- (a) appointed for a term of more than 4 years; or
  - (b) appointed or reappointed if, at any time, they have already served a term of 4 years or terms totalling 4 years.

*Example—*

A is a councillor-member appointed for a 4-year term. A ceases to be a councillor of the relevant council after 3 of those years. B, another councillor of the council, is appointed to replace A for the rest of that term. B is re-elected as a councillor of the council. The participation agreement does not provide for more than a 4-year term for councillor-members. Therefore, B can only be reappointed for 3 more years.

- (2) A councillor-member’s appointment ends if—
- (a) the person stops being a councillor of the relevant council; or

- (b) either—
  - (i) all participating local governments have, by resolution, so agreed; or
  - (ii) the ending happens under the participation agreement.
- (3) A vacancy under subsection (2) may be filled—
  - (a) only by—
    - (i) a councillor of the relevant council; or
    - (ii) if the distributor-retailer’s participation agreement provides for a councillor of a different relevant council to fill the vacancy—the other councillor; and
  - (b) in the way provided for under the participation agreement.
- (4) A councillor-member’s appointment is suspended during any period of suspension of the person as a councillor of the relevant council.

### **35 Independent members**

- (1) The matters to which regard must be had in considering whether to appoint a person as an independent member include 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) An independent member—
  - (a) holds office for the term stated in the person’s appointment; and
  - (b) is, if not disqualified, eligible for reappointment.

(3) A person's appointment as an independent member ends if the person becomes disqualified.

(4) In this section—

*disqualified* means unable to be appointed because of section 36.

### **36 Disqualifications for independent member**

A person can not be appointed as an independent member if the person—

- (a) is a public service employee; or
- (b) is an employee of any local government in the SEQ region; or
- (c) is an insolvent under administration; or
- (d) has a conviction, other than a spent conviction, for an indictable offence; or
- (e) is a member of a board of—
  - (i) another distributor-retailer; or
  - (ii) the Queensland Bulk Water Supply Authority established under the 2007 restructuring Act.

### **36A Terms of membership**

- (1) A board member holds office on the terms of appointment provided for under a participation agreement of the distributor-retailer, and subject to this Act.
- (2) A councillor-member can not receive, and the distributor-retailer can not confer, a benefit on a councillor-member—
  - (a) by way of remuneration as the holder of that office; or
  - (b) in connection with retirement from or other ending of the office.

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- (3) However, the councillor-member may receive a benefit conferred on the member under LGA 2009 or CBA 2010.
- (4) For applying CBA 2010 under subsection (3), the relevant provisions of those Acts apply as if a reference to a corporate entity of the relevant council included a reference to a distributor-retailer.

*Note—*

For LGA 2009, see the *Local Government (Operations) Regulation 2010*, section 43.

- (5) An independent member may receive from a distributor-retailer, and a distributor-retailer may confer on an independent member, a benefit for the following only if it complies with the participation agreement—
  - (a) remuneration as the holder of that office;
  - (b) a matter for, or in connection with, retirement from or other ending of the office.
- (6) A purported benefit conferred or received that can not be made under this section is of no effect.
- (7) In this section—

***benefit*** means a payment made or an interest in property or other valuable consideration or benefit given or transferred.

### **36B Chairperson**

- (1) A distributor-retailer must have an independent member 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 takes place—elected by the board.

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## **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) A quorum of a board must consist of at least 1 independent member.
- (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.

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*Example of use of technology—*

teleconferencing

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

#### **41 Minutes**

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

#### **42 Disclosure of interests**

- (1) This section applies to a member of a board (the *interested member*) if—
  - (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.
- (9) To remove any doubt, it is declared that the fact that a relevant council has an interest in an issue does not, of itself, mean that the councillor-member for the council has an interest in the issue.

## **Division 3                      Financial management**

### **43            Approval required for profit distribution**

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

## **Part 5                              Chief executive officer**

### **44            Appointment of chief executive officer**

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

### **45            Term of appointment**

- (1) Subject to this section, the chief executive officer holds office for the term stated in his or her contract of employment.
- (2) If otherwise qualified, the chief executive officer is eligible for reappointment.
- (3) The board may at any time end the appointment for any reason or none.
- (4) The ending of the appointment under subsection (3) does not affect any rights to compensation to which the chief executive officer is entitled under the contract of employment.
- (5) The chief executive officer may resign by giving a signed notice of resignation to the board at least the required period before the notice is to take effect.
- (6) The chief executive officer's appointment ends if he or she stops being qualified to be the chief executive officer.
- (7) In this section—

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*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.

## Part 6 Reserve powers of participating local governments

### 49 Group directions

- (1) A distributor-retailer's participating local governments may give it a written direction (a *group 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
    - (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.

### 49A Individual directions

- (1) This section applies for any participating local government (the *council*) of a distributor-retailer.
- (2) The council may give the distributor-retailer a written direction (an *individual direction*) about the way the distributor-retailer is to perform its functions relating to the council's local government area about any of the following—
  - (a) charges mentioned in section 99BOB(b) and (c);

- 
- (b) the distributor-retailer's annual capital works program under section 100B.
- (3) However, the council may give the direction only if—
- (a) it is satisfied the direction is necessary and in the public interest to the extent it relates to the local government area; and
  - (b) it has given the board and other participating local governments of the distributor-retailer a notice—
    - (i) stating the proposed direction; and
    - (ii) asking the board for its written opinion about the direction within the required period; and
  - (c) it has considered any written opinion of the board given to it within the required period; and
  - (d) its compensation liability because of the effects of the direction has been agreed or decided under section 99BZD.
- (4) The opinion may include an amount claimed for, or particulars of, the compensation liability for the distributor-retailer or all or any of its other participating local governments.
- (5) In this section—
- required period*** means the following period after the giving of the notice—
- (a) generally—1 month;
  - (b) if the distributor-retailer's participation agreement provides for another period for giving the opinion—the other period.

## 50 Publication of directions

The participating local governments that give a group direction, or the participating local government that gives an individual direction, must within 21 days after the direction is given ensure a copy—

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- (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 Compliance with directions**

- (1) This section applies if a distributor-retailer is given a group direction or an individual direction.
- (2) The board must take reasonable steps to ensure the direction is complied with unless it is unlawful to do so, or complying with the direction in the way directed would constitute an offence against this Act or another Act.
- (3) Regard must be had to the direction 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.

## **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.

### **52A Relationship between councillor-member functions and councillor functions**

While a councillor-member is acting in the person's capacity as a councillor-member, the member's responsibilities as a councillor under LGA 2009 or CBA 2010 do not apply.

## 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.
- (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 distributor-retailer may delegate the following functions to its relevant participating local government—
  - (a) functions under chapter 2C relating to the appointment of water connection officers;
  - (b) functions under chapter 4C;
  - (c) functions as a referral agency for a particular development application.
- (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) Without limiting subsection (4), the chief executive officer of a distributor-retailer may delegate his or her functions under sections 99BRBB, 99BRBC and 99BRBD to a relevant participating local government of the distributor-retailer.

- (8) A delegation of a chief executive's power to a participating local government may permit the subdelegation of the power to an appropriately qualified person.
- (9) In this section—

***building work*** see the *Building Act 1975*, section 5.

***particular development application***, for a distributor-retailer, means a development application for carrying out building work for a building or structure on a lot that contains, or is adjacent to a lot that contains, the distributor-retailer's infrastructure.

***referral agency***, for a development application, means a referral agency for the application under the Planning Act.

***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.



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## **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.
- (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.

## **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.

### **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.

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## **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—
  - (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—

[s 53AN]

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*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 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

[s 53AQ]

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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 adopts under section 99BRAB 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, a reference in that Act to a service area is, for a distributor-retailer, taken to be a reference to a connection area of the distributor-retailer unless stated otherwise.

**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 53AU]

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- (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.

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### **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 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;
  - (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—

[s 53AXA]

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- (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



[s 53BA]

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- (3) A regulation may make provision about the acquisition of land by a distributor-retailer.

### **53BA Ownership of water infrastructure that becomes part of land**

- (1) Water infrastructure owned by a distributor-retailer remains its personal property despite—
  - (a) it becoming part of any land; or
  - (b) the sale or other disposal of the land of which it becomes a part.
- (2) This section applies despite—
  - (a) an Act or law of a State; or
  - (b) a contract, covenant or claim of right under a law of a State.
- (3) This section is subject to any retransfer of the water infrastructure under chapter 3A.

## **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—

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

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

**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.

### **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

[s 53BE]

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- (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—

***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.



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- (c) if the arrangement is for water infrastructure within an agreed location on a road—provide for the distributor-retailer to give a water approval for the infrastructure without a public entity approval; and
  - (d) provide for a person identified in the consent arrangement to carry out water infrastructure work on a publicly controlled place; and
  - (e) be subject to reasonable conditions.

### **53BJ Obtaining public entity’s approval or entering consent arrangement**

- (1) The distributor-retailer may, in writing, apply to the public entity for a public entity approval or consent arrangement 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)—
  - (a) decide to grant or refuse the approval; or
  - (b) enter into the consent arrangement.
- (4) For subsection (3)(a), the entity must not unreasonably refuse to grant the approval.

### **53BK Conditions of approval or arrangement**

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

[s 53BL]

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*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 or consent arrangement; 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.
- (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—

[s 53BQ]

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- (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.

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### **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.

### **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

[s 53BV]

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- (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.



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- (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.

### **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.

[s 53CB]

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### **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.

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### **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.

### **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—



## **Chapter 2C Discharge officers and water connection officers**

### **Part 1 General provisions about discharge officers and water connection 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 or water connection officer under this Act if the distributor-retailer is satisfied the person has the necessary expertise or experience.
- (3) However, if a regulation prescribes qualifications or other requirements for the appointment of discharge officers, the person may be appointed as a discharge officer 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 or water connection officer and the officer's office as if—
  - (a) a reference in the sections to an authorised person were a reference to a discharge officer or water connection 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 all appointments.

### **53CL Functions of a discharge officer**

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.

### **53CLA Functions of a water connection officer**

A water connection officer's functions are to help the distributor-retailer to do the following—

- (a) monitor and enforce compliance with the Water Supply Act, chapter 2, part 7, other than to the extent that part relates to trade waste and seepage water;
- (b) monitor and enforce compliance with chapter 4C, part 5;
- (c) take water connection 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
    - (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.



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## **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;
  - (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.

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### **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;
  - (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.

### 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

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- (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

[s 53CT]

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- (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
      - (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).

[s 53CV]

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- (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 acknowledgement of the consent.
- (5) The acknowledgement must state—
  - (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 acknowledgement, 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 acknowledgement 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.



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### **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;
  - (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;

[s 53CY]

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*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.

## **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

[s 53DC]

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- (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.
- (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.

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## 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.

### **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—

[s 53DL]

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- (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.
- (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.



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**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.

## **Part 4 Powers of water connection officers**

### **Division 1 General powers for entering places**

**53DNA General powers of entry**

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

[s 53DNB]

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- (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 subsection (1)(a) and (b), a place does not include a building or structure used for residential purposes.
- (3) To remove any doubt, it is declared that this section does not limit or otherwise affect a water connection officer's powers as an authorised person.

## **Division 2                      Other powers of water connection officers**

### **53DNB Application of ch 2C, pt 2, divs 2 to 8**

- (1) Chapter 2C, part 2, divisions 2 to 8 apply, with any necessary changes, as if a reference in the divisions to—
- (a) a discharge officer were a reference to a water connection officer; and
  - (b) a discharge compliance action were a reference to a water connection compliance action; and
  - (c) a discharge offence were a reference to a water connection offence; and
  - (d) a trade waste approval or seepage water approval were a reference to a water approval.
- (2) For the application of section 53CV(1), the reference to section 53CM(1)(b) is taken to be a reference to section 53DNA(1)(b).

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## **Part 5**                      **Show cause and water connection compliance notices**

### **Division 1**                **Show cause notices**

#### **53DNC When show cause notice must be given before compliance notice**

- (1) A distributor-retailer or water connection officer must, before giving a person a compliance notice for a matter, give the person a show cause notice about the matter.
- (2) However, a show cause notice need not be given if the distributor-retailer or water connection officer reasonably considers—
  - (a) urgent action is required to protect public health or public safety; or
  - (b) urgent action is required to stop damage, or further damage, to the distributor-retailer's water infrastructure; or
  - (c) it is otherwise not appropriate in the circumstances to give a show cause notice for the matter.

*Example—*

The distributor-retailer or officer considers giving a show cause notice may adversely affect the effectiveness of the proposed compliance notice.

### **Division 2**                **Water connection compliance notices**

#### **53DND Who may give a water connection compliance notice**

- (1) This section applies if a distributor-retailer or a water connection officer reasonably believes—
  - (a) a person—

[s 53DNE]

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- (i) is contravening a provision of chapter 4C, part 5;  
or
    - (ii) has contravened a provision of chapter 4C, part 5,  
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 person an opportunity to  
rectify the matter.
- (2) The distributor-retailer or water connection officer may decide  
to give the person a notice (a ***water connection compliance  
notice***) requiring the holder to remedy the contravention.
- (3) Subsection (4) applies if the giving of the water connection  
compliance notice is for a matter for which a show cause  
notice has been given by the distributor-retailer or water  
connection officer.
- (4) The water connection compliance notice may be given only if,  
after considering any properly made submission by the person  
about the show cause notice, the distributor-retailer or water  
connection officer still believes it is appropriate to give the  
compliance notice.

### **53DNE Requirements for water connection compliance notice**

- (1) A water connection compliance notice must state the  
following—
- (a) that the distributor-retailer or water connection officer  
reasonably believes the person—
    - (i) is contravening a provision of chapter 4C, part 5;  
or
    - (ii) has contravened a provision of chapter 4C, part 5,  
in circumstances that make it likely the  
contravention will continue or be repeated;
  - (b) the provision the distributor-retailer or water connection  
officer believes is being, or has been, contravened;

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- (c) briefly, how it is believed the provision is being, or has been, contravened;
  - (d) that the person must remedy the contravention within a stated reasonable period;
  - (e) that it is an offence to fail to comply with the notice unless the person has a reasonable excuse;
  - (f) that, within 20 business days after the notice is given, the person may appeal against the decision to give the notice;
  - (g) how the person may apply for the appeal.
- (2) A water connection compliance notice may also state—
- (a) the reasonable steps that the distributor-retailer or water connection 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 water connection compliance notice requires the person to do an act involving the carrying out of work, it also must give details of the work involved.
- (4) If a water connection compliance notice requires the person 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.

### **53DNF Offence to contravene water connection compliance notice**

A person to whom a water connection compliance notice is given must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

[s 53DNG]

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### **53DNG Action distributor-retailer may take if water connection compliance notice contravened**

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

### **53DNH Recovery of costs of water connection compliance action**

- (1) If a distributor-retailer incurs expense because of the taking of a water connection compliance action, it may give the person a notice stating the amount of the expense incurred.
- (2) Any reasonable expenses incurred by the distributor-retailer in taking the water connection compliance action may be recovered by the distributor-retailer from the person 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.

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## 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;
    - (ii) a joint local government under LGA 2009 or CBA 2010 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;
  - (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



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

## **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

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- (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

*Note—*

Sections 79 and 83 were repealed by the *South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012*. Section 79 provided for the approval of a staff support framework.

- (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

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- 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.

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## Division 3                      Miscellaneous provision

### 61            Discharge of liabilities by transfer scheme

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

## Part 2                              Ministerial powers for transition

### 62            Transfer notice

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

*Example for paragraph (b)—*

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

- (2) A transfer notice may include conditions applying to something done under the notice.
- (3) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—
  - (a) signed by the Minister; and

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- (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

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- (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.

*Note—*

Section 79 provided for the approval of a staff support framework. That provision was repealed by the *South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012*.

- (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—1,000 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



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- (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
  - (iii) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this chapter, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

*Example—*

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

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

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

***relevant entity*** means—

- (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
  - (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—

***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
  - (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.

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- (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.

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- (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.
  - (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.

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

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

## **Subdivision 3      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;



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- (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*.

### **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—

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- (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.
- (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.

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### **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;
  - (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 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).

## **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 repealed SPA, chapter 8, part 1 or the repealed IPA, chapter 5, part 1;
- (b) a condition imposed by the local government under the repealed SPA, chapter 8, part 1 or section 848 or repealed IPA, chapter 5, part 1 or section 6.1.31;
- (c) any other decision, charge, condition, contribution or agreement made, levied or imposed by the local government under the repealed SPA 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

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- (ii) a charge for the provision of water services or wastewater services.
- (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 repealed SPA decided, made, levied or imposed before 1 July 2010;
  - (b) a development approval under the repealed SPA decided after 1 July 2010 if the relevant development application was made before 1 July 2010;
  - (c) a compliance permit under the repealed SPA 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 repealed SPA, 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.
- (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 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 Planning Act does not apply to the reconfiguring of the lot.
- (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—

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

*transferred land* means land transferred under a transition document.



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## Part 4                      **Workforce provisions— preservation of rights of employees**

### 81      **Application of pt 4**

This part 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
  - (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.



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- (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 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 landowner about entry to or use of the place.

## **87 Compensation to landowner for entry and use**

If the landowner incurs loss or damage because of the asset owner’s exercise of a power under section 86, the landowner 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 Landowner’s obligations for asset**

The landowner can not, without the asset owner’s written consent—

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

Maximum penalty—50 penalty units.

## **89 Registration of information about asset**

- (1) The asset owner may give a written request to the registrar to record the following information—
  - (a) that this part applies to the land to which the asset is attached;
  - (b) a description of the asset;
  - (c) the name of the asset owner.
- (2) On receiving the request, the registrar must make a record in a way that a search of a relevant register kept by the registrar under the Land Act or the Land Title Act will show the information.
- (3) On written request from the asset owner, the registrar must cancel the record.

## **Part 6 Provisions for easements**

### **90 Application of pt 6**

- (1) This part applies if—
  - (a) a participating local government for a distributor-retailer is the grantee under an easement; and

(b) the purpose for which the easement was created includes water supply or sewerage purposes.

(2) In this section—

*easement* includes a public utility easement under the Land Act or the Land Title Act.

## **91 Rights, liabilities and obligations under easement**

(1) To the extent the easement relates to the purposes, the distributor-retailer—

(a) may exercise the same rights as the local government; and

(b) is subject to the same liabilities and obligations as the local government.

(2) However, the rights may be exercised only for the 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

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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 3A Replacement of Allconnex by councils

### Part 1 Preliminary

#### 92AA Application of ch 3A

This chapter applies, and anything done under it takes effect, despite any other provision of this Act or another law, a transfer document, a participation agreement or a contract or other instrument.

#### 92AB What is *Allconnex*

*Allconnex* is the Southern SEQ Distributor-Retailer Authority.

#### 92AC What is a *withdrawn council*

A *withdrawn council* is—

- (a) the Gold Coast City Council; or
- (b) the Logan City Council; or
- (c) the Redland City Council.

*Note*—

The withdrawn councils are Allconnex's participating local governments.

## 92AD What is Allconnex's *successor*

- (1) Allconnex's *successor* is—
  - (a) for a provision about a customer—the withdrawn council in whose local government area the customer received, or wanted to receive, services from Allconnex of a type mentioned in the Water Supply Act, schedule 3, definition *customer*; or
  - (b) for a provision about an asset, liability or matter that, under a retransfer document or part 4, division 2, is transferred to a withdrawn council—that council; or
  - (c) for an infrastructure agreement that provides for water infrastructure for a withdrawn council's local government area—that council; or
  - (d) for a provision about a matter not provided for under paragraphs (a) to (c)—the geographically-connected withdrawn council.

*Example for paragraph (d)—*

Under this chapter, water infrastructure is transferred to a withdrawn council. That council is Allconnex's successor for a provision about a trade waste approval by it authorising discharge into the infrastructure.

- (2) If a matter is located in, or relates to, more than 1 withdrawn council's local government area, each of them is a *successor* of Allconnex.
- (3) If, under this chapter, the withdrawn councils are stated to be Allconnex's *proportional joint successor* for a matter, all of them are its joint successor, rateably in accordance with their participation rights under Allconnex's participation agreement immediately before the retransfer.
- (4) In this section—

*liability* does not include a matter that is, or may be, the subject of a dispute referral under the EWO Act or a liability under an order under that Act.

*matter* includes—

[s 92AE]

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- (a) an authority, application, document, proceeding and water infrastructure; and
- (b) a relevant action under section 77I(3), definition *relevant action*; and
- (c) an Allconnex infrastructure funding matter.

## **Part 2                      General provisions for retransfer to withdrawn councils on 1 July 2012**

### **Division 1                Preliminary**

#### **92AE Application of pt 2**

This part applies from the end of 30 June 2012.

### **Division 2                General service provider provisions**

#### **92AF Allconnex ceases to be service provider**

Allconnex ceases to be a service provider.

#### **92AG Withdrawn councils become service providers**

- (1) Each withdrawn council becomes a service provider for its local government area.
- (2) The Water Supply Act, section 20 does not apply to a withdrawn council.
- (3) A withdrawn council continues to be a service provider, subject to the Water Supply Act.
- (4) A withdrawn council must, as soon as practicable, give the regulator the information mentioned in the Water Supply Act, section 12 about the council as a service provider.



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## 92AH No notice to regulator required

The Water Supply Act, sections 24 and 25 do not apply for Allconnex's cessation as, or the withdrawn councils becoming, a service provider.

## 92AI Withdrawn council's initial service area

- (1) A withdrawn council's service area is that part of its local government area (the *new area*) that was in Allconnex's service area at the end of 30 June 2012.
- (2) This section—
  - (a) does not prevent the Water Supply Act, chapter 2, part 5, division 2 from applying to the new area; but
  - (b) is subject to section 92DB.

## 92AJ Creation of commercial business units for withdrawn councils

- (1) For LGA 2009, each withdrawn council is taken to have decided by resolution to do the following—
  - (a) commercialise a significant business for the services it provides as a water service provider (its *WSP business*);
  - (b) create a commercial business unit for its WSP business.
- (2) Until a withdrawn council decides otherwise, the name of its WSP business is the name of its commercial business unit for the services under the repealed *Local Government Act 1993* immediately before 1 July 2010.
- (3) If a withdrawn council's WSP business proposes to develop significant water infrastructure, the council must consult with any other withdrawn council or distributor-retailer whose local government area or geographic area adjoins the council's local government area.
- (4) To remove any doubt, it is declared that this section does not limit or otherwise affect a withdrawn council's capacity under

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LGA 2009 to create a corporate entity to acquire and conduct its WSP business.

### **92AK Migration of customers**

A person who, at the end of 30 June 2012, is a customer of Allconnex as a service provider becomes a customer of its successor, as a service provider on 1 July 2012.

### **92AL Migration of appointments and delegations**

- (1) This section applies to a person who, at the end of 30 June 2012, holds an appointment or delegation from Allconnex about a matter.
- (2) On 1 July 2012, the person is taken to hold the appointment or delegation from Allconnex's successor for the matter.
- (3) Subsection (2) does not affect the successor's power to end or change the appointment or delegation.

## **Division 3                      Transfer of Allconnex's trade waste and seepage water functions under Water Supply Act**

### **92AM Application of particular provisions of ch 2C**

- (1) The following provisions of chapter 2C, and any definitions relevant to them, apply for a withdrawn council, with the changes mentioned in subsection (2)—
  - section 53CL(c)
  - section 53CN
  - section 53DA
  - part 2, division 7
  - part 3.
- (2) The provisions apply—

- (a) as if a reference in them to a discharge officer were a reference to a local government worker, under LGA 2009, of the withdrawn council authorised by it to perform functions mentioned in section 53CL; and
- (b) as if a reference to a distributor-retailer included a reference to the withdrawn council; and
- (c) with other necessary changes.

### **92AN Other functions not affected**

To remove any doubt, it is declared that this division does not limit or otherwise affect the withdrawn council's or the local government worker's functions under LGA 2009.

## **Division 4 Allconnex's status, functions and board**

### **92AO Legal status unaffected until dissolution**

To remove any doubt, it is declared that, until Allconnex is dissolved, nothing in this chapter—

- (a) affects its establishment and legal status under sections 8 and 9; or
- (b) makes the State liable for any of its liabilities.

### **92AP Residual functions**

Allconnex can not perform functions other than those that are required, necessary or convenient—

- (a) for this chapter or a law applying to it until its dissolution; or
- (b) because it has been a service provider or it continues to be a distributor-retailer.

## **92AQ Board**

- (1) The old board provisions apply for Allconnex's board.
- (2) However, the associated employee restrictions do not apply.
- (3) In this section—

*associated employee restrictions* means sections 33(4) and (5) and 35(3) under the old board provisions.

*old board provisions* means chapter 2, part 4, and the definition *associated employee* in the schedule, as in force before this section commences.

## **Part 3                      Retransfer provisions**

### **Division 1                Retransfer scheme**

#### **Subdivision 1         General provisions**

#### **92AR Requirement to make scheme**

- (1) Before 30 April 2012 Allconnex and all of the withdrawn councils (the *parties*) must enter into an agreement (the *retransfer scheme*) that—
  - (a) subject to this chapter—
    - (i) transfers at the end of 30 June 2012 all of Allconnex's assets, employees (other than its chief executive officer), instruments and liabilities to the withdrawn councils; and
    - (ii) does everything else of an incidental, consequential or supplemental nature the parties consider necessary for the following—
      - (A) the transfers mentioned in subparagraph (i);

- 
- (B) financial, staffing and other arrangements for Allconnex to perform its functions pending its dissolution;
  - (C) Allconnex's dissolution; and
- (b) complies with this division.
- (2) The matters mentioned in subsection (1) are the *retransfer*.
  - (3) The retransfer must, as nearly as practicable, retransfer to each withdrawn council the assets, employees, instruments and liabilities that the council transferred to Allconnex under chapter 3.
  - (4) However, subsection (3) does not apply if the parties unanimously otherwise agree.

### **92AS Restriction on scheme taking effect**

The retransfer scheme has no effect until the Minister publishes a gazette notice about it under section 92BA(2).

## **Subdivision 2 Contents**

### **92AT Requirement to deal with proceedings and claims**

- (1) A retransfer scheme must provide for all of the following—
  - (a) the withdrawn council that is to be Allconnex's replacement for—
    - (i) a proceeding by or against Allconnex; or
    - (ii) a cause of action for a proceeding that could have been started by Allconnex at the end of 30 June 2012 but has not been started;
  - (b) how the withdrawn councils are to receive, process and decide claims for contingent and other liabilities that, other than for this chapter or Allconnex's dissolution, could have been made against Allconnex;

[s 92AU]

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- (c) all of the liabilities to be assumed by 1 or more of the withdrawn councils.
- (2) However, if, under a transition document, Allconnex became a party to a proceeding instead of a withdrawn council, the retransfer scheme must provide that the council is the replacement for the proceeding.
- (3) Also, if Allconnex is, or may be, a party to a proceeding in the Planning and Environment Court or the Land Court about land, the retransfer scheme must provide that the replacement for the proceeding is the geographically-connected withdrawn council.
- (4) In this section—  
*liability* does not include a matter that is, or may be, the subject of a dispute referral under the EWO Act or a liability under an order under that Act.  
*proceeding* includes a proceeding that has ended.

## **92AU Accounting for assets and liabilities**

- (1) The retransfer scheme must do the following—
  - (a) include a process to account for the following—
    - (i) Allconnex's unrealised assets and liabilities;
    - (ii) Allconnex's liabilities to the withdrawn councils;
    - (iii) the withdrawn councils' liabilities to Allconnex;
  - (b) transfer Allconnex's assets in a way that includes the process and the operation of this chapter, including, for example, section 92BH;
  - (c) provide for all of Allconnex's unrealised assets to be transferred to 1 or more of the withdrawn councils.

*Note—*

See also part 4, division 2 (Default provisions).

- (2) In this section—  
*unrealised* includes—

- 
- (a) for an asset—the right to the benefit of, or to a benefit under, any of the following—
    - (i) a matter mentioned in section 77H;
    - (ii) a relevant action under section 77I(3), definition *relevant action*;
    - (iii) an Allconnex infrastructure funding matter;
    - (iv) service charges under section 92BH; and
  - (b) for a liability—a liability that Allconnex may have that has not been, or the amount of which has not been, ascertained, or that is contingent.

*Example of a contingent liability—*

a liability the existence or amount of which depends on the outcome of a proceeding

## **92AV Requirement to retransfer particular land to same withdrawn council**

- (1) This section applies if—
  - (a) a withdrawn council owned land or was the trustee of trust land to which an asset is attached; and
  - (b) under a transfer scheme or transfer notice—
    - (i) the land or asset was transferred to Allconnex; or
    - (ii) the withdrawn council was removed as trustee for the trust land and Allconnex was appointed as trustee; and
  - (c) after the transfer or change in the trusteeship, one of them owns the asset and another owns or is trustee of the land to which it is attached.
- (2) The retransfer scheme must provide that the effect of the matters mentioned in subsection (1) is to be reversed and that the withdrawn council will become—
  - (a) the owner of the asset; and
  - (b) the owner or trustee of the land.

### **92AW Required transferee for after-acquired land**

(1) The retransfer scheme must provide that all after-acquired land of Allconnex is to be transferred to the geographically-connected withdrawn council.

(2) In this section—

*after-acquired land*, of Allconnex, means any land of which Allconnex is the owner, other than land that was transferred to Allconnex under chapter 3.

### **92AX Particular matters scheme may provide for**

(1) The retransfer scheme may provide for all or any of the following—

(a) the following for trust land for which Allconnex is a trustee—

- (i) its removal as the trustee;
- (ii) the appointment of a withdrawn council as the trustee;

(b) for a matter other than for which this chapter provides—

- (i) that a withdrawn council is Allconnex's successor in law for the matter; and
- (ii) if there is more than 1 successor—how the successors share the matter as Allconnex's successors;

(c) the application or transfer of an instrument to a withdrawn council, including, for example, any of the following—

- (i) whether a withdrawn council holds, or is a party to, an instrument;
- (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 withdrawn council;
- (iii) whether a reference to an entity in an instrument is to be a reference to a withdrawn council;



- 
- (iv) whether, under an instrument, an amount is or may become payable to or by a withdrawn council or other property is, or may be, transferred to a withdrawn council;
  - (v) whether a right or entitlement under an instrument is held by a withdrawn council;
  - (d) the transfer to a withdrawn council of an employee of Allconnex and the employee's work entitlements and conditions of employment;
  - (e) varying or terminating an instrument to which Allconnex and a withdrawn council are the parties;
  - (f) terminating the participation agreement between Allconnex and the withdrawn councils;
  - (g) extinguishing the withdrawn councils' participation rights in Allconnex;
  - (h) the consideration for, or the value of the following—
    - (i) an asset or liability transferred under the retransfer;
    - (ii) participation rights extinguished;
  - (i) subject to part 8, matters about Allconnex's employees transferred under paragraph (d) and their rights;
  - (j) Allconnex's or the withdrawn councils' records, including, for example, about complying with the *Public Records Act 2002* for Allconnex's records and access to them.
- (2) This section—
- (a) does not limit section 92AR; but
  - (b) is subject to the other provisions of this chapter.
- (3) In this section—
- authority** 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.

### **Subdivision 3      Certification statement**

#### **92AY Requirement to give statement to Minister**

- (1) This section applies to the parties to the retransfer when they enter into the retransfer scheme.
- (2) The parties must give the Minister a statement (the *certification statement*) certifying all of the assets, liabilities and instruments that the withdrawn councils are to receive under the scheme.
- (3) The statement must also comply with section 92AZ.

#### **92AZ Content requirements**

- (1) The certification statement must state all of the following for the retransfer scheme—
  - (a) that the parties to the retransfer (the *retransfer parties*) have identified—
    - (i) all of Allconnex's assets, liabilities and instruments; and
    - (ii) whether anything proposed to be done under the scheme would materially prejudice the interests of a third party;
  - (b) that all of the following apply for the scheme—
    - (i) the scheme transfers all of Allconnex's assets, liabilities and instruments;
    - (ii) the scheme identifies any assets that are to be jointly used or accessed by the withdrawn councils;

- 
- (iii) agreements have been made between the withdrawn councils to ensure the joint use or access;
  - (iv) either—
    - (A) the scheme does not, to the knowledge of all the retransfer parties, materially prejudice the interests of any third party; or
    - (B) if the scheme materially prejudices the interests of any third party, the consent of all third parties so prejudiced has been obtained;
  - (v) the scheme does not transfer an employee inconsistently with the retransfer staff support framework;

*Note—*

Section 92EC provided for the approval of the retransfer staff support framework. That provision was repealed by the *South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012*.

- (vi) the scheme otherwise complies with this Act;
- (c) that the retransfer parties have consulted with the State Archivist about the way in which records are to be dealt with under the scheme;
- (d) that the retransfer parties have given public notice to third parties about how they may obtain information (other than private or confidential information concerning others) about the scheme;
- (e) that the retransfer parties have, since the giving of the public notice, made information mentioned in paragraph (d) available to third parties who have asked for it;
- (f) that the statement is, after making all due enquiries, correct to the knowledge, information and belief of each individual signing it.

[s 92BA]

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- (2) For subsection (1)(b)(iv)(A), the fact of a transfer to a withdrawn council, is not, of itself, a material prejudice to a third party.
- (3) The consultation with the State Archivist may be carried out by the withdrawn councils jointly.
- (4) The certification statement must not contain private or confidential information concerning others.
- (5) In this section—  
*public notice* means a notice published in a newspaper circulating in all of the SEQ region.

### **92BA Ministerial notice of retransfer**

- (1) This section applies only if the Minister is of the opinion that the certification statement given complies with section 92AZ.
- (2) As soon as practicable after receiving the statement, the Minister must publish a gazette notice stating the following information about the retransfer scheme and the statement—
  - (a) that the scheme has been made;
  - (b) that the statement has been given;
  - (c) where copies of the statement can be obtained;
  - (d) that the scheme has effect from the day the notice is published, but that, under section 92AR, the retransfer will not take place until the end of 30 June 2012;
  - (e) where information about transfers under the scheme may be obtained.
- (3) However, the notice must not state where the information may be obtained if the Minister considers that there is a need to protect confidentiality or privacy relating to the information.
- (4) The withdrawn councils must, as soon as practicable after the gazettal, publish on each of their websites the information stated in the gazette notice and keep it so published for at least 1 year.

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## Subdivision 4      Miscellaneous provision

### 92BB Discharge of liabilities

- (1) When the retransfer scheme takes effect, all of the following that exist at that time are discharged—
  - (a) all of Allconnex’s liabilities to a withdrawn council;
  - (b) all liabilities from a withdrawn council to Allconnex other than Gold Coast City Council’s liability to Allconnex under section 92BY.
- (2) To remove any doubt, it is declared that subsection (1) does not limit or otherwise affect what may or must be provided for under the retransfer scheme.

*Note—*

See also division 3 (Miscellaneous provisions for retransfer documents).

## Division 2              Ministerial functions for retransfer

### 92BC Retransfer notice

- (1) This section applies if the Minister is of the opinion that—
  - (a) a requirement under division 1 has not been complied with; or
  - (b) something done under the retransfer scheme ought to have been done differently; or
  - (c) something ought not to have been done under the retransfer scheme.
- (2) The Minister may, by gazette notice published on or before 30 June 2013 (a *retransfer notice*), do all or any of the following—
  - (a) everything or anything to ensure the retransfer happens;
  - (b) anything that may be done by any of the parties to the retransfer scheme under the retransfer scheme;

[s 92BD]

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- (c) rectify or undo anything the Minister considers the retransfer scheme ought not to have done or ought to have done differently.
- (3) A retransfer notice may include conditions applying to something done under the notice.
- (4) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a retransfer notice (for example, because of its size or nature), the Minister may provide for it by including a reference in the retransfer notice to another document—
  - (a) signed by the Minister; and
  - (b) kept available for inspection at a place stated in the retransfer notice by the persons to whom the matter relates.
- (5) A retransfer notice has effect on the day it is published in the gazette or a later stated day.

## **92BD Retransfer direction**

- (1) The Minister may, on or before 30 June 2013, give a direction (a *retransfer direction*) to any of the following (a *relevant entity*) to do anything the Minister considers necessary or desirable to achieve the retransfer—
  - (a) Allconnex;
  - (b) any of the withdrawn councils.
- (2) Without limiting subsection (1), a retransfer direction may be about both or either of the following—
  - (a) executing an instrument;
  - (b) disclosing information.
- (3) A retransfer direction must be in writing and signed by the Minister.
- (4) If a relevant entity is given a retransfer direction—
  - (a) the entity must comply with the direction; and

- (b) if the entity is Allconnex—its board must take the action necessary to ensure Allconnex complies with the direction.

Maximum penalty for subsection (4)—1,000 penalty units.

## **Division 3                      Miscellaneous provisions for retransfer documents**

### **92BE Discharge of liabilities**

The transfer of a liability under a retransfer document discharges the person from whom it is transferred from the liability to the extent provided for under the document.

### **92BF Effect of retransfer document**

- (1) A retransfer document has effect despite any other law or a contract or other instrument.

*Example—*

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

- (2) However, a retransfer scheme takes effect subject to any retransfer notice or retransfer direction.

## **Part 4                              General provisions facilitating retransfer**

### **Division 1                      Preliminary**

#### **92BG Application of pt 4**

This part, other than divisions 4 and 5, applies from the end of 30 June 2012.

## Division 2                    Default provisions

### Subdivision 1            General provisions

#### 92BH Allconnex's service charges

- (1) This section applies if no retransfer document provides for who is Allconnex's successor in law for a service charge of Allconnex.
- (2) The withdrawn councils are Allconnex's proportional joint successor for the charge.
- (3) However—
  - (a) the charge is payable only to the geographically-connected withdrawn council; and
  - (b) only the geographically-connected withdrawn council may bill for an uncollected service charge or collect that charge.
- (4) For subsection (3), a customer of the withdrawn council may be billed by the council in its name, as if—
  - (a) the council were Allconnex; and
  - (b) this chapter had not been enacted and, if Allconnex has been dissolved, Allconnex were still in existence.
- (5) In this section—

*billed* includes imposed and levied.

*service charge* means an account, fee or charge (including any fixed access charge)—

- (a) relating to performing Allconnex's functions as a service provider for any of Allconnex's customers; and
- (b) that has, or could have, been billed by Allconnex.

*uncollected service charge* means a service charge—

- (a) not billed before the end of 30 June 2012; and



- (b) that, other than for this chapter or Allconnex's dissolution, could have been billed by Allconnex on or after that day.

### **92BI Allconnex's other assets and liabilities**

- (1) This section provides for who is the successor in law for the following if no retransfer document provides for that succession—
- (a) an asset of Allconnex, other than a service charge under section 92BH;
  - (b) Allconnex's liabilities.
- (2) If, under a transition document, the asset or liability was transferred from a withdrawn council to Allconnex, that council is the successor.
- (3) Otherwise, the withdrawn councils are Allconnex's proportional joint successor for the asset or liability.
- (4) Despite subsections (2) and (3), the Minister may, by a retransfer notice or retransfer direction, change the successor under the subsections.

### **92BJ Allconnex's replacement for proceedings**

- (1) This section applies if no retransfer document provides for who is to be Allconnex's replacement for a proceeding, including a proceeding that has ended.
- (2) If, under a transition document, Allconnex became a party to the proceeding instead of a withdrawn council, that council is the replacement.
- (3) If the proceeding is in the Planning and Environment Court or the Land Court and the proceeding is about land, the replacement is the geographically-connected withdrawn council.
- (4) Otherwise, the withdrawn councils are Allconnex's proportional joint successor for the proceeding.

[s 92BK]

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- (5) The replacement may continue the proceeding instead of Allconnex.

## **92BK Proceedings not started**

- (1) This section provides for who is Allconnex's replacement for a cause of action for which no proceeding has been started if no retransfer document provides for who is to be the replacement.
- (2) If the proceeding could have been started in the Planning and Environment Court or the Land Court and the proceeding is about land, the replacement is the geographically-connected withdrawn council.
- (3) Otherwise, the withdrawn councils are Allconnex's proportional joint successor for the cause of action.
- (4) The replacement may start the proceeding instead of Allconnex.

## **Subdivision 2 Provisions for infrastructure agreements and actions under Acts about planning**

### **92BL Application of sdiv 2**

- (1) This subdivision applies if—
  - (a) Allconnex is a party to an infrastructure agreement; and
  - (b) either of the following apply—
    - (i) a retransfer document transfers water infrastructure subject to the infrastructure agreement to a withdrawn council;
    - (ii) the infrastructure agreement provides for water infrastructure for a withdrawn council's local government area.

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- (2) This subdivision also applies for an Allconnex infrastructure funding matter or if—
    - (a) Allconnex has, under section 77B or 77J, assumed, or is taken to have the benefit of, a right or liability—
      - (i) to which the section applies; and
      - (ii) that relates to the infrastructure agreement; or
    - (b) it has been agreed under section 77E or 77K that Allconnex has a share of—
      - (i) a matter mentioned in section 77E(1); or
      - (ii) a liability to which section 77K applies.
  - (3) A matter mentioned in subsection (2) is an *Allconnex planning matter*.
  - (4) This subdivision applies subject to any retransfer document relating to Allconnex.

### **92BM Novation if only 1 successor**

- (1) This section applies if there is only 1 successor.
- (2) The successor—
  - (a) becomes a party to the agreement instead of Allconnex; and
  - (b) assumes all of Allconnex's rights and liabilities—
    - (i) under the agreement; or
    - (ii) that relate to an Allconnex planning matter.
- (3) The agreement may be enforced by the successor as if it were Allconnex.
- (4) A right or liability assumed under subsection (2)—
  - (a) may be discharged only by the discharging of it to the successor; and
  - (b) may be enforced only by the successor.

### **92BN Negotiation required if more than 1 successor**

- (1) This section applies if there is more than 1 successor.
- (2) The successors must negotiate in good faith to reach an agreement about the extent to which each of them are to share all of Allconnex's following rights and liabilities—
  - (a) those under the agreement;
  - (b) those relating to all Allconnex planning matters;
  - (c) for any costs incurred because of enforcement mentioned in section 77C;
  - (d) for any costs, damage, liability or loss incurred because of section 77D(2).
- (3) The agreement may provide for how the shares of the rights and liabilities may be discharged or enforced.
- (4) If, after the negotiation, the councils are still in dispute about a matter mentioned in subsection (1), any of the councils may refer the dispute to the Minister.
- (5) The Minister may resolve the dispute using any process the Minister considers appropriate that affords natural justice to the councils.

*Example of a process—*

an arbitration process applying sections 92CF to 92CK

- (6) The Minister may delegate the Minister's functions under subsection (5) to an appropriately qualified public service officer.

### **92BO Effect of negotiated agreement or Minister's decision**

- (1) This section applies for an agreement between successors or a decision under section 92BN about a right or liability required to be negotiated under that section.
- (2) The agreement or decision binds—
  - (a) the successors; and
  - (b) anyone else—

- (i) against whom the right is exercisable; or
  - (ii) to whom the liability is owed.
- (3) However, subsection (2)(b) only applies to the other person from when the person is given notice of the agreement or decision.

### **92BP Discharge of Allconnex**

Allconnex ceases to be bound by the agreement and is discharged from any further liability under it or for an Allconnex planning matter.

### **92BQ Other necessary changes to be made for transition**

- (1) This section applies subject to the other provisions of this division.
- (2) References in the agreement to Allconnex are taken to be changed to reflect any necessary changes for the retransfer.

### **92BR Provision for things done before retransfer**

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

- (a) a matter mentioned in section 77H;
- (b) the enforcement of a right or the discharge of a liability mentioned in sections 77A to 77D.

## **Division 3 Information provisions**

### **92BS Authorised exchange of information**

- (1) A party to the retransfer may exchange information with another party if the exchange is necessary or desirable for any withdrawn council's service provider functions.

[s 92BT]

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*Example—*

Allconnex may give its successor for one of its customers personal information about the customer, including, for example, that the customer is a pensioner and therefore eligible for rebates and subsidies.

- (2) No consent of a customer or anyone else is required for the giving of the information or for a withdrawn council to whom it is given to collect, use or store the information.

### **92BT Disclosure and use of information for retransfer**

- (1) Subsections (2) and (3) apply for information in the possession or control of a party to the retransfer.
- (2) The party may use the information for any of the following (a *relevant purpose*)—
  - (a) the retransfer;
  - (b) the performance of all or any withdrawn council's service provider functions.
- (3) The party may disclose the information to any of the following for a relevant purpose—
  - (a) a person involved in the retransfer;
  - (b) a withdrawn council or any of its councillors, employees or agents.
- (4) Allconnex or the withdrawn councils must comply with a request by the Minister to disclose information mentioned in subsections (1) to (3) to someone else.
- (5) To remove any doubt, it is declared that a person may disclose or use information to comply with a retransfer document.
- (6) 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.

### **92BU Provision for continued access to Allconnex's records**

- (1) This section applies to Allconnex's infrastructure charges register and approved inspection program.

- (2) Chapter 5, part 1 applies to Allconnex's successor as if the register and program were its records of the same type under that part.

## **92BV Relationship with Information Privacy Act 2009 and Right to Information Act 2009**

This division applies despite the *Information Privacy Act 2009* and the *Right to Information Act 2009*.

## **Division 4 Withdrawal costs**

### **Subdivision 1 Preliminary**

#### **92BW What are *withdrawal costs***

- (1) ***Withdrawal costs***, for Allconnex or a withdrawn council, are costs it has incurred, or will incur, because of any of the following—
- (a) it becoming, or ceasing to be, a service provider;
  - (b) a withdrawn council's commercialisation of a significant business or creation of a commercial business unit under section 92AJ;
  - (c) the retransfer scheme;
  - (d) the retransfer;
  - (e) complying with any retransfer document;
  - (f) Allconnex's dissolution;
  - (g) any matter consequential or incidental to a matter mentioned in paragraphs (a) to (f);
  - (h) any other matter relating to the matters mentioned in paragraphs (a) to (g) prescribed under a regulation.
- (2) However, withdrawal costs do not include costs—
- (a) for anticipated or actual revenue or profits; or

[s 92BX]

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- (b) for a failure to realise anticipated savings; or
  - (c) that a withdrawn council incurred from the beginning of 1 July 2012 in relation to the retransfer staff support framework; or
  - (d) that a withdrawn council (or any of its predecessors) would ordinarily incur as a service provider or local government had this Act never been enacted; or
  - (e) of a type prescribed under a regulation.
- (3) In this section—
- costs* includes—
- (a) loss or damage; and
  - (b) costs that Allconnex or a withdrawn council has incurred or will incur for services they provide for themselves.

## **Subdivision 2 Entitlements**

### **92BX Gold Coast City Council bears its own withdrawal costs**

Gold Coast City Council must bear its own withdrawal costs and any costs mentioned in section 92BW(2).

### **92BY Allconnex's withdrawal costs**

- (1) Subject to sections 92CB and 92CC, the Gold Coast City Council must pay Allconnex's withdrawal costs.
- (2) For this chapter or any retransfer document, the entitlement under subsection (1) is an asset of Allconnex.
- (3) The payment must be made to—
  - (a) until the retransfer scheme takes effect—Allconnex; or
  - (b) otherwise—Allconnex's successor to the asset under any retransfer document or section 92BI.



### **92BZ Other withdrawn councils**

Subject to sections 92CB and 92CC, the Gold Coast City Council must pay the other withdrawn councils' withdrawal costs.

### **92CA Claiming withdrawal costs**

An amount may be claimed for all or a part of a liability under this subdivision or for a period to which it relates.

*Example—*

Another withdrawn council may bill Gold Coast City Council monthly for consultancy fees for creating a billing system to comply with this Act as a service provider.

### **92CB Duty to mitigate**

Allconnex or a withdrawn council must take all reasonable steps to mitigate the amount of the Gold Coast City Council's liability to them under this subdivision.

### **92CC Limitation period**

A liability of the Gold Coast City Council under this subdivision ends on 30 June 2013, unless—

- (a) the council and the entity to whom it is owed have entered into a written contract under which any unpaid amount for the liability is agreed to be paid by the Gold Coast City Council to the entity as a debt; or
- (b) either the council or the entity has given the other a notice of its intention to refer a dispute about the amount of a liability to an arbitrator under subdivision 3.

### **92CD Exclusions**

- (1) The *Commercial Arbitration Act 2013* does not apply to a dispute mentioned in subsection 92CC(b).

[s 92CE]

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- (2) Neither the fact of a liability under this subdivision nor its amount is justiciable by a court or tribunal.
- (3) Subsection (2) does not apply to a proceeding to enforce a contract mentioned in section 92CC(a).

## **Subdivision 3      Arbitration**

### **92CE    Application of sdiv 3**

- (1) This subdivision applies if there is a dispute between the Gold Coast City Council and another withdrawn council (the *claimant*) about the amount of—
  - (a) a liability of the Gold Coast City Council to the claimant or for Allconnex's costs under subdivision 2; or
  - (b) a part of the liability or a period to which it relates.
- (2) This subdivision continues to apply after Allconnex's dissolution.
- (3) The Gold Coast City Council and the claimant are each a *party* to the dispute.

### **92CF    Referral to arbitrator**

- (1) Either party to the dispute may, by notice, refer the dispute to an arbitrator—
  - (a) agreed between the parties to the dispute; or
  - (b) if the parties can not agree—appointed for them by The Institute of Arbitrators & Mediators Australia Limited ACN 008 520 045.
- (2) A person can not be appointed under subsection (1)(b) if—
  - (a) the person has a direct or indirect interest in the dispute; and
  - (b) the interest could conflict with the appropriate performance of an arbitrator's functions concerning the dispute.

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### **92CG Conduct of arbitration**

- (1) A regulation may provide for how the arbitration must be conducted.
- (2) Subject to the regulation, the arbitrator—
  - (a) may conduct the arbitration in the way the arbitrator considers appropriate; and
  - (b) is not bound by the rules of evidence and may inform himself or herself in the way he or she considers appropriate.
- (3) Evidence about the dispute may be given to the arbitrator in the way the arbitrator considers appropriate.
- (4) The arbitrator and the parties to the arbitration must, in conducting the arbitration, make all reasonable endeavours to ensure the arbitration ends before 1 December 2013.

### **92CH Ordinary protection and immunity allowed**

- (1) The arbitrator has, in arbitrating the dispute, the same protection and immunity as a Supreme Court judge performing the functions of a judge.
- (2) A party and any lawyer or other agent representing the party has the same protection and immunity the party would have if the arbitration were a proceeding being heard before the Supreme Court.
- (3) A document produced at, or used for, the arbitration has the same protection during the arbitration it would have if produced before the Supreme Court.

### **92CI Orders**

- (1) The arbitrator must make an order fixing the amount of the liability.
- (2) The arbitrator may—
  - (a) make any other incidental or consequential orders the arbitrator considers appropriate; or

[s 92CJ]

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- (b) make an order, or decline to make an order, for costs of the arbitration.

### **92CJ Order final**

- (1) An order made by the arbitrator binds each party.
- (2) A party can not apply for review of, or appeal against, the order.

### **92CK How order enforced**

- (1) A party may enforce an order made by the arbitrator by filing it in the Supreme Court.
- (2) On the filing, the order is taken to be a judgment of that court.

## **Division 5 Other provisions**

### **92CL Application of Judicial Review Act 1991 to particular decisions**

- (1) The *Judicial Review Act 1991*, parts 3, 4 and 5, other than section 41(1), do not apply to a decision made, or purportedly made, by the Minister to—
  - (a) give a retransfer notice or retransfer direction; or
  - (b) approve the retransfer staff support framework.

*Note—*

Section 92EC provided for the approval of the retransfer staff support framework. That provision was repealed by the *South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012*.

- (2) In this section—  
**decision** includes a decision or conduct leading up to or forming part of the process of making a decision.

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## 92CM Effect on legal relationships

- (1) Nothing done under this chapter, including a thing done under, or in compliance with, a retransfer document—
  - (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract, confidence or duty; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) is taken to fulfil a condition that—
    - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
    - (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iii) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this chapter, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (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) For subsection (1), (2) or (3), a thing done under this chapter, or doing something under this chapter, extends to the doing of all acts preparatory to or otherwise for the purposes of doing the thing, including, for example, all things done in preparation for any of the following matters—

[s 92CN]

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- (a) Allconnex ceasing to be a service provider;
  - (b) a withdrawn council becoming a service provider for its local government area;
  - (c) the retransfer;
  - (d) Allconnex's dissolution;
  - (e) anything consequential or incidental to a matter mentioned in paragraph (a) to (d).
- (5) In this section—
- relevant entity* means all or any of the following—
- (a) the State or an employee or agent of the State;
  - (b) a withdrawn council or any of its councillors, employees or agents;
  - (c) Allconnex, a member of its board or an employee or agent of Allconnex.

## **92CN References to Allconnex**

In an Act or document, a reference to Allconnex about a matter may, if the context permits, be taken to be a reference to its successor for the matter.

## **92CO Registering authority to register or record transfer**

- (1) A registering authority must, on application by a withdrawn council, register or record in the appropriate way a transfer, under this chapter, of a particular asset, liability or instrument to the council.
- (2) The application must—
  - (a) for land—be a request to the registering authority in the appropriate form; or
  - (b) otherwise—be written and give all the information that under any relevant law would be required to register the transfer.

- (3) Subject to subsection (2), if the transfer is of a motor vehicle, the parties to the transfer are exempt from complying with any procedure under the following that, apart from this section, they would have been required to comply with to register the transfer—
- (a) the *Petroleum and Gas (Production and Safety) Act 2004*;
  - (b) the *Transport Operations (Road Use Management) Act 1995*.

- (4) In this section—

*parties* means Allconnex and the withdrawn council.

*procedure* includes the giving of a certificate or other document.

*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.

### **92CP Non-liability for State taxes, charges or fees**

- (1) Allconnex and the withdrawn councils are not liable to pay any of the following relating to anything done under a retransfer 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.

### **92CQ Tax equivalents**

Section 100(3) ceases to apply to Allconnex for any function performed by it after the end of 30 June 2012, but continues to apply for all functions it performs before that time.

## **92CR Existing trade waste compliance notices**

- (1) A discharge compliance notice given by Allconnex is taken to have been given by its successor for the matter the subject of the notice when it was given by Allconnex.
- (2) Section 53DL applies as if the successor were a distributor-retailer.

## **Part 5 Provisions for other laws and instruments**

### **Division 1 Preliminary**

#### **92CS Application of pt 5**

This part applies from the end of 30 June 2012.

### **Division 2 Water Act**

#### **92CU New grid contract documents for withdrawn councils**

- (1) This section applies if Allconnex is a party to a grid contract document under the Water Act (the *old contract*).
- (2) On 1 July 2012, each withdrawn council is taken to have become a party to a grid contract document under the Water Act (a *new contract*) instead of Allconnex.
- (3) The provisions of each new contract are those of the old contract other than for changes necessary to reflect—
  - (a) the withdrawn council being a party; and
  - (b) the contract applying only for the withdrawn council's local government area.
- (4) To remove any doubt, it is declared that this section does not alter or affect the power, under the Water Act,



section 360ZDD, of the Minister administering that Act to amend the new contract.

### **92CUA Water efficiency management plans**

- (1) A notice under the WEMP provisions from Allconnex to a relevant customer is taken to have been given by Allconnex's successor when Allconnex gave the notice.
- (2) A WEMP given to Allconnex and not approved by it is taken to have been given to its successor on 1 July 2012.
- (3) An approved WEMP for Allconnex's geographic area is taken to have been approved by its successor when it was approved.
- (4) An application under the WEMP provisions to Allconnex that has not been decided is taken to have been made to Allconnex's successor on 1 July 2012.
- (5) A liability or obligation under the WEMP provisions from a relevant customer to Allconnex is taken to be a liability or obligation to its successor when the liability or obligation first became owing to Allconnex.
- (6) In this section—

**WEMP** means a water efficiency management plan under the WEMP provisions.

**WEMP provisions** means the Water Act, chapter 2A, part 5, division 3.

### **92CUB Migration of other actions**

- (1) This section applies for an action taken by Allconnex under the Water Act about its geographic area functions to which section 92CUA does not apply.
- (2) The action is taken to have been taken by Allconnex's successor when it was taken by Allconnex.
- (3) However, subsection (2)—

[s 92CV]

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- (a) is subject to the other provisions of this chapter and all retransfer documents; and
  - (b) does not affect the successor's power under the *Acts Interpretation Act 1954*, section 24AA to amend or repeal a decision.
- (4) In this section—  
*action* includes the making or giving of a decision, notice or other document.

## **Division 3            Water Supply Act**

### **Subdivision 1        Existing trade waste and seepage approvals**

#### **92CV Existing trade waste and seepage water approvals**

- (1) All trade waste approvals and seepage water approvals (each an *existing approval*) given by Allconnex are taken to have been given by its successor for the water infrastructure the subject of the approval.
- (2) Subsection (3) applies if—
  - (a) Allconnex is required under the Water Supply Act, section 185 to give an approval holder a notice amending the holder's approval; and
  - (b) it has not given that notice.
- (3) Allconnex's successor for the approval must give the notice as soon as practicable after it becomes aware of the requirement.

#### **92CW Power to amend existing trade waste approvals for particular purposes**

- (1) This section applies for a trade waste approval or seepage water approval (each an *existing approval*) that, under

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section 92CV(1), is taken to have been given by a withdrawn council.

- (2) Subject to subsections (3) and (4), the withdrawn council may amend the existing approval to ensure the consistency of all existing approvals of the same type given for its local government area.
- (3) An amendment under subsection (2) can not be made after 1 July 2013.
- (4) Section 53AH applies to the amendment—
  - (a) as if the withdrawn council were a distributor-retailer; and
  - (b) as if the amendment were a consistency amendment; and
  - (c) with other necessary changes.
- (5) The withdrawn council may, by notice, also amend an existing approval to make any change necessary to reflect that the approval is being given by it instead of Allconnex.

## **Subdivision 2      Other matters**

### **92CX Migration of applications**

- (1) An application made to Allconnex concerning its geographic area functions that has not been decided is taken to have been made to its successor for the application on 1 July 2012.
- (2) In this section—

*application* includes—

  - (a) a request under the Water Supply Act, section 167 to connect to Allconnex’s infrastructure; and
  - (b) an application for a trade waste approval or seepage water approval.

### **92CY Migration of Allconnex's actions**

- (1) This section applies for an action taken by Allconnex under the Water Supply Act about its geographic area functions.
- (2) The action is taken to have been taken by Allconnex's successor when it was taken by Allconnex.
- (3) However, subsection (2)—
  - (a) is subject to the other provisions of this chapter and all retransfer documents; and
  - (b) does not affect the successor's power under the *Acts Interpretation Act 1954*, section 24AA to amend or repeal a decision.
- (4) Subsection (2) ceases to apply for a document on—
  - (a) 1 July 2013; or
  - (b) if, before 1 July 2013, a later day is prescribed under a regulation—the later day.
- (5) In this section—

**action** includes the making or giving of a decision, notice or other document.

### **92CZ Compliance and other notices**

- (1) This section applies for any of the following notices under the Water Supply Act given to Allconnex that have not been complied with—
  - (a) a compliance notice;
  - (b) an information notice;
  - (c) a regulator notice.
- (2) The notice is taken to have been given to Allconnex's successor for the matter the subject of the notice on 1 July 2012.

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### **92DA Plans under the Water Supply Act—generally**

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

### **92DB Provision about service areas—after water netserv plan is in effect**

- (1) This section applies to a withdrawn council from the day the withdrawn council has a water netserv plan.
- (2) The Water Supply Act, chapter 2, part 5, division 2 does not apply to the withdrawn council.
- (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 withdrawn council, a reference to its connection area.

### **92DC Strategic asset management plan**

- (1) This section applies for the Water Supply Act, chapter 2, part 4, division 1 in relation to a withdrawn council, until the council has a water netserv plan.
- (2) The existing strategic asset management plan for Allconnex's registered services becomes a withdrawn council's approved strategic asset management plan for its local government area.
- (3) The Water Supply Act, sections 73 and 74 do not apply to a withdrawn council.

[s 92DD]

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### **92DD Recycled water management plan**

- (1) This section applies for the Water Supply Act, chapter 3, part 2.
- (2) Allconnex's recycled water management plan for Allconnex's recycled water schemes becomes a withdrawn council's approved recycled water management plan for the council's recycled water schemes.

### **92DE System leakage management plans**

- (1) This section applies for the Water Supply Act, chapter 2, part 4, division 2 in relation to a withdrawn council until the council has a water netserv plan.
- (2) Allconnex's approved system leakage management plan becomes the withdrawn council's existing system leakage management plan to the extent that plan applied for its local government area.
- (3) The Water Supply Act, sections 82 and 87 do not apply to the withdrawn council.

### **92DF Drinking water quality management plan**

- (1) This section applies for the Water Supply Act, chapter 2, part 4, division 3, subdivision 1 in relation to a withdrawn council until it has an approved drinking water quality management plan under that Act.
- (2) The existing drinking water quality management plan for Allconnex's drinking water service becomes the withdrawn council's approved drinking water quality management plan.

## **Division 4 Water EPP**

### **92DG Trade waste plans and managing wastewater services**

- (1) From the day a withdrawn council has a water netserv plan, the water EPP, section 20 (*section 20*) and section 22

(*section 22*) do not apply to the council as a sewerage service provider.

- (2) Until that day—
  - (a) Allconnex’s trade waste management plan becomes a withdrawn council’s trade waste management plan; and
  - (b) each withdrawn council must, in managing its wastewater service, have regard to the provisions about the matters that, under section 20, are included in the plan.
- (3) Section 20 and section 22 cease to apply to Allconnex.
- (4) For the water EPP, section 16(2)(b), all withdrawn councils are taken to be a large local government.
- (5) In this section—

*trade waste management plan* means an environmental plan about trade waste management under section 22.

## **Division 5                      Amending particular documents to reflect transition**

### **92DH Amendment power**

- (1) The parties to a multi-area document may, until 1 July 2013, amend the document in a way that reflects the retransfer.
- (2) The power under subsection (1)—
  - (a) is subject to the other provisions of this part; and
  - (b) is exercisable in the same way, and subject to the same conditions, as the power to make the document.
- (3) In this section—

*multi-area document* means a document made under an Act relating to the former water services or wastewater services of Allconnex, including, for example, any of the following—

- (a) a drinking water quality management plan;

[s 92DI]

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- (b) a recycled water management plan under the Water Supply Act;
- (c) a strategic asset management plan under the Water Supply Act;
- (d) an approved protocol under the market rules under the Water Act.

## **Division 6                      Repealed Sustainable Planning Act 2009**

### **92DI    Cessation of Allconnex's functions**

- (1) The following things under the repealed SPA cease—
  - (a) Allconnex's concurrence agency functions;
  - (b) Allconnex's functions under chapter 9, part 7A;
  - (c) all of Allconnex's other functions as a distributor-retailer;
  - (d) a withdrawn council's obligations relating to Allconnex.
- (2) Subsection (3) applies if—
  - (a) Allconnex has functions under the repealed SPA—
    - (i) as a concurrence agency under the repealed SPA for a development application made under the repealed SPA; or
    - (ii) for a request for compliance assessment made under the repealed SPA; and
  - (b) those functions were required to be, or could have been, performed but had not been performed.
- (3) The functions under the repealed SPA merge into Allconnex's successor's function as the assessment manager for the application or as the compliance assessor for the request.
- (4) The repealed SPA, chapter 8, part 1 ceases to apply to Allconnex as a distributor-retailer.



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## Division 7                      Acquisition of Land Act

### 92DK Existing acquisitions

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

### 92DL Acquisitions interrupted by retransfer scheme or notice

- (1) This section applies if Allconnex has—
  - (a) served a notice of intention to resume to take land as a constructing authority under the Acquisition of Land Act; or
  - (b) entered into an agreement to take land under that Act.
- (2) A withdrawn council may by notice given to each affected person decide to continue the taking.
- (3) The notice must state—
  - (a) that the withdrawn council 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 withdrawn council becomes the constructing authority for the taking; and
  - (b) Allconnex'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—

[s 92DM]

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- (i) on whom Allconnex served a notice of intention to resume to take the land under the Acquisition of Land Act; or
  - (ii) with whom Allconnex has entered into an agreement to take the land; and
- (b) anyone else the withdrawn council considers is financially affected by the taking.

### **92DM Provisions for withdrawn council becoming constructing authority**

- (1) This section applies if under section 92DL, a withdrawn council becomes the constructing authority for the taking of land instead of Allconnex.
- (2) Allconnex must give the withdrawn council 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 withdrawn council.
- (4) The withdrawn council—
  - (a) has for the taking the same functions and obligations under the Acquisition of Land Act as Allconnex; and
  - (b) does not represent the State for section 12 of that Act.
- (5) The rights under the Acquisition of Land Act of a person served with a notice of intention to resume or who entered into an agreement to take the land do not change.
- (6) A reference to Allconnex in a document relating to the taking is, if the context permits, taken to be a reference to the withdrawn council.
- (7) Without limiting subsection (6), if Allconnex is taking the land under an agreement to take—
  - (a) a reference in the agreement to Allconnex is taken to be a reference to the withdrawn council; and

- (b) the agreement gives rise to the same rights and liabilities that would have arisen if Allconnex were still a party to the agreement.

## **Division 8                      Land Act**

### **92DN Provision for particular freehold land and Land Act leases**

- (1) This section applies if, under section 75 or 76, a deed of grant or a lease has been issued to Allconnex for particular land.
- (2) A retransfer document can not transfer the land or lease to a withdrawn council other than the geographically-connected withdrawn council.

## **Division 9                      Plumbing and Drainage Act 2002**

### **92DO Cessation of functions and other matters**

- (1) The following things under the *Plumbing and Drainage Act 2002* cease—
  - (a) Allconnex’s SEQ water functions and other functions as a distributor-retailer;
  - (b) a withdrawn council’s and anyone else’s obligations relating to Allconnex.
- (2) In this section—

***SEQ water functions*** means functions as a service provider relating to approving connections to, disconnections from or changes to connections to, water infrastructure.

## Division 10                      LGA 2009

### 92DP LGA 2009 applies for particular debts to Allconnex

- (1) This section applies if Allconnex is owed an amount for a charge-related debt.
- (2) From 1 July 2012, LGA 2009 applies for the debt—
  - (a) as if the debt were overdue rates and charges under that Act owing to Allconnex's successor; and
  - (b) as if the overdue rates and charges had become owing when the debt became owing to Allconnex; and
  - (c) as if action taken by the successor to recover the overdue rates and charges includes all action taken by Allconnex to recover the debt from anyone liable to pay it.
- (3) In this section—

*1 July 2010 charge handover arrangement* means an arrangement mentioned in expired sections 26 and 27 of the *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010*.

*charge-related debt* means all or any of the following—

- (a) an overdue charge;
- (b) either—
  - (i) CPI indexation on the overdue charge as if the quarter ending 30 June 2012 had ended; or
  - (ii) any interest charged on the overdue charge;
- (c) a charge imposed under a 1 July 2010 charge handover arrangement;
- (d) costs mentioned in section 53AV(1)(b) ordered to be paid to Allconnex by any owner of premises to which an amount owing to Allconnex for an matter mentioned in paragraphs (a) to (c) relates.



[s 92EI]

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- (d) grant rights to anyone else relating to the land that are inconsistent with the asset owner's rights under LGA 2009, section 144.

Maximum penalty—50 penalty units.

## **Part 8**

### **Workforce provisions— preservation of rights of employees**

#### **92EI Application of pt 8**

This part applies to the transfer of an employee of Allconnex to a withdrawn council under a retransfer document.

#### **92EJ Transfer has effect despite other laws and instruments**

The transfer has effect despite any other law, contract or other instrument.

#### **92EK Continuity of employment**

- (1) The transfer does not—
  - (a) interrupt continuity of service; or
  - (b) constitute a termination of employment by Allconnex or a retrenchment or redundancy; or
  - (c) entitle the employee to a payment or other benefit because the employee is no longer employed by Allconnex; or
  - (d) of itself, require Allconnex to make any payment for the employee's accrued rights to recreation, sick, long service or other leave that did not otherwise have to be paid.
- (2) To remove any doubt, it is declared that—



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- (2) To remove any doubt, it is declared that this part does not limit or otherwise affect a following right that had accrued or was accruing immediately before Allconnex's dissolution day—
  - (a) a right of a former member of Allconnex to a benefit or entitlement under a contract concerning that membership;
  - (b) a right of the former chief executive officer of Allconnex to a benefit or entitlement under a contract concerning that employment.
- (3) On Allconnex's dissolution day, the benefit or entitlement ceases to accrue and becomes payable as if—
  - (a) the contract had, according to its terms, been terminated on that day; and
  - (b) the termination had been other than by Allconnex.
- (4) Subject to any retransfer document, the withdrawn councils are Allconnex's proportional joint successor for the liability for the benefit or entitlement.

## 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 SEQ service providers and their customers.
- (2) The code is not subordinate legislation.



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**94 Particular matters code may provide for**

- (1) The code may provide for all or any of the following—
  - (a) rights and obligations of SEQ service providers 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 SEQ service providers relating to customers;
  - (f) meters and metering;
  - (g) dispute resolution processes for customers;
  - (h) an entity to administer the code.

*Note—*

Disputes arising between particular customers and an SEQ service provider about a function or obligation of the provider under the code may, under the EWO Act, section 18A, be referred to the energy and water ombudsman.

- (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.

## **Part 2                                      Process for making or amending code**

### **95                      Public notice about availability of draft code**

- (1) If the Minister proposes to make the code, the Minister must—
  - (a) prepare a draft of the proposed code; and
  - (b) publish a notice about the draft in a newspaper circulating in all of the SEQ region; and
  - (c) give each distributor-retailer and each local government in the SEQ region a copy of the notice.
- (2) The notice must state—
  - (a) where copies of the draft may be inspected and on payment of a fee, purchased; and

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- (b) that written submissions may be made by anyone about the draft; and
  - (c) a day (the *final submission day*) by which submissions must be made, and the person to whom, and the place where, the submissions must be made.
- (3) The final submission day must not be earlier than—
- (a) for the first draft code prepared—14 days after the day the notice is published; and
  - (b) for each subsequent draft code prepared—28 days after the day the notice is published.
- (4) The Minister must, from the publication of the notice to the final submission day, cause the draft to be published on the department’s website.

## **96 Preparing and approving final code**

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

## **97 Amendment of code**

- (1) The Minister may amend the code.
- (2) Sections 95 and 96 apply to the amendment as if a reference in the sections to the code were a reference to the amending code.
- (3) However, the sections do not apply if—
  - (a) the amending code is only to—
    - (i) correct a minor error in the code; or
    - (ii) make another change that is not a change of substance; or

- (b) the code states that an amendment of a stated type may be made to the code without complying with the sections and the amendment is of the stated type.

## **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 4                      Other customer service provisions**

### **Division 1                General provisions about standards of customer service**

#### **99AB    Obligation to comply with part**

- (1) An SEQ service provider must not, without reasonable excuse, contravene a provision of this part.

Maximum penalty—1,665 penalty units.

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

### **99AC Application of complaints standard**

- (1) The complaints standard applies to an SEQ service provider 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 SEQ service provider 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 SEQ service provider's policies about—
    - (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 charter**

An SEQ service provider 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.

### **99AEA Access to charter**

- (1) An SEQ service provider must give a copy of its customer service charter, free of charge, to anyone who asks and has not already been given a copy.
- (2) When a withdrawn council first makes its customer service charter, it must, with or in its first account to each customer after the charter is made, tell the customer—
  - (a) that the charter has been made; and
  - (b) of the customer's right under subsection (1) to obtain a copy.

## **Division 2                      Meters**

### **Subdivision 1                General provisions**

#### **99AFA SEQ service provider may accept meter reading by customer**

If asked by a customer to do so in a particular case, an SEQ service provider may accept the reading supplied by the customer of the meter recording the customer's water consumption as the water consumption of the customer for a particular period.

#### **99AG Meters must be read annually**

Each SEQ service provider 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 an SEQ service provider to install and read meters, see the Water Supply Act, sections 35 and 37.

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## 99AH Methods and basis of charging

- (1) An SEQ service provider may use methods of charging for water supplied or sold by it to its customers the provider considers appropriate, including, for example—
  - (a) giving an account based on meter readings; or
  - (b) if the water supplied or sold is not measured by a water meter—
    - (i) the estimated average water usage of the customers within a group of customers who have similar water usage; or
    - (ii) another method that is appropriate to decide a customer's likely water usage.
- (2) However, an SEQ service provider 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 for a contravention of subsection (2) that reasonable access was not available to the meter at the customer's premises.

## 99AI Special meter readings

- (1) A customer of an SEQ service provider 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 SEQ service provider 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 SEQ service provider must cause the reading to be carried out.

## **Subdivision 2      Meter tests**

### **99AJ   Meter accuracy test at customer's request**

- (1) A customer of an SEQ service provider may ask the provider to test the accuracy of the provider's meter installed on the customer's premises—
  - (a) by a test carried out for the SEQ service provider (a *provider test*); or
  - (b) by referring the meter for testing to an independent person (the *independent tester*) accredited by the National Association of Testing Authorities (an *independent test*).
- (2) The SEQ service provider or independent tester may require the customer to pay the following before carrying out the test—
  - (a) for a provider test—a charge owing by the customer to the SEQ service provider for water services or wastewater services;
  - (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 SEQ service provider or independent tester must cause the test to be carried out.
- (5) The SEQ service provider 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.



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- (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 provider 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 provider test or independent test shows the meter tested is registering incorrectly, the relevant SEQ service provider 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) An SEQ service provider 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 SEQ service provider or independent tester must keep a record of each test under subsection (1)(b) for at least 2 years.

## **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

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distributor-retailer reasonably considers the customer does not have—

- (a) a satisfactory credit rating; or
  - (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.

[s 99AT]

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- (2) The distributor-retailer must give the customer an annual statement containing the following details—
- (a) the amount of security held;
  - (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**

- (1) This section applies if all of the following apply—
- (a) premises are connected to an SEQ service provider's water service;
  - (b) a residential customer or non-residential customer of the provider fails to do any of the following (the *contravention*)—
    - (i) pay a charge for the service;
    - (ii) comply with a service provider water restriction under the Water Supply Act, section 41;
    - (iii) if the provider is a distributor-retailer—give security requested under subdivision 1 for the service;
  - (c) the provider has given the customer at least 1 month's notice to fix the contravention;
  - (d) the customer continues not to fix the contravention.
- (2) The provider may reduce the water supply to the premises to the minimum level necessary for the customer's health and sanitation purposes.

- (3) However, the provider must not completely shut off the water supply to the premises.
- (4) In this section—  
*fix*, the contravention, means—
  - (a) for a failure to pay a charge—pay the charge; or
  - (b) for a noncompliance with a restriction—not continue to contravene it; or
  - (c) for security requested—give it.

### **Subdivision 3      Publication of, and exemption from, charges**

#### **99ATA Publication etc. of charges**

- (1) An SEQ service provider must publish and maintain on its website details of its charges under section 99BO(1)(g) 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) An SEQ service provider must give a person a document showing the SEQ service provider'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 an SEQ service provider to premises if the premises are—
  - (a) land that is exempted from rates under LGA 2009, section 93(3)(a), (b), (c), (d), (e), (f), (g) or (j); or

[s 99ATC]

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- (b) prescribed under a regulation.
- (2) The SEQ service provider 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
  - (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—1,665 penalty units.

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

## **Division 4                      Accounts**

### **99AU Application of div 4**

This division applies for any account from an SEQ service provider to a customer for water services and wastewater services.

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## **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 SEQ service provider to the customer;
  - (j) any concessions, discounts or rebates applied in working out the amount charged under the account;
  - (k) any interest to be charged 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—

[s 99AW]

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- (a) for a distributor-retailer—‘Local Government distributor-retailer price’; or
  - (b) for another SEQ service provider—‘Local Government distribution and retail 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 for rates notices**

- (1) This section applies if the account is—
- (a) from a withdrawn council; or
  - (b) from a distributor-retailer and the account is included in a rates notice.
- (2) The account must—
- (a) be on a separate page to the rates notice; and
  - (b) either—
    - (i) if the account is from a distributor-retailer—be clearly identified as an account to the customer from the distributor-retailer; or
    - (ii) if the account is from a withdrawn council—be clearly identified as an account to the customer from the council for water services and wastewater services.
- (3) In this section—

***rates notice*** means an account or other notice for the payment of rates under LGA 2009 or CBA 2010.



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## Division 5                      Miscellaneous provision

### 99AX New owner's obligation to notify SEQ service provider

- (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 an SEQ service provider.
- (2) The person must, as soon as practicable, tell the SEQ service provider, or give the SEQ service provider 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 SEQ service provider may be given the same information from the form that, under LGA 2009 or CBA 2010, can be given to a local government.
- (5) In this section—

*property transfer information form* means a form that—

- (a) gives information about a change of ownership required under another Act; and
- (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 SEQ service providers; 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 SEQ service providers 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;
  - (d) location of access chambers;
  - (e) reservoirs, pump stations and wastewater pump stations;
  - (f) water reticulation and distribution pipelines;
  - (g) wastewater pipelines;

- (h) recycled water supply.
- (2) Subsection (1) does not limit the matters for which the code may provide.

## Part 2                      **Process for making or amending code**

### **99BB Public notice about availability of draft code**

- (1) Before adopting the SEQ design and construction code, the SEQ service providers must—
  - (a) prepare a draft of the proposed code; and
  - (b) keep a copy of the draft available for inspection and purchase; and
  - (c) publish a notice about the draft in a newspaper circulating in all of the SEQ region; and
  - (d) give each local government in the SEQ region and the chief executive a copy of the notice.
- (2) The notice must state—
  - (a) where copies of the draft may be inspected and purchased; and
  - (b) that written submissions may be made by anyone about the draft; and
  - (c) a day (the *final submission day*) by which submissions must be made, and the person to whom, and the place where, the submissions must be made.
- (3) The final submission day must not be earlier than 28 days after the day the notice is published.
- (4) Each SEQ service provider must, from the publication of the notice to the final submission day, keep a copy of the draft available for inspection and purchase.

[s 99BC]

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### **99BC Preparing final code**

In preparing the final SEQ design and construction code to be adopted, the SEQ service providers 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 for each SEQ service provider by the following—

- (a) for a distributor-retailer—its board;
- (b) for a withdrawn council—a resolution.

### **99BE When code has effect**

- (1) As soon as practicable after the SEQ design and construction code is adopted by the SEQ service providers, 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 SEQ service providers 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 SEQ service provider to take action about code**

- (1) This section applies if the Minister is satisfied it is necessary to give a direction to an SEQ service provider 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 an SEQ service provider 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 SEQ service provider must comply with the direction.
- (4) The direction may be as general or specific as the Minister considers appropriate.
- (5) Without limiting subsection (2), the direction may require an SEQ service provider 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 SEQ service provider does not comply with direction**

- (1) If an SEQ service provider 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 SEQ service provider to take.
- (2) Anything done by the Minister under subsection (1) is taken to have been done by the SEQ service provider and has the same effect as it would have had if the SEQ service provider had done it.
- (3) An expense reasonably incurred by the Minister in taking an action under subsection (1) may be recovered from the SEQ service provider as a debt owing to the State.

## **Chapter 4B Water netserv plans**

### **Part 1 General provisions**

#### **99BJ Requirement for SEQ service provider to adopt plan**

An SEQ service provider must by 1 October 2014 have adopted 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**

An SEQ service provider must ensure its water netserv plan is consistent with—

- (a) the SEQ regional plan; and

- 
- (b) the planning assumptions for the following (the *relevant planning assumptions*) for the following area for the SEQ service provider (its *relevant area*)—
- (i) for a distributor-retailer—its geographic area;
  - (ii) for a withdrawn council—its local government area;
  - (iii) for a corporate entity (service provider)—its establishing council’s local government area.

### **99BL Requirement for SEQ service provider to review plan**

- (1) An SEQ service provider must, within each 5-year period starting on 1 October 2014, review its water netserv plan to ensure the plan—
- (a) is consistent with—
    - (i) the SEQ regional plan; and
    - (ii) the relevant planning assumptions; and
  - (b) achieves the purposes of the plan under section 99BM.
- (2) Without limiting subsection (1), an SEQ service provider must—
- (a) before 1 October each year, review the connection areas under its water netserv plan; and
  - (b) within each 5-year period starting on 1 October 2014, review the future connection areas under its water netserv plan.
- (3) If a connection under a water approval to an SEQ service provider’s infrastructure network occurs outside of its connection area—
- (a) the location of the connection is taken to be part of its connection area; and
  - (b) the SEQ service provider must, as soon as practicable, update its connection area in its water netserv plan under subsection (2).

## Part 2                                      Purposes, form and content of plan

### 99BM Purposes of plan

The purposes of an SEQ service provider's water netserv plan for its relevant area are all of the following—

- (a) to provide for strategic planning for the operation of the SEQ service provider's business;
- (b) to provide planning for the delivery of infrastructure for supplying the SEQ service provider'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 SEQ service providers;
- (d) to integrate land use planning and planning for infrastructure for the SEQ service provider's water services and wastewater services;
- (e) to provide for the management of the SEQ service provider's water services and wastewater services in a way that seeks to achieve ecological sustainability;
- (f) if the SEQ service provider is a distributor-retailer—
  - (i) to provide a process for approvals for connections to its water infrastructure; and
  - (ii) to state fees and charges that may be levied under chapter 4C for connections to its water infrastructure, including its trunk infrastructure.

### 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 an SEQ service provider's water netserv plan must—
- (a) state the relevant planning assumptions on which the plan is based; and
  - (b) include information outlining the SEQ service provider'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 to be extended and time frames for increasing the capacity; and
  - (d) state the desired standard of service for infrastructure used to provide the SEQ service provider'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 SEQ service provider's strategy for demand management for water; and
- (f) state the SEQ service provider's policy for connections, disconnections and alterations 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 SEQ service provider guarantees to provide connections that comply with its connection

[s 99BO]

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criteria to its water service or wastewater service;  
and

- (ii) the areas (each a *future connection area*) in which the SEQ service provider intends to extend its infrastructure network; and
- (iii) the circumstances in which the SEQ service provider may approve connection outside a connection area; and
- (iv) the SEQ service provider's criteria for providing connection, with or without conditions, to its water service or wastewater service; and

*Example of a condition—*

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.

- (v) if the SEQ service provider is a distributor-retailer—each matter stated in section 99BOA; and
- (g) include a schedule (a *charges schedule*) containing details of—
- (i) charges, including charges under section 99AV(2)(b), to connect customers to the SEQ service provider's water service and wastewater service; and
  - (ii) charges for a customer's use of the services; and
  - (iii) if the SEQ service provider is not a distributor-retailer—charges relating to providing infrastructure for the services; and
  - (iv) if the SEQ service provider is a distributor-retailer—each matter stated in section 99BOB; and
- (h) indicate how the SEQ service provider proposes to achieve effective outcomes for the provision of water services and wastewater services in—

- 
- (i) the SEQ service provider's relevant area; and
  - (ii) the SEQ region; and
  - (i) if the SEQ service provider is a distributor-retailer—include a schedule of works for the provider; and
  - (j) 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—
- (a) for a distributor-retailer—its participating local governments; or
  - (b) for a withdrawn council—its local government area; or
  - (c) for a corporate entity (service provider)—its establishing council.
- (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 2.

### **99BOA Connections policy for distributor-retailers**

A distributor-retailer's connections policy must also include the following—

- (a) its criteria and conditions for a standard connection;
- (b) its criteria for a staged water connection;
- (c) its criteria for other categories of connections including connections outside of the following—
  - (i) its connection area;
  - (ii) its future connection area;
- (d) the way to apply for a water approval;

[s 99BOB]

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- (e) the categories of connections to which it may delegate its decision function under section 53;
- (f) the time frames for its decisions for connections, other than a standard connection;
- (g) its conditions for when a water approval lapses;
- (h) its requirements for construction maintenance and defects liability.

### **99BOB Charges schedules for distributor-retailers**

A distributor-retailer's charges schedule must also include details of the following—

- (a) connection charges;
- (b) charges for property service infrastructure;
- (c) adopted charges;

*Note—*

See chapter 4C, part 7, division 3.

- (d) the way a connection charge, charge for property service infrastructure and adopted charge is calculated;
- (e) the fees for an application or request under chapter 4C;
- (f) the charges breakup for all adopted charges.

### **99BP Content of part B of plan**

- (1) Part B of an SEQ service provider's water netserv plan must—
  - (a) include information outlining the SEQ service provider's existing and proposed infrastructure for providing its services, indicating how the SEQ service provider proposes—
    - (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 growth in its relevant area, considering demand for the services based on low, medium and high population growth scenarios; and
- (b) indicate the measures proposed to minimise—
- (i) water losses caused by leakage from infrastructure for supplying the SEQ service provider's water service; and
- (ii) sewerage overflows; and
- (c) include information outlining the drinking water quality management measures the SEQ service provider 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 relevant 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 SEQ service provider seeks to achieve ecological sustainability in undertaking its functions; and
- (f) include information about the management of trade waste entering the SEQ service provider'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 SEQ service provider 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 SEQ service provider must have regard to in making plan**

- (1) In making its water netserv plan, an SEQ service provider 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
  - (ii) the chief executive has advised the SEQ service provider in writing are documents relevant to the making of its plan;

*Examples of relevant documents—*

- SEQ regional plan
- SEQ water supply strategy under the SEQ regional plan

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- (b) the most efficient cost asset cycle planning for the SEQ service provider's business;
  - (c) the total water cycle management plan—
    - (i) for a distributor-retailer—of each of its participating local governments; or
    - (ii) for a withdrawn council—of the council; or
    - (iii) for a corporate entity (service provider)—of its establishing council;
  - (d) any guidelines relevant to the making of the plan and prepared by the chief executive under section 100C;
  - (e) the customer water and wastewater code.
- (2) In making its water netserv plan, a withdrawn council or corporate entity (service provider) must also have regard to efficient infrastructure investment and planning taking into account broader planning outcomes for the SEQ region.
- (3) In this section—
- total water cycle management plan*, of a local government, means a plan about the collection, treatment and recycling of wastewater, stormwater, groundwater and other water sources and the integration of water use in its local government area.

## Part 4 Making and amendment

### 99BR Process for making

- (1) To make a water netserv plan, an SEQ service provider must—
- (a) give public notice about the proposal to make part A of a water netserv plan; and
  - (b) carry out public consultation in relation to proposed part A of the plan, including—
    - (i) making proposed part A of the plan available for inspection for at least 20 business days; and

[s 99BR]

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- (ii) inviting submissions to the SEQ service provider about proposed part A of the plan; and
    - (iii) considering submissions mentioned in subparagraph (ii); and
  - (c) ensure proposed part A of the plan is endorsed as follows—
    - (i) for a distributor-retailer—by each participating local government for the distributor-retailer as being consistent with the planning assumptions for its local government area;
    - (ii) for a withdrawn council—by the council as being consistent with the planning assumptions for its local government area; and
  - (d) subject to subsections (2) to (5), adopt the plan under section 99BRAB.
- (2) A participating local government or withdrawn council must endorse proposed part A of the plan if the plan is consistent with the planning assumptions for its local government area.
  - (3) After proposed part A of the plan is endorsed under subsection (1)(c), the SEQ service provider must ensure the proposed part A is endorsed by the Planning Minister as being consistent with the SEQ regional plan.
  - (4) The Planning Minister must endorse proposed part A of the plan if it is consistent with the SEQ regional plan.
  - (5) An entity mentioned in subsection (2) or (4) is taken to endorse proposed part A of the plan if the entity has not, within 30 business days after receiving it—
    - (a) refused to endorse proposed part A of the plan; or
    - (b) asked the SEQ service provider to change proposed part A of the plan.
  - (6) The SEQ service provider can not adopt the plan if proposed part A of the plan is not endorsed by the Planning Minister.
  - (7) If the SEQ service provider is a distributor-retailer, the SEQ service provider can not adopt the plan if proposed part A of



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the plan is not endorsed by each of its participating local governments.

### **99BRAA Process for amending plan**

- (1) An SEQ service provider may, under this section and section 99BRAB, amend its water netserv plan.
- (2) An administrative amendment to part A of the plan or any amendment to part B of the plan may be made at any time.
- (3) Before making a minor amendment to part A of the plan, the SEQ service provider must—
  - (a) give public notice about the minor amendment; and
  - (b) carry out public consultation in relation to the minor amendment including—
    - (i) making the minor amendment available for inspection for at least 10 business days; and
    - (ii) inviting submissions to the SEQ service provider about the minor amendment; and
    - (iii) considering submissions mentioned in subparagraph (ii).
- (4) Section 99BR applies to a major amendment to part A of the plan, as if a reference in the section to the plan were a reference to the amendment.
- (5) In this section—

***administrative amendment***, of a water netserv plan, means an amendment correcting or changing—

  - (a) the format or presentation of the plan; or
  - (b) a cross-reference in the plan; or
  - (c) a spelling, grammatical or mapping error in the plan; or
  - (d) a factual matter incorrectly stated in the plan; or
  - (e) a redundant or outdated term in the plan; or
  - (f) inconsistent numbering of provisions in the plan; or

[s 99BRAB]

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- (g) the expression of a number, year, date, time or amount in the plan; or
- (h) a charge under section 99BO(1)(g) or 99BOB.

**major amendment**, of a water netserv plan, means an amendment to the plan other than an administrative amendment or minor amendment of the plan.

**minor amendment**, of a water netserv plan, means—

- (a) an amendment to the plan because of a change under section 99BL(3) to the SEQ service provider's connections policy; or
- (b) an amendment of the connections policy, other than an amendment to the future connection area; or
- (c) an amendment of the schedule of works included in the plan.

### **99BRAB Adoption of plan or amendment**

- (1) A water netserv plan or an amendment of a plan must be adopted for an SEQ service provider by—
  - (a) for a distributor-retailer—its board; or
  - (b) for a withdrawn council—the council.
- (2) If, for a distributor-retailer's plan, the amendment of the plan is an administrative amendment or minor amendment, the chief executive officer of the distributor-retailer may adopt the amendment.
- (3) The plan or amendment of the plan takes effect on a day stated in a resolution of the board or council.
- (4) The stated day can not be before the adoption.
- (5) As soon as practicable after the adoption of the plan, or a major amendment of the plan, the SEQ service provider must give the following notice of that fact—
  - (a) the Planning Minister;

- (b) if it is a distributor-retailer—its participating local governments.

## Chapter 4C Water approvals and infrastructure

### Part 1 Services advice notices

#### 99BRAC Obtaining notice

- (1) A person may, at any time, request a notice (a *services advice notice*) about a connection from a distributor-retailer.
- (2) The request must be made in the way stated in the distributor-retailer's connections policy.
- (3) The distributor-retailer may give the person a services advice notice stating—
  - (a) advice about the proposed connection having regard to its connections policy; and
  - (b) the charges and conditions that may apply to the connection; and
  - (c) any other relevant matter about the connection.
- (4) The distributor-retailer may impose a fee stated in the connections policy for the services advice notice.

#### 99BRAD Water approval still required

- (1) Despite any services advice notice being given, if the person intends to make the connection, the person must apply for a water approval.

[s 99BRAE]

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- (2) The services advice notice does not bind the distributor-retailer's decision if the person applies for the water approval.

## Part 2 Water approvals

### Division 1 Application and decision process

#### 99BRAE Operation of pt 2

This part provides for a person (the *applicant*) to apply for a water approval for a connection, other than a standard connection, for a distributor-retailer.

*Note—*

For provisions relevant to water approvals and offences under the Water Supply Act, see the Water Supply Act, chapter 2, part 5, division 6.

#### 99BRAE Applying for water approval

- (1) The application must be made to the distributor-retailer in the way stated in its connections policy.
- (2) If the applicant is not the owner of the land related to the connection, the owner's written consent must accompany the application.

*Examples of land related to the connection—*

- the land for the connection
- land for which access is required for the connection

- (2A) However, subsection (2) does not apply to the extent the application relates to a publicly-controlled place.
- (3) If the application is required to be made in a form under the connections policy, the *Acts Interpretation Act 1954*, section 48A applies to the form as if the form were prescribed or approved under this Act.

- (4) The distributor-retailer may impose a fee stated in the connections policy for the application.

### **99BRAG Decision generally**

- (1) In deciding the application, the distributor-retailer must assess the application and—
  - (a) approve all or part of the application; or
  - (b) refuse all of the application.
- (2) The decision may include the imposition of conditions (*water approval conditions*) permitted under division 2 and part 7 on any approval.
- (3) The assessment must be against—
  - (a) the decision criteria stated in its connections policy; and
  - (b) the SEQ design and construction code; and
  - (c) any other matter the distributor-retailer considers to be relevant to the connection or supply of its water services or wastewater services.

### **99BRAH Other decision rules**

The distributor-retailer may refuse the application if it considers the connection—

- (a) is not technically feasible; or
- (b) would unreasonably interfere with the connection or supply of its water services or wastewater services to other customers.

### **99BRAI Decision notice**

- (1) The distributor-retailer must give the applicant a notice (a *decision notice*) of the decision on the application.
- (2) The decision notice must state—
  - (a) the decision and the day it was made; and

- (b) if the application is refused, or part of the application is approved—the reasons for refusal; and
  - (c) for an application other than a staged water connection application—any water approval conditions imposed or charges levied for the connection; and
  - (d) for a staged water connection application—
    - (i) any water approval conditions imposed or charges levied for the connection; and
    - (ii) the stages of the connection; and
    - (iii) which stages of the connection (if any) are authorised under the water approval; and
    - (iv) any water approval conditions imposed, or charges levied, on a stage of the connection authorised under the water approval; and
    - (v) which stages of the connection require a further application for a water approval; and
  - (e) for each water approval condition about trunk or non-trunk infrastructure imposed under this chapter—the provision under which the condition was imposed; and
  - (f) the applicant’s rights of internal review and appeal.
- (3) The decision notice may be combined with any trade waste approval or seepage water approval given to the applicant.
- (4) If the distributor-retailer does not give the applicant a decision notice within the period during which the application is required to be decided under the connections policy, the distributor-retailer is taken to have refused the application.

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## **Division 2                    Conditions and charges**

### **Subdivision 1            Water approval conditions**

#### **99BRAJ Water approval conditions must be relevant and reasonable**

- (1) Water approval conditions must—
  - (a) be relevant to, but not an unreasonable imposition on, the connection; or
  - (b) be reasonably required for, or as a result of, the connection.
- (2) Without limiting subsection (1), the conditions may be for any of the following—
  - (a) the level of demand for the water service or wastewater service for the connection;
  - (b) protecting or maintaining the safety and efficiency of the distributor-retailer's infrastructure;
  - (c) requiring property service infrastructure or network infrastructure to be designed and constructed including infrastructure designed and constructed in accordance with the SEQ design and construction code;
  - (d) requiring a document or works for the water approval to be certified by the distributor-retailer or a nominated person;
  - (e) requiring a nominated person to make a connection to the distributor-retailer's network infrastructure;
  - (f) requiring a connection, or part of it, to be completed within a stated period;
  - (g) requiring the payment of security under an agreement under section 99BRAL to support a condition of the approval;
  - (h) trunk infrastructure or non-trunk infrastructure.

- (3) However, a water approval condition must not—
  - (a) impose a condition about trunk infrastructure or non-trunk infrastructure unless the condition is permitted to be imposed under part 7, divisions 4 to 6; or
  - (b) require a person to enter into a water infrastructure agreement.
- (4) If a water approval is for all or part of a staged water connection application, the water approval conditions for the approval may be imposed on any or all stages of the connection.

### **99BRAK Power to amend**

- (1) This section applies if the holder of a water approval asks the distributor-retailer, in the way stated in its connections policy, to amend a water approval condition of the approval.
- (2) The distributor-retailer must decide to—
  - (a) approve the request, with or without conditions; or
  - (b) refuse the request.
- (3) Division 1, other than section 99BRAI, applies to the decision, with any necessary changes, as if a reference in the division to an application were a reference to an application for the amendment.
- (4) The distributor-retailer must give the applicant notice (an *amendment notice*) of the decision about the condition stating the following—
  - (a) the day the decision was made;
  - (b) whether the request is approved or refused;
  - (c) if the request is refused, the reasons for refusal;
  - (d) the applicant's rights of internal review and appeal.
- (5) If the condition is amended under this section—



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- (a) the condition as amended, and any conditions imposed under subsection (2)(a), take effect when the amendment notice is given to the applicant; and
  - (b) any conditions imposed under subsection (2)(a) are taken to be water approval conditions of the water approval; and
  - (c) the distributor-retailer may give the applicant an infrastructure charges notice under part 7, division 3, subdivision 3 if the notice relates to the amended condition.
- (5A) If an infrastructure charges notice is given under subsection (5)(c) for a water approval, the notice replaces any existing infrastructure charges notice in effect for the approval.
- (6) To avoid any doubt, it is declared that despite an amendment to a condition of a water approval—
- (a) the water approval continues in effect; and
  - (b) a condition amended under this section is a water approval condition.

### **99BRAL Water approval condition agreements**

- (1) The holder of a water approval may enter into an agreement with an entity, including, for example, a distributor-retailer, to establish the obligations, or secure the performance, of a party to the agreement about a water approval condition of the approval.
- (2) An applicant for a connection, the distributor-retailer and a nominated person may enter into an agreement to establish the obligations, or secure the performance, of a party to the agreement about a proposed water approval condition for the connection.

### **99BRAM Water infrastructure agreement terms become water approval conditions**

If there is a water infrastructure agreement and a water approval for the same connection, all terms of the agreement are taken to be water approval conditions of the approval.

*Note—*

For provisions about water infrastructure agreements, see part 7, division 7.

## **Subdivision 2 Water approval charges**

### **99BRAN Charges that may be levied**

- (1) A distributor-retailer may levy a charge for any of the following—
  - (a) a property service connection or a network connection (a *connection charge*);
  - (b) property service infrastructure (a *property service works charge*).
- (2) The charges may be levied on any stage of the relevant connection.
- (3) The distributor-retailer may recover from a person to whom the charge is levied the amount, or part of the amount, of the charge as a debt.

## **Division 3 Effect of water approvals**

### **99BRAO When approval takes effect**

A decision notice for a water approval is taken to be a water approval having effect from when the decision notice is given to the applicant.

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### **99BRAP When approval lapses**

A water approval has effect until it lapses under a condition of the approval.

### **99BRAQ Approval attaches to land**

- (1) A water approval—
  - (a) attaches to the land to which the approval relates until the approval lapses; and
  - (b) binds the owner of the land, the owner's successors in title and any occupier of the land.
- (2) Subsection (3) applies if a water approval (a *prior approval*) attaches to land and another water approval (a *later approval*) attaches to the land after the prior approval.
- (3) Subsection (1) continues to apply to the prior approval but only to the extent the prior approval is not modified under the later approval.

### **99BRAR Notice about conditions, fees and charges**

The distributor-retailer may give a holder of a water approval a notice stating whether the holder has—

- (a) complied with the conditions of the approval; and
- (b) paid the fees and charges under the approval.

### **99BRAS Authority to make a connection**

- (1) The water approval authorises the making of a connection to the extent authorised under the approval.
- (2) However, a distributor-retailer or a person authorised by the distributor-retailer may make a connection, or carry out works for the connection, without a water approval.

### **99BRAT Assessment of connections, water approvals and works**

- (1) To avoid any doubt, it is declared that—
  - (a) a water approval for a connection including works for the connection, or a grant of a standard connection including works for the connection, is a complete assessment of the connection or works; and
  - (b) a connection including works for the connection can not be assessed or authorised under a local law or any other law of a State.
- (2) Subsection (1) does not apply to a connection, including works for the connection—
  - (a) in a priority development area under the *Economic Development Act 2012*; or
  - (b) on PDA-associated land for a priority development area under the *Economic Development Act 2012*.

## **Part 3 Standard connections**

### **99BRAU Requests for standard connections**

- (1) This section applies if a connection (a *standard connection*) complies with a distributor-retailer's criteria mentioned in section 99BOA(a) for the connection area.
- (2) A person may ask the distributor-retailer for the standard connection.
- (3) The distributor-retailer must grant the request if—
  - (a) the person pays the fee for the request stated in the distributor-retailer's connections policy; and
  - (b) if the land related to the standard connection is land other than a publicly-controlled place and the person making the request is not the owner of the land—the owner has given written consent to the connection.

*Examples of land related to the connection—*

- the land for the connection
  - land for which access is required for the connection
- (4) The grant of the request must be made within 5 business days after receiving it or another period agreed to by the distributor-retailer and the person.
- (5) The distributor-retailer must, within 5 business days of granting the request, give the person a notice stating—
- (a) the standard conditions for the standard connection; and
  - (b) a charge for the standard connection under this part.
- (6) The grant is taken to be a water approval for the standard connection and has effect from when the person receives the notice.

*Note—*

Part 2, division 3 and part 7, divisions 3 to 7 apply to a standard connection that is taken to be a water approval.

- (7) The standard connection is subject to the conditions (the ***standard conditions***) stated in the distributor-retailer's connections policy under section 99BOA(a).
- (8) The distributor-retailer may impose a fee stated in the connections policy for the request under this section.

### **99BRAV Charges that may be levied**

- (1) A distributor-retailer may, for a standard connection, levy a charge for any of the following—
- (a) a property service connection or a network connection (a ***connection charge***);
  - (b) property service infrastructure (a ***property service works charge***).
- (2) The distributor-retailer may recover from a person to whom the charge is levied the amount, or part of the amount, of the charge as a debt.

## Part 4                      Reviews and appeals

### Division 1                  Preliminary

#### 99BRAW Meaning of *interested person* and *original decision*

- (1) An *interested person* for this part is an applicant under this chapter who—
  - (a) has been given a decision notice; or
  - (b) if the period during which the application was required to be decided under the relevant connections policy has expired—has not been given a decision notice; or
  - (c) has had 1 or more of the following charges levied for a connection, other than for a standard connection—
    - (i) a connection charge;
    - (ii) a property service works charge;
    - (iii) a charge under an infrastructure charges notice; or
  - (d) has been given a notice under section 99BRDG about a conversion application, or there is a deemed refusal for the application.
- (2) Each of the following is an *original decision*—
  - (a) the decision or action for which a decision notice was given (an *approval decision*);
  - (b) if the period during which an application was required to be decided under the connections policy has expired—the failure to give a decision notice for the application (a *failure to decide*);
  - (c) the decision to levy a charge for a connection mentioned in subsection (1)(c)(i) or (ii) (a *charge decision*);
  - (d) the decision to give an infrastructure charges notice;
  - (e) the refusal or deemed refusal of a conversion application (a *conversion decision*).

- (3) However, for an original decision under subsection (2)(a), an interested person can not appeal a water approval condition that became a condition under section 99BRAM.

### **99BRAX Other definitions for pt 4**

In this part—

*charge decision* see section 99BRAW(2)(c).

*conversion decision* see section 99BRAW(2)(e).

*deemed refusal*, for a conversion application, means a refusal of the application that is taken to have happened if a decision is not made within the required period for the application.

*required period*, for a conversion application, see section 99BRDF(6).

*standard appeal period*, for an appeal under division 3 or 4, means—

- (a) if the notice for the review decision is given to the interested person—within 20 business days after the notice was given; and
- (b) otherwise—within 20 business days after the review decision is taken to have been made under section 99BRBC(4).

## **Division 2 Internal reviews**

### **99BRAY Appeal process starts with internal review**

An appeal of an original decision, other than an appeal against a compliance notice, must be, in the first instance, by way of an application for internal review.

### **99BRAZ Who may apply for review**

- (1) An interested person for an original decision may apply for an internal review of the decision (an *internal review application*).
- (2) An internal review application may be made only to the chief executive officer of the relevant distributor-retailer (the *reviewer*).

### **99BRBA Requirements for making internal review application**

An internal review application must be—

- (a) accompanied by a statement of the grounds on which the applicant seeks the review of the decision; and
- (b) supported by enough information to enable the reviewer to decide the application; and
- (c) made within 30 business days after the day—
  - (i) for a failure to decide or a deemed refusal of a conversion application—the relevant decision was required to be made; or
  - (ii) otherwise—the original decision is made.

### **99BRBB Review decision**

- (1) The reviewer must, within the review decision period—
  - (a) review the original decision the subject of the application; and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
  - (a) the person who made the original decision; or



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- (b) a person in a less senior office than the person who made the original decision.
  - (3) Subsection (2)—
    - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
    - (b) does not apply to an original decision made by the chief executive officer.
  - (4) If the review decision confirms the original decision, for the purpose of an appeal, the original decision is taken to be the review decision.
  - (5) If the review decision amends the original decision, for the purpose of an appeal, the original decision as amended is taken to be the review decision.
  - (6) In this section—

***review decision period*** means—

    - (a) 15 business days after receiving an internal review application; or
    - (b) another period agreed to between the distributor-retailer and the applicant.

### **99BRBC Notice of review decision**

- (1) The reviewer must, within 5 business days after the review decision period ends, give the applicant notice of the review decision (a ***review notice***).
- (2) The review notice must state the reasons for the review decision.
- (3) If the review decision is not the decision sought by the applicant, the notice must also state the applicant may, within 20 business days after the review notice is given—
  - (a) appeal against the decision to a development tribunal; or
  - (b) appeal against the decision to the Planning and Environment Court.

- (4) If the reviewer does not comply with subsection (1), the reviewer is taken to have made a decision confirming the original decision.

### **99BRBD Internal review stops particular actions**

- (1) If an internal review is started under this division, any work under a water approval must not be started until the review is decided or withdrawn.
- (2) Despite subsection (1), if the reviewer is satisfied the outcome of the review would not be affected if the work is started before the review is decided, the reviewer may allow the work to start before the review is decided.

## **Division 3                      Appeals to a development tribunal**

### **99BRBE Appeals about applications for connections—general**

- (1) This section applies to an applicant for a connection if—
  - (a) the land to which the connection relates is subject to an application for a development approval; and
  - (b) a development tribunal may, under the Planning Act, hear an appeal against a decision on the application for a development approval; and
  - (c) the applicant applied for internal review of an approval decision or failure to decide; and
  - (d) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal to a development tribunal against any of the following—
  - (a) a refusal, or an approval in part, of the application for a connection;
  - (b) a water approval condition;
  - (c) another matter stated in the approval.

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- (3) The appeal must be started within the standard appeal period.

### **99BRBF Appeals about applications for connections—particular charges**

- (1) This section applies to an applicant for a connection if—
- (a) the applicant applied for internal review of a charge decision or a decision to give an infrastructure charges notice; and
  - (b) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal to a development tribunal about the review decision.
- (3) The appeal may be made only on 1 or more of the following grounds—
- (a) the amount of the charge is so unreasonable that no reasonable distributor-retailer could have imposed the amount;
  - (b) the decision involved an error relating to the application of the relevant charge;
  - (c) if the decision is the giving of an infrastructure charges notice—
    - (i) the decision involved an error relating to—
      - (A) the working out, for section 99BRCJ, of additional demand; or
      - (B) an offset or refund; or
    - (ii) there was no decision about an offset or refund; or
    - (iii) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.
- (4) To remove any doubt, it is declared that the appeal must not be about—
- (a) the relevant charge itself; or

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- (b) for a decision about an offset or refund for an infrastructure charges notice—
  - (i) the establishment cost of infrastructure identified in the distributor-retailer’s water netserv plan; or
  - (ii) the cost of infrastructure decided using the method included in the distributor-retailer’s infrastructure charges schedule.
- (5) The appeal must be started within the standard appeal period.

### **99BRBFA Appeals against refusal of conversion application**

- (1) This section applies to an applicant for a conversion application if—
  - (a) the applicant applied for internal review of the conversion decision; and
  - (b) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal to a development tribunal against the review decision.
- (3) The appeal must be started within the standard appeal period.

### **99BRBG Application of relevant development tribunal appeal provisions**

- (1) The relevant development tribunal appeal provisions apply, with any necessary changes, to an appeal under this division as if a reference in the provisions to—
  - (a) an assessment manager were a reference to the distributor-retailer; and
  - (b) a development application were a reference to the application for the water approval; and
  - (c) a development approval were a reference to a water approval; and

- (d) an appeal under the Planning Act were an appeal under this Act; and
  - (e) an infrastructure charges notice under the Planning Act were an infrastructure charges notice under this Act; and
  - (f) the period required under the Planning Act for lodging a document to start proceedings were a reference to the period required under this Act for lodging a document to start proceedings.
- (2) In this section—
- relevant development tribunal appeal provisions—*
- (a) means the Planning Act, section 230(1) and (2) and chapter 6, part 2, division 3, other than sections 247, 251 and 254(2)(e) of that Act; and
  - (b) includes any definitions in that Act relevant to section 230(1) and (2) and chapter 6, part 2, division 3 (other than sections 247, 251 and 254(2)(e)) of that Act.

### **99BRBH Notice of appeal**

- (1) This section applies to an appeal under this division.
- (2) The registrar of development tribunals must, within 10 business days after the day the appeal is started, give written notice of an appeal under this division to the distributor-retailer.
- (3) The notice must state the grounds of the appeal.

### **99BRBI Respondent for appeals**

- (1) This section applies to an appeal under this division.
- (2) The distributor-retailer is the respondent for the appeal and may be heard in the appeal as a party to the appeal.

### **99BRBIA Development tribunal to decide appeal about application for a connection based on particular laws**

- (1) This section applies to an appeal against a decision on an application for a connection, including, for example, a decision under a water approval given for the application.
- (2) The development tribunal must decide the appeal based on the laws in effect when the application was made.
- (3) However, if the laws are subsequently amended or replaced, the tribunal may in deciding the appeal give the weight the tribunal considers appropriate, in the circumstances, to any new laws.

### **99BRBJ Who must prove case for appeals**

In an appeal by the applicant under this division, it is for the applicant to establish that the appeal should be upheld.

### **99BRBK Registrar must ask distributor-retailer for material in particular proceedings**

- (1) This section applies to an appeal under—
  - (a) section 99BRBE if the applicant applied for internal review of a failure to decide; or
  - (b) section 99BRBFA if the applicant applied for internal review of a deemed refusal of a conversion application.
- (2) The registrar of development tribunals must ask the distributor-retailer to give the registrar—
  - (a) all material, including plans and specifications, relevant to the application; and
  - (b) a statement of the reasons the distributor-retailer had not decided the application during the period for deciding the application; and
  - (c) any other information the registrar requires.

- (3) The distributor-retailer must give the material mentioned in subsection (2) within 10 business days after the day the registrar asks for the material.

### **99BRBL Work under water approval not to start if appeal is started and not decided or withdrawn**

- (1) If an appeal is started under this division, any work under a water approval must not be started until the appeal is decided or withdrawn.
- (2) However, if the development tribunal is satisfied the outcome of the appeal would not be affected if all or part of the work were to start before the appeal is decided, the tribunal may allow all or that part of the work to start before the appeal is decided.

### **99BRBM Appeals may be combined with appeals under the Planning Act**

- (1) This section applies if—
  - (a) an appeal is started under this division; and
  - (b) an appeal is started under the Planning Act for a development application mentioned in section 99BRBE.
- (2) The appeal under this division may be combined and heard with the appeal under the Planning Act.

## **Division 4 Appeals to the Planning and Environment Court**

### **99BRBN Appeals about applications for connections—general**

- (1) This section applies to an applicant for a connection if—
  - (a) the applicant applied for internal review of an approval decision or failure to decide; and

- (b) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal against the review decision to the Planning and Environment Court.
- (3) The appeal must be started within the standard appeal period.

### **99BRBO Appeals about applications for connections— particular charges**

- (1) This section applies to an applicant for a connection if—
  - (a) the applicant applied for internal review of a charge decision or a decision to give an infrastructure charges notice; and
  - (b) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal against the review decision to the Planning and Environment Court.
- (3) An appeal under this section may be made only on 1 or more of the following grounds—
  - (a) the amount of the charge is so unreasonable that no reasonable distributor-retailer could have imposed the amount;
  - (b) the decision involved an error relating to the application of the relevant charge;
  - (c) if the decision is the giving of an infrastructure charges notice—
    - (i) the decision involved an error relating to—
      - (A) the working out, for section 99BRCJ, of additional demand; or
      - (B) an offset or refund; or
    - (ii) there was no decision about an offset or refund; or
    - (iii) if the infrastructure charges notice states a refund will be given—the timing for giving the refund.



- (4) To remove any doubt, it is declared that the appeal must not be about—
  - (a) the relevant charge itself; or
  - (b) for a decision about an offset or refund for an infrastructure charges notice—
    - (i) the establishment cost of infrastructure identified in the distributor-retailer’s water netserv plan; or
    - (ii) the cost of infrastructure decided using the method included in the distributor-retailer’s infrastructure charges schedule.
- (5) The appeal must be started within the standard appeal period.

### **99BRBOA Appeals against refusal of conversion application**

- (1) This section applies to an applicant for a conversion application if—
  - (a) the applicant applied for internal review of the conversion decision; and
  - (b) the review decision is not the decision sought by the applicant.
- (2) The applicant may appeal to the Planning and Environment Court against the review decision.
- (3) The appeal must be started within the standard appeal period.

### **99BRBP Appeals about water connection compliance notices**

- (1) This section applies if a person is given a compliance notice.
- (2) The person may appeal against the decision to the Planning and Environment Court.
- (3) The appeal must be started within 20 business days after the water connection compliance notice is given to the person.

### **99BRBPA How appeals are started**

- (1) An appeal under this division is started by lodging a written notice of appeal with the registrar of the Planning and Environment Court.
- (2) The notice of appeal must be in the approved form and succinctly state the grounds of the appeal.

### **99BRBQ Application of relevant court provisions**

- (1) The relevant court appeal provisions apply, with any necessary changes, to an appeal under this division as if a reference in the provisions to—
  - (a) a Planning Act appeal or Planning Act proceeding were a reference to an appeal under this division; and
  - (b) the Planning Act were a reference to this Act; and
  - (c) the assessment manager were a reference to the distributor-retailer that made the decision the subject of the appeal; and
  - (d) a development permit or development approval were a reference to a water approval; and
  - (e) a development application were a reference to the application for the water approval.
- (2) In this section—

***relevant court appeal provisions***—

  - (a) means the *Planning and Environment Court Act 2016*, part 5, other than sections 45 and 46(2), (5) and (6) of that Act; and
  - (b) includes any definitions in the *Planning and Environment Court Act 2016* relevant to part 5 (other than sections 45 and 46(2), (5) and (6)) of that Act.

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### **99BRBQA Court to decide appeal about application for a connection based on particular statutory instruments**

- (1) This section applies to an appeal against a decision on an application for a connection, including, for example, a decision under a water approval given for the application.
- (2) The Planning and Environment Court must decide the appeal based on the statutory instruments in force when the application was made.
- (3) However, if a statutory instrument is amended or replaced before the Planning and Environment Court decides the appeal, the court may, in deciding the appeal, give the weight the court considers is appropriate, in the circumstances, to the amendment or replacement.

### **99BRBR Notice of appeal to other parties**

- (1) The applicant must give notice of the appeal to the distributor-retailer.
- (2) The notice must be given within 10 business days after the appeal is started.
- (3) The notice must state the grounds of the appeal.

### **99BRBS Stay of operation of water connection compliance notice**

- (1) If the applicant gives a notice of appeal about a water connection compliance notice, the operation of the compliance notice is stayed until the earliest of the following to happen—
  - (a) the Planning and Environment Court, on the application of the distributor-retailer, decides otherwise;
  - (b) the appeal is withdrawn;
  - (c) the appeal is dismissed.
- (2) However, subsection (1) does not apply if the compliance notice is about—

[s 99BRBT]

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- (a) a work, if the water connection compliance notice states the entity believes the work is a danger to persons or a risk to public health; or
- (b) stopping the demolition of a work; or
- (c) clearing vegetation on freehold land; or
- (d) the removal of quarry material allocated under the *Water Act 2000*; or
- (e) extracting clay, gravel, rock, sand or soil, not mentioned in paragraph (d), from Queensland waters; or
- (f) works the assessing authority reasonably believes is causing erosion or sedimentation; or
- (g) works the assessing authority reasonably believes is causing an environmental nuisance; or
- (h) action required to stop damage or further damage to the distributor-retailer's water infrastructure.

### **99BRBT Respondent for appeals**

The distributor-retailer is the respondent for the appeal and may be heard in the appeal as a party to the appeal.

### **99BRBU Who must prove case for appeals**

- (1) In an appeal under section 99BRBN, 99BRBO or 99BRBOA, the appellant must establish that the appeal should be upheld.
- (2) In an appeal under section 99BRBP by a person given a water connection compliance notice, the distributor-retailer who gave the notice must establish that the appeal should be dismissed.

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### **99BRBV Work under water approval not to start if appeal is started and not decided or withdrawn**

- (1) If an appeal, other than an appeal under section 99BRBP, is started under this division, any work under a water approval must not be started until the appeal is decided or withdrawn.
- (2) However, if the Planning and Environment Court is satisfied the outcome of the appeal would not be affected if all or part of the work were to start before the appeal is decided, the court may allow all or that part of the work to start before the appeal is decided.

### **99BRBW Appeals may be combined with appeals under the Planning Act**

- (1) This section applies if—
  - (a) an appeal is started under this division; and
  - (b) an appeal is started under the Planning Act for a development application which relates to land the subject of the application of a water approval.
- (2) The appeal under this division may be combined and heard with the appeal under the Planning Act.

## **Part 5                      Offences**

### **99BRBX Connections without water approval**

A person, other than a distributor-retailer, must not make a connection without a water approval for the connection.

Maximum penalty—1,665 penalty units.

### **99BRBY Requirement to comply with standard conditions**

- (1) A person must comply with each standard condition of a standard connection.

Maximum penalty—165 penalty units.

[s 99BRBZ]

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- (2) To avoid any doubt, it is declared that this section does not apply to a distributor-retailer.

### **99BRBZ Requirement to comply with conditions of water approvals**

- (1) A person must comply with each water approval condition of a water approval.  
Maximum penalty—1,665 penalty units.
- (2) To avoid any doubt, it is declared that this section does not apply to a distributor-retailer.

## **Part 6 Enforcement proceedings**

### **99BRCA Starting proceeding for enforcement order**

- (1) A distributor-retailer may start a proceeding in a District Court—
  - (a) for an enforcement order to remedy or restrain the commission of a water connection offence; or
  - (b) if the distributor-retailer has started a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under the Water Supply Act, section 478 as applied by section 99BRCB; or
  - (c) for an order that a person who has committed a water connection offence pay damages to compensate the applicant for injury suffered by the applicant or loss or damage to the applicant's property because of the commission of the offence.
- (2) A person may start a proceeding in a District Court—
  - (a) for an order that someone else who has committed a water connection offence pay damages to compensate the person for injury suffered by the person or loss or damage to the person's property because of the commission of the offence; or

- (b) if the person has started a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under the Water Supply Act, section 478 as applied by section 99BRCB.
- (3) If a person other than a distributor-retailer starts a proceeding for an enforcement order, the person must, within 5 business days, give the distributor-retailer for the geographic area to which the proceeding relates notice of the proceeding.

### **99BRCB Application of Water Supply Act enforcement order provisions**

- (1) This section applies to a proceeding started under section 99BRCA.
- (2) The Water Supply Act, sections 476 to 482, other than sections 480(2), 481(1)(d) and 481(2)(d), and any definitions under that Act relevant to those sections apply—
  - (a) as if a reference in the sections to an offence under the Water Supply Act were a reference to an offence against this chapter; and
  - (b) with any other necessary changes.

## **Part 7 Water infrastructure**

### **Division 1 Preliminary**

#### **99BRCC Definitions for pt 7**

In this part—

*additional payment condition* see section 99BRCU(1).

*agreement* means an agreement in writing.

*automatic increase provision* see section 99BRCCG(3)(b).

*board decision* see section 99BRCCF(1).

**breakup agreement** means an agreement entered into by a distributor-retailer and its participating local government under the Planning Act, section 115(2).

**establishment cost**, for a provision about trunk infrastructure, means the following—

- (a) for existing infrastructure—
  - (i) the current replacement cost of the infrastructure as reflected in the relevant distributor-retailer's asset register; and
  - (ii) the current value of the land acquired for the infrastructure;
- (b) for future infrastructure—all costs of land acquisition, financing, and design and construction, for the infrastructure.

**infrastructure charges schedule** see section 99BRCD.

**levied charge** see section 99BRCI(6).

**necessary infrastructure condition** see section 99BRCP(2).

**payer**, for a provision about a levied charge or for a payment, means anyone who pays part or all of the charge or payment.

**payment** includes a contribution by way of a payment.

**PPI** means—

- (a) the producer price index for construction 6427.0 (ABS PPI) index number 3101—Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics; or
- (b) if that index stops being published—another similar index prescribed by regulation.

**premises** means—

- (a) a building or other structure; or
- (b) land, whether or not a building or other structure is located on the land.

**subject premises** see section 99BRCP(1).



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## Division 2                    Infrastructure charges schedule

### 99BRCD Operation of div 2

This division applies if the charges schedule (an *infrastructure charges schedule*) of a distributor-retailer includes an adopted charge.

### 99BRCE Schedule of charges to be adopted

- (1) The distributor-retailer's board must adopt its infrastructure charges schedule before the schedule is—
  - (a) included in the distributor-retailer's water netserv plan; and
  - (b) uploaded to the distributor-retailer's website.
- (2) The infrastructure charges schedule must include the matters dealt with in the board's decision under division 3, subdivisions 1 and 2.
- (3) A charge in the infrastructure charges schedule takes effect—
  - (a) if the infrastructure charges schedule is uploaded to the distributor-retailer's website before the beginning of the day stated in the board decision as the day the charge takes effect—on the day stated in the board decision; or
  - (b) otherwise—the day the infrastructure charges schedule is uploaded to the distributor-retailer's website.

## Division 3                    Charges for trunk infrastructure

### Subdivision 1                Power to adopt charges

#### 99BRCF Power to adopt charges by board decision

- (1) A distributor-retailer's board may decide (a *board decision*) to adopt charges (each an *adopted charge*) for providing trunk

infrastructure in relation to its water service or wastewater service.

*Note—*

See also section 140F.

- (2) However—
- (a) a board decision does not, of itself, levy an adopted charge; and
  - (b) the making of a board decision is subject to subdivision 2; and
  - (c) an adopted charge must not be for—
    - (i) trunk infrastructure related to work or use of land authorised under the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or
    - (ii) trunk infrastructure related to development in, or on PDA-associated land for, a priority development area under the *Economic Development Act 2012*; or
    - (iii) trunk infrastructure related to development by a department, or part of a department, under a designation under the Planning Act.
- (3) A board decision must state the day when an adopted charge in the board decision is to take effect.

*Note—*

See section 99BRCE(3).

## **Subdivision 2 Board decision**

### **99BRCG Matters for board decision**

- (1) An adopted charge may be made for providing trunk infrastructure for a land use if—

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- (a) the land use is prescribed by regulation under the Planning Act, section 112(3)(b); and
  - (b) the charge is no more than the proportion of the maximum adopted charge for trunk infrastructure the distributor-retailer may have under—
    - (i) a breakup agreement to which it is a party; or
    - (ii) if it is not a party to a breakup agreement—a regulation under the Planning Act.
- (2) There may be different adopted charges for providing trunk infrastructure in different parts of the distributor-retailer’s geographic area.
- (3) Also, a board decision may do either or both of the following—
- (a) declare there is no adopted charge for part or all of the distributor-retailer’s geographic area;
  - (b) make a provision (an ***automatic increase provision***) that provides for automatic increases in levied charges from when they are levied to when they are paid.
- (4) However, an automatic increase provision must state how increases under it are to be worked out.
- (5) Also, the automatic increase must not be more than the lesser of the following—
- (a) the difference between the levied charge and the amount mentioned in subsection (1)(b) the distributor-retailer could have levied for the trunk infrastructure when the charge is paid;
  - (b) the increase worked out using the PPI, adjusted according to the 3-yearly PPI average, for the period—
    - (i) starting on the day the levied charge is levied; and
    - (ii) ending on the day the charge is paid.
- (6) In this section—

**3-yearly PPI average** means the PPI adjusted according to the 3-year moving average quarterly percentage change between financial quarters.

**maximum adopted charge**, for a financial year, for trunk infrastructure, means the sum of—

- (a) the maximum amount for an adopted charge for the infrastructure—
  - (i) prescribed under the Planning Act, section 112(1); and
  - (ii) in force at the start of the financial year; and
- (b) an amount equal to the amount mentioned in paragraph (a) multiplied by the sum of the percentage increases for each financial quarter since the amount was last prescribed or amended.

**percentage increase** means the 3-yearly moving average quarterly percentage increase in the PPI.

### **99BRCH Working out cost of infrastructure for offset or refund**

- (1) For the purpose of working out an offset or refund under this part, a board decision must include a method for working out the cost of the infrastructure the subject of the offset or refund.
- (2) The method must be consistent with the parameters for the purpose provided for under a guideline under the Planning Act, section 116(2).

### **99BRCHA Criteria for deciding conversion application**

- (1) A board decision must include criteria for deciding a conversion application.
- (2) The criteria must be consistent with parameters for the criteria provided for under a guideline mentioned in the Planning Act, section 117(2).

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## Subdivision 3 Levying charges

### 99BRCI When charge may be levied and recovered

- (1) This section applies if—
  - (a) a distributor-retailer has given a water approval; and
  - (b) an adopted charge applies for providing the trunk infrastructure.
- (2) The distributor-retailer must give the applicant for the water approval an infrastructure charges notice.

*Note—*

For the giving of an infrastructure charges notice for the part of a water approval that was a PDA development approval under the *Economic Development Act 2012*, see also section 51AU(5) and (6) of that Act.

- (3) The infrastructure charges notice must be given within 10 business days after the distributor-retailer gives the applicant a decision notice under section 99BRAI or a notice under section 99BRAU(5).
- (4) Subsection (3) is subject to any provision under which an infrastructure charges notice may be amended or replaced.

*Note—*

See sections 99BRAK(5)(c), 99BRDC(3) and 99BRDH(4).

- (5) The infrastructure charges notice lapses if the water approval stops having effect.
- (6) A charge (a *levied charge*) under an infrastructure charges notice—
  - (a) is subject to sections 99BRCJ and 99BRCT; and
  - (b) is payable by the applicant; and
  - (c) attaches to the premises; and
  - (d) becomes payable as provided for under subdivision 4; and
  - (e) is subject to any agreement under section 99BRCM(1); and

- (f) may be recovered, in whole or part, by the distributor-retailer from the applicant as a debt.

### **99BRCJ Limitation of levied charge**

- (1) A levied charge may be only for additional demand placed upon trunk infrastructure that will be generated by the connection the subject of the water approval.
- (2) In working out additional demand—
  - (a) any existing demand for a water service or wastewater service must not be included if it is the subject of an existing water approval for the premises; and
  - (b) the demand on trunk infrastructure generated by the following must not be included—
    - (i) an existing use on the premises if the use is lawful and already taking place on the premises;
    - (ii) a previous use that is no longer taking place on the premises if the use was lawful at the time it was carried out;
    - (iii) other development on the premises if the development may be lawfully carried out without the need for a further development permit under the Planning Act.
- (3) However, the demand generated by a water approval, use or development mentioned in subsection (2) may be included if an infrastructure requirement that applies or applied to the water approval, use or development has not been complied with.
- (3A) Also, the demand generated by development mentioned in subsection (2)(b)(iii) may be included if—
  - (a) an infrastructure requirement applies to the land on which the development will be carried out; and
  - (b) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the land.

(4) In this section—

*charges notice* means—

- (a) an infrastructure charges notice under this Act or the Planning Act; or
- (b) a notice mentioned in the repealed SPA, section 977(1).

*infrastructure requirement* means a charges notice, a water approval condition or a condition of a development approval that requires infrastructure or a payment in relation to demand on trunk infrastructure.

### **99BRCK Requirements for infrastructure charges notice**

(1) An infrastructure charges notice must state all of the following for the levied charge—

- (a) its current amount;
- (b) how it has been worked out;
- (c) the land;
- (d) when it will be payable under section 99BRCL (without considering any possible water infrastructure agreement);
- (e) if an automatic increase provision applies—
  - (i) that it is subject to automatic increases; and
  - (ii) how the increases are worked out under the provision;
- (f) whether an offset or refund under this part applies and, if so, information about the offset or refund, including when the refund will be given.

(1A) However, the infrastructure charges notice need not include the information mentioned in subsection (1)(f) if the person who is to receive the notice has—

- (a) advised, in writing, the distributor-retailer giving the notice that the information need not be included in the notice; or

[s 99BRCL]

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- (b) indicated, in an approved form, that the information need not be included in the notice.
- (2) The infrastructure charges notice must also include, or be accompanied by, an information notice about the decision to give the notice.

## Subdivision 4      Payment

### 99BRCL Payment triggers generally

- (1) A levied charge for trunk infrastructure becomes payable—
  - (a) if the charge applies for a water approval and there is a related reconfiguring of a lot that is assessable development—when the network connection is made; or
  - (b) otherwise—when the property service connection is made.
- (2) This section is subject to any relevant water infrastructure agreement.
- (3) In this section—  
*assessable development* see the Planning Act, section 44(3).

### 99BRCM Agreements about payment or provision instead of payment

- (1) The recipient of an infrastructure charges notice and the distributor-retailer that gave it may agree about either or both of the following—
  - (a) whether the levied charge may be paid other than as required under section 99BRCL, including whether it may be paid by instalments;
  - (b) whether infrastructure may be provided instead of paying part or all of the levied charge.



- (2) If the levied charge is subject to an automatic increase provision, the agreement must state how increases in the charges are payable under the agreement.

## **Subdivision 5 Changing charges**

### **99BRCN Application of Planning Act, ch 4, pt 2, div 2, sdiv 5**

The Planning Act, chapter 4, part 2, division 2, subdivision 5 applies to an infrastructure charges notice given by a distributor-retailer with any necessary changes, as if a reference in the subdivision to—

- (a) an infrastructure charges notice were a reference to an infrastructure charges notice under this Act; and
- (b) the local government that gave the infrastructure charges notice were the distributor-retailer that gave the infrastructure charges notice under this Act; and
- (c) the appeal period for the infrastructure charges notice were a reference to the period within which the recipient of the infrastructure charges notice may make an internal review application under part 4, division 2 of this Act about the decision to give an infrastructure charges notice.

## **Subdivision 6 Miscellaneous**

### **99BRCO Distributor-retailer may supply different trunk infrastructure from that identified in a water netserv plan**

A distributor-retailer may supply different trunk infrastructure from the infrastructure identified in its water netserv plan if the infrastructure supplied delivers the same desired standard of service identified in the plan.

## **Division 4                    Water approval conditions about trunk infrastructure**

### **Subdivision 1            Conditions for necessary trunk infrastructure**

#### **99BRCP Application and operation of sdiv 1**

- (1) This subdivision applies if trunk infrastructure necessary to service the premises the subject of a water approval (the *subject premises*)—
  - (a) has not been provided; or
  - (b) has been provided but is inadequate.
- (2) Sections 99BRCQ and 99BRCR provide for a distributor-retailer to be able to impose particular water approval conditions (each condition is a *necessary infrastructure condition*) on any water approval given.

#### **99BRCQ Necessary infrastructure condition for infrastructure identified in water netserv plan**

- (1) This section applies if the distributor-retailer's water netserv plan identifies adequate trunk infrastructure to service the subject premises.
- (2) The distributor-retailer may impose a water approval condition requiring either or both of the following to be provided at a stated time—
  - (a) the identified infrastructure;
  - (b) different trunk infrastructure delivering the same desired standard of service.

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### **99BRCR Necessary infrastructure condition for other infrastructure**

- (1) This section applies if the distributor-retailer's water netserv plan does not identify adequate trunk infrastructure to service the subject premises.
- (2) The distributor-retailer may impose a water approval condition that requires development infrastructure necessary to service the premises to be provided at a stated time.

*Note—*

See schedule, definition *trunk infrastructure*.

- (3) However, the distributor-retailer may impose a condition under subsection (2) only if the development infrastructure services a connection consistent with the assumptions stated in the water netserv plan about the type, scale, location, timing or intensity of future development.

### **99BRCS Deemed compliance with reasonable or relevant requirement**

- (1) A necessary infrastructure condition is taken to comply with section 99BRAJ(1) if—
  - (a) generally, the infrastructure required is—
    - (i) necessary to service the subject premises; and
    - (ii) the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and
  - (b) for a necessary infrastructure condition that requires the provision of the infrastructure on the subject premises, its provision—
    - (i) is not an unreasonable imposition on the connection; and
    - (ii) is reasonably required for the connection.
- (2) To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure

even if it will service premises other than the subject premises.

### **99BRCT Offset or refund requirements**

- (1) This section applies if—
  - (a) trunk infrastructure the subject of a necessary infrastructure condition services, or is planned to service, premises other than the subject premises; and
  - (b) an adopted charge applies for the trunk infrastructure.
- (2) If the cost of the infrastructure required to be provided under the condition is equal to or less than the amount worked out by applying the adopted charge to the connection, the cost must be offset against that amount.

*Note—*

For how the cost is worked out, see sections 99BRCH and 99BRDC.

- (3) If the cost of the infrastructure required to be provided under the condition is more than the amount worked out by applying the adopted charge to the connection—
  - (a) there is no amount payable by the applicant for the relevant water approval; and
  - (b) the distributor-retailer must refund the applicant an amount equal to the difference between the establishment cost of the trunk infrastructure and the amount worked out by applying the adopted charge to the connection.

## **Subdivision 2      Conditions for additional trunk infrastructure costs**

### **99BRCU Power to impose**

- (1) A distributor-retailer may impose a condition (an *additional payment condition*) on a water approval requiring the payment of additional trunk infrastructure costs if—

- (a) the connection—
    - (i) will generate infrastructure demand of more than that required to service the type, scale or intensity of future development assumed in the water netserv plan; or
    - (ii) will require new trunk infrastructure earlier than when identified in the distributor-retailer's water netserv plan; or
    - (iii) is for premises completely or partly outside the connection area and future connection area; and
  - (b) the connection would impose additional trunk infrastructure costs on the distributor-retailer after taking into account either or both of the following—
    - (i) levied charges for the trunk infrastructure;
    - (ii) trunk infrastructure provided, or to be provided, by the applicant under this part.
- (2) An additional payment condition is taken to comply with section 99BRAJ(1) to the extent the infrastructure is necessary, but not yet available, to service the connection.
- (3) Subsection (2) applies even if the infrastructure is also intended to service other premises.
- (4) The power to impose an additional payment condition is subject to the rest of this subdivision.

### **99BRCV Content of additional payment condition**

- (1) An additional payment condition must state all of the following—
- (a) why it was imposed;
  - (b) the amount of the payment to be made under the condition;
  - (c) details of the trunk infrastructure for which the payment is required;
  - (d) when the amount becomes payable (the *payment time*);

- (e) that the applicant may, instead of making the payment, elect to provide part or all of the trunk infrastructure;
  - (f) if the applicant so elects—
    - (i) any requirements for providing the trunk infrastructure; and
    - (ii) when it must be provided.
- (2) Unless the applicant and the distributor-retailer otherwise agree, the payment time is—
- (a) if the trunk infrastructure is necessary to service the premises—by the day the connection, or work associated with the connection, starts; or
  - (b) if the trunk infrastructure is not necessary to service the premises—
    - (i) for a connection associated with reconfiguring a lot—when the network connection is made; or
    - (ii) for other connections—when the property service connection is made.

### **99BRCW Restriction if connection completely in connection area and future connection area**

- (1) This section applies for an additional payment condition imposed by a distributor-retailer for a connection completely inside the connection area and future connection area.
- (2) The additional payment condition may require a payment only as follows—
  - (a) for trunk infrastructure to be provided earlier than planned in the water netserv plan—the additional establishment cost that would be incurred by the distributor-retailer in providing the trunk infrastructure earlier than planned;
  - (b) for infrastructure associated with a different type, scale or intensity of future development from that assumed in the water netserv plan—the establishment cost of any

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additional trunk infrastructure made necessary by the connection.

### **99BRCX Other area restrictions**

- (1) This section applies for an additional payment condition imposed by a distributor-retailer for a connection completely or partly outside the connection area and future connection area.
- (2) The additional payment condition may only require the payment of—
  - (a) the establishment cost of trunk infrastructure that is—
    - (i) made necessary by the connection; and
    - (ii) needed to service the rest of the connection area and future connection area; and
  - (b) either or both of the following establishment costs of any temporary infrastructure—
    - (i) costs required to ensure the safe or efficient operation of infrastructure needed to service the connection;
    - (ii) costs made necessary by the connection; and
  - (c) any decommissioning, removal and rehabilitation costs of the temporary infrastructure; and
  - (d) the maintenance and operating costs for up to 5 years of the infrastructure and temporary infrastructure as mentioned in paragraphs (a) and (b).

### **99BRCY Refund if connection in connection area and future connection area**

- (1) This section applies for an additional payment condition imposed by a distributor-retailer for a connection completely inside the connection area and future connection area.
- (2) The distributor-retailer must refund the payer the proportion of the establishment cost of the infrastructure that—

[s 99BRCZ]

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- (a) may be apportioned reasonably to other users of the infrastructure; and
- (b) has been, is or is to be, the subject of a levied charge by the distributor-retailer.

### **99BRCZ Refund if water approval ceases**

- (1) This section applies if—
  - (a) a water approval subject to an additional payment condition no longer has effect; and
  - (b) a payment has been made under the condition; and
  - (c) construction of the infrastructure the subject of the condition has not substantially started before the water approval no longer has effect.
- (2) The distributor-retailer must refund the payer any part of the payment the distributor-retailer has not spent, or contracted to spend, on designing and constructing the infrastructure.
- (3) Timing of the refund is subject to terms agreed between the payer and distributor-retailer.

### **99BRDA Additional payment condition does not affect other powers**

To remove any doubt, it is declared that the imposition of an additional payment condition does not prevent a distributor-retailer from doing the following—

- (a) adopting charges for trunk infrastructure or levying charges;
- (b) imposing a condition for non-trunk infrastructure;
- (c) imposing a necessary infrastructure condition.



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## Subdivision 3 Miscellaneous provisions

### 99BRDB No conditions on State infrastructure suppliers

- (1) A distributor-retailer can not impose a condition under this division on a supplier of State infrastructure.
- (2) In this section—  
*State infrastructure* see the Planning Act, schedule 2.

### 99BRDC Working out cost for required offset or refund

- (1) This section applies if—
  - (a) a distributor-retailer has given an applicant for a water approval—
    - (i) a water approval under which the applicant is required to provide trunk infrastructure; and
    - (ii) an infrastructure charges notice that includes details of an offset or refund under this part relating to the establishment cost of the trunk infrastructure; and
  - (b) the applicant does not agree with the value of the establishment cost.
- (2) The applicant may, by notice to the distributor-retailer, require it to use the method under the relevant infrastructure charges schedule to recalculate the establishment cost.
- (2A) A notice under subsection (2) must be given to the distributor-retailer before the levied charge under the infrastructure charges notice becomes payable under section 99BRCL.
- (3) By notice to the applicant, the distributor-retailer must amend the existing infrastructure charges notice.
- (4) The amended infrastructure charges notice must adopt the method to work out the establishment cost.

## **Division 5                      Miscellaneous provisions about trunk infrastructure**

### **Subdivision 1                Conversion of particular non-trunk infrastructure before construction starts**

#### **99BRDD Application of sdiv 1**

This subdivision applies if—

- (a) a particular water approval condition under section 99BRDJ requires non-trunk infrastructure to be provided; and
- (b) the construction of the non-trunk infrastructure has not started.

#### **99BRDE Application to convert infrastructure to trunk infrastructure**

- (1) The holder of a water approval may apply to convert non-trunk infrastructure to trunk infrastructure.

*Note—*

For the making of a conversion application for the part of a water approval that was a PDA development approval under the *Economic Development Act 2012*, see also section 51AU(7) of that Act.

- (2) The application (the *conversion application*) must be made to the distributor-retailer, in writing, within 1 year after the water approval takes effect.

#### **99BRDF Deciding conversion application**

- (1) The distributor-retailer must consider and decide the conversion application within the required period.

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- (2) In deciding the conversion application, the distributor-retailer must have regard to the criteria for deciding the application in its infrastructure charges schedule.
  - (3) However, at any time before making the decision, the distributor-retailer may give a notice (an *information requirement*) to the applicant requiring the applicant to give information the distributor-retailer reasonably needs to make the decision.
  - (4) The notice must state—
    - (a) what information it requires; and
    - (b) a period of at least 10 business days for giving the information; and
    - (c) the effect of subsection (5).
  - (5) The application lapses if the applicant does not comply with the notice within the later of the following—
    - (a) the period stated in the notice for giving the information;
    - (b) any later period, as agreed within the period stated in the notice, between the distributor-retailer and the applicant.
  - (6) In this section—

*required period* means 30 business days after—

    - (a) generally—the making of the application; or
    - (b) if an information requirement is made—the requirement is complied with.

### **99BRDG Notice of decision**

- (1) As soon as practicable after deciding the conversion application, the distributor-retailer must give the applicant notice of the decision.
- (2) If the decision is to convert the non-trunk infrastructure to trunk infrastructure, the notice must state whether an offset or refund under this part applies and, if it does, details of the offset or refund.

[s 99BRDH]

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- (3) If the decision is not to convert the non-trunk infrastructure to trunk infrastructure, the notice must be an information notice about the decision.

### **99BRDH Effect of and action after conversion**

- (1) This section applies if the decision on a conversion application is to convert the non-trunk infrastructure to trunk infrastructure.

*Note—*

See schedule, definition *trunk infrastructure*.

- (2) The relevant water approval condition requiring the non-trunk infrastructure to be provided no longer has effect.
- (3) Within 20 business days after making the decision, the distributor-retailer may amend the water approval by imposing a necessary infrastructure condition for the trunk infrastructure.
- (4) If a necessary infrastructure condition is imposed, the distributor-retailer must also do either of the following within 10 business days after the imposition for the purposes of section 99BRCT(2) or (3)(b)—
  - (a) give an infrastructure charges notice;
  - (b) amend, by notice to the applicant, any existing infrastructure charges notice for the water approval.
- (5) For taking action under subsections (3) and (4), divisions 3 and 4 and part 4 apply as if—
  - (a) a water approval were a reference to the conversion; and
  - (b) a levied charge were a reference to the amendment of the levied charge.

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## Subdivision 2 Other provisions

### 99BRDI Application of levied charge

- (1) A levied charge paid to a distributor-retailer must be used to provide trunk infrastructure.
- (2) To remove any doubt, it is declared that the amount paid need not be held in trust by the distributor-retailer.

## Division 6 Non-trunk infrastructure

### 99BRDJ Conditions distributor-retailers may impose

- (1) This section applies for the imposition by a distributor-retailer of a water approval condition about non-trunk infrastructure.
- (2) The condition may be only about providing development infrastructure for 1 or more of the following—
  - (a) a network, or part of a network, internal to the premises;
  - (b) connecting the premises to external infrastructure networks;
  - (c) protecting or maintaining the safety or efficiency of the water infrastructure network of which the non-trunk infrastructure is a component.
- (3) The condition must state the infrastructure to be provided and when it must be provided.

## Division 7 Water infrastructure agreements

### 99BRDK Water infrastructure agreement

A *water infrastructure agreement* is an agreement, as amended from time to time, mentioned in any of the following—

- section 99BRCM(1)

[s 99BRDL]

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- section 99BRCV(2)
- section 99BRCZ(3)
- section 99BRDP(1).

### **99BRDL Obligation to negotiate in good faith**

- (1) This section applies if—
  - (a) a distributor-retailer proposes to another entity that they enter into a water infrastructure agreement; or
  - (b) another entity proposes to a distributor-retailer that they enter into a water infrastructure agreement.
- (2) The distributor-retailer or other entity to whom the proposal is made must, in writing, tell the proponent if it agrees to entering into negotiations for an infrastructure agreement.
- (3) In negotiating an infrastructure agreement, the distributor-retailer and the other entity must act in good faith.

*Examples of actions that subsection (3) requires—*

- disclosing to the other party to the negotiation in a timely way information relevant to entering into the proposed agreement
- considering and responding in a timely way to the other party's proposals about the proposed agreement
- giving reasons for each response

### **99BRDM Content of water infrastructure agreement**

A water infrastructure agreement must—

- (a) if obligations under it would be affected by a change in the ownership of land the subject of the agreement—include a statement about how the obligations must be fulfilled in that event; and
- (b) include any other matters required by regulation to be included.

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### **99BRDMA Copy of water infrastructure agreement to be given to local government**

- (1) This section applies if a participating local government is not a party to a water infrastructure agreement that relates to its local government area.
- (2) The distributor-retailer must give the local government a copy of the agreement.

### **99BRDN When water infrastructure agreement binds successors in title**

- (1) This section applies if the owner of land to which a water infrastructure agreement applies is a party to the agreement or consents to the water connection obligations being attached to the land.
- (2) The water connection obligations under the water infrastructure agreement attach to the land and bind the owner and the owner's successors in title of the land.
- (3) If the owner's consent under subsection (1) is given but not endorsed on the water infrastructure agreement, the owner must give a copy of the document evidencing the owner's consent to the distributor-retailer for the land to which the consent applies.
- (4) Despite subsection (2), subsections (5) and (6) apply if—
  - (a) the water infrastructure agreement states that if the land is subdivided, part of the land is to be released from the water connection obligations; and
  - (b) the land is subdivided.
- (5) The part is released from the water connection obligations.
- (6) The water connection obligations are no longer binding on the owner of the part.
- (7) In this section—  
*public sector entity* see the Planning Act, schedule 2.

*water connection obligation* means an obligation under the water infrastructure agreement other than an obligation to be fulfilled by a public sector entity.

### **99BRDO Water infrastructure agreement prevails over water approval and infrastructure charges notice**

- (1) If a water infrastructure agreement is inconsistent with a water approval or infrastructure charges notice, the agreement prevails to the extent of the inconsistency.
- (2) This section is subject to the *Economic Development Act 2012*, section 120A(4).

*Note—*

See also the *Economic Development Act 2012*, section 120(5) for when an infrastructure agreement under the Planning Act applies instead of the part of a water approval that was part of a PDA development approval under that Act.

### **99BRDP Agreement for infrastructure partnerships**

- (1) A person may enter into an agreement with a distributor-retailer about—
  - (a) providing or funding infrastructure; or
  - (b) refunding payments made towards the cost of providing or funding infrastructure.
- (2) Subsection (1) has effect despite section 99BRAJ and divisions 2 to 6.

## **Part 8 Miscellaneous provisions**

### **99BRDQ SEQ service provider's guarantees to provide connection**

- (1) This section applies to an SEQ service provider that has adopted a water netserv plan.



- (2) The SEQ service provider must provide a connection to its infrastructure networks for its water service or wastewater service if the connection complies with its connection criteria in the connection area.
- (3) To avoid any doubt, it is declared that an SEQ service provider does not guarantee to provide a connection to its water service or wastewater service in a future connection area.

### **99BRDR Ch 4C does not limit Water Supply Act**

To avoid any doubt, it is declared that this chapter is not intended to limit a power or function of a distributor-retailer under the Water Supply Act.

## **Chapter 5            Miscellaneous provisions**

### **Part 1                Public access to information**

#### **99BT    Keeping particular documents available for inspection and purchase**

- (1) An SEQ service provider must keep available for inspection and purchase a copy of each of the following—
  - (a) part A of the SEQ service provider’s water netserv plan;
  - (ab) all supporting material used to draft its water netserv plan;
  - (b) a map showing the limits of the SEQ service provider’s connection areas;
  - (c) the SEQ design and construction code;
  - (d) if the SEQ service provider is a distributor-retailer, the following—

[s 99BU]

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- (i) each annual capital works program prepared by the distributor-retailer under section 100B;
- (ii) an infrastructure charges register that complies with section 99BU;
- (iii) each infrastructure agreement and water infrastructure agreement to which the distributor-retailer is a party;
- (iv) each approved inspection program;
- (v) each water approval that attaches to land, including any conditions of the approval;
- (vi) each document mentioned in the water netserv plan used to prepare the plan.

*Note—*

For access to an SEQ service provider's customer service charter, see section 99AEA.

- (2) The documents mentioned in subsection (1)(a) and (c) must also be kept available on the SEQ service provider's website.

### **99BU Requirements for infrastructure charges register**

- (1) For section 99BT(1)(d)(ii), the infrastructure charges register must include all charges for infrastructure levied by the distributor-retailer.
- (2) For each of the charges, the register must include all 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) any relevant number of units of demand charged for;

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- (f) if the charge was levied as a result of a development approval—the approval reference number and the day the approval will lapse;
  - (g) if infrastructure was to be provided instead of paying the charge—details of any infrastructure still to be provided.
- (3) Also, the register must include—
- (a) the charge rate, stated in the charges schedule, for each charge levied; and
  - (b) if the charge has been adjusted for inflation—details of how it was adjusted and the adjusted charge rate.

### **99BV SEQ service provider may charge for copies of documents**

- (1) An SEQ service provider 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 SEQ service provider of—
  - (a) making the copy available to the person; and
  - (b) if the person asks for the material to be posted—the postage.

## **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.

[s 99BZ]

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### **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
- (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.

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### **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;

[s 99BZD]

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- (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.

## Part 4 Other matters

### 99BZD Compensation by local governments for particular matters

- (1) This section applies if a participating local government (the *council*) of a distributor-retailer adopts, does or makes any of the following (the *triggering event*)—
  - (a) an individual direction;
  - (b) a change, during the capped prices period, to a subsidy or rebate for users of water services or wastewater services;
  - (c) an action or decision of a type prescribed under a regulation.
- (2) The council has a liability to compensate (the *compensation liability*) the distributor-retailer and its other participating local governments (each a *claimant*) for any direct and reasonably anticipated financial detriment they will or may suffer because of the triggering event's effects.
- (3) However, the compensation liability does not apply for a type of detriment prescribed under a regulation.
- (4) The council and each claimant must make reasonable endeavours to negotiate in good faith to reach an agreement about the amount, if any, of the compensation liability.
- (5) However, the agreement can not do, or have the effect of—
  - (a) changing participation rights without approval under section 29; or
  - (b) anything else prescribed under a regulation.

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- (6) A regulation may provide for all or any of the following about the compensation liability—
- (a) the period within which it can be claimed;
  - (b) how it may be claimed;
  - (c) how any amount for the liability may or must be paid;
  - (d) dispute resolution if it is not provided for under the distributor-retailer's participation agreement.

## **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 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

[s 100A]

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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 EPP, section 22.
- (3) In managing its wastewater service, the distributor-retailer must have regard to the provisions about the matters that, under the water EPP, 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 EPP, section 22 does not apply to the distributor-retailer as a sewerage service provider.



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- (5) On and from 1 July 2010, the water EPP, 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, means the local government’s environmental plan about trade waste management or total water cycle management plan developed under the water EPP and in effect immediately before 1 July 2010.

### **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 Chief executive may make guidelines**

The chief executive may make guidelines to provide guidance to SEQ service providers 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

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

### **100DA Requirement for SEQ service provider to give information**

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

Maximum penalty for subsection (3)—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) 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.

[s 100G]

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- (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 SEQ service provider for whom the relevant discharge compliance notice was issued; or
  - (b) for a provision prescribed under subsection (1)(b)—the entity prescribed under a regulation.

### **100G Documents and information about water approvals and development approvals**

- (1) Subsection (2) applies if a distributor-retailer asks a local government to give it information or documents relevant to a water approval or application for a water approval.

*Examples of information or documents—*

- information about a development application or development approval
- associated documents of a development application or development approval
- information a local government receives as a delegate under section 53

- (2) The local government must give the information or documents as soon as practicable and at no cost.

- (3) Subsection (4) applies if a local government asks a distributor-retailer to give it information or documents relevant to a development approval or development application.

*Examples of information or documents—*

- information about an application for a water approval or a water approval
- associated documents of an application for a water approval or water approval

- (4) The distributor-retailer must give the information or documents as soon as practicable and at no cost.

(5) In this section—

*development application* includes—

- (a) a development application made under the repealed IPA or repealed SPA; and
- (b) a change application made under the Planning Act.

## **101 Approved forms**

The chief executive of the department in which the Water Supply Act is administered 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);
    - (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) provide for any additional matters for water approvals; and
  - (g) make provision for a withdrawn council as a service provider or for a corporate entity (service provider).
- (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.

[s 107A]

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- (2) A distributor-retailer is not a grid participant under the market rules under the Water Act.

## **Part 2**

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

### **107A Declaratory provision for s 83**

- (1) The Queensland Local Government Officers' Award 1998 is declared to be, and to have always been, a prescribed industrial instrument.
- (2) Subsection (1) applies even though the award does not of its own terms purport to apply to a distributor-retailer.
- (3) It is declared that section 83 does not prevent, and never has prevented, the award or a section 83 instrument from—
  - (a) applying to a transferred employee; and
  - (b) continuing to apply to a transferred employee after the transitional period under section 83 ends.
- (4) In this section—

*prescribed industrial instrument* see section 83(5).

*section 83 instrument* means an industrial instrument mentioned in section 83(3)(a), including, for example, a prescribed industrial instrument.

*transferred employee* means an employee to whom section 83 applies.



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**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—

[s 111]

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- (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;
- 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—

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- (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.

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- (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.

## Part 6

# Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2012

### 119 What is a *transitional matter*

A *transitional matter* is any of the following—

- (a) the retransfer;
- (b) the cessation of Allconnex's functions under this Act or its dissolution;
- (c) the service provider functions of a withdrawn council or a corporate entity (service provider);
- (d) anything necessary or desirable for a distributor-retailer other than Allconnex because of a matter mentioned in paragraphs (a) to (c).

[s 120]

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## **120 Price mitigation plans of withdrawn councils**

The price mitigation plan of a participating local government of Allconnex becomes that local government's price mitigation plan as a withdrawn council.

## **120A Authorised exchange of information**

Section 92BS applies to a party to the retransfer exchanging information with another party under that section from the period starting at the beginning of 11 October 2011 and ending on the date of assent.

## **121 Customer water and wastewater code amendments for transitional matters**

Section 97(2) does not apply for any amendment of the customer water and wastewater code the Minister considers is for a transitional matter.

## **121A Application of s 99ATA to withdrawn councils and Allconnex**

- (1) Despite section 99ATA(2), the details of the charges relating to a withdrawn council's water services and wastewater services for the financial year starting on 1 July 2012 must be published on its website by 1 July 2012.
- (2) To remove any doubt, it is declared that—
  - (a) section 99ATA(1) and (2) does not apply to Allconnex for charges relating to the financial year starting on 1 July 2012; and
  - (b) section 99ATA(3) and (4) does not apply to Allconnex for proposed charges for the financial year starting on 1 July 2012.

## 122 Deferral of application of s 99AV

Section 99AV(1)(c), (d), (e), (i), (l) and (m) do not apply for a withdrawn council until—

- (a) 2 years after the day on which this section commences;  
or
- (b) if within the 2 years an earlier day is prescribed under a regulation—the earlier day.

## Part 7 Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012

### 124 Definitions for pt 7

In this part—

*amending Act* means the *South-East Queensland Water (Distribution and Retail Restructuring) Amendment Act 2012*.

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

*former*, in relation to a provision, means as in force immediately before the repeal of the provision by the amending Act.

*retransfer staff support framework* means the retransfer staff support framework mentioned in former section 92EC.

*staff support framework* means a staff support framework approved by the industrial relations Minister under former section 79.

## **125 Cessation of staff support framework**

- (1) This section applies to a staff support framework applying immediately before the commencement to a distributor-retailer.

*Note—*

The reference to a distributor-retailer in this section includes Allconnex, for which sections 126 and 127 make particular provision.

- (2) From the commencement—
- (a) the staff support framework ceases to apply for the distributor-retailer's employees and its participating local governments; and
  - (b) any requirement in a document for the distributor-retailer to act in accordance with the staff support framework, or any provision of it, no longer applies.
- (3) However, subsection (2) does not invalidate or otherwise affect—
- (a) anything done under the staff support framework before the commencement; or
  - (b) any requirement in a document that does not rely on the staff support framework, or any provision of it, merely because it is a similar obligation.
- (4) Also, anything started under the staff support framework before the commencement may be finished from the commencement as if former section 79 had not been repealed.
- (5) For the purposes of subsection (4), former section 80 continues to apply to anything to be finished under subsection (4) as if former section 80 had not been repealed.
- (6) From the commencement, former section 83 continues to apply to the transfer of an employee of a local government to a distributor-retailer under a transition document as if former section 79 and former section 83 had not been repealed.



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**126 Retransfer staff support framework taken never to have had effect**

- (1) From the commencement, the retransfer staff support framework has no effect and is taken never to have had effect.
- (2) However, subsection (1) does not invalidate or otherwise affect anything done under the retransfer staff support framework before the commencement.
- (3) Also, if an affected employee received a payment from Allconnex or a withdrawn council in the retransfer period, whether or not the payment was made or purportedly made under the retransfer staff support framework, subsection (1) does not, of itself, create a right by Allconnex or the withdrawn council to recover the payment.
- (4) Subsection (5) applies if Allconnex or a withdrawn council—
  - (a) before the commencement—
    - (i) makes a representation in relation to an affected employee in compliance or purported compliance with the retransfer staff support framework; or
    - (ii) in connection with the retransfer staff support framework, enters into an agreement or has an understanding with an affected employee or undertakes to take action in relation to an affected employee; and
  - (b) from the commencement, fails to act on the representation, agreement, understanding or undertaking because the retransfer staff support framework has no effect.
- (5) Allconnex's or the withdrawn council's making of the representation, entering into the agreement or having the understanding with the affected employee under subsection (4)(a), or failure to act under subsection (4)(b), does not, of itself, create a legally enforceable right of anyone.
- (6) In this section—

***action*** includes inaction.

[s 127]

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*affected employee* means an employee of Allconnex or a withdrawn council.

*payment* includes a benefit.

*representation* includes a promise, whether express or implied.

*retransfer period* means the period starting at the beginning of 16 December 2011 and ending on the date of assent of the amending Act.

## **127 Effect of former s 92EE on staff support framework**

To remove any doubt, it is declared that the staff support framework—

- (a) did not under former section 92EE cease to apply for Allconnex's employees and the withdrawn councils; and
- (b) continued to apply for Allconnex's employees and the withdrawn councils, to the greatest practicable extent, until its cessation under section 125.

## **128 Application of particular provisions of Local Government (Operations) Regulation 2010 to withdrawn councils' employees**

For the application of the *Local Government (Operations) Regulation 2010*, chapter 5, part 3, division 4 to a withdrawn council's employees who are transferred from Allconnex under a retransfer document, and despite section 99(7) of that regulation, a water entity is taken not to include a withdrawn council.

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## Part 8 Transitional provision for South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012

### 130 Effect of SEQ design and construction code

- (1) This section applies to the SEQ design and construction code in effect for each SEQ service provider immediately before the commencement of this section.
- (2) On the commencement, the SEQ design and construction code continues as the SEQ design and construction code adopted by the SEQ service provider under this Act.

## Part 9 Transitional provisions for Water Supply Services Legislation Amendment Act 2014

### Division 1 Preliminary

#### 131 Definitions for pt 9

In this part—

*amending Act* means the *Water Supply Services Legislation Amendment Act 2014*.

*commencement* means the commencement of this section.

*former*, in relation to a provision, means the provision as in force immediately before the repeal or amendment of the provision under the amending Act.

## **Division 2                      Provisions about delegations**

### **132      Delegations for concurrence agency functions**

- (1) This section applies to—
  - (a) a development application mentioned in the repealed SPA, section 959B(1) or 959C(1); and
  - (b) a development approval mentioned in the repealed SPA, section 959E(1) or (2).
- (2) A delegation under former section 53(5)(a)(i), or a subdelegation of that function under former section 53(6), continues to apply to the development application or development approval, as if the amending Act had not been enacted.
- (3) Also, a delegation under former section 53(5)(d), or a subdelegation of that function under former section 53(6), continues to apply to a development approval mentioned in subsection (1)(b) as if the amending Act had not been enacted.
- (4) Former section 53(6) to (10) continues to apply to a delegation mentioned in subsection (2) or (3).

### **133      Delegations related to functions under the repealed SPA, ch 9, pt 7A, div 4 continue**

- (1) This section applies if a compliance assessment (an *existing assessment*) mentioned in the repealed SPA, section 959F was, or is, required.
- (2) A delegation under former section 53(5)(a)(ii) or (5)(d), or a subdelegation under former section 53(6), continues to apply to the existing assessment as if the amending Act had not been enacted.
- (3) Former section 53(6) to (10) continues to apply to a delegation mentioned in subsection (2).

**134 Delegation of functions under the repealed SPA, ch 9, pt 7A, div 5**

- (1) A distributor-retailer may delegate its functions under the repealed SPA, former chapter 9, part 7A, division 5 to its relevant participating local governments.
- (2) Former section 53(6) and (10) is taken to apply to a delegation made under subsection (1).

**Division 3 Provisions about development approvals**

**135 Water connection aspect of development approvals under the repealed SPA**

- (1) This section applies to the following development approvals if the approval involves a water connection aspect—
  - (a) a development approval that takes effect under the repealed SPA, section 959B or 959C if the approval is for a material change of use of premises or reconfiguring a lot under the repealed SPA;
  - (b) a staged development approval to which the repealed SPA, section 959D applies.
- (2) The water connection aspect of the development approval is taken to be a water approval for a staged connection.
- (3) All conditions of the development approval relating to the water connection aspect are taken to be conditions of the water approval.
- (4) In this section—

*development approval* means a development approval under the repealed SPA.

*staged development approval* means a development approval for reconfiguring a lot.

*water connection aspect*, of a development approval, means the aspect of the approval that is related to the infrastructure

of a distributor-retailer in relation to its water service or wastewater service.

## **Division 4                      Miscellaneous**

### **137      SEQ service providers to adopt interim connections policy**

- (1) An SEQ service provider must, by 1 July 2014, adopt a water netserv plan to the extent the plan deals with the connections policy under section 99BO(1)(f) (an *interim connections policy*).
- (2) The following provisions apply for the making and adoption of the interim connections policy—
  - (a) section 99BR(1)(a) to (c) and (2);
  - (b) section 99BR(5), to the extent it applies to a participating local government or withdrawn council;
  - (c) section 99BR(7);
  - (d) section 99BRAB, other than subsections (2) and (5)(a).
- (3) The interim connections policy ceases to have effect when the SEQ service provider's water netserv plan takes effect under section 99BRAB(3).

### **138      Documents and information about water approvals and development approvals under former s 53**

- (1) This section applies if—
  - (a) a relevant participating local government holds information or documents under former section 53; and
  - (b) a distributor-retailer asks the local government to give it the information or document.
- (2) The local government must, as soon as reasonably practicable, give it the information or documents at no cost.

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### **139 Overdue charges**

- (1) This section applies if, on the commencement, a distributor-retailer is owed an amount for all or any of the following for premises—
  - (a) a charge under the repealed SPA, former section 755K or 755KB;
  - (b) a charge under an agreement under the repealed SPA, former section 755L, 755M or 755MA.
- (2) From the commencement, the amount is taken to be an overdue charge for chapter 2A, part 3.
- (3) However, a charge under this section is not recoverable unless the entitlements for the approval or permit under the repealed SPA are exercised.

### **140 Schedule of works for distributor-retailers before 1 October 2014**

- (1) A distributor-retailer's board must adopt a schedule of works by 1 July 2014.
- (2) The schedule of works—
  - (a) must be made available for inspection by the public; and
  - (b) ceases to have effect once the schedule is incorporated in the distributor-retailer's water netserv plan and the plan is in effect.
- (3) Subsection (4) applies for a distributor-retailer until the earlier of the following to happen—
  - (a) the distributor-retailer adopts a water netserv plan;
  - (b) 1 October 2014.
- (4) A reference to a water netserv plan in any of the following provisions is taken to be a reference to the schedule of works adopted by the distributor-retailer's board under subsection (1)—
  - (a) section 99BRCO, 99BRCQ, 99BRCR, 99BRCU or 99BRCW;

- (b) the schedule, definition *trunk infrastructure*.

## **Part 10**

# **Transitional provisions for Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014**

### **140B Definitions for pt 10**

In this part—

***commencement*** means, other than for section 141, the commencement of the *Water Supply Services Legislation Amendment Act 2014*, section 30.

***concurrence agency*** see the repealed SPA, section 251.

***development approval*** means a development approval under the Planning Act.

***unamended repealed SPA*** means the repealed SPA as in force immediately before the commencement.

### **140C Development application for development approval—distributor-retailers**

- (1) This section applies to a development application to which the repealed SPA, section 959B or 959C applies if the application is for a material change of use of premises or reconfiguring a lot under the repealed SPA.
- (2) Despite the repealed SPA, sections 959B(3) and 959C(3), for the aspect of the application for which a distributor-retailer or its participating local government is a concurrence agency—
  - (a) the following provisions of the unamended repealed SPA do not apply for deciding the application—
    - (i) chapter 8;



- (ii) section 347(1)(b);
- (iii) chapter 9, part 7A, division 5; and
- (b) section 99BRAJ(2)(h), (3) and (4) and chapter 4C, part 7, divisions 4 and 6 apply for deciding the application—
  - (i) as if a reference to an application for a water approval were a reference to a development application; and
  - (ii) as if a reference to an applicant for a water approval were a reference to an applicant for a development approval; and
  - (iii) as if a reference to a water approval were a reference to a development approval; and
  - (iv) as if a reference to a water approval condition were a reference to a condition of a development approval; and
  - (v) as if a reference to a distributor-retailer were a reference to the concurrence agency for the development application; and
  - (vi) with any other necessary changes.
- (3) The distributor-retailer or its participating local government may, under chapter 4C, part 7, impose on any development approval given for the development application a condition about infrastructure for the distributor-retailer's water service or wastewater service as if the development approval were a water approval.
- (4) To remove any doubt, it is declared that if a condition is imposed on a development approval under subsection (3), the condition is a condition of the development approval.

*Note—*

The water connection aspect of a development approval given for a development application to which the repealed SPA, section 959B or 959C applies becomes a water approval under section 135.

### **140D Existing notices**

- (1) This section applies if—
  - (a) a notice (an *original notice*) to which the repealed SPA, section 959G applies is given for a development approval to which the repealed SPA, section 959E applies; and
  - (b) a person makes a request under the repealed SPA, section 369(1) to change the development approval.
- (2) Despite sections 959E(3) and 959G(2), an infrastructure charges notice may be given under the amended Act, chapter 4C, part 7, division 2, subdivision 3 to replace the original notice as if—
  - (a) the original notice were an infrastructure charges notice under this Act; and
  - (b) a reference to a water approval were a reference to a development approval.
- (3) However, section 99BRDC does not apply to an infrastructure charges notice given under subsection (2).
- (4) In this section—

*amended Act* means this Act as in force after the commencement of the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014*, section 45.

### **140E Power to give infrastructure charges notice for particular existing development approvals**

- (1) This section applies if a water connection aspect of a development approval is taken to be a water approval under section 135.
- (2) For section 99BRCI, a reference in that section to a decision notice is taken to be a reference to the decision notice for the development approval under the repealed SPA.
- (3) A distributor-retailer can not levy a charge under section 99BRCI for the supply of trunk infrastructure for the

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water connection aspect if a charge was levied under the repealed SPA for the supply of the trunk infrastructure before the water connection aspect was taken to be a water approval.

- (4) However, this section does not limit a distributor-retailer from levying a charge under section 99BRCI for the supply of additional or related trunk infrastructure if a subsequent water approval takes effect under this Act.

#### **140F Adopted infrastructure charges at commencement continue in effect**

- (1) This section applies if—
- (a) before the commencement—
    - (i) a State Planning Regulatory Provision under the repealed SPA provided for a charge for the supply of trunk infrastructure; and
    - (ii) the distributor-retailer’s board adopted a charge (an *existing charge*) for the supply of the trunk infrastructure under the unamended Planning Act, section 755KA; and
  - (b) the relevant distributor-retailer has not adopted an infrastructure charges schedule under section 99BRCE.
- (2) Despite section 99BRCF(1), the adopted charge for providing the trunk infrastructure is the existing charge for the infrastructure and is taken to have had effect on the day it had effect under the unamended Planning Act.
- (3) However, an existing charge is of no effect to the extent it is inconsistent with the SPRP (adopted charges).
- (4) Subsection (5) applies if a decision (an *existing board decision*) of the distributor-retailer’s board under the unamended Planning Act, section 755KA does not include a method for working out the cost of infrastructure the subject of an offset or refund.
- (5) The decision is taken to include a method as set out in a guideline mentioned in the repealed SPA, section 979(3).

[s 141]

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- (6) If the existing board decision does not include criteria for deciding a conversion application, the existing board decision is taken to include criteria as set out in a guideline mentioned in the repealed SPA, section 979(3A).
- (7) In this section—  
**SPRP (adopted charges)** see the repealed SPA, section 629(5).

## Part 11 Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016

### 141 Definitions for part

In this part—

**amending Act** means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

**defined related application** means a development application for a development approval, or an existing development application for a development approval under the repealed SPA, that—

- (a) involves a water connection aspect; and
- (b) relates to a development approval given (whether or not to the applicant) under the repealed SPA before 1 July 2014.

**existing development application** means a development application made under the repealed SPA, to which the Planning Act, section 288 applies.

**former**, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

**water connection aspect**—

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- (a) of a development application, means the aspect of the application for which—
    - (i) a distributor-retailer has a referral agency function under the Planning Act, section 298(2)(b); or
    - (ii) a distributor-retailer’s participating local government has a referral agency function under section 298(3)(b) of that Act; or
  - (b) of an existing development application, means the aspect of the application for which a distributor-retailer or its participating local government had a concurrence agency function under the repealed SPA; or
  - (c) of a development approval, means the aspect of the approval that relates to a distributor-retailer’s water infrastructure.

**142 Particular existing functions of distributor-retailer—SEQ declared master planned area**

- (1) Former section 78B continues to apply to an SEQ declared master planned area, as if the amending Act had not been enacted.
- (2) In this section—

*SEQ declared master planned area* means a declared master planned area under the repealed SPA that—

  - (a) is in the SEQ region; and
  - (b) immediately before 1 July 2010, was identified in a master planned area declaration under the repealed SPA.

**143 Appeals and particular rights to appeal to a building and development dispute resolution committee**

- (1) Subsections (2) to (4) apply if—
  - (a) a person started an appeal under former chapter 4C, part 4, division 3 about a matter to a building and development dispute resolution committee; and

- (b) the appeal was not decided before the repealed SPA was repealed.
- (2) If, before the repealed SPA was repealed, a building and development dispute resolution committee had been established for the appeal proceeding—
  - (a) former chapter 4C, part 4, division 3 and the repealed SPA continue to apply in relation to the appeal; and
  - (b) the committee's decision on the appeal is taken to be a decision of a development tribunal on the appeal.
- (3) Subsection (4) applies if a building and development dispute resolution committee had not been established for the appeal proceeding before the repealed SPA was repealed.
- (4) Chapter 4C, part 4, division 3 and the Planning Act apply in relation to the appeal, as if the person had started an appeal under chapter 4C, part 4, division 3 to a development tribunal about the matter.
- (5) Subsections (6) and (7) apply if—
  - (a) immediately before the commencement, a person had a right to appeal under former chapter 4C, part 4, division 3 to a building and development dispute resolution committee about a matter; and
  - (b) the person had not, before the commencement, started an appeal under former chapter 4C, part 4, division 3 to a building and development dispute resolution committee in exercise of the right.
- (6) The person may, under chapter 4C, part 4, division 3, appeal to a development tribunal about the matter.
- (7) Chapter 4C, part 4, division 3 and the Planning Act apply in relation to the appeal.
- (8) In this section—

***building and development dispute resolution committee*** means a building and development dispute resolution committee under the repealed SPA.

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## 144 Appeals and particular rights to appeal to Planning and Environment Court

- (1) Subsection (2) applies if—
  - (a) a person started an appeal under former chapter 4C, part 4, division 4 about a matter to the Planning and Environment Court; and
  - (b) the appeal had not been decided before the repealed SPA was repealed.
- (2) Former chapter 4C, part 4, division 4 and the repealed SPA continue to apply in relation to the appeal.
- (3) Subsections (4) and (5) apply if—
  - (a) immediately before the commencement, a person had a right to appeal under former chapter 4C, part 4, division 4 to the Planning and Environment Court about a matter; and
  - (b) the person had not, before the commencement, started an appeal under former chapter 4C, part 4, division 4 to the Planning and Environment Court in exercise of the right.
- (4) The person may, under chapter 4C, part 4, division 4, appeal to the Planning and Environment Court about the matter.
- (5) Chapter 4C, part 4, division 4 applies in relation to the appeal.

*Note—*

See also the *Planning and Environment Court Act 2016*, section 76.

## 145 Existing board decisions

- (1) This Act applies to an existing board decision as if the board decision was made under section 99BRCF.
- (2) To remove any doubt, it is declared that the decision was made when it was made under this Act as in force immediately before the commencement.
- (3) In this section—

*existing board decision* means a board decision—

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- (a) made under section 99BRCF before the commencement; and
- (b) in force immediately before the commencement.

#### **146 Submission made under former s 99BRCN**

- (1) This section applies if—
  - (a) before the commencement, a person made a submission to a distributor-retailer about an infrastructure charges notice under the repealed SPA, section 641, as applied by former section 99BRCN; and
  - (b) the distributor-retailer had not made a decision on the submission before the commencement.
- (2) Former section 99BRCN continues to apply to the submission as if the amending Act had not been enacted.

#### **147 Development approval involving a water connection aspect given after commencement of Planning Act**

- (1) This section applies to a development approval involving a water connection aspect if—
  - (a) the approval is given after the commencement of the Planning Act; and
  - (b) the approval is for a material change of use of premises, or reconfiguring a lot, under that Act; and
  - (c) either—
    - (i) the approval was given for an existing development application and, immediately before the commencement of the Planning Act, the repealed SPA, section 959B applied to the application; or
    - (ii) the approval was given for a defined related application.
- (2) On and from the development approval taking effect—



- 
- (a) the Planning Act does not apply to the water connection aspect of the development approval; and
  - (b) the water connection aspect of the development approval is taken to be a water approval for a staged water connection; and
  - (c) any conditions of the development approval relating to the water connection aspect are taken to be conditions of the water approval.

**148 Defined related application made after commencement—  
water approval conditions**

- (1) This section applies to a defined related application made after the commencement.
- (2) For deciding the water connection aspect of the application—
  - (a) the Planning Act, chapter 4 and section 66(1)(c) and (f) do not apply to the application; and
  - (b) section 99BRAJ(2)(h), (3) and (4) and chapter 4C, part 7, divisions 4 and 6 (each an *applied provision*) apply to the application as if a reference in an applied provision to—
    - (i) an application for a water approval were a reference to a defined related application; and
    - (ii) an applicant for a water approval were a reference to an applicant for a defined related application; and
    - (iii) a water approval were a reference to a development approval; and
    - (iv) a water approval condition were a reference to a condition of a development approval; and
    - (v) a distributor-retailer were a reference to a referral agency for the defined related application; and
  - (c) the applied provisions apply to the application with any other necessary changes.

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- (3) Subsection (4) applies if a distributor-retailer or a participating local government—
  - (a) is a referral agency under the Planning Act for a defined related application that is a development application; or
  - (b) was a concurrence agency under the repealed SPA for a defined related application that is an existing development application.
- (4) The distributor-retailer or participating local government may, under chapter 4C, part 7, impose on a development approval given for the defined related application a condition about infrastructure for the distributor-retailer's water infrastructure, as if the development approval were a water approval.
- (5) To remove any doubt, it is declared that if a condition is imposed on a development approval under subsection (4), the condition is a condition of the development approval.

**149 Infrastructure charges notice for water connection aspect of development approval taken to be water approval**

- (1) This section applies if a water connection aspect of a development approval is taken to be a water approval for a staged water connection under section 147(2)(b).
- (2) For section 99BRCI(3), a reference in that section to a decision notice under section 99BRAI is taken to be a reference to the decision notice under the Planning Act for the development approval.
- (3) Section 140E(3) and (4) applies to the development approval as if a reference in section 140E(3) to the repealed SPA were a reference to the repealed SPA or the Planning Act.

**150 Infrastructure charges notice for particular other development approval**

- (1) This section applies if—

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- (a) notice (the *original notice*) levying a charge is given under the Planning Act, or was given under the repealed SPA, for a development approval—
    - (i) that was given before 1 July 2014; and
    - (ii) the water connection aspect of which did not become a water approval for a staged water connection under section 135(2); and
  - (b) a following application is approved under the Planning Act—
    - (i) a change application under that Act to change the development approval;
    - (ii) an extension application under that Act for any part of the development approval.
- (2) The distributor-retailer for the water infrastructure to which the development approval relates may give the holder of the approval an infrastructure charges notice under chapter 4C, part 7, division 3, subdivision 3 to replace the original notice.
- (3) Chapter 4C, part 7, division 3, subdivision 3 applies to the giving of the infrastructure charges notice, as if—
- (a) the original notice were an infrastructure charges notice; and
  - (b) a reference in chapter 4C, part 7, division 3, subdivision 3 to a water approval were a reference to a development approval.
- (4) However, section 99BRDC does not apply to an infrastructure charges notice given under subsection (2).

## 151 Delegations

- (1) Subsection (2) applies to—
  - (a) a defined related application made after the commencement of the Planning Act; and
  - (b) a development approval involving a water connection aspect.

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- (2) Section 132(2) to (4) applies to the application and approval as if—
  - (a) a reference in section 132(2) to a development application were a reference to a defined related application; and
  - (b) a reference in section 132(2) or (3) to a development approval were a reference to a development approval involving a water connection aspect.
- (3) Subsection (4) applies to a compliance assessment mentioned in the repealed SPA, section 959F if, under the Planning Act, the compliance assessment may continue after the commencement of that Act.
- (4) Section 133(2) and (3) applies to the compliance assessment.

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# Schedule Dictionary

## section 7

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

**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*.

**additional payment condition**, for chapter 4C, part 7, see section 99BRCC.

**adopted charge**, for chapter 4C, see section 99BRCF(1).

*Note—*

See also section 140F.

**agreement**, for chapter 4C, part 7, see section 99BRCC.

**agreement to take**, for land, means a resumption agreement in relation to the land within the meaning of the *Acquisition of Land Act*, section 15.

**Allconnex** see section 92AB.

**Allconnex infrastructure funding matter** means an agreement, charge or condition imposed, levied or made by or for, or for the benefit of, Allconnex or its water infrastructure under the repealed SPA, chapter 9, part 7A, division 5.

**Allconnex planning matter** see section 92BL(3).

**Allconnex's dissolution day** see section 92EQ(2).

**alteration**, for a connection, includes any material change in infrastructure or increase in demand for a water service or sewerage service at the connection.

**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).

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

***automatic increase provision***, for chapter 4C, part 7, see section 99BRCG(3)(b).

***available for inspection***, for a document of or held by an entity, means that the document, or a certified copy of it, is held in the entity's public office in a way that anyone may inspect it free of charge whenever the office is open for business.

***available for inspection and purchase***, for a document of or held by an entity, means that—

- (a) the document, or a certified copy of it, is available for inspection; and
- (b) a person may obtain—
  - (i) if the entity may lawfully copy the document—a copy of the document, or part of the document, from the entity; or

- (ii) if the entity can not lawfully copy the document—information at the entity’s public office about how to obtain a copy of it.

**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.

**board decision**, for chapter 4C, part 7, see section 99BRCF(1).

**bulk water component** means the charge for bulk water services included in an SEQ service provider’s charge.

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

**CBA 2010** means the *City of Brisbane Act 2010*.

**certification statement** see section 92AY(2).

**change**, for a subsidy or rebate, includes—

- (a) a failure to renew it; or
- (b) a renewal of it without an adjustment equal to or greater than an adjustment for the CPI figure from the Capital Cities Comparison in the publication ‘Consumer Price Index, Australia’, Cat no. 6401.0, for Brisbane relating to the annual period from one March quarter to the next March quarter published by the Australian Bureau of Statistics.

**charge decision**, for chapter 4C, part 4, see section 99BRAX.

**charges breakup** see the Planning Act, schedule 2.

**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.

**conditions**, for a provision about an employee, means terms and conditions of the employee's employment.

**connection** means a property service connection or network connection.

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

**connection charge**—

(a) generally—see section 99BRAN(1)(a); and

(b) for a standard connection—see section 99BRAV(1)(a).

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

**consent arrangement**, for chapter 2B, part 2, see section 53BI(1)(b).

**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).

**conversion application** see section 99BRDE(2).

**conversion decision**, for chapter 4C, part 4, see section 99BRAX.

**corporate entity (service provider)** means a corporate entity created under LGA 2009 by a withdrawn council to acquire and conduct its WSP business mentioned in section 92AJ.

**councillor** means a councillor of a local government under LGA 2009 or CBA 2010.

**councillor-member** see section 33(3).

**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.

**customer** see the Water Supply Act, schedule 3.



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

**decision notice** see section 99BRAI(1).

**deemed refusal**, for a conversion application, see section 99BRAX.

**development application** means a development application under the Planning Act.

**development approval** means a development approval under the Planning Act.

**development infrastructure** see the Planning Act, schedule 2.

**development tribunal** means a tribunal established under the Planning Act, section 235.

**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 an SEQ service provider'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 or a water connection officer—means the distributor-retailer that appointed the officer; and
- (d) for a provision about a discharge compliance notice or a water connection compliance notice—means the distributor-retailer that gave the notice; and
- (e) for a provision about an application for a water approval for a connection or a request for a standard connection—means the distributor-retailer for the connection or standard connection; and
- (f) for a provision about a water approval for a connection—means the distributor-retailer for the connection; and
- (g) for a provision about an infrastructure charges notice—means the distributor-retailer that gave the notice.

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

**drinking water** see the Water Supply Act, schedule 3.

**drinking water quality management plan** see the Water Supply Act, schedule 3.

**ecological sustainability** means the balance that integrates—

- (a) protection of ecological processes and natural systems at local, regional, State and wider levels; and
- (b) economic development; and
- (c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

**establishing council**, for a provision about a corporate entity (service provider), means the withdrawn council that decided to create the entity.

**establishment cost**, for chapter 4C, part 7, see section 99BRCC.

***EWO Act*** means the *Energy and Water Ombudsman Act 2006*.

***fixed access charge*** means a fixed access charge mentioned in section 99AV(2).

***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).

***future connection area*** see section 99BO(1)(f)(ii).

***geographically-connected***, for a provision about a withdrawn council and land, the performance of a function or another matter, means the withdrawn council in whose local government area the land is in, the function was performed or to which the matter relates.

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

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

***group direction*** see section 49(1).

***independent member*** see section 33(3).

***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.

***individual direction*** see section 49A(2).

***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 this Act or the Water Supply Act.

**information request** see section 53CF(2).

**infrastructure agreement** means any of the following agreements—

- (a) an infrastructure agreement under the Planning Act;
- (b) an infrastructure agreement under the repealed SPA;
- (c) an infrastructure agreement under the repealed IPA, mentioned in the repealed SPA, section 840;
- (d) an infrastructure agreement under the repealed *Local Government (Planning and Environment) Act 1990* to which the repealed SPA, section 855 applied;
- (e) an agreement to which the repealed SPA, section 856 applied.

**infrastructure charges notice** means—

- (a) if paragraphs (b) and (c) do not apply—an infrastructure charges notice given under section 99BRCI(2) or 99BRDH(4)(a); or
- (b) if, under the Planning Act, section 125(3), as applied under section 99BRCN, a negotiated notice within the meaning of the Planning Act, section 125(3) replaces an existing infrastructure charges notice—the negotiated notice; or
- (c) if an existing infrastructure charges notice is amended or replaced under section 99BRAK(5)(c), 99BRDC(3) or 99BRDH(4)(b)—the notice as amended or replaced.

**infrastructure charges schedule**, for chapter 4C, part 7, see section 99BRCD.

**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.

***interested person***, for chapter 4C, part 4, see section 99BRAW(1).

***internal review application***, for chapter 4C, part 4, see section 99BRAZ.

***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.

***landowner***, for chapter 3, part 5, see section 84(1)(c).

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

***levied charge***, for chapter 4C, part 7, see section 99BRCI(6).

***LGA 2009*** means the *Local Government Act 2009*.

***LGIP*** means an LGIP under the Planning Act.

***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.

***necessary infrastructure condition***, for chapter 4C, part 7, see section 99BRCP(2).

**network connection** means—

- (a) the connection of network infrastructure to a distributor-retailer's water infrastructure to supply a water service or wastewater service; and
- (b) the disconnection of network infrastructure from a distributor-retailer's water infrastructure to stop supply of a water service or wastewater service; and
- (c) the alteration of network infrastructure; and
- (d) works for the matters mentioned in paragraph (a), (b) or (c) to extend or upgrade the distributor-retailer's water infrastructure.

**network infrastructure** means—

- (a) generally—water infrastructure, other than property service infrastructure; and
- (b) for chapter 4C, part 2—trunk infrastructure or non-trunk infrastructure.

**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).

**nominated person**, of a distributor-retailer, means a person who is endorsed by its chief executive officer.

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

**non-trunk infrastructure**, for a distributor-retailer, means water infrastructure of the distributor-retailer that is development infrastructure, other than trunk infrastructure.

**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.

**original decision**, for chapter 4C, part 4, see section 99BRAW(2).

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

**owner**, for chapter 4C, of land, means any of the following—

- (a) the registered proprietor of the land under the *Land Title Act 1994*;
- (b) the lessee or licensee under the *Land Act 1994* of the land;
- (c) the holder of a mineral development licence or mining lease over the land under the *Mineral Resources Act 1989*;
- (d) the holder of a petroleum lease over the land under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*;
- (e) the entity who, for the time being, has lawful control of the land, on trust or otherwise;
- (f) the person who is entitled to receive the rents and profits of the land.

**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(1).

**participation agreement**—

- (a) generally, means a participation agreement made under section 20 or 23; or
- (b) for a provision about a distributor-retailer or a distributor-retailer's board, means the participation agreement between the distributor-retailer and its participating local governments.

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

**parties**, to the retransfer, see section 92AR(1).

**party**, for chapter 3A, part 4, division 4, subdivision 3, see section 92CE(3).

**payer**, for a provision about a levied charge or for a payment, see section 99BRCC.

**payment**, for chapter 4C, part 7, see section 99BRCC.

**Planning Act** means the *Planning Act 2016*.

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

**planning assumptions**, for a relevant area of an SEQ service provider, means—

- (a) for a distributor-retailer—
  - (i) the assumptions about the type, scale, location and timing of future development and future growth (each a **planning descriptor**) for any part of the area stated in the distributor-retailer's participating local governments' LGIPs; or
  - (ii) if the distributor-retailer, a participating local government and the Planning Minister agree that assumptions about a planning descriptor stated in a proposed LGIP for the area are appropriate for preparing or reviewing a water netserv plan—the agreed assumptions; or
  - (iii) if the distributor-retailer, a participating local government and the Planning Minister agree that different assumptions about a planning descriptor are appropriate for preparing or reviewing a water netserv plan—the agreed assumptions; or
- (b) for a withdrawn council—
  - (i) the assumptions about the planning descriptors for any part of the area stated in the council's LGIPs; or
  - (ii) if the council and the Planning Minister agree that assumptions about a planning descriptor stated in a proposed LGIP for the area are appropriate for



preparing or reviewing a water netserv plan—the agreed assumptions; or

- (c) for a corporate entity (service provider)—
- (i) the assumptions about the planning descriptors for any part of the area stated in the entity's establishing council's LGIPs; or
  - (ii) if the entity's establishing council and the Planning Minister agree that assumptions about a planning descriptor stated in a proposed LGIP for the council are appropriate for preparing or reviewing a water netserv plan—the agreed assumptions.

**Planning Minister** means the Minister administering the Planning Act.

**planning scheme** means a planning scheme under the Planning Act.

**PPI**, for chapter 4C, part 7, see section 99BRCC.

**premises**—

- (a) for chapter 4C, part 7—see section 99BRCC; or
- (b) otherwise, means—
  - (i) a lot as defined under the Planning Act, schedule 2; or
  - (ii) 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).

**proceeding** includes an arbitration or internal review application under the Water Supply Act.

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

**property service connection** means—

- (a) the connection of property service infrastructure to a distributor-retailer's water infrastructure to supply a water service or wastewater service; and
- (b) the disconnection of property service infrastructure from a distributor-retailer's water infrastructure to stop supply of a water service or wastewater service; and
- (c) the alteration of property service infrastructure that is part of a distributor-retailer's water infrastructure.

***property service infrastructure*** has the meaning of a property service under the Water Supply Act, schedule 3.

***property service works charge***—

- (a) generally—see section 99BRAN(1)(b); and
- (b) for a standard connection—see section 99BRAV(1)(b).

***proportional joint successor***, for Allconnex, see section 92AD(3).

***provider test*** see section 99AJ(1)(a).

***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.

***reconfiguring a lot*** see the Planning Act, schedule 2.

***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 area***, for an SEQ service provider, see section 99BK(b).

***relevant council***, for a proposed, existing or former councillor-member, is the participating local government of which the member is proposed to be, is or was a councillor.

***relevant planning assumptions*** see section 99BK(b).

***remedial action*** see section 53BZ.

***remedial action requirement*** see section 53CA.

***repealed IPA*** means the repealed *Integrated Planning Act 1997*.

***repealed SPA*** means the repealed *Sustainable Planning Act 2009*.

***replacement***, for a provision about a proceeding to which Allconnex is a party or that could have been started by Allconnex, means a withdrawn council that is to be Allconnex's successor in law to or against the cause of action for the proceeding and is to become a party to the proceeding instead of Allconnex.

***required period***, for a conversion application, see section 99BRDF(6).

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

**retransfer**, from Allconnex to the withdrawn councils, see section 92AR(2).

**retransfer direction** see section 92BD(1).

**retransfer document** means the retransfer scheme, a retransfer notice or a retransfer direction.

**retransfer notice** see section 92BC(2).

**retransfer scheme** see section 92AR(1).

**review decision**, for chapter 4C, part 4, see section 99BRBB(1).

**reviewer**, for chapter 4C, part 4, see section 99BRAZ(2).

**road** see section 53BE(1).

**road works** see section 53BF.

**schedule of works**, for a distributor-retailer, means a schedule including the following information—

- (a) a map of development infrastructure of the distributor-retailer that is to be identified in the schedule as trunk infrastructure;
- (b) identification of proposed development infrastructure of the distributor-retailer that is to be identified in the schedule as trunk infrastructure (**future trunk infrastructure**);
- (c) the location, estimated cost and expected time of delivery of future trunk infrastructure.

**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.

**SEQ service provider** means—

- (a) a distributor-retailer; and
- (b) either—
  - (i) generally—a withdrawn council; or
  - (ii) if a withdrawn council is the establishing council for a corporate entity (service provider)—that entity.

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

**service provider functions**, for a provision about a withdrawn council, means its functions under the Water Supply Act as a service provider and its functions under this Act as a withdrawn council.

**services advice notice** see section 99BRAC(1).

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

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

**small business customer**, of an SEQ service provider for water services or wastewater services, means a customer (other than a residential customer) of the provider for the services if—

- (a) the customer uses or, if connected to the SEQ service provider'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 given the SEQ service provider notice, and the provider is satisfied, that the customer is likely to use no more than 100kL of drinking water a year.

**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.

***staged water connection*** means a connection that complies with a distributor-retailer's criteria under section 99BOA(b).

***staged water connection application*** means an application for a staged water connection.

***standard appeal period***, for chapter 4C, part 4, see section 99BRAX.

***standard appeal period***, for chapter 4C, part 4, see section 99BRAX.

***standard conditions***, for chapter 4C, see section 99BRAU(7).

***standard connection***, for chapter 4C, see section 99BRAU(1).

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

***subject premises***, for chapter 4C, part 7, see section 99BRCP(1).

***successor*** see section 92AD.

***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).

**transitional matter**, for chapter 6, part 6, see section 119.

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

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

**trunk infrastructure**, for a distributor-retailer, means water infrastructure of the distributor-retailer that is—

- (a) development infrastructure identified in the distributor-retailer's water netserv plan as trunk infrastructure; or
- (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or
- (c) development infrastructure that is required to be provided under a condition imposed under section 99BRCR(2).

**variable measures**, for relevant services or 2011–12 Allconnex 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.

**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 approval** means a decision notice that approves all or part of an application for a connection under chapter 4C,

part 2 with or without water approval conditions or water approval charges.

**water approval conditions**, for chapter 4C, see section 99BRAG(2).

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

**water connection compliance action**, for chapter 2C, see section 53DNG(2).

**water connection compliance notice** see section 53DND(2).

**water connection offence** means an offence against—

- (a) the Water Supply Act, chapter 2, part 7, other than to the extent that part relates to trade waste or seepage water; or
- (b) chapter 4C, part 5.

**water connection officer**, for chapter 2C, means a person who holds appointment as a water connection officer under section 53CK.

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

**water infrastructure** see section 53BB(1).

**water infrastructure agreement** see section 99BRDK.

**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*.

**withdrawal costs** see section 92BW.

**withdrawn council** see section 92AC.

**work direction** see section 53BQ(2).