

Water and Other Legislation Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Water and Other Legislation Amendment Bill 2011.

Policy objectives and the reasons for them

The objectives of the Bill are to amend the:

- *Water Act 2000* (the Water Act) and related legislation to:
 - establish a Single Process framework for the concurrent development of a water resource plan and resource operations plan. The amendments also remove the requirement for establishment of community reference panels (CRPs) and provide discretion to employ a shortened process in certain circumstances, for example, if a replacement plan is not materially different to the existing plan;
 - simplify the notification of works process by relocating the process from the *Water Regulation 2002* (Water Regulation) and water resource plans to the Water Act;
 - streamline the existing statutory process for the transfer of category 2 water authorities to alternative institutional structures or local governments by enacting amendments to:
 - rationalise the regulatory requirements for category 2 water authorities transferring to local government where both entities agree to the transfer; and
 - provide for a regulation to dissolve a water authority employing office and provide a process for the transfer of staff and distribution of assets, rights and liabilities; and

- replace the current requirement for a two thirds majority of ratepayers agreeing to conversion of a water authority with a requirement for the majority of the ratepayers to agree to the conversion.
- make better provision for recovery through the levy on petroleum tenure holders of Government seed funding provided to the Queensland Water Commission to commence its new underground water management functions established under Chapter 3 of the Water Act;
- to provide for Indigenous reserves of unallocated water for each of the four wild river areas within the area covered by the Gulf water resource plan, including:
 - establishing Indigenous reserves with specified volumes of water that will be made available as either surface water, overland flow water or underground water through the grant of water licences;
 - providing that on commencement, the Gulf resource operations plan will be amended to include provisions (the resource operations plan provisions) for dealing with the Indigenous water reserves established under the Gulf water resource plan.
- implement a number of other miscellaneous amendments to address operational issues necessary to provide for continued effective implementation of the water planning and management framework under the Water Act ensuring the Department of Environment and Resource Management's operational needs are met. These amendments include:
 - an amendment to enable the South East Queensland water grid manager and the Commonwealth Environmental Water Holder to apply for a water licence not attached to land and to engage in dealings with water licences, for example, enabling a water licence already attached to land to be transferred to these entities. This amendment is intended to provide the flexibility necessary for these entities to achieve the significant water reform activities for which they were originally established;

- amendments to the provisions relating to quarry allocation notices, which include clarifying that a holder must apply for renewal of an allocation notice before it expires and allowing the surrender of a notice before it expires; and
 - providing an exemption from the requirement to hold a riverine protection permit if works that take or interfere with water are made self-assessable under a water resource plan or regulation and the works are being constructed in accordance with a self-assessable code listed in the Water Regulation.
- *Wild Rivers Act 2005* (the Wild Rivers Act) to:
 - allow the Minister to establish Indigenous reference groups under the Wild Rivers Act to provide greater engagement with Indigenous communities in the wild river declaration process; and
 - recognise the wild river rangers program.
 - *Cape York Peninsula Heritage Act 2007* (CYPHA) to ensure that a Property Development Plan under CYPHA is recognised as a property development plan in a wild river high preservation area of a wild river area. This will ensure that a single application is all that is required from proponents who intend to clear for development within Indigenous Community Use Areas.
 - *River Improvement Trust Act 1940* to allow a person appointed by the Governor in Council as a river improvement trust member to continue to hold office after the person's term of office ends until the person's successor is appointed.

Water Act 2000

Single Process for water resource planning

The Water Act provides the framework for the sustainable allocation and management of water and other resources in particular through the water resource planning process. The purpose of Chapter 2 of the Water Act is to advance sustainable management and efficient use of water and other resources by establishing a system for the planning, allocation and use of water.

Since the commencement of the Water Act in 2000, water resource planning has been developed for much of Queensland through a consecutive two stage process.

The two stage process involves:

- development of a strategic catchment wide plan (the water resource plan). Water resource plans are subordinate legislation and state the outcomes, objectives and strategies for the allocation and management of water in a plan area. Followed by;
- development of an operational plan (the resource operations plan). A resource operations plan is a statutory instrument that implements the water resource plan, providing the operating rules and management arrangements under which the holders of water entitlements and water infrastructure operators must operate.

The current framework also mandates the establishment of a community reference panel.

This two stage process contains many duplicated steps and has resulted in long timeframes for the development of the water resource plans and their implementation through their corresponding resource operations plans. In addition, consultation with community reference panels and stakeholders has been carried out during development of both the water resource plan and resource operations plan, often revisiting issues in the resource operations plan that were previously considered in the water resource plan consultation. This approach has attracted adverse criticism from stakeholders who view the process as ineffective and inefficient.

In 2007, in recognition of the fact that many water resource plans were approaching their statutory 10 year expiry date and the perceived lengthy timeframes for water planning, the then Department of Natural Resources and Water commenced a review of the water planning process. The Department engaged consultants Price Waterhouse Coopers to identify improvement opportunities for the water planning process, utilising case studies where appropriate. Price Waterhouse Coopers undertook consultation with key internal and external stakeholders as part of its review process.

The Price Waterhouse Coopers review identified several business improvement opportunities that would assist stakeholders in understanding the planning process and reduce the time taken to prepare the plans. The

key recommendation proposed either a single plan or single process approach.

Notification of works process

The development and implementation of certain aspects of water resource plans relies on the collection of data about works used to take or interfere with water and the end use of the water.

Section 20(6) of the Water Act provides a statutory authorisation for an owner of land to take or interfere with subartesian water or take overland flow water without a water entitlement unless or until the water is regulated under a moratorium notice, water resource plan, wild river declaration or regulation.

Section 37 of the Water Act provides that a regulation may require the owner of land on which works used to take water under section 20(6) are, or are to be, constructed to notify the chief executive of the works and the end use of the water. Significantly, the process under section 37 does not provide for notification of works or water use if the water is regulated under a moratorium notice, water resource plan, wild river declaration or regulation.

If the take of overland flow water or subartesian water is regulated under a moratorium notice, water resource plan, wild river declaration or regulation, the notification of works process may be provided for only in the water resource plan or wild river declaration. In some cases a water resource plan regulates the water but does not provide a process for notification of works and currently, the only available option to provide such a process is through amendment of the plan.

Currently, on each occasion that the chief executive undertakes a process to require notification of works and water use, it first involves amendment of subordinate legislation, either of the Water Regulation or a water resource plan or another statutory instrument such as a wild river declaration. This approach has proved to be too rigid, complex and time consuming.

Conversion of category 2 water authorities (Webbe – Weller implementation)

There are 52 category 2 water authorities, which are statutory bodies established under the Water Act. These authorities raise rates from benefited landholders and generally operate independent of local government. Water authority areas are commonly much smaller than local government areas but can be across more than one local government area.

Functions of water authorities vary across the State. In summary, their main functions are to carry out water activities decided by the authority in the authority area, however other functions may include:

- riverine area protection;
- soil erosion control;
- land degradation treatment and prevention; and
- the management of recreational areas on land owned by the authority or under its control.

Works can include bores, pumps, channels, pipelines and drains.

Of the 52 water authorities, there are 14 drainage boards, primarily in far north Queensland that ensure that ratepayer's agricultural land within drainage board declared areas is well drained.

The remaining 38 water authorities deliver a mix of services to their ratepayers:

- 16 water authorities supply surface water for stock and domestic purposes;
- 11 water authorities supply water solely for irrigation purposes (two of these water authorities also replenish subterranean water for irrigation purposes);
- 11 water authorities supply bore water.

In March 2008 the Premier announced a major public sector reform program including an independent review of government boards, committees and statutory authorities. This review was undertaken by Ms Simone Webbe and Professor Pat Weller. The review sought to identify ways to improve the overall efficiency of government bodies while maintaining the integrity and security of necessary regulatory functions.

In December 2008 the Part A report, *A Public Interest Map: An Independent Review of Queensland Government Boards, Committees and Statutory Authorities* was released. The Part A report provided a decision-making model for the establishment of government bodies in the future. In March 2009 the Part B report, *Brokering Balance: A Public Interest Map for Queensland Government Boards* was released. This report provided 210 recommendations primarily relating to the abolition of a number of government bodies.

The review recommended that:

- the functions of the State's 52 category 2 water authorities established under the Water Act be transferred to local government or, subject to local government consideration, to alternative non-government structures;
- the transfer of water authority responsibilities be managed efficiently and cost-effectively once the alternative institutional structures have been determined; and
- the transfer of functions should be completed by no later than July 2011.

The Water Act currently includes statutory requirements for category 2 water authorities intending to convert to an alternative institutional structure or transfer to a local government.

The Government has since decided to adopt the recommendation, with modification. The modification is intended to permit the functions of the Category 2 water authorities to be transferred direct to alternative institutional structures where the State, local government and the water authority agree to the direct transfer to an alternative institutional structure. The Premier has also extended the timeframe for completion of the transitions to 30 June 2013.

In accordance with section 625 of the Water Act, the following employing offices were established for water authorities in the Water Regulation 2002:

- North Burdekin Water Board Employing Office
- South Burdekin Water Board Employing Office
- Pioneer Valley Water Board Employing Office
- Callandoon Water Supply Board Employing Office
- Glamorgan Vale Water Board Employing Office
- Merlwood Water Board Employing Office
- Yambocully Water Board Employing Office

None of the above employing offices have employed any staff or conducted any financial transactions.

It is likely that the water authorities for the above employing offices will transfer to alternative arrangements, and therefore the employing offices will need to be dissolved at the time the water authority is dissolved.

The Water Act does not make provision for an employing office to be dissolved.

Funding for the Queensland Water Commission's Petroleum and Gas Water Functions

In December 2010 the *Water and Other Legislation Amendment Act 2010* introduced amendments to the Water Act to strengthen and expand the regulatory system for managing underground water impacts associated with the extraction of petroleum and gas, including coal seam gas (CSG). A key change was to establish a role for the Queensland Water Commission (the Commission) in relation to the management of impacts resulting from underground water extraction by the petroleum tenure holders.

Chapter 3 of the Water Act details new underground water management provisions. A key provision is that the State may declare a cumulative management area (CMA) where the impacts of water extraction by two or more tenure holders overlap. Accordingly, the Surat CMA was established in March 2011 to encompass the area of intensive CSG development in the Dalby/Roma area.

The Commission is responsible for key aspects in the management of the CMA. The Commission will build groundwater flow models for the CMA to assess the likely future impact of groundwater extraction on the coal seams and adjacent aquifers. It will prepare an underground water impact report for the CMA which sets out predicted future water level impacts, monitoring strategies and spring impact management strategies. Models will be progressively updated and a new underground water impact report prepared every three years.

The Commission also has petroleum and gas water functions that include areas outside the CMA. The Commission will maintain a database of monitoring data and relevant data collected by petroleum tenure holders across Queensland, and may provide advice to the Chief Executive of the Department of Environment and Resource Management on matters such as the formation of additional CMAs.

Section 360FA of the Water Act provides for the new underground water management functions for the Commission to be funded by an annual levy payable by petroleum tenure holders, and for the levy to be worked out in the way prescribed under a regulation. A Regulatory Assessment Statement has been prepared relating to the levy structure to be implemented through proposed amendment to the *Water Regulation 2002* and is expected to be released for consultation in June 2011. The Government approved the

Commission's planned expenditure for 2010-11 and 2011-12. It provided seed funding for 2010-11 and for the first half of 2011-12, on the basis that the seed funding is recovered through the industry levy. Industry is aware that the seed funding is to be recovered, and the intention to recover the seed funding will be set out in the Regulatory Assessment Statement.

The Water Act does not specifically provide for the recovery of the seed funding. In addition, for the start up period the Water Act s360FA does not provide relief from the requirement that the Commission's estimated costs be prepared in consultation with a relevant advisory body and approved by the Minister. The budgets for 2010-2011 and 2011-2012 have been approved by Government so further consultation with an advisory body would now be unnecessary.

Therefore, it is proposed to amend the Water Act to:

- provide that the Commission be enabled to recover its costs for carrying out its functions under Chapter 3 of the Water Act for the 2010 -2011 and 2011-2012 financial years by way of the levy and that the estimated costs for those years are not subject to the requirements under section 360FA(5) of the Water Act to consult with a relevant advisory body and obtain the Minister's approval;
- provide that the Commission's estimated costs for the 2010 -2011 and 2011-2012 financial years will be as prescribed in the regulation;
- provide that, in the event that further funding is required for the financial year 2011-2012 the Commission may obtain that extra funding by following the same process to that set out in section 360FA including section 360FA(5);
- the levy to be imposed on tenure holders in future financial years may include a proportion of the levy for the 2010-2011 financial year. The Queensland Water Commission intends that the financial years 2011-2012, 2012-2013, and 2013-2014 may include in each year one third of the costs of the Queensland Water Commission's functions under Chapter 3 for the financial year 2010-2011.

The amendments are required to clarify that the Commission may recover the funding for 2010-2011 in subsequent years and to provide that the Commission need not undertake consultation with a relevant advisory body or obtain the Minister's approval for funding already approved by the Government.

Indigenous water reserves

Section 27 of the CYPHA provides that wild river declarations and water resource plans that relate to an area in the Cape York Peninsula Region and that are made after commencement, must provide for a reserve of water for the purpose of helping Indigenous communities achieve their economic and social aspirations.

In accordance with section 27 of the CYPHA, the *Water Resource (Gulf) Plan 2007* (Gulf water resource plan) and wild river declarations (WRDs) for the Cape York Peninsula established Indigenous reserves of unallocated water for the parts of the plan/declaration area within the Cape York Peninsula Region. As the CYPHA does not apply outside the Cape York Peninsula Region there are no Indigenous reserves of unallocated water outside the region.

Traditional Owners in the Gulf region sought the establishment of Indigenous reserves of unallocated water in wild rivers areas that are located within the plan area of the Gulf water resource plan, but outside the Cape York Peninsula Region.

Following discussions with Traditional Owners in the Gulf region in late 2010, the Queensland Government made a commitment to provide an Indigenous Reserve for all Gulf wild river areas, namely the Gregory, Morning Inlet, Settlement and Staaten wild river areas. The amendments to the Water Act give effect to the establishment of Indigenous reserves and the process for granting water entitlements from the reserves via amendments to the Gulf water resource plan and Gulf Resource Operations Plan (Gulf resource operations plan).

Miscellaneous operational amendments

The legislative framework for water planning and management has undergone significant change in recent years, with many elements still being refined and opportunities for improvements being identified. Amendments to the Water Act and related legislation are necessary to provide for these operational efficiencies and continued effective implementation of the water planning and management framework under the Water Act.

Wild Rivers Act 2005

Indigenous Reference Groups

The purpose of the Wild Rivers Act is to preserve the natural values of rivers that have all, or almost all, of their natural values intact through the declaration of areas to be wild river areas. The objective of a wild river declaration is to preserve a river's natural values by establishing a framework to manage future development activities and the take of natural resources in a declared wild river area.

The Wild Rivers Act sets out varying levels of regulation on development activities, most of which are carried out under provisions contained in other legislation. The extent of regulation is dependent upon the proximity of development to a proposed wild river and potential impact on natural values. No existing rights are affected. In preparing a wild river declaration, issues raised by community and peak bodies as part of the extensive consultation program are considered by the Government.

Some Traditional Owners and Indigenous communities claim that existing Indigenous organisations are unable to accurately or impartially represent their views in decisions about their country in relation to wild river declarations. Under the current framework Indigenous involvement in the declaration of wild rivers is done as part of a broader community consultation process, that is Indigenous consultation is not specifically identified within the existing legislation. The establishment of Indigenous reference groups provides an opportunity for enhanced engagement and a proper remuneration of those parties involved. Continued Indigenous involvement in these processes is critical.

Wild River Rangers

In August 2006 Premier Beattie made an election commitment for the appointment of up to 100 Indigenous rangers to areas covered by the *Wild Rivers Act 2005*. Prior to the 2009 State Election the Premier re-stated the commitment. The Queensland Government has 40 Indigenous rangers contracted in Northern Queensland who care for and promote the world-class natural values of Queensland's wild rivers. A wild river is a river system that has all, or almost all, of its natural values intact.

Most wild river rangers are Traditional Owners of the land on which they work. They are employed through local Indigenous host organisations with funding provided by the Queensland Government.

The rangers have been contracted to:

- Pormpuraaw (Coleman & Holroyd Rivers)
- Kowanyama (Coleman River)
- Mapoon (Ducie & Wenlock Rivers)
- Napranum (Wenlock River)
- Burketown (Settlement & Gregory Rivers)
- Chuulangun (Wenlock & Pascoe Rivers)
- Normanton (Morning Inlet & Staaten River)
- Mareeba (Staaten River)
- Cardwell (Hinchinbrook island)
- Injinoo (Jardine and Jacky Jacky Rivers)
- Hopevale (Jeannie River)
- Aurukun (Watson River)

In late 2010 the Premier announced that the Wild River Ranger program be recognised within the Wild Rivers Act and that the Queensland Government would move to provide security of employment for rangers within the Wild River Ranger program.

A discussion paper on options to achieve security of employment is being developed with full consultation to occur after the wet season, in June and July. The Department of Environment and Resource Management expects to have the views of the rangers and their host organisations on their preferred option/s to the Minister later in 2011.

Cape York Peninsula Heritage Act 2007

Currently, under the CYPHA, an Indigenous group or individual wishing to clear a large area of vegetation for agricultural or aquaculture purposes can apply for the creation of an “Indigenous Community Use Area” (ICUA).

There is a special clause under the *Vegetation Management Act 1999* (VMA) to allow clearing for such purposes in an ICUA. The approval of an ICUA is contingent on a number of factors including submission of a property development plan under CYPHA.

Currently if the community use area is proposed within a wild rivers high preservation area (HPA), a Property Development Plan under the Wild Rivers Act would also be required.

The alignment of the two property development plans processes in these circumstances will result in a reduced regulatory burden.

Achievement of policy objectives

To achieve its objectives, the Bill will:

Water Act 2000

Single Process for water resource planning

Amend the Water Act to allow for the key stages of development of a water resource plan and resource operations plan to be undertaken together, effectively providing a Single Process for the concurrent development and approval of a water resource plan and resource operations plan.

The proposed amendments will not change the key attributes of water resource plans and resource operations plans. The water resource plan will remain as subordinate legislation prepared by the Minister, with the resource operations plan remaining as a statutory instrument prepared by the chief executive.

A key element of the streamlined processes will be the requirement for concurrent development of a resource operations plan with the water resource plan.

The Single Process approach to water planning addresses the efficiency and effectiveness of consultation, as well as the issue of perceived lengthy timeframes to finalise and implement the plans. By combining the development and approval of the water resource plans and resource operations plans into a Single Process, consultation processes will be streamlined and allow for more effective and meaningful stakeholder engagement and timeframes will be considerably reduced.

The Single Process framework proposes a significant change to the process for developing water resource plans and resource operations plans. The current provisions of the Water Act pertaining to the initial preparation, content or effect of water resource plans and resource operations plans are to be retained, essentially without significant changes.

Other provisions that are to be retained include:

- when plans may be amended or replaced;
- minor or stated amendments of plans; and
- the notice of proposal to the operators of infrastructure.

Significantly, the provisions relating to the role of the resource operations plan referral panel for the review of submissions will be retained in full.

The Single Process framework proposes a standard pathway that is significantly shorter than the current sequential two-stage process. The intent is that a less complex plan(s) will be developed to the draft stage and released for public consultation. This pathway will also be used where a resource operations plan is to be developed separately from a water resource plan (e.g. amendment to change water sharing rules in a resource operations plan). It is anticipated that this pathway will be the most frequently used. The key statutory steps in the process will be:

1. Public release of a draft plan(s) for consultation and notice of availability of the draft plan (s);
2. Public release of an overview report with the draft plan(s);
3. Submissions on the draft plan(s);
4. resource operations plan referral panel if required;
5. Approval of the plan(s);
6. Release of consultation report on gazettal of plan(s).

If the Minister considers that it is in the public interest to undertake further consultation in development of the draft water resource plan, there will be the option for a longer pathway involving the following additional steps prior to the release of a notice of availability of draft plans:

- Public release of a statement of proposals and a notice of availability of a statement of proposals; and
- Submissions on the statement of proposals.

The additional steps are to be used only if a draft water resource plan is being developed, whether concurrently with a resource operations plan or without a resource operations plan.

The current statutory requirement for establishment of a community reference panel, after a notice of intent to prepare a water resource plan has

been published, is omitted by the Bill and replaced with an administrative discretion for the Minister to establish a consultative body or to use existing community groups and government agencies. Sufficient consultation will be provided through the opportunity to make submissions on the statement of proposals, or if there is no statement of proposals, on the draft plan.

The community reference panel under the current framework is a requirement for the water resource plan only. The community reference panel is appointed by the Minister to provide advice on community views; and to disseminate information to the community and stakeholders they represent. There are a number of disadvantages associated with the current community reference panel process including that:

- stakeholders affected by the water resource planning process may not understand when the water resource plan is released, what it means in terms of their individual entitlements. They may often only understand the impact of the water resource plan when the draft resource operations plan is released;
- a community reference panel may duplicate or resemble membership of an existing body which could have fulfilled the same role but the department cannot take advantage of existing groups (e.g. Natural Resource Management bodies) because the Water Act requires a new panel to be established for each plan;
- meetings and community reference panel support are resource intensive and time consuming and can be costly. Recent experience indicates an average cost of a community reference panel may be between \$40,000 (Moreton) to \$65,000 (Cooper Creek) plus relevant departmental resources;
- members have often expressed and or represented personal views and have not disseminated information back to their community.

A key advantage of the Single Process framework is that more meaningful consultation is available through the new water planning framework. This will be achieved through:

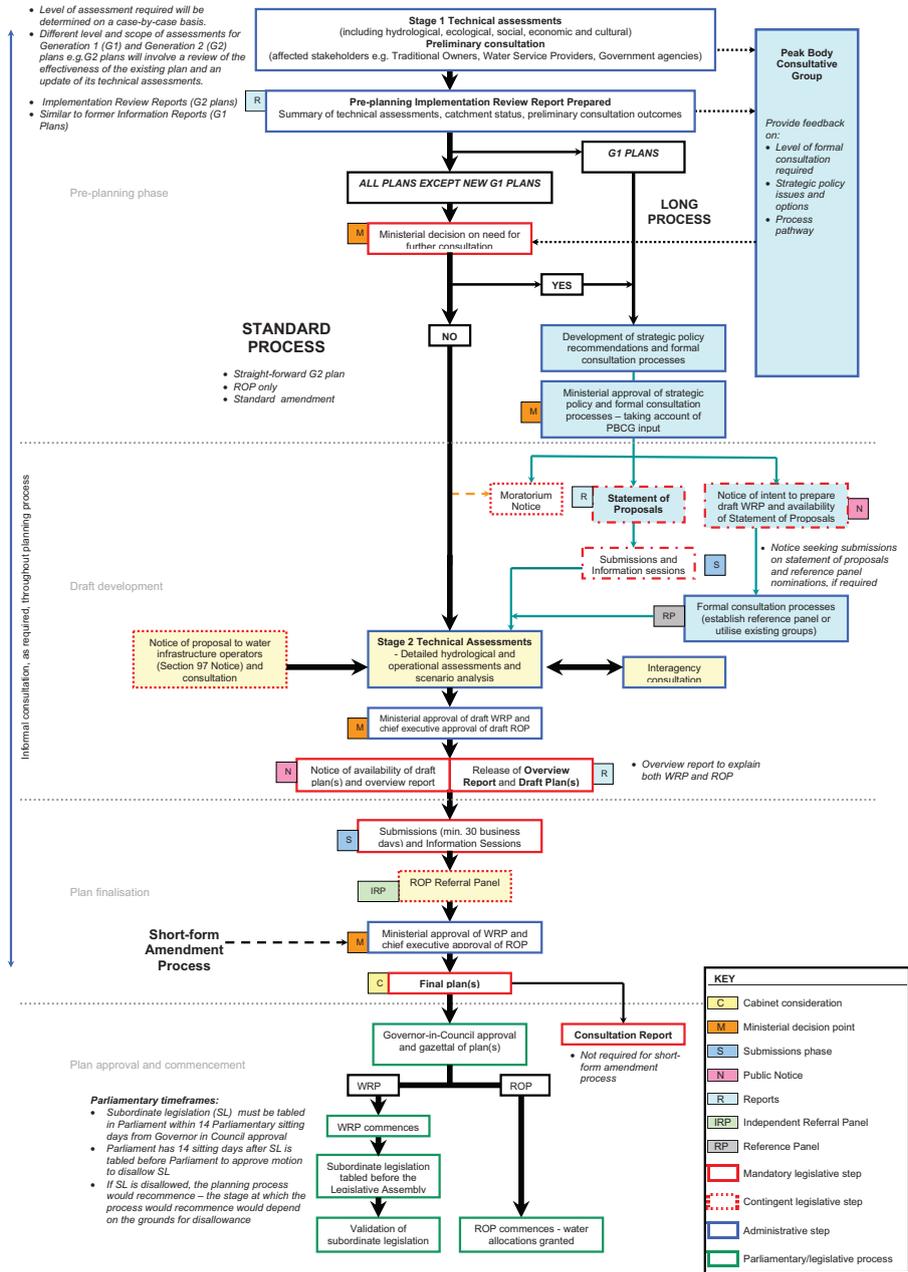
- flexibility for the Minister to decide the appropriate level of consultation for developing a particular plan. The new framework does not prevent the establishment of a reference panel. Rather, it provides flexibility for the Minister to establish a new reference panel or to use an existing body for more targeted

and effective consultation. Also, in certain catchments where the community is well educated on the water resource planning processes and the new water resource plan is not proposing significant changes, it may be an unnecessary use of resources to establish any reference panel;

- concurrent release of both draft water resource plan and resource operations plan. This means that stakeholders will see both the strategic and operational aspects of plans concurrently and the on-ground implications of water resource plan strategies for entitlement holders will be apparent and presented at information sessions held on the release of the draft plans. Therefore stakeholders will be empowered to make more meaningful submissions;
- retention of the current practice of holding public meetings – the department will continue to hold these meetings at various stages of the planning process (e.g. before and after the release of draft plans as necessary; and
- the option of a non-statutory Peak Body Consultative Group to advise the Minister – a new body will be established to assist the Minister in deciding which path (standard or long) to take when preparing a plan and to advise the Minister on any additional consultation steps for the plan including whether a reference panel should be established.

A flow chart of the Single Process is set out below.

Single Process Framework



Notification of works process

Amend the Water Act to allow a notification of works process to be initiated by the chief executive publishing a notice. Further, the application of the process to only works that take or interfere with subartesian water or works that take overland flow water will be replaced to allow for a process of notification of works for all types of water other than water taken or interfered with under the authority of a water entitlement.

As a consequence of the amendments to the works notification process under the Water Act, amendments are proposed to the Water Regulation, *Water Resource (Moreton) Plan 2007* (Moreton water resource plan) and *Water Resource (Pioneer Valley) Plan 2002* (Pioneer water resource plan). For the Water Regulation, the amendment will simply remove the process for notification of works currently provided under the regulation. For the Moreton and Pioneer water resource plans, the amendments proposed will ensure the plans are consistent with the new simplified process for works notification under the Water Act.

Conversion of category 2 water authorities (Webbe – Weller implementation)

Amend the Water Act to streamline the existing statutory process for the dissolution and conversion of category 2 water authorities including amendments to:

- rationalise the regulatory requirements for category 2 water authorities transferring to local government where both entities agree to the transfer; and
- provide for a regulation to dissolve a water authority employing office and provide a process for the transfer of staff and distribution of assets, rights and liabilities; and
- replace the current requirement for a two thirds majority of ratepayers agreeing to the conversion of a water authority with a requirement for a majority of the ratepayers to agree to the conversion.

In relation to the issue of a majority vote, given the abovementioned additional protection given to the ratepayers, balanced with the Government's approach to streamlining processes and minimising impediments to transfers, it is considered that a majority vote is sufficient in representing the best way forward for individual water authorities.

Funding for the Queensland Water Commission's Petroleum and Gas Water Functions

Amend section 360FA of the Water Act to:

- specifically provide for the recovery of Government-provided seed funding for 2010-2011 and 2011-2012 for the underground water management functions of the Commission;
- to recover seed funding for 2010-2011 and 2011-2012 without consulting with a relevant advisory body or obtaining Minister's approval for the Commissions estimated costs in relation to the planned expenditure already approved by the Government for the start up period; and
- other related amendments.

Indigenous water reserves

Amend the:

- *Gulf* water resource plan to establish these Indigenous reserves with specified volumes of unallocated water that will be made available as either surface water, overland flow or underground water through the grant of water licences; and
- *Water Act* to provide that on its commencement, the Gulf resource operations plan will be amended to include provisions (the resource operations plan Provisions) for dealing with the Indigenous water reserves established under the Gulf water resource plan. The resource operations plan provisions have been drafted separately by the Department of Environment and Resource Management and, to provide full transparency, will be tabled with the Bill upon introduction.

Miscellaneous operational amendments

Amend the Water Act to provide for miscellaneous operational amendments. The legislative framework for water planning and management has undergone significant change in recent years, with many elements still being refined and opportunities for improvements being identified.

Amendments to the Water Act will address miscellaneous operational issues necessary to provide for continued effective implementation of the water planning and management framework under the Water Act ensuring the department's operational needs are met.

The amendments will remove unnecessary requirements, correct errors, fix oversights and improve existing statutory processes, including the following:

- provide for the South East Queensland Water Grid Manager and the Commonwealth Environmental Water Holder to apply for a water licence not attached to land and to engage in dealings with water licences, for example, enabling a water licence already attached to land to be transferred to these entities. This amendment is intended to provide the flexibility necessary for these entities to achieve the significant water reform activities for which they were originally established;
- remove the power allowing a head of power in water resource plans to specify the types of works for interference with overland flow water that are intended to be assessable or self-assessable development under the *Sustainable Planning Act 2009* (Sustainable Planning Act);
- change section 229 (Effect of disposal of part of land to which water licence to take water attaches) of the Water Act to prevent expiry of a licence due to part disposal of land to which the licence attaches;
- correct an error in section 121(4) (Converting water entitlements);
- remove the requirement for notice of the existence of a supply contract where the Resource Operations Licence holder and the water allocation holder are the same;
- clarify that the meaning of ‘give’ in the context of giving a certificate to the Registrar to record a subdivision, amalgamation or change of a water allocation on the water allocations register;
- amend section 132 (Public notice of application to change water allocation) to enable the chief executive to give the applicant a notice to publish, ensuring that section 132 is consistent with similar provisions of the Water Act and appropriately places the responsibility of publishing the notice on the applicant seeking the benefit of the water entitlement;
- amend section 153 (Searching water allocations register) to clarify where a person may search the water allocations register;

- ensure consistency for both interim water allocations or water licences for where part of the land to which an interim water allocation or water licence attaches is acquired by a constructing authority under the *Acquisition of Land Act 1967* (Acquisition of Land Act) or where the constructing authority negotiates the purchase of the part of the land without using the Acquisition of Land Act;
- amend section 213 (Contents of a water licence) of the Water Act to provide that water licences that authorise the take of artesian water for stock purposes, or the take of subartesian water hydraulically connected to artesian water for stock or domestic purposes attach only to the land on which the water is taken. Also, insert a new provision to provide that for these particular water licences section 229 (Effect of disposal of part of land to which water licence to take water attaches) does not apply. Instead provide for the chief executive to amend the licence under section 219 (Minor or stated amendments of water licence);
- amend section 216A (Amending water licence without public notice) to:
 - remove the requirement for the chief executive to give an information notice to parties who make a submission, where the submission is irrelevant to deciding the application;
 - remove the requirement for the licensee to give the chief executive a copy of the notice given to interested parties and replace with a requirement to confirm to the chief executive that interested parties have been given said notice;
 - amend a water licence to remove land, without requiring public notice under 208 where the application is also to reduce the allocation as a reduction of allocation will not adversely impact on any other party. Where land is added and the allocation is to be increased, this would still be dealt with through application under section 216 and require public notice.
- provide a mechanism for dealing with the part disposal of land to which a water licence attaches, without the need for the water licence to expire in all cases;

- provide a defence for the holder of a water entitlement where they were not responsible for the operation of works associated with a contravention of:
 - Section 808 (Unauthorised taking, supplying or interfering with water)– the unauthorised taking, supplying or interfering with water; and
 - Section 812 (Contravening conditions of water entitlement, seasonal water assignment notice or water permit) – the conditions of a water entitlement, seasonal water assignment notice or water permit.
- provide for the refusal of particular water licence applications and the non-acceptance of particular water licence applications under water resource plans and resource operations plans;
- clarify that ‘changes’ to water entitlements for the purposes of section 98(2)(e) (Content of draft resource operations plan) includes ‘amendments’ to water entitlements;
- address issues in relation to conversion of water entitlements;
- ensure that a water resource plan and resource operations plan can provide for both monitoring and reporting for the purposes of sections 46 (Contents of draft water resource plans) and 98 (Content of draft resource operations plan);
- provide definitional clarification by inserting a new definition in schedule 4 (Dictionary) of the Water Act for urban stormwater as a component of overland flow water to allow for water resource plans that regulate overland flow water to deal with urban stormwater separately;
- correct an oversight in the current legislation to add a sublessee under the *Land Act 1994* to section 203 (Definitions for part 6 – Water licences and permits) as an owner of land who may apply for a water licence;
- remove an unnecessary requirement by amending section 127(3) (Registration details for water allocations) to provide a discretion for some of the attributes of a water allocation not managed under a resource operations licence;
 - amend the provisions relating to quarry allocation notices, which include clarifying that a holder must apply for

renewal of an allocation notice before it expires and allowing for the surrender of a notice before it expires;

- provide an exemption from the requirement to hold a riverine protection permit if works that take or interfere with water are made self-assessable under a water resource plan or regulation and the works are being constructed in accordance with a self-assessable code listed in the Water Regulation;
- other minor operational amendments.

Wild Rivers Act 2005

Indigenous reference groups

Amend the Wild Rivers Act to enhance Indigenous consultation and representation during the process of declaring a wild river area by providing a head of power in the Act for the Minister to establish an Indigenous reference group for an area proposed for declaration as a wild river area. The Indigenous reference group is to be made up of representatives nominated from within the area of the proposed declaration.

Each participating member will be required to contribute cultural and environmental expertise relating to their country as part of deliberations. The Indigenous reference groups will provide information to, and seek feedback from, Traditional Owners and their respective Indigenous community on development of wild river declarations, communicating any views or concerns to Government.

The Department of Environment and Resource Management will work closely with each Indigenous reference group, meeting with them “on country” to discuss their concerns, issues and aspirations and sharing perspectives on the future of an area proposed for declaration as a wild river area. The department will also assist in building the capacity of the Indigenous reference groups to provide advice, arising from a wild river declaration proposal, that they wish to make directly to the Minister.

As Traditional Owner representation is the key focus of an Indigenous reference group, this model will ensure independence from the government and provide representatives of the Traditional Owners and Indigenous communities of an area an alternate avenue to express their views on wild river related matters directly to the Minister.

Wild River Rangers

Amending the Wild Rivers Act to:

- Recognise the wild river ranger program in the Wild Rivers Act;
- Outline that the intent of the wild river rangers program is to contribute to:
 - the preservation of the natural values of wild river basins; and
 - the development of a natural resource management economy in wild river areas.

Cape York Peninsula Heritage Act 2007

Amend the CYPHA to ensure that a property development plan under the CYPHA is recognised as a property development plan in a wild river high preservation area of a wild river area. This will ensure that a single application is all that is required from proponents who intend to clear for development within Indigenous Community Use Areas.

River Improvement Trust Act 1940

Amend the River Improvement Trust Act to provide that a person appointed by the Governor in Council as a river improvement trust member will continue to hold office after the person's term of office ends until the person's successor is appointed.

Alternative ways of achieving policy objectives

For all the amendments in the Bill, there are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated cost for government implementation

Single Process – The Single Process framework has the potential to reduce planning timeframes by up to approximately two years with corresponding resource savings for each plan. These savings will not be realised until the first plans developed under the new framework are completed.

Notice of works – The changes to the notification of works process will reduce administrative costs for government by removing the requirement to amend subordinate legislation.

Category 2 water authorities – the government will provide:

- relief from transfer duties to transfers into new arrangements of an estimated \$5.8 million (includes river improvement trusts);
- \$1.2 million over two years for due diligence for all functions to be transferred to local government (includes river improvement trusts and water authorities);
- an allowance for the non-repayment of the State's investment in water authorities assets if transferred to non-government entities (approx \$3.9m including \$2.5m for Pioneer); and
- the allocation of \$0.6 million over three years to contribute to the costs of affected local governments, water authorities and trusts in final reporting, records management and entity/systems establishment.

Streamlining the statutory requirements for water authorities transferring to local government will achieve the following savings:

- the relevant water authority and local government's costs associated with administrative processes for the proposal will be reduced; and
- State government administrative / approval processes for transfers of this nature will be reduced which will result in resource savings.

There are no further financial considerations that arise from the Bill.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are:

Whether legislation make rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review—Legislative Standards Act 1992, section 4(3)(a)

Clauses 29 and 41 of the Bill (Amendment of s 57 (Minor or stated amendments of water resource plan)) and (Amendment of s 106 (Minor or stated amendments of resource operations plan)) provide for minor amendments to be made to the water resource plan and resource operations plan where:

- the water resource plan or resource operations plan state that an amendment is of a type allowed; and
- the Minister/chief executive reasonably believes the amendment will not adversely affect the rights of water entitlement holders or natural ecosystems.

This potentially make rights and liberties, or obligations, dependent on administrative power where the power is not subject to appropriate review because the provision does not include criteria the Minister/chief executive must have regard to in making the decision.

The provision is justified because it is, in fact, a strengthening of the current provision, which currently allows amendment merely if the water resource plan or resource operations plan allow an amendment of that type. The extra provision has been inserted to safeguard natural ecosystems and the rights of water entitlement holders.

Clause 90 of the Bill (Gulf Resource Operations Plan amended) effectively amends the Gulf resource operations plan to provide for Indigenous water reserves of unallocated water in the plan area. Under usual processes that apply under the Water Act, any decision to amend the resource operations plan would be subject to judicial review. Amending the resource operations plan by legislation therefore potentially adversely affects an aggrieved person's rights to have the decision reviewed.

The provision is justified because the amendments are beneficial to indigenous people in the plan area and the water allocated in the indigenous reserve of unallocated water would not be available to any other person for any other purpose.

The existing Gulf water resource plan set unallocated water reserve volumes that support the potential demands identified for the 10-year life of the plan. The unallocated water volumes, with the volumes held under existing water entitlements, amount to less than 1.5% of the Gulf river systems' average annual freshwater discharge into the Gulf of Carpentaria. This means that the Gulf plan area is not viewed as being fully allocated and the additional Indigenous reserves can be made available without impacting on existing water users, or compromising the ecological outcomes of the water resource plan or the purposes of the wild river declarations. These reserves are in addition to existing reserves of unallocated water and are not being sourced from unallocated water that has already been set aside in strategic and general reserves of the existing Gulf water resource plan and resource operations plan.

Whether legislation has sufficient regard to rights and liberties of individuals—Legislative Standards Act 1992, section 4(2)(a)

Under the provisions of the Bill which introduce the Single Process framework (clauses 11 to 43), a draft resource operations plan is to be consulted on at the same time as the draft water resource plan it is to implement. Also, a final draft water resource plan and a final draft resource operations plan must be concurrently approved by the Governor in Council.

This potentially fails to have sufficient regard to the rights and liberties of individuals because a final draft water resource plan prepared by the Minister under section 50 of the Act (Preparing and approving final water resource plan) may be significantly different to the draft water resource plan consulted on. This could mean that the final draft resource operations plan prepared by the chief executive under section 103 (Preparing and approving final draft resource operations plan) will also be significantly different to the draft resource operations plan consulted on.

The Bill does not provide for the chief executive to further consult on the changes that need to be made to the draft resource operations plan (to accord with the final draft water resource plan). However, this lack of a requirement to consult is not caused by the amendments being made by the Bill but has always been in the Water Act.

The process as currently set out in the Act and preserved through the amendments made by this Bill are justified because the process to date has been that if the water resource plan is significantly amended after the chief executive's consultation process on the resource operations plan, the chief executive will issue a notice of intention not to proceed with the making of the draft plan under section 104 of the Act. The chief executive then commences the process of making the plan again.

Clause 65 of the Bill (Amendment of s 216A (Amending water licence without public notice) removes the right of an entity that has an interest in the land to which the water licence attaches, the land to be added or the land to be removed. This potentially fails to have sufficient regard to the rights and liberties of individuals.

The Water Act provides for the sustainable allocation and management of Queensland's water resources. Chapter 2, part 6 of the Water Act details the arrangements for water licences, entitlements to take or interfere with water which generally, attach to the land of the licensee.

Licence holders may apply to amend a water licence for particular reasons. In most cases an application to amend a water licence is dealt with in accordance with the usual process for applying for a water licence. The process for applying for a water licence involves a public notice element, whereby the chief executive must give the applicant a notice to publish which invites submissions on the proposed application.

Section 216A of the Water Act provides the circumstances where a person may apply to amend a water licence without public notice. This section currently applies to an application to amend a water licence by adding land to, or removing land from, the land to which the water licence attaches. In this circumstance, in place of a public notice, the applicant is required to give notice to any entity that has an interest in the land to which the licence attaches (including the land to be added or removed) inviting submissions from these entities.

The amendment removes the provision that allows for an entity who has an interest in the land and who has been given a notice in accordance with s216A to make a submission.

The clause is justified because of the reduction in the administrative burden and the reduction in the likelihood of entities wrongly getting the impression that they may appeal certain issues. Submissions that the Department of Environment and Resource Management receives from interested parties under section 216A are primarily from banks with an interest in a mortgage on the land to which the licence attaches.

The issues raised in such submissions are not of relevance to managing the water resource to which the applicable licences give access, and as such have no influence in deciding the application. The chief executive in deciding the application must give consideration to the criteria under section 210 of the Act including existing water entitlements, the effects of taking or interfering with water on natural ecosystems and the effect on the physical integrity of watercourses, lakes, spring or aquifers, amongst other things. While the chief executive must consider any submissions, financial interests are irrelevant to the decision.

This creates unnecessary work for the Department of Environment and Resource Management as there is a requirement to provide an information notice to any person who made a submission on the application. An information notice invites internal review of the decision and ultimately allows for an appeal against the decision, which effectively does not change the decision and is a waste of time and resources for both the Department

of Environment and Resource Management and an entity with an interest in the land.

Giving an information notice in this situation gives the entity the wrong impression by implying that they may have grounds for a successful appeal against the decision. However, any appeal on grounds that are not included in the criteria under section 210 of the Water Act cannot succeed. In any event, an appeal to the Land Court in these circumstances is not an appropriate forum for addressing interests in property disputes.

Whether legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons— Legislative Standards Act 1992, s 4(3)(c)

Clause 10 of the Bill (Replacement of s37 (Notice of works and water use)) enables the chief executive, by publishing a notice, to require the owner of land to notify the chief executive of certain works, or proposed works, for taking or interfering with certain water and the water use or proposed water use in relation to the works. Failure to comply with the notice would be an offence.

This clause potentially allows the delegation of administrative power other than in an appropriate case.

The provision is justified because currently, on each occasion that the chief executive undertakes a process to require notification of works and water use, it first involves amendment of subordinate legislation, either of the Water Regulation or a water resource plan or another statutory instrument such as a wild river declaration.

Whichever process is used for the notification of works, it involves amendment of subordinate legislation or another regulatory instrument such as a wild river declaration, which adds considerably to time frames for the collection and processing of data necessary for the development and implementation of water resource plans and wild river declarations.

This approach has proved to be too rigid, complex and time consuming.

In addition, the Department of Environment and Resource Management will undertake an extensive awareness campaign involving the holding of public information sessions and consulting with:

- local irrigator groups;
- local governments; and
- stakeholder groups.

Clause 78 of the Bill, which inserts new section 633 (Dissolving employing office) enables a regulation to dissolve an employing office. This potentially is a delegation of power that is not in an appropriate case.

In 2007 the Water Act was amended to implement Government (at the time) policy and election commitments to return employees of certain statutory bodies affected by the federal WorkChoices legislation to the State industrial system. Part 4A—Employing Offices For Water Authorities (sections 625 – 632) was inserted for this purpose.

In accordance with section 625 of the Water Act the following employing offices were established for water authorities in the *Water Regulation 2002*:

- North Burdekin Water Board Employing Office
- South Burdekin Water Board Employing Office
- Pioneer Valley Water Board Employing Office
- Callandoon Water Supply Board Employing Office
- Glamorgan Vale Water Board Employing Office
- Merlwood Water Board Employing Office
- Yambocully Water Board Employing Office.

It is likely that the water authorities for the above employing offices will transfer to alternative arrangements, and therefore the employing offices will need to be dissolved at the time the water authority is dissolved.

The clause is justified because none of the above employing offices have employed any staff or conducted any financial transactions under these employing offices.

The provision merely facilitates the effective application of the transfer provisions. The provisions in the Water Act set out how the water boards will transfer and, in practice, the employing offices should, as a matter of course, transfer at the same time.

It is also arguable that section 24AA of the *Acts Interpretation Act 1954* could be used for the purpose of dissolving employing offices. However, it is preferable for the process for dissolving a water authority employing office to be prescribed in the Water Act.

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

Clause 88 of the Bill (Amendment of s 812A (Liability for unauthorised taking of water)) arguably reverses the onus of proof in criminal proceedings without adequate justification because under section 812A as amended, if the holder of an authorisation contravenes any condition of the authorisation, the holder is taken to have contravened the condition in the absence of evidence to the contrary. Also, under that section, if the holder of an authorisation has contravened section 808(1), the holder is taken to have taken or supplied the water without authority in the absence of evidence to the contrary.

These provisions reverse the onus of proof and represent a widening of the existing evidential provision by extending the range of purported contraventions caught under the provision.

The reason for the amendment of section 812A is that;

- section 808 of the Water Act provides an offence for the unauthorised taking or interfering with water. In accordance with this section, a person must not take or supply water to which the Water Act applies unless authorised under the Water Act or under a law of another State or Territory declared by regulation; and
- Section 812 of the Water Act provides a similar offence for a person to contravene a condition of a water entitlement, seasonal water assignment notice or water permit. A condition of a water entitlement may include, for example, the location from where the water may be taken or monitoring and reporting requirements associated with the entitlement.

Section 812A currently provides for liability of the unauthorised take of water. The section applies if there is evidence that a condition of an authorisation has been contravened by the taking of water the holder of an authorisation was not authorised to take.

Section 812A was intended to provide for the holder of a water allocation, interim water allocation, water licence or water permit to be responsible, in the absence of evidence to the contrary, for the taking of unauthorised water.

The volume of water permitted to be taken or supplied under the authority of a water allocation, interim water allocation, water licence or water permit is not always a *condition* of the authorisation and therefore section 812 is unable to capture the offence of unauthorised take of water committed by a person who does not hold any form of entitlement under

the Water Act. Similarly, a water entitlement commonly specifies a volume of water that may be taken under the entitlement as a nominal entitlement that may be reduced by announced allocations under water sharing rules or through the assignment of part of the volume that may be taken and therefore, the nominal entitlement is arguably not a condition of the entitlement.

Section 812A of the Water Act is currently drafted to only accommodate an offence under section 812 where a condition of a water allocation, interim water allocation, water licence, seasonal water assignment notice or water permit has been contravened by the taking of water the holder was not authorised to take.

Section 812A currently does not adequately provide for the liability of unauthorised take of water under section 808 or the liability of other conditions contravened under section 812.

The amendment is justified because, by not extending the application of section 812A, the holder of an entitlement would have no avenue to transfer the responsibility of the offence in the circumstance where they did not have physical control over or responsibility for the works associated with the contravention at the time.

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

Whether a Bill authorises the amendment of an Act only by another Act— Legislative Standards Act 1992, s 4(4)(c)

Clause 78 of the Bill, which inserts new section 633 (Dissolving employing office) enables a regulation to dissolve an employing office. This clause is potentially a Henry VIII clause.

It is likely that the water authorities for the above employing offices will transfer to alternative arrangements, and therefore the employing offices will need to be dissolved at the time the water authority is dissolved.

The clause is justified because none of the above employing offices have employed any staff or conducted any financial transactions.

The provision merely facilitates the effective application of the transfer provisions. The provisions in the Water Act set out how the water boards

will transfer and, in practice, the employing offices should, as a matter of course, transfer at the same time.

It is also arguable that section 24AA of the *Acts Interpretation Act 1954* could be used for the purpose of dissolving employing offices. However, it is preferable for the process for dissolving a water authority employing office to be prescribed in the Water Act.

Whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively - Legislative Standards Act 1992 s 4(3)(g)

Clause 77 of the Bill proposes to insert new sections 360FB and 360FC into the Water Act. The sections provide for the collection of the annual levy payable for the Queensland Water Commission carrying out its functions under chapter 3 of that Act for the 2010-2011 and 2011-2012 financial years. The main purpose of the sections is to override the requirement in existing section 360FA(5) of the Water Act that the estimated costs of the commission (on which the annual levy is to be based) be prepared by the commission in consultation with a relevant advisory body (established by the commission), and approved by the Minister.

The sections also clarify that an annual levy may be collected for the 2010-2011 financial year even though it has ended, and may be collected for the entire 2011-2012 financial year even though the regulation prescribing the levy is made after that financial year starts.

It could be argued that the provisions provide for retrospective operation of the regulation prescribing the annual levy. However, the power to charge the annual levy has been in place since 1 December 2010. The sections merely provide for transitional matters that have arisen because the regulation has not been, and will not be, made before the 2010-2011 financial year ends. The petroleum tenure holders who are to be liable for the annual levy are aware that the commission has incurred costs for carrying out its functions under chapter 3 of the Water Act for the 2010-2011 and 2011-2012 financial years and that these costs are to be recovered through the annual levy.

The commission has received funding from the State for carrying out its functions under chapter 3 of the Water Act for the 2010-2011 and 2011-2012 financial years on the condition that the amount of the funding is to be recovered through the annual levy.

This funding has been based on estimated costs of the commission.

The current provisions of the Water Act do not adequately deal with the start up period and recovery of the seed funding. Amendments are required to avoid the need to consult on planned expenditure already approved, and to provide for recovery of the seed funding over three years

It also creates a risk of the estimated costs decided under this procedure being different to those already agreed.

Consultation

- **Community**

Single Process for water resource planning: The Water Consultation Group, consisting of State Government Agency representatives and key stakeholders such as Queensland Farmers' Federation (QFF), Queensland Resources Council (QRC), Queensland Conservation Council (QCC) and Local Government Association Queensland (LGAQ), was consulted in developing the Single Process framework.

Notification of works process: As part of the ongoing implementation of the Moreton water resource plan, there has been extensive consultation with the Lockyer Water Users Forum about the regulation of groundwater works and water use in the Lockyer Valley.

Conversion of Category 2 water authorities (Webbe – Weller Implementation): The Department of Environment and Resource Management consulted broadly with several water authorities and affected local governments, Local Government Association Queensland, Queensland Farmers Federation and Canegrowers. There has been ongoing consultation with local governments and Category 2 water authorities, particularly through eight regional forums undertaken during April – May 2010 with 35 out of the 52 water authorities attending the forums.

Indigenous reference groups: Preliminary consultation on Indigenous reference groups has occurred with some Indigenous leaders from Cape York Peninsula and the Gulf. These discussions have been positive with the expectation that Indigenous reference groups will be truly representative of Traditional Owners.

- **Government**

All government agencies were consulted on the Bill.

Results Of Consultation

- **Community**

Notification of works process – The Lockyer Water Users Forum are supportive of the department's intention to amend the Water Act to simplify the notice of works process.

Conversion of Category 2 water authorities (Webbe – Weller Implementation) – The department has conducted regional forums to provide water boards with an opportunity to discuss their proposed arrangements and implementation issues. Thirty-five out of the 52 authorities attended forums and 41 have indicated a preferred structure. There was some opposition to the reforms due to a perceived lack of reasons for the reforms, uncertainty about what functions will be transferred, the direct cost of transferring functions, and the ongoing cost of operating the functions under non-statutory body arrangements. Many of these concerns have been addressed through consultation with individual water authorities.

The following information was provided to water authorities to address concerns relating to costs of transfer and ongoing costs of operating Category 2 water authorities:

- Water authorities were advised of the funding approved by State Government in February 2010, including limited funding to assist with the costs of winding up water authorities and establishing new entities.
- Water authorities were also advised of the legislation to give transfer duties relief and exemption for fees and charges under the Water Act, the *Land Act 1994* and the *Land Titles Act 1994*, associated with transfers under Webbe-Weller.
- Water authorities were also advised that the Government had decided not to seek repayment on transfer for its previous investment in water authority assets.

- **Government**

All agencies consulted support the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act is the *Water and Other Legislation Amendment Bill 2011*.

Part 2 Amendment of Cape York Peninsula Heritage Act 2007

Act amended

Clause 2 provides that this part amends the *Cape York Peninsula Heritage Act 2007*.

Amendment of s 19 (Development in indigenous community use area)

Clause 3 amends section 19 of the Act. Currently an Indigenous group or individual wishing to clear a large area of vegetation for agricultural or aquaculture purposes in the area to which the *Cape York Peninsula Heritage Act 2007* can apply for the creation of an “Indigenous Community Use Area” (ICUA). There is a special clause under the *Vegetation Management Act 1999* to allow clearing for such purposes in an ICUA. The approval of an ICUA is contingent on a number of factors including submission of a property development plan under the *Cape York Peninsula Heritage Act 2007*.

Currently if the community use area is proposed within a wild river high preservation area, a property development plan under the *Wild Rivers Act 2005* (Wild Rivers Act) would also be required.

The amendment to subsection 19(b) of the Act includes additional considerations for how the Minister for the *Vegetation Management Act*

1999 may be satisfied that a development application in a wild river high preservation area that involves vegetation clearing is for a special indigenous purpose that can also be considered an application for a property development plan under the Wild Rivers Act 2005. The additional requirements are:

- the title of the wild river area; and
- evidence to show that the development can not be carried out without amending the wild river declaration for the wild river area; and
- details of any adverse impact that is likely to result from the development on the natural values of the wild river area; and
- the nature and extent of anything proposed to be done that would result in a beneficial impact on the natural values of the wild river area.

The clause inserts a new subsection 19(e) to provide that the vegetation management Minister also may be satisfied that development applied for under a vegetation clearing application is for a special indigenous purpose if the area or part of the area to which the property development plan relates is in a wild river high preservation area, and the vegetation management Minister has been advised that the Minister administering the Wild Rivers Act is satisfied that:

- the proposed development cannot be carried out without amending the wild river declaration for the wild river area; and
- the proposed development will not have an overall adverse impact on the natural values of the wild river area; and
- the plan identifies any environmental benefits associated with carrying out the proposed development.

The clause also inserts new subsection 19(2) providing that if the area or part of the area to which the property development plan relates is in a wild river high preservation area, and the vegetation management Minister is satisfied the development is for a special indigenous purpose, the property development plan is taken to be a property development plan under the Wild Rivers Act for the area of the plan which relates to the wild river area.

The amendment to section 19 will align a property development plan under this Act with a property development plan under the Wild Rivers Act such

that a single property development plan could be submitted that addresses all the appropriate criteria required under both Acts.

Amendment of s 27 (Special provision about water reserve)

Clause 4 omits the definition of *wild river declaration* from section 27 as the definition of wild river declaration is relocated to the schedule (Dictionary).

Amendment of schedule (Dictionary)

Clause 5 inserts definitions of *wild river area*, *wild river declaration* and *wild river high preservation area*. The clause also amends the definition of *high risk species*.

Part 3 Amendment of River Improvement Trust Act 1940

Act amended

Clause 6 provides that this part amends the *River Improvement Trust Act 1940*.

Amendment of s 5 (Membership of trust)

Clause 7 inserts new subsection 5(3C) which provides that despite subsections (2) and (2B), a person appointed under subsection (1)(a) or (c) continues to hold office as a member of the trust after the person's term of office ends until the person's successor is appointed.

This new provision ensures members appointed by the Governor in Council may continue in office until their formal reappointment or a new appointment is made. The amendment aligns with similar provisions in the *Water Act 2000* for water authority directors.

Part 4 Amendment of Water Act 2000

Act amended

Clause 8 provides that this part amends the *Water Act 2000*.

Amendment of s 20 (Authorised taking of water without water entitlement)

Clause 9 amends section 20 of the Act. The amendment inserts reference to interference in the section heading to clarify that the section applies to the authorised interfering with the flow of water as well as taking of water without a water entitlement. The amendment also inserts a new subsection 20(6A) to provide that a person may interfere with overland flow water without a water entitlement.

This amendment corrects an omission in the Act by providing a clear authorisation under the Act that a person may interfere with overland flow water anywhere in the State without the need to hold another authorisation under this Act such as a water licence.

Replacement of s 37 (Notice of works and water use)

Clause 10 omits section 37 of the Act, which provides that a regulation may require the owner of land on which works are used to take water under section 20(6) (take or interfere with subartesian water or take overland flow water without a water entitlement unless or until the water is regulated under a water resource plan, wild river declaration or regulation) to notify the chief executive of the works and water use, and replaces it with a new section 37.

This amendment will overcome two key issues associated with the operation of the existing section 37. Firstly, section 37 is currently limited in application to a process for notification of works that take or interfere with water in accordance with the authority provided under section 20(6) of the Water Act. This limitation has proved too restrictive.

Secondly, on each occasion that the chief executive undertakes a process to obtain information about works and water use, it first involves amendment of subordinate legislation, either of the Water Regulation or a water resource plan or another statutory instrument such as a wild river

declaration. This approach has proved to be too rigid, complex and time consuming.

The new section 37:

- removes the limitation of application of the section to works that take or interfere with water under section 20(6) and broadens the application to works that take or interfere with water under the Water Act, provided the taking or interfering with water is not already authorised under a water entitlement;
- changes the current approach of using a regulation to require notification of works to allow the chief executive to publish a notice requiring notification of works that take or interfere with water and water use in a particular area.

The new section 37 removes the complex and time consuming process of a works notification process through amendment of subordinate legislation and provides in its place a more direct and transparent process through a public notice initiated by the chief executive.

Amendment of ch 2, pt 3, div 2, sdiv 1, hdg

Preparing and approving water resource plans

Clause 11 amends the heading of chapter 2, part 3, division 2, subdivision 1 to make it clear that the subdivision relates to the power to prepare water resource plans.

Amendment of s 38 (Minister may prepare water resource plans)

Clause 12 amends section 38 of the Act to provide that preparation of a water resource plan by the Minister is subject to new subdivision 2. The section is also amended to clarify that a water resource plan may regulate the taking of overland flow water only if there is a risk that changes or proposed changes in land use are, or are likely to, significantly affect the taking of overland flow water.

These are consequential amendments that reflects new grouping of sections and to clarify that a water resource plan will only regulate taking of overland flow water and not interference. This is necessary due to the

amendment of section 20 that provides a clear authorisation allowing the interference with overland flow water without a water entitlement.

Replacement of ss 39 and 40

Clause 13 omits section 39 and 40 of the Act and inserts new subdivision heading and new sections 38A, 39 and 40.

Subdivision 2 Consultation requirements for particular plans before their preparation

New section 38A (Application of sdiv 2)

New section 38A provides for when the Minister should prepare a statement of proposals under section 39 and publish a notice of intention under section 40 of the Minister's intention to prepare a water resource plan.

New section 38A(1) requires that the Minister must prepare a statement of proposals under section 39 and publish a notice under section 40 if the proposed draft water resource plan will apply to an area of Queensland for which there is currently no water resource plan.

The new section also provides discretion for the Minister to prepare a statement of proposals under section 39 and publish a notice under section 40 if the Minister decides that more public consultation, than provided later through the release of the draft plan, is required before preparing a draft water resource plan. The Minister's discretion is guided by the following criteria:

- if the draft plan will significantly change the arrangements for the allocation and management of water in the proposed plan area;
- the terms of the proposed draft plan will be significantly different to other water resource plans in other parts of Queensland;
- the Minister needs further information about community views and expectations about water allocation and management issues in the proposed plan area.

The new section allows for the Minister to decide to use a shorter standard process that bypasses sections 39 and 40 if the Minister is preparing an amending draft plan or a new draft plan that replaces an existing plan. This operates with the other legislative amendments to the planning process to give effect to the single process policy.

New section 39 (Minister must first prepare a statement of proposals)

Section 39 of the Act currently provides that the Minister must prepare an information report before publishing a notice under section 40. Section 39 currently provides that the information report must include detail about:

- water allocation and sustainable management issues in the proposed plan area; and
- proposed arrangements for establishing a community reference panel; and
- proposed arrangements for technical assessment.

The new section 39 provides that the Minister must prepare a statement of proposals before publishing a notice under section 40 of the Act. The statement of proposals must:

- include a map of the proposed draft plan area; and
- state the water to which the proposed draft plan is intended to apply; and
- state the water allocation and sustainable management issues to which the proposed draft plan will apply and proposed strategies for dealing with the issues; and
- state the proposed arrangements for assessments, including technical assessment; and
- state the proposed arrangements for implementing the proposed draft plan; and
- state the proposed arrangements for consultation.

The new section also requires the Minister to give a copy of the statement of proposals to the chief executive and as soon as practicable after receiving the statement of proposals the chief executive must explain the implications of the proposals to as many affected water entitlement holders

as possible. The explanation may be given in writing by a letter or by public meetings.

The new section 39 applies only if, under section 38A, the Minister is required or decided to prepare a statement of proposals.

A statement of proposals will provide the public with more information about the proposal to prepare a draft water resource plan and better inform the community about the proposal.

New section 40 (Public notice of proposal to prepare draft water resource plan and availability of statement of proposals)

The heading of the new section 40 clarifies that the notice published under this section also relates to the availability of the statement of proposals prepared under section 39.

The new section provides that a notice published under section 40 must state the Minister's intent to prepare a draft water resource plan for the proposed plan area and that a statement of proposals under section 39 is available for inspection and purchase.

The new section provides that the notice must also state:

- the purpose and reasons for which the draft plan is being prepared;
- the proposed plan area;
- the water in the proposed plan area to which the draft plan is intended to apply;
- where copies of the statement of proposals prepared under section 39 are available for inspection and purchase;
- that written submissions may be made by any entity about the statement of proposals;
- a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

The new section requires the Minister to give a copy of the statement of proposals prepared under section 39 to the chief executive. This ensures that the chief executive is aware of the Minister's intention to prepare a draft water resource plan.

The new section 40 applies only if, under section 38A, the Minister is required or decides to prepare a statement of proposals and publish a notice under this section.

The new section will replace the current section 40 and will operate with the other legislative amendments to the planning process to give effect to the single process policy.

Amendment of s 40A (Further public notice of proposal to prepare draft water resource plan)

Clause 14 amends section 40A to replace ‘information report’ with ‘statement of proposals’ to reflect the changes to section 39 of the Act.

The clause also removes subsections (2) and (3).

Amendment of section 40A is needed to ensure it is clear that there is no information report in the single process framework and also, recognition of the omission of section 41 (Community reference panels) under clause 15.

Omission of s 41 (Community reference panels)

Clause 15 omits section 41 of the Act, which mandates the establishment of a community reference panel if a notice of intention to prepare a draft water resource plan was published under section 40. Under the new legislative arrangements the removal of the requirement to form a community reference panel provides the Minister with the discretion to decide the most appropriate consultation for a particular plan.

Separately, the Bill also contains transitional provisions for existing community reference panels.

The new legislative framework for water planning does not prevent the establishment of a reference panel. Rather, it provides flexibility for the Minister to establish a new reference panel or to use an existing body for more targeted and effective consultation. Also, in certain catchments where the community is well educated on the water resource planning processes and the new water resource plan is not proposing significant changes, it may be an unnecessary use of resources to establish any reference panel. This operates with the other legislative amendments to the planning process to give effect to the single process policy.

Insertion of new ch 2, pt 3, div 2, sdiv 3, hdg

Subdivision 3 Preparing and approving water resource plans

This clause also inserts a new heading for chapter 2, part 3, division 2, subdivision 3 of the Act. This subdivision provides for preparing and approving water resource plans.

Amendment of s 46 (Content of draft water resource plans)

Clause 16 amends section 46 of the Act.

Section 46(1)(d) is amended to require that a draft water resource plan must also state the water and natural ecosystem reporting requirements in addition to stating the monitoring requirements.

A new paragraph is inserted under section 46(1) to provide that a draft water resource plan must state the strategies proposed for the establishment of water allocations in the proposed plan area.

Section 46(2) is amended to remove the head of power for a draft water resource plan to make works that interfere with overland flow water assessable or self-assessable development under the *Sustainable Planning Act 2009*. Interference with overland flow water is not an offence under section 808(2) of the Act. As interference with overland flow water is not intended to be regulated through water resource plans, therefore it is appropriate that the head of power under section 46(2) to regulate works that interfere with overland flow water is removed.

A further amendment of section 46(2) inserts a new subsection to provide that a draft water resource plan may include directions to the chief executive to refuse to grant or to accept certain water licence applications. This will ensure clarity for applicants about the anticipated outcome of their applications and provide clear guidance for the chief executive when deciding to refuse existing applications or to not accept future applications (for example, when dealing with applications the subject of a moratorium notice).

Section 46(2) is further amended by insertion of an additional paragraph 46(2)(k) that provides a head of power for a draft water resource plan to

state operational rules for taking or sharing water such as water sharing rules.

These amendments operate with the other legislative amendments to the water resource planning process to improve operational efficiency.

Amendment of s 47 (Matters the Minister must consider when preparing draft water resource plan)

Clause 17 omits paragraph (i) from section 47 removing the requirement for the Minister to consider advice from the community reference panel when preparing a draft water resource plan.

This is a consequential amendment due to the omission of section 41 which removes the requirement for the Minister to establish a community reference panel.

Amendment of s 48 (Overview report)

Clause 18 omits the editor's note relating to section 48(1) replacing it with a new editor's note clarifying that the chief executive must, in accordance with section 1009 of the Act, keep a copy of the overview report available for inspection and purchase.

Amendment of s 49 (Public notice about availability of draft water resource plan)

Clause 19 amends section 49 to clarify that a public notice about the availability of a draft water resource plan published under this section also relates to the availability of an overview report about the draft water resource plan.

The amendment also inserts a new subsection requiring the Minister to give a copy of the draft water resource plan to the chief executive before publishing a notice under section 49.

This amendment will ensure that the chief executive is aware of the Minister's intention to publish the notice under this section and if the chief executive is also preparing a draft resource operations plan, the chief executive may, at the same time, publish a notice under section 100 about the availability of the draft resource operations plan and overview report under section 99A of the Act. This will allow for both the notice under section 49 and the notice under section 100 relating to the same plan area to

be published at the same time, which will effectively implement the new framework.

This amendment operates with the other legislative amendments to the planning process to give effect to the single process policy.

Amendment of s 50 (Preparing and approving final water resource plan)

Clause 20 addresses minor inconsistencies in references in section 50 to a water resource plan to clarify the section relates to a final draft water resource plan and not a final water resource plan.

This amendment ensures consistent terminology with section 103 of the Act, which provides for preparing and approving the final draft resource operations plan.

New section 50A (Insertion of new s 50A)

Copy of final draft water resource plan to be given to chief executive

Clause 21 inserts a new section 50A that requires the Minister to give a copy of a final draft water resource plan to the chief executive before the plan is approved by the Governor in Council under section 50(2).

This amendment will ensure that before the plan is approved the chief executive knows about the final draft water resource plan and the Minister's intention to seek the approval of the plan by the Governor in Council. If the chief executive has developed a final draft resource operations plan to implement the final draft water resource plan the chief executive can have the final draft resource operations plan approved by Governor in Council at the same time as the final draft water resource plan.

Amendment of s 51 (Minister must prepare report on consultation process)

Clause 22 amends section 51 of the Act, which currently requires the Minister to prepare a consultation report within 30 business days after a water resource plan is approved. The amended section requires the Minister to prepare a consultation report on or before the day the approved water resource plan is gazetted.

The clause also inserts an editor's note clarifying that the chief executive must, in accordance with section 1009 of the Act, keep a copy of the consultation report available for inspection and purchase.

This amendment will ensure the consultation report is available for public inspection at the same time the water resource plan is released.

Amendment of s 52 (Public notice of intention not to proceed with making draft water resource plan)

Clause 23 amends references in section 52 to a water resource plan to clarify the section relates to a draft or final draft water resource plan.

Renumbering of ch 2, pt 3, div 2, sdivs 2–4

Clause 24 renumbers chapter 2, part 3, division 2, subdivision 2 to 4 to be subdivisions 4 to 6 to reflect insertion of new subdivisions 2 and 3 under this part.

Amendment of s 53 (Minister must report on all water resource plans)

Clause 25 omits the editor's note relating to section 53(2) replacing it with a new editor's note clarifying that the chief executive must, in accordance with section 1009 of the Act, keep a copy of the report available for inspection and purchase.

Amendment of s 54 (Matters the reports must include)

Clause 26 amends section 54(c) to substitute 'objectives' with 'strategies'. The amendment will provide that the Minister's report under section 53 must include an assessment of whether the plan's strategies are continuing to promote the purpose of chapter 2 of the Water Act instead of the plan's objectives.

A new subsection 54(2) is inserted to provide that the Minister's report under section 53 may also include an assessment of whether the plan's objectives are continuing to promote the purpose of chapter 2 of the Water Act.

This amendment allows for more meaningful reporting by the Minister as generally reporting on strategies can be done at an early stage after

approval of a water resource plan whereas it can be some years before an assessment can be made of the effectiveness of a plan's objectives.

Amendment of s 55 (When water resource plans may be amended or replaced)

Clause 27 amends section 55, which currently provides the Minister must amend or replace a water resource plan if the Minister is satisfied a report shows the plan's outcomes are not being achieved or the objectives are no longer appropriate.

The amendment removes the requirement for the Minister to consider a report and inserts a requirement to also consider whether the plan's strategies are still appropriate. In doing so, the amendment reflects the amendments to section 54 and provides that before amending or replacing a water resource plan the Minister needs to be satisfied that the plan's outcomes are not being achieved or the plan's strategies or objectives are no longer appropriate.

Amendment of s 56 (Preparing amending or new draft water resource plan)

Clause 28 amends section 56, which provides for when a water resource plan should be amended or replaced.

The amended section 56 provides for subdivisions 1 to 3 (1 Power to prepare water resource plans; 2 Consultation requirements for particular plans before their preparation; and 3 Preparing and approving water resource plans) to apply for amending or new draft water resource plans.

These amendments operate with the other legislative amendments to the planning process to give effect to the single process policy.

Amendment of s 57 (Minor or stated amendments of water resource plan)

Clause 29 amends subsection 57(b), which provides that the Governor in Council may approve a plan to amend a water resource plan by making an amendment of a stated type without sections 38A to 52 applying, if the water resource plan states that an amendment of the stated type may be made to the plan by amendment under section 57.

New subsection 57(b) provides for approval of the amended plan by Governor in Council if the amendment is of a type allowed under the water resource plan and the Minister reasonably believes the amendment will not adversely affect the rights of water entitlement holders or natural ecosystems.

Replacement of s 96 (Public notice of proposal to prepare draft resource operations plan)

New section 96 (When chief executive must prepare a draft resource operations plan)

Clause 30 omits section 96 and replaces with new section 96 to provide that the chief executive must prepare a resource operations plan to implement a water resource plan concurrently with the preparation of the water resource plan by the Minister, if the proposed water resource plan requires any of the following on the day the water resource plan is intended to commence:

- the conversion or granting of water allocations under section 121; or
- the granting of water licences under section 212 or amendment of water licences under section 217; or
- the granting of a resource operations licence or distribution operations licence under section 107 ; or
- the granting of an interim resource operations licence under section 176; or
- the amendment of a resource operations licence under section 111A; or
- the amendment of an interim resource operations licence under section 184A; or
- environmental management rules, water sharing rules, water allocation change rules or seasonal water assignment rules; or
- operating rules for water infrastructure to which the resource operations plan will apply.

The clause also inserts a definition for the section of *operating rules*.

New section 96 is necessary to ensure a resource operations plan is prepared concurrently with the Minister's preparation of a water resource plan in the specified circumstances.

This amendment operates with the other legislative amendments to the planning process to give effect to the single process policy.

Amendment of s 97 (Notice of proposal to water infrastructure operators)

Clause 31 amends section 97 to reflect the requirement under the single process for preparation of the water resource plan and resource operations plan at the same time and recognises that in the absence of a draft water resource plan being available, an operator of infrastructure will have to consider other documents when developing their proposed arrangements for operating the infrastructure. The amended section requires the holder of an authorisation to operate infrastructure to have regard to the statement of proposals (if one has been prepared under section 39) for the proposed plan area, or otherwise the existing water resource plan for the plan area, when preparing their proposed arrangements for operating their infrastructure.

This amendment addresses changes to the planning process arising from amendments to other sections that will give effect to the single process policy.

Amendment of s 98 (Content of draft resource operations plan)

Clause 32 amends section 98 to address inconsistencies in terminology and to provide that a draft resource operations plan must include the water and ecosystem reporting that will apply in the proposed plan area.

The clause also inserts a new subsection to provide that the draft resource operations plan may include directions to the chief executive about the refusal to grant or, in the future to not accept, a water licence application. This new provision enables the chief executive to give operational effect to the decisions made by the Minister in a water resource plan (in accordance with the amendment to section 46) and ensures that resource operations plans can clearly articulate how existing applications and future applications will be dealt with. An amendment of this nature is necessary as in some cases, the development of a water resource plan and resource operations plan identifies that there is an overallocation of water resources. This amendment provides a mechanism to ensure that any overallocation is not exacerbated by the grant of new water entitlements. The direction in a

resource operations plan to refuse an application does not remove the normal requirement to deal with the application in accordance with section 209 of the Act.

Subsection 98(3) is amended to clarify that if the draft plan provides for the regulating of overland flow water this only applies to the regulating of the taking of overland flow water.

In addition, the clause removes the reference under subsection 98(4)(a) to interference with water. This omission clarifies that an authority to interfere with the flow of water cannot be converted to a water allocation. Water allocations may only be granted for the take of water.

Amendment of s 99 (Matters the chief executive must consider when preparing draft resource operations plan)

Clause 33 amends subsection 99(a), which currently provides that when preparing a draft resource operations plan for an area the chief executive must consider the water resource plan or draft water resource plan or, if notice of draft amendment or new draft plan has been published, the existing water resource plan as it would be amended or the new draft water resource plan mentioned in the notice, for the area.

The new subsection 99(a) provides that if the Minister has published a notice under section 40, the chief executive, when preparing a draft resource operations plan, must consider the statement of proposals prepared under section 39 or otherwise the existing water resource plan for the proposed plan area.

The clause also omits subsection 99(b), which provides that the chief executive must consider all properly made submissions about the proposed draft resource operations plan. New subsection 99(b) provides that if the Minister has published a notice under section 40, the chief executive, when preparing a draft resource operations plan, must consider all properly made submissions about the statement of proposals prepared under section 39.

This amendment addresses changes to the planning process arising from amendments to other sections that will give effect to the single process policy.

Insertion of new s 99A

New section 99A (Overview report)

Clause 34 inserts new section 99A to provide that before publishing a notice about a proposed draft resource operations plan under section 100, the chief executive must prepare an overview report about the proposed draft plan. The overview report must summarise assessments and findings about the matters mentioned in section 99.

The clause also inserts an editor's note clarifying that the chief executive must, in accordance with section 1009 of the Act, keep a copy of the overview report available for inspection and purchase.

Amendment of s 100 (Public notice about availability of draft resource operations plan)

Clause 35 amends section 100 of the Act. The section heading is amended to clarify that a public notice about the availability of the draft resource operations plan published under this section is also a notice about the availability of the overview report under section 99A.

To give effect to the new legislative arrangements relating to water resource plans, new subsections are inserted under section 100 to provide that if the chief executive has been given a copy of the draft water resource plan by the Minister under section 49(7), the Minister and the chief executive must liaise to ensure that a notice published under this section is published together with a notice under section 49 of the Act for the proposed plan area.

This amendment will give effect to the new legislative arrangements that provide for the simultaneous development of the water resource plan and resource operations plan under the single process policy.

Amendment of s 102 (Reviewing submissions about draft resource operations plan)

Clause 36 amends section 102(4)(a) of the Act, which currently provides that if a submission is made about a draft resource operations plan in relation to a matter that is inconsistent with the water resource plan then the submission does not need to be referred to the resource operations plan referral panel. The amendment extends this provision to also apply to a matter that is not consistent with a draft water resource plan.

This amendment is necessary to recognise that under the single process a draft resource operations plan will generally be developed at the same time as a draft water resource plan.

Amendment of s 103 (Preparing and approving final draft resource operations plan)

Clause 37 amends section 103 of the Act to address minor anomalies in references to draft resource operations plan and final water resource plan. The clause also inserts a new subsection into section 103 of the Act to reflect the new legislative arrangements that provide for development of the water resource plan and resource operations plan at the same time, clarifying that the resource operations plan cannot commence earlier than the day the final water resource plan commences.

This amendment is necessary to recognise that under the single process a draft resource operations plan will generally be developed at the same time as a draft water resource plan and it needs to be clear that the resource operations plan must not commence before the water resource plan commences.

Renumbering of s 104B (Public access to particular notices)

Clause 38 provides for section 104B of the Act to be renumbered as 104D to reflect the insertion of new sections 104B and 104C.

Insertion of new ss 104B and 104C

Clause 39 inserts new sections 104B and 104C.

New section 104B (Concurrent approval by Governor in Council)

New section 104B provides that if section 96 requires a draft resource operations plan to be prepared concurrently with a water resource plan the Minister and chief executive must liaise with each other to ensure that the final draft water resource plan and the final draft resource operations plan are approved by the Governor in Council concurrently. This gives effect to the intent of the legislative changes to provide for a joint process for both plans at key stages of development.

New section 104C (Chief executive must prepare report on consultation process)

New section 104C provides for the chief executive to prepare a report about the final draft resource operations plan on or before the day notice of approval of the final draft plan is gazetted.

The report must include a summary of issues raised during the consultation process and how the issues have been dealt with.

These new sections will give effect to the new legislative arrangements that provide for the simultaneous development of the water resource plan and resource operations plan under the single process policy.

Amendment of s 105 (General provision for amending resource operations plan)

Clause 40 amends section 105 of the Act. Subsections 105(2) and (3) are replaced with new subsections (2) and (3) to provide that if the chief executive is made aware of a proposed amendment to a water resource plan under sections 39(2) or 49(7), which would result in the resource operations plan being inconsistent with the water resource plan as proposed and for which it will have effect, the chief executive must amend the resource operations plan.

Section 105 is further amended to provide that if the resource operations plan is to be amended and the amendment is not as a result of an inconsistency with a proposed amendment to a water resource plan, section 99(b) to (d) do not apply to the amendment. Effectively, the chief executive may proceed directly to preparation of a final draft resource operations plan on its own.

This gives effect to the intent of the legislative changes to provide for a joint process for both plans at key stages of development.

Amendment of s 106 (Minor or stated amendments of resource operations plan)

Clause 41 amends section 106(b), which provides that an amendment of a resource operations plan that the plan stated to be an amendment of a type that may be made, may be approved by Governor in Council without sections 95 to 103 applying.

The section is amended to provide that an amendment to a resource operations may be approved by Governor in Council without sections 95 to 103 applying if the amendment is of a type allowed for under the plan and the chief executive reasonably believes the amendment will not adversely affect the rights of entitlement holders or natural ecosystems.

Insertion of new s 106AA

New section 106AA (Amendment of resource operations plan between approval and commencement)

Clause 42 inserts new section 106AA, which provides that the chief executive may amend a resource operations plan in the period after its approval, but before commencement, if the amendment is to correct the details of water entitlements or other authorities to take water that are to be converted to water allocations, or to correct details of the holders of the entitlements or other authorities, to ensure the water allocations converted from other authorities to take water are correctly recorded on the Water Allocations Register.

This amendment recognises that land dealings may impact on certain water entitlements that are attached to land in the period between approval of the plan and commencement of the plan. The schedule of entitlements to be converted under the resource operations plan may now be adjusted to reflect changes to land ownership or other impacts of land dealings on the converting authority during the intervening period.

Amendment of s 106A (Continuation of resource operations plan for new water resource plan)

Clause 43 amends section 106A to provide that if a water resource plan is approved under section 50(2) that replaces an existing water resource plan and the chief executive has not prepared a resource operations plan to implement the new water resource plan, the existing resource operations plan continues as the resource operations plan for the new water resource plan.

Amendment of s 121 (Converting water entitlements)

Clause 44 amends section 121 of the Act to correct a reference to another section.

Amendment of s 127 (Registration details for water allocations)

Clause 45 amends section 127 of the Act. Section 127 currently provides that the entry on the water allocations register for a water allocation not managed under a resource operations licence must state the maximum rate for taking water and the flow conditions under which water may be taken. The amendment removes the mandate for these attributes of a water allocation to be stated in the entry on the water allocations register providing instead that they may be stated in the entry.

This amendment reflects that it is not appropriate for all water allocations to state a maximum rate for taking water or flow conditions. For example, flow conditions generally relate to surface water allocations, specifying the times when water can be taken from a watercourse. Such conditions are not relevant to water allocations that authorise the taking of underground water.

Amendment of s 128A (Amalgamation or subdivision of water allocations)

Clause 46 amends section 128A(7) to clarify that the certificate of approval for a change to a water allocation given by the chief executive to an applicant is to be lodged with the registrar and not given to the registrar. This aligns the provision with the terminology used by the registrar of titles.

It is a requirement of section 128A that if an applicant lodges with the registrar a certificate to change a water allocation that the registrar not act to record a change to the water allocation on the register unless the registrar has received notice from the resource operations licence holder of the existence of a supply contract. Insertion of a new subsection clarifies that this requirement does not apply if the applicant is also the resource operations licence holder or a subsidiary company of the resource operations licence holder.

This amendment is necessary to ensure consistency with terminology used by the registrar of titles and also to recognise that the holder of a resource operations licence or a subsidiary company will not have a supply contract with itself.

Amendment of s 129 (Changing water allocations permitted under water allocation change rules)

Clause 47 amends section 129(6) to clarify that the certificate of approval for a change to a water allocation given by the chief executive to an applicant is to be lodged with the registrar and not given. This aligns the provision with the terminology used by the registrar of titles.

It is a requirement of section 129 that if an applicant lodges with the registrar a certificate to change a water allocation that the registrar not act to record a change to the water allocation on the register unless the registrar has received notice from the resource operations licence holder of the existence of a supply contract. Insertion of a new subsection clarifies that this requirement does not apply if the applicant is also the resource operations licence holder or a subsidiary company of the resource operations licence holder.

This amendment is necessary to ensure consistency with terminology used by the registrar of titles and also to recognise that the holder of a resource operations licence or a subsidiary company will not have a supply contract with itself.

Replacement of s 132 (Public notice of application to change water allocation)

Clause 48 omits the existing section 132 of the Act, which provided for the chief executive to publish a notice about an application under section 130 to change a water allocation if the change is not mentioned in a resource operations plan and replaces it with a new section.

The new section 132 provides that if the chief executive is satisfied that an application to change a water allocation under section 130 has been properly made and any additional information the chief executive may have required has been provided, the chief executive must give the applicant a notice about the application that the applicant must publish on the date and in the newspaper or newspapers stipulated by the chief executive.

The provision stipulates the minimum information that must be contained in the notice and requires the applicant to provide the chief executive with a copy of the page in the newspaper or newspapers containing the notice within 10 days after publication. Failure to comply will result in the application lapsing.

This new provision shifts the requirement for publication of the notice about an application from the chief executive to the applicant, which is consistent with other applicant driven application processes under the Act and the shift overall to a ‘user pays’ regime.

Amendment of s 135 (Registering approved application to change water allocation)

Clause 49 amends section 135(1) to clarify that the certificate of approval for a change to a water allocation given by the chief executive to an applicant is to be lodged with the registrar and not given. This aligns the provision with the terminology used by the registrar.

It is a requirement of section 135 that if an applicant lodges with the registrar a certificate to change a water allocation that the registrar not act to record a change to the water allocation on the register unless the registrar has received notice from the resource operations licence holder of the existence of a supply contract. Insertion of a new subsection clarifies that this requirement does not apply if the applicant is also the resource operations licence holder or a subsidiary company of the resource operations licence holder.

This amendment is necessary to ensure consistency with terminology used by the registrar of titles and also to recognise that the holder of a resource operations licence or a subsidiary company will not have a supply contract with itself.

Amendment of s 144 (Deciding application for seasonal water assignment)

Clause 50 amends section 144 of the Act to change a reference to section 150 as a consequence of the amendment of section 150 that renumbers existing subsections.

Amendment of s 150 (Interests and dealings that may be registered)

Clause 51 amends section 150 of the Act. It is a requirement of section 150 that the registrar must not record the transfer or lease of a water allocation on the register unless the registrar has received notice from the resource operations licence holder of the existence of a supply contract between the transferee or lessee and the licence holder. Insertion of a new subsection

clarifies that this requirement does not apply if the applicant is also the resource operations licence holder or a subsidiary company of the resource operations licence holder.

This amendment is necessary as the holder of a resource operations licence or a subsidiary company will not have a supply contract with itself.

Amendment of s 153 (Searching water allocations register)

Clause 52 amends section 153 to remove unnecessary wording.

Amendment of s 167 (Purpose of pt 5)

Clause 53 amends section 167 to broaden the purpose of part 5 of chapter 2. Section 167(a) currently provides the purpose of part 5 is to provide powers and functions of the chief executive for water managed through existing water infrastructure in an area where a resource operations plan has not been approved.

The department recently proposed to grant an interim resource operations licence to replace existing Orders in Council authorising the operation of existing infrastructure in an area where a resource operations plan had been approved. While the infrastructure, the subject of the proposed interim resource operations licence, was not managed under the resource operations plan, it was found that section 167(a) prohibited the granting of this interim resource operations licence. As the power to grant an interim resource operations licence sits under part 5, the only option available to grant a licence for the infrastructure is to amend section 167(a) to extend the powers under part 5. The amendment will provide for the powers and functions of the chief executive for water managed through existing water infrastructure other than infrastructure to which a resource operations plan applies.

This amendment is necessary to allow an interim resource operations licence to be granted for infrastructure within the plan area of a resource operations plan where the plan does not currently apply to the infrastructure.

Amendment of s 198 (Effect of disposal of part of land to which interim water allocation attaches)

Clause 54 amends section 198 to allow for the chief executive to extend the period in which one or more owners of the land to which an interim water

allocation attaches may make an application to replace the interim water allocation following part disposal of the land to which the interim water allocation attaches.

The section currently allows a period of 60 business days in which an application may be made. However, in many cases the owners of the land to which the interim water allocation attaches have only been made aware of the effect of section 198 after the 60 day period has passed. In these cases the only solution available has been for the chief executive to deal with the allocation in accordance with section 198(6) and give notice to the joint holders of the allocation.

The amendment will give the chief executive the discretion to extend the period for making application, which will mean the option for the chief executive to give notice to the joint holders of the allocation will only be necessary in rare and exceptional cases.

Amendment of s 198A (Effect of acquisition of land to which interim water allocation attaches)

Clause 55 amends section 198A. The section currently provides for how an interim water allocation is dealt with if part of land to which the interim water allocation attaches is taken under the Acquisition of Land Act and the acquisition includes acquisition of the interim water allocation.

The amendment operates in conjunction with amendments to sections 199, 199A and 199B to extend the operation of the section to where land to which an interim water allocation attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act. This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 199 (Effect of acquisition of part of land adjoining a watercourse, lake or spring)

Clause 56 amends section 199. The section currently provides for how an interim water allocation is dealt with if part of land to which the interim water allocation attaches is taken under the Acquisition of Land Act and the remaining part of the land continues to adjoin the watercourse, lake or spring from which water may be taken under the allocation.

The amendment operates in conjunction with amendments to sections 198A, 199A and 199B to extend the operation of the section to where land to which an interim water allocation attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act. This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 199A (Effect of acquisition of part of land above an aquifer)

Clause 57 amends section 199A. The section currently provides for how an interim water allocation is dealt with if part of land to which the interim water allocation attaches is taken under the Acquisition of Land Act and the remaining part of the land is above the aquifer from which water may be taken under the allocation.

The amendment operates in conjunction with amendments to sections 198A, 199 and 199B to extend the operation of the section to where land to which an interim water allocation attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act. This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 199B (Effect of acquisition of part of other land)

Clause 58 amends section 199B. The section currently provides for how an interim water allocation granted in response to an application under section 206(3) is dealt with if part of land to which the interim water allocation attaches is taken under the Acquisition of Land Act.

The amendment operates in conjunction with amendments to sections 198A, 199 and 199A to extend the operation of the section to where land to which an interim water allocation attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act. This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act

preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 203 (Definitions for pt 6)

Clause 59 inserts a definition into section 203 of sublessee of land under the *Land Act 1994* as an owner of land for the purposes of chapter 2, part 6.

This amendment corrects an oversight and will allow a sublessee of land under the *Land Act 1994* to apply for and hold a water licence under the Act.

Amendment of s 206 (Applying for a water licence)

Clause 60 inserts into section 206(4) the Commonwealth Environmental Water Holder and the water grid manager as entities that may apply for and hold a water licence not attached to land.

The amendment will allow the Commonwealth Environmental Water Holder to purchase water licences to use the water for environmental purposes and hold the licences as licences not attached to land. The amendment also addresses an anomaly whereby the water grid manager may currently hold a water licence not attached to land but may not make application for such a licence.

Amendment of s 208 (Public notice of application for water licence)

Clause 61 omits subsection 208(9) to remove the definition of properly published and amends section 208(8) to clarify that a notice published under this section must be published in accordance with the requirements under s208(2).

Amendment of s 212 (Granting a water licence under a plan or declaration process)

Clause 62 amends section 212 to clarify that the chief executive may also grant a licence to interfere with the flow of water under this section if a water resource plan, resource operations plan or wild river declaration states a process for the grant of a water licence to interfere with water.

Amendment of s 213 (Contents of water licence)

Clause 63 inserts into section 213(e) the Commonwealth Environmental Water Holder as a licensee whose water licence does not attach to land.

The clause also amends section 213 to provide that a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to an artesian aquifer for stock or domestic purposes, attaches only to the land on which the water is being taken. This amendment corresponds with the existing statutory position under subsection 215(2)(b) and (c) which provides that water taken under these water licences may be used on land other than the land to which the licences attach.

This amendment is supported by the provisions under section 215(2)(b) and (c) that provides water taken under these licences may be used on other land. While these licences attach to land section 215(2) provides that the water may be used on land other than the land to which the licence attaches.

Amendment of s 215 (Where water under certain licences must be used)

Clause 64 amends section 215 by substituting ‘and’ with ‘or’ to clarify that the subsection applies to water licences with a purpose of stock or domestic and not just stock and domestic.

Amendment of s 216A (Amending water licence without public notice)

Clause 65 amends section 216A. Section 216A currently provides that if an application is made to amend a water licence by adding or removing land to which the licence attaches, public notice of the application in accordance with section 208 is not required if the applicant gives notice of the application to any entity that has an interest in the land. The applicant must give a copy of the notice to the chief executive. If considered appropriate, the chief executive may give a copy of the notice to any other entity. An entity given a notice under this section may make a submission about the application.

The amendment to section 216A:

- Removes the provision that provides for an entity with an interest in the land given notice under s216A to make a submission. This

recognises that the notice to the entity with an interest in the land is intended to alert the entity to the proposed change to the water licence so they may consider the impact the change will have on their interest. This is not a matter for the chief executive to consider in deciding the application and therefore it is not appropriate that such a matter be a trigger for review of a decision under this section;

- Requires the applicant to confirm in writing to the chief executive that interested parties have been given said notice;
- Provides an additional element to section 216A whereby, amending a water licence to remove land, without requiring public notice under 208 where the application is also to reduce the allocation as a reduction of allocation will not adversely impact on any other party. Where land is added and the allocation is to be increased, this would still be dealt with through application under s216 and require public notice.

This operational amendment of section 216A will result in operational efficiencies.

Amendment of s 222 (Transferring water licence to another person)

Clause 66 amends section 222 to provide for the transfer of a water licence attached to land from the licensee to the Commonwealth Environmental Water Holder. On transfer, the licence will detach from the land such that the Commonwealth Environmental Water Holder may hold the licence as a licence not attached to land.

This amendment will allow the Commonwealth Environmental Water Holder to purchase water licences with any purpose for environmental purposes without the Commonwealth Environmental Water Holder having to also purchase the land to which the licence attaches.

Amendment of s 229 (Effect of disposal of part of land to which water licence to take water attaches)

Clause 67 omits section 229(2) to (9) and replaces with new subsections (2) to (13). Currently, section 229 provides that a water licence attaching to land expires on disposal of part of the land to which the licence attaches. The section provides for application to replace the expired licence and that

if such an application is made, the expired licence is taken to remain in force.

The new section 229 provides that on disposal of part of the land to which a water licence attaches, the water licence is taken to be held jointly by all the owners of the land to which the licence attaches, which includes the new owner of the part of the land disposed. In order to provide for instances where the owners of land do not wish to jointly hold the water licence the amendment enables one or more of the owners of the land may, with the written consent of the other owners, apply to replace the jointly held licence with one or more licences. An application or applications to replace the licence must only relate to the land to which the licence attaches and overall must not seek to increase the area of land that may be irrigated, or volume of water that may be taken, or rate at which water may be taken, or period during which water may be taken. Such application must be dealt with as if it were an application under section 225. Significantly, the application does not require public notification provided the application does not seek to change the location from which water may be taken.

An application under this section may be made within 90 business days of the part disposal or, if the chief executive extends the period, within the extended period. If application is not made by the owners of the land and the chief executive considers it is not appropriate to leave the licence jointly held by all the owners, the chief executive may give notice to the owners about how the chief executive proposes to deal with the licence by amending, subdividing or cancelling the licence. If the chief executive does decide to amend, subdivide or cancel the licence under this section an information notice must be given to each of the owners which enlivens rights to review and appeal of the decision.

Giving the chief executive the discretion to extend the period for making application will mean the option for the chief executive to give notice to the joint holders of the allocation will only be necessary in rare and exceptional cases.

The part disposal of land to which a water licence attaches is a common occurrence and due to expiry of the licence under the current section 229 results in a considerable administrative workload for both government and licensees. This amendment will prevent water licences that attach to land from expiring due to part disposal of land, which will reduce the administrative burden on both the chief executive and licensees.

Amendment of s 229B (Application of sdiv 6)

Clause 68 amends section 229B. The section provides for the operation of subdivision 6 of part 6 in respect of how a water licence is dealt with if part of land to which the water licence attaches is taken under the Acquisition of Land Act and the acquisition includes acquisition of the water licence.

The amendment operates to extend the operation of the subdivision to a situation where land to which a water licence attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act.

This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 229C (Effect of acquisition of part of land adjoining a watercourse, lake or spring)

Clause 69 amends section 229C. The section currently provides for how a water licence to take water from a watercourse, lake or spring is dealt with if part of land to which the water licence attaches is taken under the Acquisition of Land Act and the remaining part of the land continues to adjoin the watercourse, lake or spring from which water may be taken under the allocation. Otherwise, the licence is dealt with under section 229.

The amendment operates in conjunction with amendments to sections 229C and 229E to extend the operation of the section to where land to which a water licence attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act.

This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 229D (Effect of acquisition of part of land above an aquifer)

Clause 70 amends section 229D. The section currently provides for how a water licence to take underground water is dealt with if part of land to which the water licence attaches is taken under the Acquisition of Land Act and the remaining part of the land is above the aquifer from which water may be taken under the licence. Otherwise the licence is dealt with under section 229.

The amendment operates in conjunction with amendments to sections 229D and 229E to extend the operation of the section to where land to which a water licence attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act.

This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 229E (Effect of acquisition of part of other land)

Clause 71 The section currently provides for how a water licence granted in response to an application under section 206(3) is dealt with if part of land to which the water licence attaches is taken under the Acquisition of Land Act.

The amendment operates in conjunction with amendments to sections 229C and 229D to extend the operation of the section to where land to which a water licence attaches is disposed of to a constructing authority for a purpose for which land may be taken under the Acquisition of Land Act.

This amendment recognises that constructing authorities rarely use their powers to acquire land under the Acquisition of Land Act preferring instead to negotiate the purchase of land required for public infrastructure.

Amendment of s 283 (Deciding application for allocation of quarry material)

Clause 72 amends section 283. Insertion of new section 291A provides the holder of a quarry allocation notice may surrender the allocation notice by giving the chief executive a notice of surrender. As a consequence, section 289 is to be amended to provide that an allocation notice remains in force unless sooner surrendered.

Amendment of s 289 (Renewing allocations of quarry material)

Clause 73 amends section 289 to clarify that the holder of a quarry allocation notice must make application to renew the notice before the notice expires.

Section 283(4)(b) provides that an allocation notice remains in force for a period of not more than 5 years. However, section 289 does not currently

stipulate a maximum period for which an allocation notice may be renewed. In order to align the maximum period of a renewed allocation notice with the maximum period at grant of the original application, section 289 is amended to provide that a renewed allocation notice remains in force for a period of not more than 5 years.

This amendment aligns the maximum period of a renewed allocation notice with the period for which a new allocation notice may be granted.

Insertion of new s 291A (Surrendering allocation notice)

Clause 74 inserts a new section to provide that the holder of a quarry allocation notice may surrender the notice by giving the chief executive notice of its surrender. Currently, there are no provisions that allow for surrender of an allocation notice even though the holder may no longer wish to hold the notice.

Amendment of s 360D (Standing references)

Clause 75 corrects a minor spelling error of water in section 360D.

Amendment of s 360FA (Annual levy for underground water management)

Clause 76 provides that section 360FA of the Water Act will be of general application, reflecting the fact that additional specific provision is now to be made in the following provisions for the recovery of the Commission's costs of underground water management under Chapter 3 of the Water Act for the financial years 2010-2011 and 2011-2012.

The clause also clarifies that the annual levy is imposed in relation to a financial year.

Insertion of new ss 360FB and 360FC

Clause 77 inserts new sections 360FB and 360FC.

New section 360FB (Annual levy for underground water management—special provision for 2010-11 financial year)

Proposed section 360FB provides that a regulation may provide for the annual levy for the 2010-2011 financial year even if that financial year has ended and for the annual levy for the 2010-2011 financial year to be paid

over one or more subsequent financial years. The consultation and approval process in section 360FA of the Water Act will not apply and the Commission's estimated costs for the year will be prescribed by regulation.

New section 360FC (Annual levy for underground water management—special provision for 2011-12 financial year)

Proposed section 360FC provides that a regulation may provide for the annual levy for the 2011-2012 financial year even if that financial year has started. The consultation and approval process in section 360FA of the Water Act will not apply and the Commission's estimated costs will be prescribed by regulation. The Commission will be able to amend its estimated costs as prescribed by regulation for the 2011-2012 financial year only by following the same process provided for in section 360FA(5) of the Water Act (ie consultation with a relevant advisory body and approval by the Minister) and only if the time for paying the annual levy, or the final part of the annual levy for the financial year has not passed.

The reason for these amendments is that the existing section 360FA of the Water Act was not considered appropriate to the circumstances in which the Queensland Water Commission has been establishing its capacity to undertake its underground water management functions in Chapter 3 of the Water Act. It received "seed funding" from the government for the "start up" period on the basis that the costs should be recovered from the petroleum tenure holders. However, it was not appropriate to undertake any consultation with regard to the estimated costs for this period nor was it possible to start charging the levy until the levy structure had been worked out (which has required time and considerable work to undertake). The amendments therefore constitute the insertion of transitional provisions into the Water Act to facilitate the recovery by the Queensland Water Commission of its costs for the 2010-2011 and 2011-2012 financial years.

Insertion of new ss 633 and 634

Clause 78 Inserts new sections 633 and 634 into chapter 4, part 4A, division 4.

New section 633 (Dissolving employing office)

Inserts a new section 633 to provide that a regulation may dissolve an employing office for a water authority and, on dissolution of the employing office, provide for the transfer of staff, assets, rights or liabilities of the

employing office and starting, continuing or finishing a proceeding by or against the employing office.

As part of the implementation of the government response to the Webbe-Weller review recommendation, a number of water authorities which have employing offices will be dissolved and converted to alternative arrangements. At this time their employing offices will also need to be dissolved. The Water Act does not currently provide for the dissolution of employing offices. Also issues including the transfer of employing office staff, assets, rights or liabilities and continuing or finishing a proceeding by or against the employing office will need to be dealt with in a regulation dissolving the employing office.

New section 634 (Executive officers go out of office on dissolution)

Inserts a new section 634 to provide that an executive officer of an employing office for a water authority goes out of office on dissolution of the employing office and no compensation is payable to the executive officer.

Currently the Water Act does not provide for the termination of the appointment of an executive officer to an employing office for a water authority. This amendment is necessary to make it clear that an executive officer goes out of office on the dissolution of an employing office

Amendment of s 691 (Dissolution of water authority and authority area)

Clause 79 inserts in section 691(1)(c) reference to new section 700A to clarify that on dissolution of a water authority under this section the functions of the water authority may be transferred to a local government using the alternative process provided under new section 700A. Currently, the functions may only be transferred to a local authority using the process under section 700.

Amendment of s 695 (Water authority may request its dissolution)

Clause 80 amends section 695 of the Act, which currently provides that a water authority may request its dissolution if, by a special ballot, at least a two thirds majority of the ratepayers agree to the water authority making

the request. The amendment omits ‘two thirds’ requiring instead that a majority of the ratepayers to agree to the request being made.

Often as a result of a lack of response to a ballot by ratepayers, water authorities have difficulty in obtaining support from two-thirds of their ratepayers to make a request for the dissolution and conversion of their water authority to an alternative institutional structure. This amendment is necessary to facilitate the implementation of the Webbe-Weller review recommendations.

Amendment of s 698 (Water authority and local government must agree to proposed transfer)

Clause 81 amends section 698 of the Act, which provides for the proposed transfer of a water authority to a local government through agreement. If agreement is reached in accordance with this section the transfer of the water authority’s functions is affected through a regulation in accordance with section 700.

The amendment provides that the section does not apply if the proposed transfer is a transfer to which the new section 700A applies. Section 700A provides for the transfer of a water authority’s functions with the approval of the Minister without the requirement to give effect to the transfer through a regulation.

This amendment will facilitate the transfer of a water authority’s functions to a local government in accordance with the government response to the Webbe-Weller review recommendation.

Amendment of s 699 (Joint report to Minister)

Clause 82 amends section 699 of the Act, which provides that the water authority and local government must give a joint report to the Minister and Treasurer about the proposed transfer. The report must be accompanied by a copy of the agreement.

The amendment provides that the section does not apply if the proposed transfer is a transfer to which the new section 700A applies. Section 700A provides for the transfer of a water authority’s functions with the approval of the Minister without the requirement to give effect to the transfer through a regulation.

This amendment will facilitate the implementation of the government response to the Webbe-Weller review recommendation by streamlining

approval process for water authorities which propose to transfer their function to local government.

Amendment of s 700 (Transferring functions)

Clause 84 amends section 700 of the Act to renumber certain subsections and changes references to other sections that have been renumbered. The section also inserts a new subsection 700(2) to provide that section 700 does not apply to a proposed transfer under new section 700A. This clarifies that section 700 relates to the process of transfer of water authority functions through a regulation rather than transfer with the approval of the Minister.

Insertion of new s 700A (Alternative process for proposed transfer)

Inserts a new section 700A to provide an alternative process for the transfer of the functions of a water authority to a local government without the need to make a regulation. Before approving a transfer under this section the Minister must be satisfied that the water authority and local government have agreed in writing to transfer all or part of the authority's functions to the local government and how the proposed transfer is to be implemented. In this regard the Minister must be satisfied that the local government and water authority have notified the Minister of the agreement in writing and asked for the Minister's approval of the proposed transfer. The Minister must also be satisfied that the water authority has taken reasonable steps to inform:

- its customers and ratepayers of the proposed transfer and the date of the proposed transfer;
- its ratepayers of proposed charges by the local government for water supply in the first year, or how to work out the proposed charges;
- its ratepayers of the terms of the model agreement between the local government and the persons being supplied with water and whether the persons being supplied are required to enter into agreements with the local government about the supply of water.

The Minister may require the local government or water authority to provide further particulars relating to the proposed transfer within a

reasonable period of at least 28 days after the requirement is made and address an issue relevant to the proposed transfer in the agreement.

The Minister may approve the proposed transfer and, if approved, a regulation may approve the agreement. The regulation must include a copy of the agreement as an attachment. The agreement takes effect when the regulation commences.

This amendment will facilitate the implementation of the government response to the Webbe-Weller review recommendation 47 by providing a more streamlined process for transferring water authority functions to local government.

Amendment of s 701 (Definitions for div 3)

Clause 85 amends the definition of *new entity* under section 701.

This amendment will vest the assets, right and liabilities of a former water authority in the local government that its functions were transferred to instead of the State.

Amendment of s 704 (Existing employees)

Clause 86 amends section 704 of the Act by inserting a new subsection that provides an employee of a former water authority dissolved following the transfer of its assets to a local government under section 700A becomes an employee of the local government on the changeover day. The employee must be employed on terms and conditions that are no less favourable than their existing terms and conditions of employment and they retain all their existing and accruing rights of employment.

Insertion of new s 707 (Water Authority to help local government transfer)

Clause 87 inserts a new section 707 in the Act, which provides that if a water authority transfers all or part of its functions to a local government the water authority must give all reasonable help to the local government to facilitate the transfer.

Amendment of s 812A (Liability for unauthorised taking of water)

Clause 88 amends section 812A. The section is currently limited in application to a contravention of a condition of a water authorisation. To address an ambiguity about how the offences under section 808 and section 812 are dealt with, the amendment broadens the section to apply also to a contravention of section 808, unauthorised take or supply of water.

Amendment of s 814 (Destroying vegetation, excavating or placing fill without permit)

Clause 89 inserts a new subsection into section 814 to provide it is not an offence under the Act to destroy vegetation, excavate or place fill in a watercourse, lake or spring without a permit if the activity is a necessary and unavoidable part of constructing self-assessable works under the Sustainable Planning Act for taking or interfering with water in a watercourse, lake or spring.

Insertion of new ch 8, pt 4C

Clause 90 inserts a new chapter 8, part 4C, a special provision to provide for indigenous water reserves in wild river areas in the area of the Gulf water resource plan outside the Cape York Peninsula Region.

New Part 4C Special provision for Gulf Resource Operations Plan

New section 1003C (Gulf Resource Operations Plan amended)

New section 1003C provides that the Gulf resource operations plan is amended by the Gulf resource operations plan amendment and the Gulf resource operations plan as amended is the resource operations plan for the *Water Resource (Gulf) Plan 2007*.

The section defines the Gulf resource operations plan amendment to be the provisions in the document titled 'Gulf resource operations plan amendment' signed by the chief executive on 6 June 2011 and enables the amendments necessary to implement the Indigenous water reserves established under the Gulf water resource plan by this Bill to be undertaken concurrently.

Amendment of s 1009 (Public inspection and purchase of documents)

Clause 91 amends section 1009, which provides for the public inspection and purchase of documents. The amendments address changes in terminology and other matters arising from the amendment of the water planning provisions. Under subsection 1009(1)(a) ‘information report’ is omitted and replaced with ‘statement of proposals’ to reflect the changes to section 39 of the Act. In subsection 1009(1)(b) a new reference is inserted to include an overview report under new section 99A. Similarly, under section 1009(1) a new subsection (ja) is inserted to reference the new resource operations plan consultation report prepared under new section 103B.

Insertion of new ch 9, pt 5, div 17

Clause 92 inserts transitional provisions.

New Division 17 Transitional provisions for Water and Other Legislation Amendment Act 2011

New section 1182 (Definitions for div 17)

New section 1182 provides definitions for the division of *amending Act*, *commencement* and *old* in relation to a provision in force before the commencement of this provision.

New section 1183 (Existing information report)

New section 1183 provides that an information report, prepared under section 39 of the Act as in force before commencement of this provision, is taken to be a statement of proposals under section 39 for a proposed draft water resource plan.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1184 (Existing public notice of proposal to prepare draft water resource plan)

New section 1184 provides that a notice, published under section 40 of the Act as in force before commencement of this provision, is taken to be a notice published under section 40(1) for a proposed draft water resource plan.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1185 (Existing written submission about proposed draft water resource plan and establishment of a community reference panel)

New section 1185 provides for a submission about a proposed draft water resource plan, made in relation to a notice published under section 40 of the Act before the commencement of this section, to be taken to be a written submission under section 40(2)(e) of the Act about the statement of proposals for a proposed draft water resource plan. This applies whether the written submission is made before or after commencement of this section. The Minister must consider the submission when preparing the draft water resource plan.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1186 (Existing community reference panels)

New section 1186 provides transitional arrangements for community reference panels established under the current section 41 of the Act. If a community reference panel was established under section 41 before the commencement of this section and the Minister has not prepared a draft water resource plan, the panel continues until the draft water resource plan has been prepared or the Minister publishes a notice under section 52 of the Act of a decision not to proceed with making a draft water resource plan. If the Minister continues with the preparation of a draft water resource plan, the Minister must consider the advice of the panel.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1187 (Existing overview report)

New section 1187 provides that an overview report prepared under section 48 before the commencement of this section is taken to be an overview report prepared under section 48.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1188 (Existing notice about availability of draft water resource plan)

New section 1188 provides that a notice published under section 49 about the availability of a draft water resource plan, before commencement of this section, is taken to be a notice published under section 49 about the availability of the draft plan and an overview report prepared under section 48.

This amendment allows for the process for development of a draft water resource plan that was started prior to commencement of this section to continue.

New section 1189 (Existing written submission about draft water resource plan)

New section 1189 provides that a written submission made about a draft water resource plan in relation to a notice under section 49 of the Act, published before the commencement of this section, is taken to be a written submission under section 49(2)(b) of the Act about a draft water resource plan. This applies whether the written submission is made before or after commencement of this section.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1190 (Stated amendments of water resource plan)

New section 1190 provides that if, before the commencement of this section, a water resource plan states an amendment that may be made under the plan (a stated amendment), the amendment may be made under section 57(b) of the Act as in force immediately before commencement of this section as if section 57(b) had not been amended.

This amendment provides that if a stated amendment is mentioned in a water resource plan prior to commencement of this section the water resource plan may be amended in accordance with the stated amendment as if the Act had not been amended.

New section 1191 (Existing written submission about a proposed draft resource operations plan)

New section 1191 provides that a written submission about a draft resource operations plan made in relation to a notice published under the current section 96 of the Act about a proposal to prepare a draft resource operations plan must be considered by the chief executive when developing the resource operations plan. This applies whether the submission is made before or after this section commences.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1192 (Existing notice to provide proposed arrangement for management of water)

New section 1192 provides that a notice given by the chief executive to the holder of an authorisation to operate water infrastructure under section 97 of the Act before the commencement of this section is taken to be a notice given under section 97 of the Act. This transitional provision will allow the chief executive to accept from the holder their proposed operating arrangements for the infrastructure where the proposal is received after the commencement of this section.

New section 1193 (Existing proposed arrangement for management of water)

New section 1193 is a validating provision for when the holder of an authorisation to operate water infrastructure has given the chief executive

their proposed operating arrangements for the infrastructure under section 97 of the Act before the commencement of this section. The proposed arrangements are taken to be proposed arrangements under section 97 such that the holder of the authorisation is not required to re-submit their proposed operating arrangements.

New section 1194 (Existing notice about availability of draft resource operations plan)

New section 1194 provides that a notice under section 100 of the Act about the availability of a draft resource operations plan, published before the commencement of this section, is taken to be a notice published under section 100 of the Act about the availability of a draft resource operations plan and an overview report under section 99A of the Act about the draft resource operations plan is not required.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1195 (Existing written submissions about draft resource operations plan)

New section 1195 provides that a written submission about a draft resource operations plan given in relation to a notice about the availability of a draft resource operations plan published under section 100 of the Act before the commencement of this section, is taken to be a written submission under section 100(4)(b) of the Act.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1196 (Stated amendments of resource operations plan)

New section 1196 provides that if, before the commencement of this section, a resource operations plan states an amendment that may be made under the plan (a stated amendment), the amendment may be made under section 106(b) of the Act as in force immediately before commencement of this section as if section 106(b) had not been amended.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1197 (Existing draft water resource plans, draft amending water resource plans and draft new water resource plans to replace existing water resource plans)

New section 1197 transitions existing draft water resource plans. The section continues a draft water resource plan, a draft amending water resource plan or a draft new water resource plan in existence before the commencement of this section as a draft water resource plan, draft amending water resource plan or draft new water resource plan respectively.

New section 1198 (Existing draft resource operations plans and draft amending resource operations plans)

New section 1198 transitions existing draft resource operations plans. The section continues a draft resource operations plan, a draft amending resource operations plan or a draft new resource operations plan in existence before the commencement of this section as a draft resource operations plan, draft amending resource operations plan or draft new resource operations plan respectively.

This amendment allows for the process for development of a draft resource operations plan that was started prior to commencement of this section to continue.

New section 1199 (Existing final water resource plans)

New section 1199 transitions an existing final water resource plan. The section provides that a final water resource plan in existence before the commencement of this section, other than a final water resource plan mentioned in section 50(3) is a final water resource plan.

New section 1200 (Continuation of provisions relating to replacement of expired licence under old s 229(3))

New section 1200 provides transitional arrangements for dealing with licences that have expired under the current section 229 due to part disposal of land to which the licence attached. If, before commencement of the

amendments to section 229, application has not been made to replace the expired licence or application has been made but not decided, the relevant provisions of the current section 229 will continue to apply as if the amendment of section 229 had not commenced. Effectively, applications to replace licences that have expired due to the operation of section 229 can continue to be made and dealt with as if the section 229 amendments were not enacted.

New section 1201 (Application of s 289(6))

New section 1201 provides that the amendment to section 289(6) that restricts the renewal of an allocation to a period of not more than 5 years applies only to an allocation notice renewed after the commencement of this section.

New section 1202 (Existing process to prepare new draft water resource plan to replace *Water Resource (Burnett Basin) Plan 2000*)

New section 1202 provides for the continuation of the development of a draft water resource plan to replace the *Water Resource (Burnett Basin) Plan 2000* (Burnett water resource plan) without the need for the chief executive to commence concurrent development of a resource operations plan to implement the replacement Burnett water resource plan. However, the section requires the chief executive to commence preparation of a resource operations plan to implement the replacement Burnett water resource plan as soon as practical after the replacement plan commences.

New section 1203 (Existing process to amend *Water Resource (Condamine and Balonne) Plan 2004*)

New section 1203 provides for the continuation of the development of the amendment of the *Water Resource (Condamine and Balonne) Plan 2004* (Condamine Balonne water resource plan) without the need for the chief executive to commence concurrent development of a resource operations plan to implement the amending Condamine Balonne water resource plan. However, the section requires the chief executive to commence preparation of a resource operations plan to implement the amending Condamine Balonne water resource plan as soon as practical after the amending plan commences. Also, after the amending plan commences, the existing

Condamine and Balonne Resource Operations Plan 2008 is taken to be the resource operations plan for the amending water resource plan.

The new section further provides that to the extent of any inconsistency between the amending water resource plan and the existing resource operations plan, the existing resource operations plan prevails, unless the water resource plan expressly provides otherwise.

New section 1204 (Existing process to prepare new draft water resource plan to replace *Water Resource (Cooper Creek) Plan 2004*)

New section 1204 provides for the continuation of the development of a draft water resource plan to replace the *Water Resource (Cooper Creek) Plan 2004* (Cooper Creek water resource plan) without the need for the chief executive to commence concurrent development of a resource operations plan to implement the replacement Cooper Creek water resource plan. However, the section requires the chief executive to commence preparation of a resource operations plan to implement the replacement Cooper Creek water resource plan as soon a practical after the replacement plan commences.

New section 1205 (Existing process to prepare new draft water resource plan to replace *Water Resource (Fitzroy Basin) Plan 1999*)

New section 1205 provides for the continuation of the development of a draft water resource plan to replace the *Water Resource (Fitzroy Basin) Plan 1999* (Fitzroy water resource plan) without the need for the chief executive to commence concurrent development of a resource operations plan to implement the replacement Fitzroy water resource plan. However, the section requires the chief executive to commence preparation of a resource operations plan to implement the replacement Fitzroy water resource plan as soon a practical after the replacement plan commences.

New section 1206 (Existing process to prepare draft water resource plan for wet tropics catchment)

New section 1206 provides for the continuation of the development of a draft water resource plan for the Wet Tropics catchment without the need for the chief executive to commence concurrent development of a resource operations plan to implement the water resource plan for the Wet Tropics

before it is finalised. However, the chief executive may commence preparation of a resource operations plan to implement a water resource plan for the Wet Tropics at any time before or after approval of the water resource plan.

New section 1207(Particular notices are taken to be chief executive's or owners' notices)

New section 1207 inserts a validating provision relating to works notification processes purportedly carried out under section 3CA of the Water Regulation.

Both the Moreton and Pioneer water resource plans regulate the take of water that was previously authorised to be taken under section 20(6) of the Water Act. However, both plans refer to a notification of works process to be undertaken in accordance with section 37 of the Water Act, that is, by a regulation. Subsequently, a notification of works process was commenced under the Water Regulation. However, as both plans now regulated the water to which the notification process related the process was invalid and any works notifications received by the chief executive can not be used to grant water licences.

The new section validates the information provided by land owners in respect of the notification processes for the Moreton and Pioneer water resource plans carried out under section 3CA of the Water Regulation such that notifications received from land owners under this process may be used in the future to grant licences to the land owners. Further, the section clarifies that an owner of works who previously notified the chief executive under the earlier invalid process is not required to re-notify if a future notification process under the new section 37 of the Water Act applies to the same works.

New section 1208 (Amendment of subordinate legislation under amending Act)

New section 1208 provides that the amendment of subordinate legislation by this Act does not affect the power of to further amend the subordinate legislation or repeal it.

Amendment of sch 4 (Dictionary)

Inserts new definitions for *amending Act*, *CEWH*, *chief executive's notice*, *owner's notice*, *commencement*, *old*, *owner's notice*, *subsidiary company*, *urban area* and *urban stormwater*. The clause also amends the definition of *overland flow water* to clarify that overland flow water includes urban stormwater, amends the definition of *owner* to include a sublessee of land under the Land Act as an owner of land for the purposes of the Act and amends the definition of *process*.

Part 5 Amendment of Wild Rivers Act 2005

Act amended

Clause 94 provides that this part amends the *Wild Rivers Act 2005*.

Insertion of new s 8A

Clause 95 amends new section 8A provides for the recognition of a community based wild river ranger program for wild river areas with the purpose of contributing to:

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

The new section provides for the purpose of the wild river rangers program to be achieved by the wild river rangers carrying out certain activities, including but not limited to, the preservation of the natural values of rivers in the wild river area.

This amendment delivers on a government commitment to recognise the important role of the wild river rangers program.

Amendment of s 13 (Matters Minister must consider)

Clause 96 amends section 13 of the Act to provide that if the Minister has established an Indigenous reference group under section 8A for a proposed

wild river area, the Minister must consider the advice of the group when deciding to declare the wild river area.

This amendment ensures adequate and appropriate consultation is undertaken with members of the indigenous community about the proposed wild river declaration.

Amendment of s 25 (Matters Minister must consider)

Clause 97 amends section 25 of the Act to provide that if the Minister has established an Indigenous reference group for a wild river area and an amendment of the declaration for that area is proposed, before making the amendment the Minister must consider the advice of the reference group about the proposed amendment.

This amendment ensures adequate and appropriate consultation is undertaken with members of the indigenous community about the amendment of the wild river declaration.

Insertion of new pt 5, div 1 and div 2 hdg

Clause 98 Inserts a new division 1 relating to the establishment and role of Indigenous reference groups.

New Division 1 Indigenous reference groups

New section 47A (Establishment of Indigenous reference groups)

New section 47A provides for the Minister to establish advisory groups, called Indigenous reference groups, by appointing members who represent the interests of Indigenous people in the area of an existing or proposed wild river area. The role of the group will be to advise the Minister on matters relating to an existing wild river area or a proposal to declare a wild river area. The amendment provides examples of matters on which the Indigenous reference group may provide advice to the Minister and includes matters relating to the extent of the high preservation areas, preservation areas, floodplain management areas, special floodplain management areas and subartesian management areas for the proposed wild river area or proposals for development in the wild river area.

This amendment ensures adequate and appropriate consultation is undertaken with members of the indigenous community in the area of the proposed or existing wild river declaration.

New section 47B (Notice about decisions to be given to Indigenous reference groups)

New section 47B provides that if the Minister declares a wild river area or amends a wild river declaration in respect of which an Indigenous reference group for the area has provided advice to the Minister and the declaration is not consistent with the advice, as soon as practicable after making the declaration the Minister must give the Indigenous reference group written notice of the declaration. The notice must include:

- a statement about how the Indigenous reference group's advice was dealt with by the Minister; and
- details about the ways in which the declaration is inconsistent with the advice; and
- the reasons for the decision to make the declaration.

This provision ensures the Indigenous community can have confidence that the advice of the Indigenous reference groups about declaration proposals or amendments of existing declarations has been given appropriate consideration by the Minister.

Amendment of schedule (Dictionary)

Clause 99 inserts a new definition of *Indigenous reference group*.

Part 6 Amendment of Water Resource (Gulf) Plan 2007

Plan amended

Clause 100 provides that this part amends the *Water Resources (Gulf) Plan 2007* (Gulf water resource plan).

Amendment of s13 (General outcomes)

Clause 101 amends section 13 of the plan to provide that one of the outcomes of the water resource plan is to make water available for helping Indigenous communities in Gulf wild river areas achieve their economic and social aspirations.

Amendment of s28 (Particular unallocated water held as indigenous, strategic or general reserve)

Clause 102 omits section 28 and replaces with a new section 28 to provide that unallocated water in the Settlement Creek, Morning Inlet and Staaten river catchment areas and the Gregory River sub-catchment area is held as an Indigenous Reserve, or a strategic reserve or a general reserve. The new section 28 also maintains the existing provision that unallocated water in another part of the plan area, other than the Upper Leichhardt River subcatchment area, is held as a strategic or general reserve.

Amendment of s32 (Purpose for which indigenous unallocated water may be granted)

Clause 103 amends section 32, which provides the purpose for which indigenous unallocated water may be granted. Section 32 currently provides that unallocated water held as an indigenous reserve may be granted for helping indigenous communities in the Cape York Peninsula Region area achieve their economic and social aspirations. The Cape York Peninsula Region area incorporates part of the Staaten wild river area. The amendment extends the operation of the existing provision such that indigenous unallocated water may be granted for helping indigenous communities in all the wild river areas that are located within the plan area of the Gulf water resource plan (namely the Gregory, Morning Inlet, Settlement and Staaten wild river areas) achieve their economic and social aspirations.

Amendment of s33 (Volumetric limits for indigenous unallocated water)

Clause 104 provides that the volumes of unallocated water mentioned in new schedule 6A column 1 are the volumes of indigenous unallocated water available for allocation in wild river areas within the plan area of the Gulf water resource plan.

Insertion of new schedule 6A (Total volumes for indigenous unallocated water)

Clause 105 inserts a new schedule 6A to provide the volumes of indigenous unallocated water available for allocation in the plan area of the Gulf water resource plan.

Amendment of sch 13 (Dictionary)

Clause 106 inserts a new definition for *Gulf wild river area* in the Dictionary.

Part 7 Consequential amendments

Subordinate legislation amended

Clause 107 provides that the schedule amends the subordinate legislation it mentions.

Schedule Subordinate legislation amended

Sustainable Planning Regulation 2009

Schedule 3, part 1, table 4, item 3(c)(i) from ‘a water’ to ‘2000’—

Clause 1 amends schedule 3, part 1, table 4, item 3(c)(i) by omitting references to water resource plans and a regulation under the Water Act, retaining a wild river declaration as the only instrument that may make operational works that both either take or interfere with overland flow water assessable development under the Sustainable Planning Act.

Schedule 3, part 1, table 4, item 3

Clause 2 amends schedule 3, part 1, table 4, item 3 by inserting a new item 3(f), which states the triggers for assessable development for operational works that take overland flow water. The new item does not include works that interfere with overland flow water to be assessable development as it was originally the intention that such works would be exempt development.

This reflects amendments to the Water Act which have clarified that interference with overland flow water is not intended to be regulated under the Water Act.

Schedule 3, part 2, table 4, item 1(b)(ii), from ‘a water’ to ‘2000’—

Clause 3 amends schedule 3, part 2, table 4, item 1(b)(ii) by omitting references to water resource plans and a regulation under the Water Act, retaining a wild river declaration as the only instrument that may make operational works that both either take or interfere with overland flow water self-assessable development under the Sustainable Planning Act.

Schedule 3, part 2, table 4, item 1

Clause 4 inserts a new item schedule 3, part 2, table 4, item (1)(e) providing for works that take overland flow water to be made self-assessable. This amendment and the preceding amendment to schedule 3, part 2, table 4, item (1) remove the head of power for a water resource plan or regulation under the Water Act to make works that interfere with overland flow water self-assessable development.

It was originally the intention that works that interfere with overland flow water would be exempt development. This reflects amendments to the Water Act which have clarified that interference with overland flow water is not intended to be regulated under the Water Act.

Water Regulation 2002

Section 3CA

Clause 1 omits section 3CA of the regulation, which currently deals with notice of works and water use relating to water taken under section 20(6) of the Water Act. Section 37 of the Water Act, which provides the head of power for making the regulation, is to be amended by this Bill and removes the head of power to make a regulation, instead providing a power for the chief executive to publish a notice under section 37 such that section 3CA of the Regulation is no longer required.

Section 23(1)(d), ‘item 1(b)(ii)’—

Clause 2 replaces a reference in the section to schedule 3, part 2, table 4, item 1(b)(ii) of the Sustainable Planning Act with a reference to new item schedule 3, part 2, table 4, item (1)(e) to reflect amendments to schedule 3 of the Sustainable Planning Act.

Water Resource (Border Rivers) Plan 2003

Section 37(1), ‘item 3(c)(i)’—

Clause 1 amends section 37(1) of the Border Rivers water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 37(3), ‘item 1(b)(ii)’—

Clause 2 amends section 37(3) of the Border Rivers water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Burdekin Basin) Plan 2007

Section 82(1), ‘item 3(c)(i)’—

Clause 1 amends section 82(1) of the Burdekin Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 82(3), ‘item 1(b)(ii)’—

Clause 2 amends section 82(3) of the Burdekin Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Burnett Basin) Plan 2000

Section 30F(b), ‘item 1(b)(iii)’—

Clause 1 amends section 30F of the Burnett Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Calliope River Basin) Plan 2006

Section 18(1), ‘item 3(c)(i)’—

Clause 1 amends section 18(1) of the Calliope River Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 18(3), ‘item 1(b)(ii)’—

Clause 2 amends section 18(3) of the Calliope River Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Condamine and Balonne) Plan 2004

Section 50(1), ‘item 3(c)(i)’—

Clause 1 amends section 50(1) of the Condamine and Balonne water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 50(3), ‘item 1(b)(ii)’—

Clause 2 amends section 50(3) of the Condamine and Balonne water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Fitzroy Basin) Plan 1999

Section 28G(1), ‘item 3(c)(i)’—

Clause 1 amends section 28G(1) of the Fitzroy Basin water resource plan to reflect changes to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 28G(3), ‘item 1(b)(ii)’—

Clause 2 amends section 28G(3) of the Fitzroy Basin water resource plan to reflect changes to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Georgina and Diamantina) Plan 2004

Section 15(1), ‘item 3(c)(i)’—

Clause 1 amends section 15(1) of the Georgina and Diamantina water resource plan to reflect changes to the numbering of schedule 3 of the *Sustainable Planning Regulation 2009*.

Section 15(3), ‘item 1(b)(ii)’—

Clause 2 amends section 15(3) of the Georgina and Diamantina water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Gulf) Plan 2007

Section 81(1), ‘item 3(c)(i)’—

Clause 1 amends section 81(1) of the Gulf water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 81(3), ‘item 1(b)(ii)’—

Clause 2 amends section 81(3) of the Gulf water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 83(2)(b), ‘item 1(b)(iii)’—

Clause 3 amends section 83(2)(b) of the Gulf water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Mitchell) Plan 2007

Section 57(1), ‘item 3(c)(i)’—

Clause 1 amends section 57(1) of the Mitchell water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 57(3), ‘item 1(b)(ii)’—

Clause 2 amends section 57(3) of the Mitchell water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Moonie) Plan 2003

Section 37(1), ‘item 3(c)(i)’—

Clause 1 amends section 37(1) of the Moonie water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 37(3), ‘item 1(b)(ii)’—

Clause 2 amends section 37(3) of the Burdekin Basin water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Moreton) Plan 2007

Sections 73(1), 79(1) and 87(1), ‘regulation’—

Clause 1 amends sections 73(1), 79(1) and 87(1) of the Moreton water resource plan, which currently refers to a notice of works process undertaken through a regulation made under section 37 of the Water Act. Section 37 is to be amended by this Bill to remove the head of power to make a regulation, instead providing a power for the chief executive to publish a notice under section 37. This amendment reflects the amendment to section 37 of the Water Act in the Moreton water resource plan.

Section 73(2), ‘must’—

Clause 2 amends sections 73(2), which currently provides that the chief executive must grant a licence to an owner of works who notifies the chief executive of works that take groundwater through a process under section 37 of the Act. The amendment replaces ‘must’ with ‘may’ providing the chief executive with a discretion to not grant a licence in response to a notification of works.

This amendment also addresses the situation where an owner of works may have previously notified of the works and then subsequently re-notifies of the same works. The chief executive would only grant a single licence in respect of such works and water use.

Section 79(2), ‘must’—

Clause 3 amends section 79(2) to replace ‘must’ with ‘may’ providing the chief executive with a discretion whether or not to grant a licence in response to a notification of works.

Section 88(1), ‘, or interfering with,’—

Clause 4 removes from section 88(1) of the Moreton water resource plan the reference to interfering with overland flow water to clarify that the plan does not all up as assessable development works that interfere with overland flow water. This reflects the proposed amendment to section 46 of the Act to remove the power for a water resource plan to regulate works that interfere with overland flow water

Section 88(1), ‘item 3(c)(i)’—

Clause 5 amends section 88(1) of the Moreton water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 88(3), ‘item 1(b)(ii)’—

Clause 6 amends section 88(3) of the Moreton water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Water Resource (Pioneer Valley) Plan 2002

Section 30A(1), ‘regulation’—

Clause 1 amends section 30A(1) of the Pioneer water resource plan, which currently refers to a notice of works process undertaken through a regulation made under section 37 of the Water Act. Section 37 is to be amended by this Bill to remove the head of power to make a regulation, instead providing a power for the chief executive to publish a notice under section 37. This amendment reflects this change in the Pioneer water resource plan.

Section 30A(2), ‘must’—

Clause 2 amends sections 30A(2), which currently provides that the chief executive must grant a licence to an owner of works who notifies the chief executive of works through a process under section 37 of the Act. The amendment replaces ‘must’ with ‘may’ providing the chief executive with a discretion to not grant a licence in response to a notification of works.

This addresses the situation where an owner of works may have previously notified of the works and then subsequently re-notifies of the same works. The chief executive would only grant a single licence in respect of such works and water use.

Water Resource (Warrego, Paroo, Bulloo and Nebine) Plan 2003

Section 37(1), ‘item 3(c)(i)’—

Clause 1 amends section 37(1) of the Warrego, Bulloo and Nebine water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.

Section 37(3), ‘item 1(b)(ii)’—

Clause 2 amends section 37(3) of the Warrego, Bulloo and Nebine water resource plan to reflect amendments to schedule 3 of the *Sustainable Planning Regulation 2009* relating to the trigger for works that take overland flow water.