

**Environment, Agriculture, Resources and Energy Committee : South-East
Queensland Water (Distribution and Retail Restructuring) and Other
Legislation Amendment Bill 2011**

Submissions 1 – 4(b), tabled paper reference 5312T6226

001 – [Logan City Council](#)

002 – [Allconnex Water](#)

003 – [Gold Coast City Council](#)

004a – [Redland City Council](#)

004b – [Redland City Council \(Addendum\)](#)

Your Ref:
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Please Quote File: 713960-1
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25 November 2011

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Dear Sir/Madam


LOGAN CITY COUNCIL SUBMISSION ON THE "SEQ WATER (DISTRIBUTION AND RETAIL RESTRUCTURING) & OTHER LEGISLATION AMENDMENT BILL 2011"

I have attached for your attention Logan City Council's submission to the "SEQ Water (Distribution and Retail Restructuring) & Other Legislation Amendment Bill 2011".

Given Logan City Council, and its community are impacted directly by this Bill, I would appreciate the opportunity to participate in the public hearing to expand upon our points raised directly with your Committee.

If you require clarification on any part of this submission, please contact Council's Water Reform Project Manager, Mr Shane Mansfield on 3412 5909.

Yours faithfully


Shane Mansfield
Water Reform Project Manager
(on behalf of Chris Rose, Chief Executive Officer)

Att:



LOGAN CITY COUNCIL

SUBMISSION ON THE SOUTH-EAST QUEENSLAND WATER (DISTRIBUTION & RETAIL RESTRUCTURING) AND OTHER LEGISLATION AMENDMENT BILL 2011

Section	Matter
Legislative timetable for the assent of the Bill.	<p>The delayed progression of the SEQ Water (Distribution & Retail Restructuring) and Other Legislation Amendment Bill with its proposed assent in April 2012 is of grave concern to Council, our community and to the staff involved.</p> <p>Previous communication received from the State was that the legislation was being passed in November 2011.</p> <p>Council respectfully requests the State Government treat this legislation as urgent and amend its legislative making timetable in an expedient time-frame.</p> <p>The current State Government may not be in a position to enact the proposed legislation. Therefore the current legislation may not be adopted at all, or may be further delayed. Alternatively the current legislation may not be adopted in its current form (noting the requirement to consider public submissions made and the potential impact of the State election in 2012).</p> <p>This results in:</p> <ul style="list-style-type: none"> ▪ Councils being required to commit significant Council resources and ratepayer funds in the absence of legislative certainty for such actions. ▪ Communicating with staff in the absence of legislative certainty. ▪ Significant financial risk to all 3 Councils - The investment of time and money between now and April 2012 may be wasted and/or misdirected. ▪ Significant risk to provisions of essential services given the short time period between April 2012 and 30 June 2012. The Bill's Retransfer Scheme, which affects the transfer of all Allconnex assets, employees, liabilities and instruments to the withdrawn Councils on 30 June 2012, is required to be agreed by 30 April 2012. ▪ Ongoing uncertainty for the staff involved in the water industry. The current draft Retransfer Workforce Framework, which is aligned to the new Bill, requires all Council CEOs to finalise their new water business structures by 1 March 2012 and notify employees transferring into the structures by 15 March 2012. ▪ Further to the preceding point, a further significant risk is the ongoing exodus of Allconnex personnel departing and therefore the service provider requirements not being able to be fulfilled i.e. the provision of critical water and sewerage services.
Chapter 3A, Part 3, Division 1 "Retransfer Scheme", Sub div 2 "Contents", Section 92AU (Accounting for Assets & Liabilities) - Liabilities	<p>This section includes a requirement for a "process" to account for Allconnex's liabilities to the withdrawn Councils. At this point in time the Queensland Water Commission is seeking agreement with the withdrawn Councils and Allconnex. Whilst some assets and liabilities can be determined by geographical area, some cannot or critically were the result of strategic decisions by an organisation with a significantly larger revenue base than the individual three withdrawn Councils. In this respect it is considered the Bill must make a definitive reference to the apportionment of "amalgamated" assets and liabilities that are not specifically referenced in the Bill to be apportioned on the basis of "equity" as per the Participation Agreement in the SEQ Distribution Retailer Authority. An example of this would be QTC debt extinguishment.</p>

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Chapter 3A, Part 3, Division 1 "Retransfer Scheme", Sub div 2 "Contents", Section 92AU (Accounting for Assets & Liabilities) - Assets	The amount of unpaid water use charges in the Gold Coast area of Allconnex is substantially larger than other Councils. In the event such amounts are written off, less funds potentially will be distributed to the three withdrawn Councils at 1 July 2012 via equity as per the Participation Agreement in the SEQ Distribution Retailer Authority. Gold Coast City Council however will be in a position to "recover" such unpaid water use charges via the Bill's Section 92 DP "LGA applies for particular debts Allconnex". In this respect it is considered the Bill must make the accounting treatment for unpaid water use charges as an asset for the respective geographical withdrawn Council and not be written off as an expense.
Chapter 3A, Part 3, Division 2 "Ministerial functions for retransfer", Section 92BD (Retransfer Direction) & Part 4, Division 2 "Default provisions", Section 92BI (Allconnex's other assets and liabilities".	It is a requirement of the Bill at Section 92AR (Requirement to make scheme) that "Before 30 April 2012 Allconnex and all of the withdrawn councils, the parties, must enter into an agreement (the retransfer scheme)...". It is considered that all parties would be aware of any unresolved disagreement prior to 30 April 2012 and therefore the Retransfer scheme not being agreed to. It is further considered that the Section 92BA (Ministerial notice of retransfer) include a provision where there is not compliance with Section 92AZ i.e. no Retransfer Scheme submitted due to disagreement, to ensure the Minister decides and enforces such in the Retransfer Scheme prior to 30 May 2012. It is considered Section 92BI is not flexible enough to enforcing "amount" disagreements as it is prescriptive in terms of "change the successor Council". It is considered such section should also be clarified in this respect.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)	It is considered the Section 92BW should be clarified to include costs incurred prior to passing of the Bill i.e. since the decision of the Council's to withdraw from Allconnex.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)	The following items need to be clarified in the Bill under the Section 92BW given their high profile at sections / subsections within the Bill rather than being included in any "regulation" as referenced at subsection 92BW (h). Specifically: - subsections (a) and (b) - the costs attributed to effectively discharge the regulatory requirements of a withdrawn Council as a service provider under the State water legislation for the period 1 July 2012 to 30 June 2013. - subsections (c), (d) and (e) - such to be clarified to included the costs in contributing to the development of the Retransfer Workforce Framework and the maintenance of the conditions for employees enshrined in the framework for the life of such. - additional subsection - the costs of Arbitration under Chapter 4, Div 4, Subdivision 3 "Arbitration" of the Bill.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)	The Bill's reference to a "regulation" under Section 92BW "What are withdrawal costs" is considered imperative to the effectiveness of the section and accordingly the Regulation must be approved at the same date as the passing of the Bill. In the event no Regulation is programmed to support the legislation, the attachment of Regulation inclusions for the withdrawal costs be included as a Schedule in the Act.

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Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92BY (Allconnex's Costs) & 92CA (Claiming Withdrawal Costs)	These sections are required to be amended to clarify a withdrawn Council may claim on behalf of Allconnex prior to or after the dissolution of Allconnex for the limitations period.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92CA (Claiming Withdrawal Costs)	<p>Logan City Council is desirous to securing "withdrawal costs" in a reasonably early time frame to avoid unnecessary impost on its financial position and to secure assurance for implementing the requirements of the impending Act amendments.</p> <p>The legislation should require that GCCC must either pay the other Withdrawn Council's costs within 20 business days <u>or</u> dispute such with the Withdrawn Council within 20 business days.</p> <p>The section also requires amendment by inclusion of a substantial penalty for Gold Coast City Council for not either:</p> <ul style="list-style-type: none"> • Making a withdrawal cost payment to the Withdrawn Council in the time period prescribed to be 20 business days. • Not disputing the cost claim with the Withdrawn Council by the time period prescribed to be 20 business days.
Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 2 "Entitlements", Section 92CC (Limitation Period)	<p>The section requires to be amended to avoid reliance on a "written contract" which detours from the restricted Arbitration process.</p> <p>Section 92 CC (Limitation Period) is in conflict with Section 92 CG (Conduct of Arbitration) which provides "makes all reasonable endeavours to ensure the arbitration ends before 1 December 2013".</p> <p>Any action by 92 CK (How order enforced) will reasonably extend beyond 1 December 2013 and also costs associated with the Retransfer Workforce Framework.</p> <p>It is considered therefore the limitation period accordingly should be 30 June 2017 as opposed to 30 June 2013 in the impending Act amendment at Section 92cc "Limitation Period".</p>
Chapter 3A, Part 4, Division 4, Sub div 3 "Arbitration" Section 92 CG (Conduct of Arbitration)	This section requires amendment by inclusion of a substantial penalty for a withdrawn Council not participating in the Conduct of Arbitration as per the legislation.
Chapter 3A, Part 4, Div 4 "Withdrawal Costs", Sub div 3 "Arbitration" Section 92 CE (Application of Sub div 3)	Section 92CE requires amendment to require that the Gold Coast City Council must pay all costs of an agreed or appointed arbitrator under Section 92CF.
Chapter 3A, Part 4, Div 4 "Withdrawal Costs", Sub div 3 "Arbitration" Section 92 CK (How order enforced)	<p>Section 92CK requires amendment to allow the respective Minister to enforce Gold Coast City Council to act upon an order within a defined time period of 20 business days.</p> <p>A Supreme Court action will be a time resource and costly process to implement.</p> <p>Alternatively the legislation needs to clearly articulate that all costs for all parties in a Supreme Court action must be paid by the Gold Coast City Council.</p>

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Chapter 3A, Part 5, Provisions for other laws and instruments	<p>The Bill does not recognise the intellectual property of Allconnex currently invested in implementing various requirements of the Water Act, Water Supply Act and the current South-East Water (Distribution & Retail Restructuring) Act 2009 will "disperse" as at 30 June 2012.</p> <p>Allconnex will inherently transfer committed high level, public interest matters to Councils for which it has largely had no control over. Examples include:</p> <ul style="list-style-type: none"> - QCA obligations require Allconnex to submit its proposed charges for 2012/13 for water and wastewater services by 31 March 2012 and final charges by 30 June 2012. Council will then need to submit ongoing price monitoring requirements on prices set by a previous entity from 31 August 2012. This is not realistic and needs a review for the current Bill to include exemption / extensions provisions for the respective Minister for meeting the QCA requirements. - The Net Serv Plan is required to be finalised by 30 June 2013. This date may not be realistic and the Bill needs to acknowledge this by allowing extensions from the Minister for the provision of such.

Regulation inclusions for the withdrawal costs to include as a Schedule in the Act to support Chapter 3A, Part 4, Division 4 "Withdrawal Costs", Sub div 1 "Preliminary", Section 92BW (What are withdrawal costs)

1. Dis-establishment activities;

- a. Project coordination/management
- b. Project costs (due diligence, professional fees, etc)
- c. Contract penalty costs of early termination or admin to amend
 - i. Payments related to the cancellation of accommodation and vehicle leases, service contracts or systems support no longer required and not novated to the Distributor-retailer entities
- d. Dissolution expenses
- e. Voluntary redundancy payments to staff
- f. Disposal of assets

2. Establishment of commercial business unit;

- a. category relates to the direct costs and purchases required to make the entities operational by 1 July 2012
- b. Establishing a Corporate structure for the Council water business (eg a General Manager, etc)
- c. Establishing a Regulatory capability for the Council water business (eg a Regulatory and Compliance Unit in Council's Water Business)
 - i. systems required for complaints management and reporting
- d. Professional costs
- e. Software upgrade (eg needed to do billing as the current system is not supported)
 - i. systems modification to accommodate new billing information
- f. Ombudsman Fees
- g. Project coordination/management
- h. Costs of insurance for works (and WIPs) done by AW
- i. Loan implications for WIP/ debt servicing costs
- j. Work required to be done to reintegrate assets and liabilities back into the Council System
- k. Work required to be done by the Council CFO to establish new debt and loan structures
- l. Costs to replace assets (eg plant fleet) that have been disposed of by AW due to economies of scale change to business operations (eg reducing the number of backhoes to increase utilisation rates)
- m. Costs of media/communication plan to inform customers
- n. New branding and associated modification to any systems, etc

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- o. Secondment arrangements between AW and councils as per Workforce Framework
- 3. **Retransfer scheme activities;**
 - a. category of cost represents the costs incurred in order to affect the transfer of the relevant assets, employees, liabilities and legal instruments from the existing businesses to the new entities
 - b. Professional costs
- 4. **Consequential or incidental activities;**
 - a. Professional costs
 - b. Arbitration costs
 - c. Interest
 - d. Storage of AW corporate records
 - e. Salary Maintenance under Workforce Framework, ie. costs of wages (difference between the LCC Certificated Agreement and wage of the transferring employee)
 - f. Costs of wages and conditions resulting from changes to employees conditions made by AW (eg paying out the 9 day fortnight)
 - g. Allocation of overhead or management costs within councils of operational staff involved in establishing the new water business.
 - h. Attendance at project steering committees, participation in working groups or subject matter expert groups etc (internal and external)
 - i. Costs associated with the disaggregation of water from AW such as system or process modification
 - j. Costs associated with the modification of existing systems to ensure the ongoing provision of services to the water business
 - k. Any overhead costs associated with the provision of the above
 - l. Cost of a direct cost - asset purchase/increase in budget for software licencing
 - m. Major information technology and systems development costs, such as additional phone capabilities
 - n. Change management and communication plan development and activities.

Expenses not deemed to be considered withdrawal costs:

- Salary increases to transferring staff as determined by the successor council (LCC CA);
- Anticipated or actual revenue or profits;
- Failure to realise anticipated savings;
- Costs that would ordinarily be incurred as a service provider or local government.

Date: 1 December 2011
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The Research Director
Environment, Agriculture, Resources and
Energy Committee
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Dear Sir/Madam,

**SOUTH-EAST QUEENSLAND WATER (DISTRIBUTION AND RETAIL
RESTRUCTURING) AND OTHER LEGISLATION AMENDMENT BILL 2011**

Allconnex Water (**Allconnex**) is grateful for the opportunity to provide this submission to the Environment, Agriculture, Resources and Energy Committee (**Committee**) on the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011 (the Bill)*.

Allconnex is the 'council-owned' water and wastewater distribution and retail business for the Gold Coast, Logan and Redland City Council areas.

Allconnex, has identified some elements in the Bill that may affect the workability of the legislation and the proper implementation of the retransfer, and would appreciate guidance or clarification by way of amendments to the Bill.

Further, the board members and officers of Allconnex have a statutory duty to act in the best interests of Allconnex and a positive obligation to implement the retransfer (which will necessitate Allconnex taking into account Councils' interests). The board members and officers are concerned with their ability to fully comply with such duties, and the protections afforded to them in respect of actions taken to implement the retransfer, given the current drafting of some provisions of the Bill.

The material concerns of Allconnex are set out in full in the **attached** table, but for your convenience they are also summarised below:

- the scope of the statutory protection for directors and officers of Allconnex is inadequate given the unique situation that Allconnex has been placed in;
- while the Bill does not appear to require Allconnex to publish any charges for 2012-2013 financial year, the Bill should remove any doubt on this issue and make clear which body has any obligations to publish charges for the 2012-2013 financial year;

- the concept of 'materially prejudice' is not defined, and, more specifically, as it is used in the context of the retransfer scheme only and not the broader retransfer process it is not clear whether the concept is a relevant consideration in respect of negotiations or other dealings (occurring 'outside' the scope of the retransfer scheme);
- there is currently no legislative basis for the authorised exchange of information between Allconnex and the withdrawn councils, and no protection from breach of contract and confidentiality claims in circumstances where parties need to exchange information prior to the Bill being enacted;
- the default position in relation to the allocation of liabilities in section 92BI of the Bill has the potential to be utilised by a council who does not wish to accept a whole liability which may otherwise be appropriate for a council to assume;
- there is no flexibility to allow Allconnex and the withdrawn councils to agree a mechanism to adjust any change in the asset and liability position which may occur between the date of the retransfer scheme, 30 April 2012, and 1 July 2012;
- there is no flexibility to allow Allconnex and the withdrawn councils to agree that it may be desirable for some of the assets and liabilities to remain with Allconnex after 1 July 2012 until dissolution; and
- there is no ability for the Minister to make regulations regarding any aspect of the retransfer to address any aspect which may have been inadvertently overlooked during the retransfer process.

The attached table addresses these matters in more detail and outlines proposed solutions to assist the Committee.

Allconnex would again like to extend its appreciation for the opportunity to engage with the Committee on the development of the Bill and would welcome an opportunity to further elaborate on the attached material issues.

Yours sincerely



Andrew Foley
CHIEF EXECUTIVE OFFICER

Allconnex Water Submission SEQ Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011

No.	Issue	Current position	Concern	Comment/Proposed solution
1.	Protections for Allconnex Board members and officers	Section 92CM of the Bill operates to exclude liability for Allconnex, a member of the board, or employee or agent of Allconnex (Indemnified Person) for a 'civil wrong, contravention of law, breach of contract or confidence' in relation to things done under the chapter [Chapter 3A] or under or in compliance with a retransfer document.	<p>Allconnex and its Board have been acting and making decisions in contemplation of the Bill, including Chapter 3A, coming into effect. It is not clear when Chapter 3A will commence. Allconnex is concerned about the following:</p> <ul style="list-style-type: none"> it is not clear that s92CM offers protection for decisions made by Indemnified Persons, or actions done by them in anticipation of Chapter 3A or the retransfer prior to Chapter 3A coming into effect. This is because things done before Chapter 3A commences are not things done 'under the chapter'. the Indemnified Persons are not protected from liability arising in respect of decisions made or actions done by them in the ordinary course of business in contemplation of or to implement the retransfer. This is because s92CM is directed only at protecting decisions made or actions done 'under the chapter..including in compliance with a retransfer document'. the Indemnified Persons are not excluded from liability arising from a breach of particular duty (eg it 	<p>Allconnex seeks confirmation in the Bill that:</p> <ul style="list-style-type: none"> all Indemnified Persons have the benefit of s92CM for actions done or decisions made by them under the proposed Chapter 3A or in connection with the proposed retransfer prior to Chapter 3A coming into effect. the Indemnified Persons are protected for liability arising from decisions made or actions taken in the ordinary course of business in anticipation of or to implement the retransfer. Indemnified Persons are excluded from liability arising from a breach of duty (consistent with the approach adopted by the State Government in recent facilitating legislation involving statutory transfer processes). Allconnex will not be in breach of section 92CB in circumstances where it may not be in the best interests of Allconnex to 'take all reasonable steps to mitigate' the liability of GCCC.

No.	Issue	Current position	Concern	Comment/Proposed solution
			<p>may not always be possible for Board members or officers to act in the best interests of Alconnex given that Alconnex must work to implement a policy decision of the State Government to retransfer/disestablish, which must by necessity involve it taking into account the interests of the withdrawn councils as future owners and operators of Alconnex's water business). This can be contrasted with recent facilitating legislation such as <i>the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIA)</i> where explicit protection was afforded for breach of duty.</p> <ul style="list-style-type: none"> the conflict between Alconnex's statutory duty to act in the best interests of Alconnex and Alconnex's statutory obligation under section 92CB to act in the interests of Gold Coast City Council to mitigate GCCC's liability to Alconnex. 	
2.	Publication of future charges	<p>Section 99ATA of the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Current Act) currently requires a distributor-retailer to publish on its website details of:</p> <ul style="list-style-type: none"> its charges for the current financial year by 30 June in the preceding financial year; and 	<p>Clause 40 of the Bill does not commence until the end of 30 June 2012.</p> <p>While Alconnex will maintain on its website details of its current charges up to 30 June 2012, Alconnex has no proposed charges for the following 2012 - 2013 financial year. Therefore, Alconnex would not be publishing on</p>	<p>We propose that the commencement of the amendments to sections 99ATA and 99ATB of the Current Act (reflected in clauses 40 and 41 of the Bill) be brought forward so those amendments commence on the date of assent of the Bill. Assuming the date of assent is before 31 March 2012, this would impose the obligation on the withdrawn councils to publish their proposed charges for the next financial year by</p>

No.	Issue	Current position	Concern	Comment/Proposed solution
		<ul style="list-style-type: none"> its proposed charges for the next financial year by 31 March in the preceding financial year. <p>Under clause 40 of the Bill it is proposed to extend these obligations from distributor-retailers to an SEQ service provider.</p>	<p>its website details of any charges that may be proposed after 30 June 2012.</p> <p>Allconnex assumes that the withdrawn councils (captured by the proposed definition of "SEQ service provider") would publish details of their proposed charges for the 2012 – 2013 financial year and that they would do so by 31 March 2012.</p> <p>However, because clause 40 of the Bill is proposed not to commence until the end of 30 June 2012, there would be no obligation on the withdrawn councils to do so.</p>	<p>31 March 2012.</p> <p>Allconnex's view is that section 99ATA does not impose an obligation on Allconnex to publish any proposed charges for the 2012-2013 financial year because Allconnex does not propose to make any such charges. However, to remove any doubt on this issue, we also propose that the Bill introduce an additional provision making it clear that Allconnex has no obligation to publish charges or proposed charges for any period after 30 June 2012.</p>
3.	"Material prejudice"	<p>Section 92AY of the Bill requires the retransfer parties to give the Minister a statement (the certification statement) certifying all of the assets, liabilities and instruments that the withdrawn councils are to receive under the scheme. The certification statement must also comply with section 92AZ.</p> <p>Section 92AZ(1)(b)(iv) requires that either:</p> <ul style="list-style-type: none"> the scheme does not, to the knowledge of all the retransfer parties, materially prejudice the interests of any third party; or if the scheme materially prejudices the interests of any third party, the consent of all third parties so prejudiced has been obtained. <p>Section 92AZ(2) provides that for</p>	<p>Allconnex notes that as 'materially prejudice' is not defined in the Bill, it not clear how the retransfer parties should determine whether the scheme 'materially prejudices' the interests of any third party.</p> <p>Further, Allconnex notes that section 92AZ(1)(b)(iv) appears to consider the concept of material prejudice in the context of the 'scheme' only, and not in the context of the broader retransfer process. This creates some further uncertainty which is demonstrated by the example below.</p> <p>Allconnex understands that in some circumstances a contract which is in place between Allconnex and a counterparty prior to the retransfer may need to be 'split' (i.e. terminated and renegotiated as several separate</p>	<p>Allconnex is seeking clarification in the Bill in relation to:</p> <ul style="list-style-type: none"> what may constitute a 'material prejudice' of the interests of a third party. whether the concept of material prejudice need only be considered in respect of the transfer scheme itself, and not other negotiations which may occur 'outside' of the transfer scheme (to enable parties to agree the retransfer scheme).

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		<p>subsection (1)(b)(iv)(A), the fact of a transfer to a withdrawn council, is not, of itself, a material prejudice to a third party.</p>	<p>contracts) to facilitate the retransfer. These renegotiated contracts may then be included in the retransfer scheme agreed by the retransfer parties.</p> <p>Allconnex notes that if a contract is terminated and renegotiated into several separate contracts, the counterparty may incur additional administration and management costs as a result of managing several contracts in place of one contract. It is not clear if these additional costs would be a 'material prejudice', and in any case even if considered to be a 'material prejudice', Allconnex notes that these additional costs could be viewed to arise outside of the scheme (i.e. in separate negotiations between Allconnex and the relevant counterparty) rather than under the scheme itself.</p>	
4.	<p>Exchange of information and confidentiality</p>	<p>Section 92BS of the Bill contains a regime for the authorised exchange of information/disclosure of information between the retransfer parties. This regime is complimented by section 92CM which protects an entity in exchanging or disclosing information under the regime, such that nothing done under chapter 3A, including a thing done under or in compliance with a transition document, makes a relevant entity liable for...a breach of a contract or confidence.</p> <p>Allconnex is a 'relevant entity'.</p>	<p>As Allconnex will need to disclose information to withdrawn councils prior to the Bill being enacted to enable those withdrawn councils to have sufficient time to undertake due diligence and make other relevant enquiries in relation to documentation of Allconnex, there is no legislative basis for the authorised exchange of information, and no protection from breach of contract or confidentiality, in these circumstances.</p> <p>Further it is not practical for Allconnex to obtain consent from all</p>	<p>Allconnex seeks clarity in the Bill that protections afforded to Allconnex in respect of the exchange or disclosure of information required or desirable to implement the retransfer will also apply where the retransfer timeline necessitates information being exchanged between the parties prior to the Bill being passed.</p>

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			<p>counterparties to contracts or other affected parties prior to the disclosure of any confidential information (for withdrawn councils for the purposes of their own due diligence and to enable them to provide relevant statutory certifications).</p>	
5.	<p>Default/fall back position for successor to Allconnex liabilities</p>	<p>Section 92BI of the Bill operates such that if a retransfer scheme does not provide for succession of a liability:</p> <ul style="list-style-type: none"> • (2) if, under a transition document, the liability was transferred from a withdrawn council to Allconnex, that council is the successor; or • (3) otherwise, the withdrawn councils are Allconnex's proportional joint successor for the asset or liability. <p>Section 92AD provides that where withdrawn councils are expressed to be Allconnex's proportional joint successor, all of them are its joint successor, rateably in accordance with their participation rights under Allconnex's participation agreement immediately before the retransfer.</p>	<p>Allconnex is concerned that the fall back position contained in section 92BI (3) of the Bill could be manipulated to lead to an outcome where a withdrawn council receives a windfall gain and other withdrawn councils are disadvantaged.</p> <p>For example, if a council does not wish to accept a liability (e.g. a debt which relates specifically to an asset located in that council's geographical area), notwithstanding that it may otherwise seem appropriate for that council to assume the liability, the fall back position dis-incentivises that council from reaching an agreement. If the transfer scheme does not provide for the council to be the successor of that liability it will be split between the councils in accordance with their participation rights (and the council will receive a windfall gain).</p>	<p>Allconnex considers it may be more appropriate for the legislation to recognise that in circumstances where a debt relates specifically to an asset, that debt should be transferred to the withdrawn council to whom the asset is also transferred.</p> <p>The parties should still be required to seek to agree the matter in a retransfer scheme in the first instance, but failing such agreement, if the liability can be specifically identified as relating to an asset which is to be transferred to a specific withdrawn council, the debt should also be transferred to that same withdrawn council.</p>
6.	<p>Certification Statement – content requirements</p>	<p>Under s92AR of the Bill, Allconnex and the withdrawn councils must enter into a retransfer scheme by 30 April 2012 which, amongst other things, transfers all</p>	<p>It is inevitable that the assets, liabilities, and instruments of Allconnex will change between 30 April 2012 and 30 June 2012. Allconnex is concerned that</p>	<p>Allconnex is seeking confirmation in the Bill that the retransfer scheme and certification statement can accommodate changes in the asset, liabilities and instruments of Allconnex</p>

No.	Issue	Current position	Concern	Comment/Proposed solution
		Allconnex's assets, etc at the end of 30 June 2012. In addition, under s 92AY and 92AZ, Allconnex and the withdrawn councils must execute a certification statement, at the time they enter into the retransfer scheme which, amongst other things, certifies that they have identified all relevant assets, etc.	there is currently no flexibility to allow Allconnex and the withdrawn councils to agree a mechanism for making any adjustments in the certification statement/retransfer scheme to reflect the change in position of the assets, liabilities and instruments of Allconnex during this period.	between the date of the retransfer scheme and 30 June 2012.
7.	Residual assets and liabilities	Under s92AR of the Bill, the retransfer scheme requires that all of Allconnex's assets, employees (other than its CEO), instruments and liabilities are transferred at 30 June 2012.	During the process of negotiating the retransfer scheme, Allconnex and the withdrawn councils may determine that it is more advantageous for certain assets or liabilities to remain with Allconnex following 30 June 2012. For example, this could be because a significant procurement contract is reaching a critical milestone immediately following retransfer. Alternatively, there may be cost-savings associated with retaining software licences for an additional specified period.	Allconnex is seeking some flexibility in the Bill to allow for Allconnex and the withdrawn councils to agree that in certain circumstances it may be desirable for an asset or a liability to be retained by Allconnex following the retransfer, prior to dissolution.
8.	Regulation making power	There is currently no power for the Minister to make regulations about any aspect relating to the retransfer. This is in contrast to recent State Government legislation facilitating asset sales such as the IIA and the Airports Act.	Allconnex is concerned that there may be matters which, despite the best intentions of Allconnex and the withdrawn councils, are overlooked as part of the retransfer scheme process, and in relation to which are not capable of being cured through the current statutory regime.	Allconnex is proposing that the Minister be granted a power to make regulations to assist in remedying any oversights and assisting Allconnex and the withdrawn councils achieve a streamlined transition.
9.	Timing of Ministerial approval of the retransfer staff	Allconnex and the withdrawn councils are required to comply with the retransfer staff support framework which must first be	Allconnex is concerned that the retransfer staff support framework will not receive Ministerial approval in	Allconnex seeks confirmation that the retransfer staff support framework will receive Ministerial approval in sufficient time to enable it to comply

No.	Issue	Current position	Concern	Comment/Proposed solution
	support framework	approved by the Minister.	sufficient time to allow it and the withdrawn councils to comply with it prior to 30 June 2012.	with the framework prior to 30 June 2012.
10.	Penalty for failing to comply with a retransfer direction	Under s92BD of the Bill, the Minister may give a retransfer direction on or before 30 June 2013 in respect of certain aspects of the retransfer. A penalty is imposed for failure to comply with the retransfer direction.	Allconnex does not believe that a penalty is appropriate in the retransfer context. Allconnex notes that recent facilitating legislation for disposal of Queensland infrastructure assets, IIA, did not impose a penalty on a particular entity or their board for failing to comply with a direction.	Allconnex seeks guidance as to the rationale for imposing a penalty on it for failing to comply with a retransfer direction.

2 December 2011
Mark Harvey
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The Research Director
Environment, Agriculture, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000
Emailed to: earec@parliament.qld.gov.au;

Dear Sir/ Madam

Submission in relation to the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011

On behalf of the Gold Coast City Council, the following submission is made in relation to the above Bill.

Gold Coast City Council has resolved to withdraw from its water retailer/distributor (Allconnex Water) and re-establish its own water services business. The draft Bill facilitates this decision and is therefore, in general terms, supported by Council. It is further acknowledged that Council officers were afforded the opportunity to be consulted on the proposed contents of the Bill. There are however a number of matters which remain of concern to Council which are outlined below.

One issue of particular concern relates to the potential timing of the passage of the legislation. GCCC is concerned that the consideration of this Bill could be significantly delayed as the Committee is required to report to the Parliament by April 2012, just three months prior to the proposed disestablishment date.

The potential delay poses a serious and unacceptable risk to the Councils and Allconnex Water. Achievement of the proposed disestablishment of Allconnex Water/re-establishment of Council water businesses on 1 July 2012 requires considerable expenditure and has a significant impact on employees. It will require the Councils and Allconnex Water to make decisions and commit public funds to disestablishment and re-establishment activities without the certainty of legislation having been passed.

It is respectfully requested by GCCC that the Committee give urgent consideration to the Bill with a view to expediting its report to Parliament to facilitate a timely passage of the legislation.

The grounds for this representation are:

- The significant risk to the Councils associated with the uncertainty created by the proposed timelines for the Committee process.
- The potential risk to the orderly provision of an essential service created by the passage of the legislation at a date so close to the proposed implementation date.

- The need to provide certainty for employees of Allconnex Water.

Withdrawal Costs (Division 4, Subdivision 2)

Gold Coast City Council has maintained a position that the costs incurred as a consequence of deciding to 'opt out' of Allconnex Water and re-establish its own water business should be met by the State government and not the ratepayers of the Gold Coast. This belief is based upon the premise that the State government, as the originator of the water reform process in South East Queensland, should bear the financial costs of the reforms effectively being reversed. This position has been formally put to the Premier and the Minister for Energy and Water Utilities and our opposition to the provisions of Sections 92BR, 92BS, and 92BT insofar as they require Gold Coast to be responsible for its withdrawal costs and the withdrawal costs of Allconnex Water, Logan and Redland City Councils is again formally made.

General Provisions Relating to Re-transfer

While the Bill provides a dispute mechanism in the event of the parties failing to reach an agreement in relation to the determination of withdrawal costs, there is no such mechanism to resolve a dispute in relation to the apportionment of assets and liabilities. Presumably, failure to reach an agreement would lead to the apportionment of the assets or liabilities in accordance with the participation rights of the Councils (Section 92BI (3)). This could lead to sub optimal outcomes in the circumstances of assets and liabilities which were not transferred to Allconnex from a withdrawn Council. As an example, infrastructure loans (loans taken out to finance the construction of infrastructure assets) should be apportioned to the asset they are aligned to, which, under the terms of the Bill, being a geographically linked asset would be transferred to the Council in which local government area the asset is located. To fail to apportion a loan established to fund the building of the asset to that Council would be inequitable, as the Council would receive the benefit of the asset without a guarantee of the full amount of any attached liability being transferred to that Council. To avoid the potential for this outcome, it is suggested that either of two amendment could be adopted:

- i) The dispute settling provisions be extended to also cover disputes in relation to the re-transfer scheme, or
- ii) The provisions of Section 92BI be revised to reflect a position that assets other than those originally transferred from a withdrawn Council be apportioned, where able, to the Council to which the asset or liability can be reasonably linked, and if the asset or liability cannot be reasonably so linked then the withdrawn Councils are Allconnex's proportional joint successor for the asset or liability.

I note the Minister's power under Section 92BI (4) to change the successor. The effect of the above proposals could be achieved by the adoption of a Regulation which clarifies the circumstances in which the Minister would exercise the powers under this provision.

Any questions in relation to the above submission may be directed to the undersigned on 07 5581 7165.

Yours sincerely



Mark Harvey

DIRECTOR WATER REFORM
For the Chief Executive Officer

2 December, 2011

Your Ref:
Our Ref: Gov Allconnex Water
File No:
Contact: Kate Giese - 3829 8496

The Chair
Environment, Agriculture, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam


I am writing to express Councils strong concerns on the timing of the passage of the South - East Queensland Water (Distribution and Retail Restructuring) and Other Legislation and Amendment Bill 2011. (the 'Bill').

I understand that the Bill is not scheduled to be reviewed by Parliamentary Committee as last as April 2012, just three months prior to the proposed date for the disestablishment of Allconnex Water and the required re-establishment of a Council water business. This raises a significant risk regarding the potential timing of a State election, which is required to be before June 2012. The calling of the election could coincide with the return of the Bill to Parliament and thus may even impact the ability of the current government to pass it (if the State government were in caretaker mode).

This potential delay (and possible risk to the passage of the Bill) poses a serious and unacceptable risk to Allconnex Water and its Participating Councils. Achievement of the proposed disestablishment of Allconnex Water and the re- establishment of Council water businesses on 1 July 2012 requires considerable expenditure and has a significant impact on employees. It will require the Councils and Allconnex Water to make decisions and commit public funds to disestablishment and re- establishment activities without the certainty of legislation having been passed or passed in its current form.

On behalf Redland City Council I request you declare this as an urgent bill to expedite its adoption before the end of the Parliamentary Year.

Yours sincerely



Gary Stevenson PSM
Chief Executive Officer
Redland City Council

cc *Michael Choi*
Mark Robinson
Peter Dowling
Mayor
Councillors
M Drydale

9 December, 2011

Your Ref:
Our Ref: Gov Allconnex Water
File No:
Contact: Kate Giese - 3829 8496

The Chair
Environment, Agriculture, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

Following advice from the Research Director for the Environment and Resources Committee, Rob Hansen, a summary of additional concerns regarding the South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011, that have been raised by Redland City Council, to the Minister Stephen Robertson and to the Queensland Water Commission are provided below, for consideration by the Parliamentary Committee.

Whilst we do not wish to delay the process of approval of the legislation at all, given our strong concerns about the extreme risks of delayed legislation (previously outlined), we would request that consideration be given to the concerns outlined below.

Queensland Competition Price Monitoring (QCA) requirements

The major imposition of the QCA requirements is anticipated to have resource implications that are over and above those in place prior to the establishment of Allconnex Water. Council is not opposed to pricing oversight for water and wastewater services; however, we believe that the QCA requirements place an unacceptable financial impact on water prices and on ratepayers. We appreciate the intent of the prudence and efficiency assessments and believe that under Council direction there will naturally be a greater focus on these matters, without the need for a full scale regime. Whilst every other Council-owned water business in Queensland will be subject to the prices oversight regime that Redland Water previously was subject to, Redland Water of the future will have a much higher order (and much more costly) obligation akin to that required of the huge SEQ water authorities (QUU and Urban Utilities) In addition, whilst we acknowledge that no decision has yet been made on the longer term role for the QCA, post 1 July 2013, this does not provide certainty that the requirements will not extend beyond that period.

Energy and Water Ombudsman Queensland (EWOQ)

We believe it will be more efficient for Councils to be subject to a single Ombudsman scheme, rather than two as would be the case under the proposed legislation, particularly when the full range of complaints-related statutory arrangements are considered as follows:

- Energy and Water Ombudsman requirements (ref Energy and Water Ombudsman Act)
- Queensland Ombudsman requirements which is confusing for the community to have two Ombudsman systems (ref Ombudsman Act)
- Administrative action complaints management requirements (ref both Local Government Act and Judicial Review Act)
- Local Government Act competitive neutrality complaints requirements (ref both Local Government Act and Queensland Competition Authority Act)
- Misconduct complaints (ref Crime and Misconduct Act)

This round of water reform appears to be taking Council in the opposite direction to the efforts being undertaken by the State Government Department of Local Government and Planning to rationalise and stream-line the laws that apply to local government. Our intent is to restore an efficient water business that can truly contain prices and focus on improving services. Unfortunately the added compliance obligations will make it more difficult and more costly, having a direct impact on the business operation and resource requirements of Redland Water, which will flow onto its cost of operation and water pricing.

The requirement to deal with proceedings and claims

Should the proceedings not apply jointly and severally to allow each council to act in its own best interests in defending or pursuing a matter? In addition, with regard to the costs and proceeds of proceedings, the method of apportionment of costs and / or proceeds of legal actions should be defined i.e. proportional to the Participation Rights.

Thank you for the opportunity for your consideration of these matters.

Yours sincerely



Gary Stevenson PSM
Chief Executive Officer
Redland City Council