Parliamentary Committees

Water Reform and Other Legislation Amendment Bill 2014

Report No. 52
Agriculture, Resources and Environment Committee
November 2014

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Acknowledgements

The committee thanks submitters and the officers who briefed the committee on the Bill.

Contents

Abbreviations and definitions

APPEA	Australian Petroleum Production and Exploration Association Limited
BSA	Basin Sustainability Alliance
CSG	coal seam gas
Common Provisions Act	*Mineral and Energy Resources (Common Provisions) Act 2014*
DEHP	Department of Environment and Heritage Protection
DNRM	Department of Natural Resources and Mines
EDOQ	Environmental Defenders Office of Queensland
EIA	environmental impact assessment
ESD	ecologically sustainable development
FLP	fundamental legislative principles
GAB	Great Artesian Basin
GBRMPA	Great Barrier Reef Marine Park Authority
IWA	interim water allocations
LGAQ	Local Government Association of Queensland
Mineral Resources Act	*Mineral Resources Act 1989*
Petroleum and Gas Act	*Petroleum and Gas (Production and Safety) Act 2004*
PRA	Property Rights Australia
QCC	Queensland Conservation Council
QFF	Queensland Farmers Federation
QMDC	Queensland Murray Darling Committee
QRC	Queensland Resources Council
RIS	regulatory impact statement
RIT Act	*River Improvement Trust Act 1940*
ROP	resource operations plan
Water Act	*Water Act 2000*
WDO	water development option
WEN	water entitlement notice
WRP	water resource plan
WSQ	The Wilderness Society Queensland

Chair's foreword

This report presents the findings from the committee's inquiry into the Water Reform and Other Legislation Amendment Bill 2014, which was introduced by the Hon Andrew Cripps MP, Minister for Natural Resources and Mines.

The Minister is to be congratulated for formulating a Bill that not only reduces red tape, but also will improve outcomes in relation to water management, quality, sustainability and control into the future. This Bill would appear to have the broad support of most user groups across the state, albeit some of the comments criticising the Bill highlighted a lack of understanding or a skewed interpretation of the legislation.

In terms of proposed changes, the Bill has sought to protect land owners' rights, in relation to the introduction of make good provisions, alongside a statutory right for take of associated water for resource projects.

Also, in relation to river trusts, the Minister and his department have realised that these trusts need to be modernised and assisted so they can provide environmental and sustainable ecosystems that are required. This was never more evident than after Cyclone Oswald in 2013 and the devastating floods and silt loads in many of Queensland's rivers.

I commend this report to the House.

Ian Rickuss MP
Chair

November 2014

Recommendations

Recommendation 11 **59**

The committee recommends that clause 24 of the Bill be amended to expressly provide for constituent local government(s) to retain powers to appoint local government representatives on a trust where there are more than two local government areas that make up a river improvement area. A new section 5(1)(b) could provide that these appointments would be limited to a number agreed by the Minister and stated in the regulation establishing the trust. This may obviate the requirement for section (1A) to provide for an alternative process of nomination.

Recommendation 12 **62**

The committee recommends that amendment be made to the Explanatory Notes or relevant clauses /schedule 3 in the Bill for consistency, as to the updating of the term safety management plan in the *Petroleum and Gas (Production and Safety) Act 2004* with either the term 'safety management system' or 'safety and health management system'.

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).[2]

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of that consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

FLPs are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 11 September 2014, the Minister for Natural Resources and Mines, the Hon Andrew Cripps MP, introduced the Water Reform and Other Legislation Amendment Bill 2014 to the Queensland Parliament. The Legislative Assembly referred the Bill to the committee for examination, in accordance with Standing Order 131. The committee was given until 17 November 2014 to table its report to the Legislative Assembly, in accordance with Standing Order 136(1).

The committee's processes

In its examination of the Bill, the committee:

- invited written submissions from stakeholder groups and members of the public. The committee accepted written submissions from 47 parties. A list of submitters is at **Appendix A**.
- sought advice from the Department of Natural Resources and Mines (DNRM) on the policy drivers for the amendments proposed, a summary of consultation undertaken and details of the outcomes of that consultation, and issues raised in submissions received by the committee. The department's advice in response to issues raised in submissions is published on the Queensland Parliament's website at:

  http://www.parliament.qld.gov.au/documents/committees/AREC/2014/26-WaterReformOLA14/cor-27Oct2014-dnrm-response.pdf
- sought expert advice on possible FLP issues with the Bill
- convened public briefings by officers from DNMR and the Department of Environment and Heritage Protection (DEHP) on 15 and 29 October August 2014, and
- held a public hearing to hear evidence from submitters and others on 29 October 2014.

The briefing officers and hearing witnesses who assisted the committee are listed at **Appendix B**.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2. Background information on key objectives of the Bill

Background

Water resources in Queensland

Water availability in Queensland is highly seasonal and varies significantly across the state. On average, less than 200 mm falls in the south west each year, while 1,000 mm falls in the densely populated south east and 3,200 mm falls on the far north coast. Queensland is prone to both intense flooding events and extended periods of drought. The past decade has included six consecutive years of drought up to 2009, followed by significant flooding events in late 2010 and early 2013.

Most western river systems in Queensland are ephemeral, ceasing to flow for months or years at a time. The eastern river systems generally flow all year round but are also seasonally variable. Consequently, about one third of Queensland's consumptive water use is sourced from groundwater. Groundwater plays an important role in maintaining flows in connected surface water systems and is becoming increasingly integrated into regional planning and management frameworks.

Queensland supports a diverse range of aquatic ecosystems, including more than 140,000 wetlands that provide habitat for 130 species of fish, 200 species of waterbirds and 3,000 plant species. Internationally significant environmental assets include five declared wetlands under the Ramsar convention and the World Heritage-listed Great Barrier Reef. Several unregulated river systems that are in near-natural condition still exist in Queensland.[3]

Queensland accounts for approximately 20 per cent of Australia's water use. Almost two thirds of water consumption in Queensland is sourced from surface water. Surface water resources in Queensland range from those contained in highly developed systems, such as those in the south east of the State and the upper reaches of the Murray–Darling Basin, through systems with lower levels of development to river systems in a near-natural state such as those on Cape York. Groundwater resources range from localised aquifers to the Great Artesian Basin (GAB) which underlies approximately 70 per cent of Queensland.

Queensland faces a number of water planning challenges to ensure that water is used efficiently and that competing needs for water are balanced in an open and transparent way. Rapid population growth, particularly in the south east, is creating increasing demand for urban water supplies. Highly variable rainfall across most of the state has an impact on water availability which will intensify according to current climate change projections. Providing water for Indigenous economic and social benefit, as well as for cultural flows, provides another driver for water planning. Recent levels of activity in coal seam gas exploration and extraction create additional challenges to the sustainability of significant groundwater resources.

The objective for water planning in Queensland is to manage the allocation and use of water across the diversity of water systems in the State in a way that provides efficient and transparent allocation of water to meet community needs and provide for the economic development of Queensland in a manner that protects natural ecosystems and other resources from degradation.[4]

Legislative and policy overview

The Water Act 2000 (Water Act) provides the legislative and institutional framework for water use in Queensland. The Water Act is supported by the Water Regulation 2000, which provides details on matters provided for in the Water Act. Management of water resources is underpinned by a planning

[3] National Water Commission, 2014, *Australian Environmental Water Management: 2014 Review,* p. 74. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0006/37248/AEMR-2014-2.pdf. Accessed 3 November 2014.

[4] National Water Commission, 2013, *Water Planning Report Card 2013*, p. 265. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0016/37222/5.-QLD.pdf. Accessed 11 November 2014.

framework also prescribed in the Water Act. The Water Act provides for a two-stage planning process whereby a water resource plan (WRP) states the strategic goals, management principles and water allocations for the catchment, and a resource operations plan (ROP) implements the plan by establishing the day-to-day operational management rules and processes for the catchment. The ROPs also specify trading rules and water sharing rules.

A number of other legislative and policy instruments operate alongside the Water Act to manage the use of water resources.

Queensland shares the Murray–Darling Basin, Great Artesian Basin (GAB) and Lake Eyre Basin resources with other jurisdictions and is party to cross-jurisdictional management agreements including the Lake Eyre Basin Agreement, the Great Artesian Basin Sustainable Management Plan, the Murray–Darling Basin Agreement and Murray–Darling Basin Plan.[5]

Market governance

DNRM is the lead agency responsible for water resource management in Queensland. DNRM administers water entitlements and deals with the practical business of sharing and managing water resources. It coordinates the development of WRPs and ROPs and oversees the implementation of the plans. The Registrar of Land Titles is also the Registrar of Water Allocations. The Water Allocations Register is a secure Torrens-based register that centrally records details of holders.

Bulk water storage and delivery services for rural communities are provided by a number of authorities, but the main supplier of bulk water is SunWater (a corporation owned by the Queensland Government). It owns and manages 24 water storages throughout Queensland and operates the headworks and distribution infrastructure, including pipes and channels.

DEHP is responsible for water quality and licences discharges into watercourses. DEHP also plays a role in management of cumulative underground water impacts and an assessment role in the take of water where proposed projects may impact on environmental objectives.

System of water entitlements and water trading

Under the Water Act, all rights to use and control water in Queensland are vested in the state. A person wishing to take water must be authorised to do so under the Water Act (except for prescribed minor uses such as for stock and domestic purposes). This is generally either via a 'statutory authorisation' or a 'water entitlement'.

Three types of water entitlement exist in Queensland.

- Water allocations (unbundled from land tenure and fully tradable). A water allocation is an authority to take water that is separate from land and can be held and traded as personal property by non-landholders. They are registered as titles on the Queensland Water Allocations Register. They are established upon completion/amendment of a WRP and ROP where the conversion and nominal volume (share) of the total water available for consumptive purposes is specified. Water allocations can apply to both supplemented and unsupplemented water resources.
- Interim water allocations (IWA) (bundled with land tenure and partially tradable). An IWA is an entitlement to be supplied with a volumetric share of water by the operator of a water supply scheme. It exists only in supplemented supply schemes where a ROP is yet to be completed (and therefore the water modelling and assessment of available water has not yet been determined). The IWA is usually attached to land, although some entities (water supply scheme operators, local governments and water authorities) can hold IWAs without being landholders.

[5] National Water Commission, 2014, *Australian Environmental Water Management: 2014 Review,* p. 74. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0006/37248/AEMR-2014-2.pdf. Accessed 3 November 2014.

- Water licenses (bundled with land tenure and not tradable). An authority to take water and use it on specified land (the water may be used only on the land to which the licence is attached). Water licences are not tradeable, but may (when specified in the Queensland Water Regulations) be relocated from one parcel of land to another, subject to relocation rules and conditions. Water licences are not recorded on the Queensland Water Allocations Register.

Three types of water transactions are possible in Queensland.

- Water allocation transfer (water trading), which is the passing or sale of the legal title in a water allocation to another person and where a change of ownership is reflected on the Queensland Water Allocations Register.
- Leases of water allocations (which may extend for many years), which is the passing of consumptive/beneficial use of the nominal volume (share of water resource for a fixed period, but where the legal title remains with the original holder.
- Trading of seasonal water assignments, which is available for water allocations, IWAs and water licenses and which involves the temporary assignment of some or all of the water available under a water allocation, IWA or water licence for all or part of a water year to another person or another place of extraction.

Currently, only surface water can be permanently traded; however, significant progress has been made towards the conversion of groundwater licenses to tradable water allocations in the Burnett and Pioneer WRP areas. The November 2010 draft amendment to the Burnett ROP includes a provision to establish the first tradable groundwater allocations in Queensland. If finalised, the amendment will convert approximately 660 existing water entitlements to tradable water allocations.

Trading rules are included in the ROPs to ensure that trading activities do not adversely affect the reliability of water allocations and environmental flow objectives. SunWater and other licensed operators of water supply schemes have the authority to determine and enforce trading rules for the trading of seasonal assignments within the water supply scheme.

Trading is only possible between water supply schemes that are hydrologically connected. As most schemes in Queensland are not, there is limited inter-scheme trade. Unsupplemented water allocations can be traded within catchments, but trade between separate catchments is restricted. Where ROPs have not yet commenced, entitlements continue to be administered as licenses and IWAs and generally only change ownership when land is bought and sold. However, water under the licences and IWAs in those areas is still able to be seasonally assigned.

In 2012–13:

- 93,080 ML of supplemented water allocations was traded, 64% of which was medium priority
- 131,862 ML of unsupplemented water allocations was traded
- 2,300 ML of water allocations was leased, and
- 157,713 ML of seasonal water assignments was traded, 44% of which was supplemented.

The average price for medium-priority water allocation transfers was $1,965/ML.

The gross value of supplemented water allocation trades in Queensland during 2012–13 was estimated at $182.9 million, a 28% increase from $142.4 million in 2011–12.[6]

[6] National Water Commission, 2013, *Australian Water Markets Report 2012–13*, p. 56. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0003/35733/Contents-and-foreword.pdf. Accessed on 3 November 2014.

Policy objectives of the Bill

The stated policy objectives of the Bill are to:

- establish a new purpose for the whole Water Act that will encompass the broad nature of the Water Act's provisions to ensure it provides for the responsible and productive management, allocation and use of Queensland's water and riverine quarry resources
- establish a watercourse identification map to identify what is and is not a watercourse
- provide a new framework for management and allocation of water to deliver a significantly more efficient, flexible and responsive framework for water resource planning by:
    - providing for the development of statutory water plans as the primary catchment-based water management instrument
    - providing for the development of water entitlement notices to grant, amend, refuse, repeal or cancel entitlements (under certain situations) to implement a water plan
    - establishing a streamlined assessment and approval framework to facilitate major water infrastructure projects (including large-scale agricultural projects)
    - streamlining the framework for regulating the take and interference with water to reduce the regulatory burden
    - reforming the framework for water licensing
    - enabling the surrender of water allocations, and
    - making other changes to Chapter 2 such as minor amendments to align the streamlined frameworks
- establish a consistent framework for underground water rights for the resources sector and for the management of impacts on underground water due to resources sector activities through changes to:
    - the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*, and
    - expand the application of Chapter 3 of the Water Act to the mineral resources sector
- enact safety and health legislative provisions for the new overlapping tenure framework for Queensland's coal and coal seam gas industries
- broaden the categories of mandatory qualification for eligibility for appointment as the Commissioner for Mine Safety and Health
- support the transition of category 2 water authorities to other institutional forms and simplify the administrative requirements for both category 2 water authorities and river improvement trusts
- provide a pathway for water rights held under special agreement legislation to be transitioned into the Water Act framework to ensure consistency with the Water Act and provide clarity of access to water for all water users
- removing the reversal of the onus of proof under section 812A and 812B of the Water Act, and
- make other amendments to:
    - remove provisions of the Water Act relating to drainage and embankment areas
    - provide flexible 'fit for purpose' public notice requirements
    - provide for online fees and payment, and

- remove spent transitional provisions from the Water Act.[7]

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

Committee comment

At the outset, the committee commends the department on its program of consultation with affected stakeholders in the water, agriculture and resources sectors to discuss the Bill. The committee's process of inquiry has sought to draw upon the results of this consultation, particularly those conducted in partnership with agriculture peak bodies and landowners across the state, as well as to engage with other interested persons and community-based groups to examine this Bill in its detail.

In general, the committee considers that the approach set out in the Bill is reflective of continuous improvement, which is vital in the efficient and effective management of our finite water resource. This observation is particularly relevant to the sections associated with the new framework for water planning and allocation. The committee concurs with the view that the allocation and management of water needs to occur, notwithstanding some of the difficulties associated with data, and supports the Bill as a way forward on the understanding that efforts continue unabated to improve data availability to support evidence-based planning and decision-making. This is key to ensure that water reliability and quality exists to support our lives and our highest priorities for production and development in the state. This invariably means that competition may exist in parts of the state, for which this Bill should provide a transparent, statutory-based water planning and allocation framework to best manage and protect this resource.

The evidence presented to the committee through written submissions and hearings provides broad support for the Bill to progress. That said, some aspects of the Bill warrant further consideration to ensure that the balance of interests is set to optimise economic, social and environmental outcomes for present and future uses.

Recommendation 1

The committee recommends that the Bill be passed, with consideration of the further recommendations in this report.

[7] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, pp. 1-2.

3. Framework for management and allocation of water

Part 8 amends the Water Act giving effect to the outcomes of the strategic review of Chapters 2, 3 and 4 of the Act. The following presents a discussion of the key clauses and issues raised in submissions.

Key concepts in purpose and planning

Clause 58 of the Bill provides for the following long title:

> *An Act to provide for the responsible and productive management of water and the management of impacts on underground water, and for other purposes.*

Clause 59 replaces section 2 of the Water Act with a new section 2 outlining the purpose of the Water Act. This is in place of the existing purpose clause at section 10, which applied only to water planning and allocation within Chapter 2:

> *(1) The purpose of this chapter 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.*
>
> *(2) For subsection (1), sustainable management is management that—*
>
> *(a) allows for the allocation and use of water for the physical, economic and social wellbeing of the people of Queensland and Australia within limits that can be sustained indefinitely; and*
>
> *(b) protects the biological diversity and health of natural ecosystems; and*
>
> *(c) contributes to the following—*
>
> *(i) improving planning confidence of water users now and in the future regarding the availability and security of water entitlements;*
>
> *(ii) the economic development of Queensland in accordance with the principles of ecologically sustainable development;*
>
> *(iii) maintaining or improving the quality of naturally occurring water and other resources that benefit the natural resources of the State;*
>
> *(iv) protecting water, watercourses, lakes, springs, aquifers, natural ecosystems and other resources from degradation and, if practicable, reversing degradation that has occurred;*
>
> *(v) recognising the interests of Aboriginal people and Torres Strait Islanders and their connection with the landscape in water planning;*
>
> *(vi) providing for the fair, orderly and efficient allocation of water to meet community needs;*
>
> *(vii) increasing community understanding of the need to use and manage water in a sustainable and cost efficient way;*
>
> *(viii) encouraging the community to take an active part in planning the allocation and management of water;*
>
> *(ix) integrating, as far as practicable, the administration of this Act and other legislation dealing with natural resources.*

New section 2 states the four main purposes of the Water Act. Whilst each main purpose is intended to guide the entire Act, each can be viewed as particularly relevant to certain chapters.[8]

[8] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 53.

2 Purposes of Act and their achievement

(1) The main purposes of this Act are to provide a framework for the following—

(a) the responsible and productive management of Queensland's water resources and quarry material to optimise economic, social and environmental outcomes;

(b) the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions;

(c) the management of impacts on underground water caused by the exercise of underground water rights by the resource sector;

(d) the effective operation of water authorities.

(2) For subsection (1)(a), responsible and productive management is management that—

(a) incorporates consideration of long-term and short-term economic, social and environmental considerations; and

(b) allows for the allocation and use of water resources and quarry material for the economic, physical and social wellbeing of the people of Queensland, within limits that can be sustained indefinitely; and

(c) sustains the health of ecosystems, water quality and water-dependent ecological processes and biological diversity associated with catchments, watercourses, lakes, springs, aquifers and other natural systems; and

(d) enables water resources and quarry material to be obtained through fair, transparent and orderly processes to support the economic development of Queensland; and

(e) builds confidence regarding the availability, security and value of water entitlements and other authorisations for those investing in developing the water resource; and

(f) promotes the efficient use of water through—

(i) the establishment and operation of water markets; or

(ii) the initial allocation of water; or

(iii) the regulation of water use if there is a risk of land or water degradation; and

(g) facilitates the community taking an active part in planning for the management and allocation of water; and

(h) recognises the interests of Aboriginal and Torres Strait Islander peoples and their connection with water resources.

Stakeholders broadly supported the introduction of an overarching purpose applying to the whole Water Act and the recognition given to other important functions, including meeting water supply and security objectives, managing underground water impacts and oversight of water authorities.

AgForce, Queensland Farmers Federation (QFF), Cotton Australia and Canegrowers agreed that the new purpose clause addressed the critical matters relevant to water planning and management.

> *QFF has reviewed this definition and considers that it adequately covers the key issues which water planning must address. It is noted that the promotion of the efficient use of water refers specifically to efficient use of water through markets, initial allocation of water or the regulation of water if there is a risk of land or water degradation. This is more appropriate than the broader definition in the current Act.*[9]

[9] QFF, *Submission No. 44*, p. 44.

> *Environmental sustainability is a key principle in ensuring that water supplies are available for use by the current and future generations (a 'balancing' across time) and this is identified in s2(2a) in relation to the definition of responsible and productive management. The definition adequately includes the critical issues requiring consideration under water planning processes. AgForce also welcomes the clarification in the Bill that considerations around the efficient use of water are to be delivered through the operation of water markets, in the initial allocation of water, and regulation only where there is a risk of land or water degradation.*[10]

Ecologically sustainable development

However, submitters from legal, environmental and community-based groups raised concerns that existing references to ecologically sustainable development have been omitted from the new purpose clause, and without evidence for the need for this reform.[11]

The National Water Commission, in its 2014 assessment of national reform, stated:

> *[w]ater reform in Australia has been driven by the value of water as an enabler of economic activity and by the environmental, social and economic costs of exceeding resource limits.*[12]

Coupled with other proposed changes in the Bill and comment about the scope of consultation, the removal of 'ecologically sustainable development' is viewed as a shift in policy approach or emphasis that responds primarily to economic drivers and moves away from national and international commitments around sustainable management.

> *Gecko finds it deeply regrettable that the new purpose omits some crucial aspects of the existing Act, namely the clause "(ii) the economic development of Queensland in accordance with the principles of ecologically sustainable development". Whereas the Water Act 2000 details these principles to guide responsible water use, the Bill has abandoned this approach and simply promotes an exploitive use of our water resources. As with the draft Planning and Development Act 2014 to replace the Sustainable Planning Act 2009, ESD principles are explicitly removed and replaced with guidelines that reduce environmental protection.....*[13]

> *As the primary legislative instrument for regulation of the use and development of water, we feel it is very important for the Water Act to retain a strong focus on sustainability and ecologically sustainable development. This would ensure that the Water Act maintains clear ties with ecologically sustainable development through application of the principles of the precautionary approach, intergenerational equity and biological diversity. It is our submission that the reference to ecologically sustainable development in the purpose of the Water Act should be reinstated, together with its corresponding meaning.*[14]

> *We understand that the current Government wants to encourage and stimulate the resource industries in our State, but the proposed change in the legislative purpose in the Bill is of significant concern. The "purpose" of an Act governs the court's approach to its interpretation. It is therefore an important insight into understanding why these amendments are being made and the extent to which court interpretation may assist in protecting existing rights and liberties or see to the balancing of competing interests (and consequently how extensive the impacts might become). The previous emphasis, such as in the current Sections 10 and 11 had a completely different emphasis and relied on widely*

[10] AgForce, *Submission No. 45*, p. 45.
[11] WWF, *Submission No. 38*, p. 1.
[12] National Water Commission, *Australia's water blueprint: national reform assessment 2014*, p. 2. Available at http://www.nwc.gov.au/publications/topic/assessments/australias-water-blueprint-national-reform-assessment-2014. Accessed 3 November 2014.
[13] GECKO, *Submission No. 15*, p. 1.
[14] Ferrier & Co., *Submission No. 11*, p. 2.

> *understood concepts such as "ecologically sustainable development", the "precautionary principle" and "intergenerational equity". Those considerations are made largely redundant and have all but disappeared. Section 2 now introduces and places complete emphasis on "responsible and productive management" and places emphasis on the "efficient use of water" The need for, and relevance of, the previous concepts of "ecologically sustainable development" and "intergenerational equity" are concepts well understood by rural people, because of the extent of dependence we have had over many years for direct physical and financial survival.*[15]
>
> *Queensland Conservation Council (QCC) opposes the removal of Ecologically Sustainable Development Principles (ESD) from the Water Act. The removal of these principles contravenes Queensland's commitments to incorporate ESD principles in all planning and resource management decision making. It makes the Water Act inconsistent with other national and other jurisdictional water planning. It also contravenes commitments made to UNESCO that future development in the [Great Barrier Reef] Coastal zone will be ecologically sustainable.*[16]

However, other submitters considered that sustainability was still accounted for.

Mr Warner, SEQ Catchments advised:

> *…we feel that through that consultation process the balance still seems to be there—that is, that while environmental sustainability is not as clear in the objectives of the act it is still accounted for within the act.*[17]

DNRM advised that:

> *The responsible and productive management of water resources and quarry material is one of the main purposes, applying to the entire Act. Responsible and productive management is defined in the Act and incorporates economic, social and environmental considerations; whilst providing fair, transparent and orderly processes; and facilitating community involvement.* [18]

The objective of the Intergovernmental Agreement on a National Water Initiative refers to a system of management that …'optimises economic, social and environmental outcomes…' and further, like the Bill, to achieving outcomes in a manner that is environmentally sustainable within the subsequent detail of the objective (as well as the preamble in the Agreement). In the Agreement this includes '…statutory provision for environmental and other public benefit outcomes, and improved environmental management practices', amongst other things.[19]

In other jurisdictions, there is explicit reference to 'ecologically sustainable development' in the objects of the *Water Management Act 2000 (*NSW) and *Natural Resources Management Act 2004 (SA)*. In the *Water Act 198*9 (Vic) and *Rights in Water and Irrigation Act 1914 (WA)*, the purposes or objects refer to 'sustainable use'.

In their submission to the 2014 Triennial Assessment of the National Water Initiative, researchers at the University of Queensland suggest that more guidance, not less, is required with respect to providing for environmental outcomes.

> *While markets can provide a transparent governance mechanism for allocating water in highly contested systems, there is still conjecture as to whether, in their current form, water markets will effectively allocate water to the highest value while taking into account*

[15] Basin Sustainability Alliance, *Submission No. 26*, p. 2.
[16] QCC, *Submission No. 18*, p. 1.
[17] Warner, S., 2014, *Draft hearing transcript*, 29 October, p. 11.
[18] DNRM, 2014, *Correspondence*, 24 October, p. 84.
[19] Australian Government, 2004, *Intergovernmental Agreement on a National Water Initiative*, pp. 1-4.

> *environmental and social externalities (Byrnes et al., 2006; Bell and Quiggin, 2008; Crase et al., 2008, Sibly, 2008). There is also evidence that current market-based allocation mechanisms have not maintained water extraction demands within the sustainable consumptive pool (Bell and Quiggin, 2008)*
>
> *…..*
>
> *In the interests of delivering on the commitments made in the National Water Initiative, it will be important to redress this imbalance towards economic reform actions in the next 10 years of the Initiative. If the ultimate impact of the national reform agenda – the management of Australia's water resources to meet economic, environmental and social outcomes – is to be realized, greater guidance will be necessary to implement a wide suite of policy instruments to progress reform...in the environmental and social elements of the National Water Initiative package.*[20]

Water quality

Another change put forward through this new purpose is the reference to water quality. Presently in the Water Act, water quality is included within the definition of sustainable management in section 10(2)(c)(iii) as:

> *maintaining or improving the quality of naturally occurring water and other resources that benefit the natural resources of the State.*

In the Bill, it is retained in the definition of the new term responsible and productive management in section (2)(2)(c), but linked with other concepts as follows:

> *sustains the health of ecosystems, water quality and water-dependent ecological processes and biological diversity associated with catchments, watercourses, lakes, springs, aquifers and other natural systems.*

In later provisions in the Bill in Part 2 Water planning, water quality is treated variably in so far as it is included in section 38 Information for planning alongside the concept of volume of water rather than ecosystems, which is a subsequent point. However, unlike volume and environmental outcomes, water quality is not included in section 43 Contents of a water plan.

The National Water Commission has recommended that water quality be incorporated into water planning as part of contemporary water management to achieve more resilient environmental and economic outcomes, and has acknowledged that the National Water Initiative is deficit in doing so.[21]

Submitters also argued that water planning and management must have water quality as an objective and accordingly that water quality should be reflected in the purpose clause.

> *The provision and management of water resources should ensure ecosystem connectivity, maintenance or improvement in water quality, and maintenance of biodiversity for the health of the Great Barrier Reef. Greater emphasis needs to be placed on sustainable use and management of water resources and aquatic ecosystem health (not just environmental flows but also water quality required to maintain the desired environmental values), as these values underpin the ecologically sustainable future of many of the economic and industry interests.*[22]

[20] Bettini,Y. and Head, B., 2014, Submissioni to the 2014 Triennal Assessment of the National Water Initiative, pp. 2-3. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0006/35628/Yvette-Bettini-and-Brian-Head-University-of-Queensland.pdf. Accessed 3 November 2014.

[21] National Water Commission, *Australia's water blueprint: national reform assessment 2014*, p. 132. Available at http://www.nwc.gov.au/publications/topic/assessments/australias-water-blueprint-national-reform-assessment-2014. Accessed 3 November 2014.

[22] GBRMPA, *Submission No. 23*, p. 1.

> *…water quality does not appear to be a major priority of the act compared to issues to do with quantity and availability. So we are suggesting that there probably should be some increase in the focus within the act on achieving water quality, whether that be through the process of the chief executive officer or others making decisions in relation to activities in the stream and making sure that water quality is a priority issue that is considered when giving approvals right the way through to, in the water planning context, making sure that water quality continues to be a significant issue taken into consideration when doing water planning.*[23]

DNRM advised:

> *The existing framework for water resource plans is intentionally focused on managing water quantity. This is primarily because there are numerous factors that contribute to water quality which are outside the scope of a water plan. These plans only deal with water quality issues that directly result from managing water quantity such as release rates from storages (which have the potential to cause excessive turbidity in a watercourse). The proposed reforms continue this approach with the new water plans (and associated implementation instruments) that are proposed to replace water resource plans. However, both the existing and proposed water planning framework include provisions for the preparation of water use plans that are intended to deal with risks of land and water degradation, including dealing with water quality issues.*
>
> *….*
>
> *The water planning framework is supported by water monitoring activities includ(ing) water quality monitoring,…* [24]

Committee comment

The committee notes that divergent views exist on the importance of retaining the express reference to ecologically sustainable development, as part of an overarching purpose, and the different approaches adopted in different jurisdictions. On balance, the committee is satisfied that the Bill, as drafted, sufficiently reflects the applied principles of ecologically sustainable development. This includes references to long-term and short-term outlooks, 'within limits that can be sustained indefinitely' and 'sustain(ing) the health of ecosystems, water quality and water-dependent ecological processes and biological diversity' in the definition of responsible and productive management, as well as in the requirements for the content a water plan in a subsequent section.

The committee considers that the treatment of water quality within the Bill, in its reference within the purpose and information for planning in the Water Act, and in the RIT Act is sufficient to provide necessary authority for activity to sustain the quality of naturally occurring water.

The committee also notes that the definition of responsible and productive management retains recognition of the interests of Aboriginal and Torres Strait Islander peoples in water resources.

Watercourse mapping

Clauses 52–56 amend the *Vegetation Management Act 1999* to clarify the meaning of the vegetation management watercourse and drainage feature map, following the introduction of the new watercourse identification mapping, and other definitions under the Water Act.

Clauses 63 – 64 give effect to the introduction of watercourse identification mapping by amending the meaning of watercourse at section 5 of the Act, replacing the reference to outer bank of a watercourse with the lateral limit of a watercourse, and introducing provisions at new section 5AA to

[23] Warner, S., 2014, *Draft hearing transcript*, 29 October, p. 10.
[24] DNRM, 2014, *Correspondence*, 24 October, p. 5.

allow the chief executive to prepare a watercourse identification map showing the extent of watercourses, designated watercourses, drainage features, lakes and springs as defined by the Water Act. The Explanatory Notes advise that the use of the new mapping system negates the need for the Act and regulations to describe and declare upstream and downstream limits for the purposes of identifying regulated water courses.[25]

Australian Petroleum Production and Exploration Association (APPEA) submitted:

> *There is no express provision for industry to challenge the mapping of a watercourse and have an area mapped as a watercourse removed from the mapping.*
>
> *Incorrect/inaccurate mapping of spatial restrictions relating to other government policies has previously been a significant issue for the resources industry. We submit that it would be prudent for government to explicitly enable review and correction of any map that imposes restriction zones.*[26]

SEQ Catchments was also concerned to ensure watercourse mapping appropriately defined watercourses, smaller tributaries and intersecting drainage features due to the potential for downstream impacts to flow and water quality to escalate in built up and urban areas:

> *While SEQ Catchments understand the desire to implement a planning system based on clarity regarding the differentiation between various waterway features through a watercourse identification map it has several concerns regarding the application of the process.*
>
> *Within the South East Queensland region changes to the drainage features of the upper catchment can have potentially large impacts on downstream water quality in tributaries and water catchments with subsequent significant economic impacts. As the explanatory notes to the Bill indicate it is often difficult to identify where the boundary between a drainage feature and a watercourse lies. As such the mapping process and identified differentiation between a drainage feature and watercourse feature will be critical to water quality outcomes.*[27]

DNRM responded:

> *The proposed watercourse identification mapping provisions will rationalise and make publically available the currently-existing mechanisms used by the department of Natural Resources and Mines to record the extent of watercourse and drainage feature as defined under the Water Act 2000. This will provide clarity for water users about the regulatory framework that applies for activities such as taking or interfering with water, extracting riverine quarry material and excavation / fill in the riverine environment.*
>
> *Mapping of watercourse and drainage feature will be undertaken in consultation with affected stakeholders.*
>
> *There will be opportunities for [stakeholders] to be involved in the process for mapping of watercourse and drainage feature.*[28]

Committee comment

The committee supports the proposed changes to the preparation of watercourse identification maps, in the shift to a more contemporary approach.

[25] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 12.
[26] APPEA, *Submission No. 22*, p. 2.
[27] SEQ Catchments, *Submission No. 32*, p. 3.
[28] DNRM, 2014, *Correspondence*, 24 October, pp. 92-93.

That said, the committee notes the importance of confidence resulting from the new method, particularly given the newly established relationship between the mapping and regulatory framework. In submissions to the committee, a number of stakeholders expressed interest in being involved in the watercourse identification mapping process. The committee trusts that that this will occur to the greatest extent possible, as engagement of stakeholders such as riparian landowners provides the best opportunity for the mapping to reflect local knowledge of the state's diverse water systems and ensure that any declaration or redefinition does not reduce any necessary protection of smaller waterways, run-off areas and management of watercourse vegetation.

One of the challenges to water planning is the highly variable rainfall across the state, and its potential to impact the riverine environment, both following significant natural events and over time. While the Water Act provides the operational capacity for restrictions during emergencies and water shortages, it is desirable that watercourse identification mapping also exploit the technical capacity available to provide up-to-date representation of the state's water systems.

Recommendation 2

The Committee recommends that the department consider an amendment to the Bill to include circumstances and events that are likely to impact the limits and features of a watercourse and riverine environment, which would trigger a review of the watercourse identification mapping.

Statutory water rights – meaning of domestic purposes

Clause 65 inserts a new section 6 into the Water Act to define 'domestic purposes'. The definition for domestic purposes in the existing Water Act was that it included 'irrigating a garden, not exceeding 0.25ha, being a garden cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden'.

The new definition includes the following changes:

- increasing the area of garden able to be watered from 0.25ha to 0.5ha
- water plans to have the ability to define (including a volume) 'domestic purposes', which supersedes the Act's definition
- the reference to 'not for the sale, barter or exchange of goods produced in the garden' has been removed.

Some stakeholders raised concern that the proposed new definition for domestic purposes of the Water Act may not result in responsible use of water.

For example Mr Lee, landowner, submitted:

> *Given that 0.5 hectares is an exceedingly large garden for domestic purposes and the removal of the restriction on selling goods produced in the 'garden', it would appear the amendment to this section is to allow riparian owners to develop market gardens or to extend existing irrigated areas, but without any restrictions on how and when the water is taken. For example, waterholes can be completely drained and flows in the watercourse can be reduced, impacting on irrigators with authorisations to take water, graziers relying on the watercourse for stock use and water-dependent native flora and fauna. In some cases, there could be impacts on urban water supply for regional towns. In large catchments with large riparian properties it is unlikely to be an issue; however, in small, heavily developed catchments with relatively small riparian properties (therefore, a large number of potential*

'domestic' water users), such as the Granite Belt or Gowrie and Oakey creeks, there could be significant impacts.[29]

Committee comment

The committee remains unclear from the evidence presented through the inquiry as to imperative for the proposed amendment to the understanding of domestic water use. The committee notes the concern raised by some stakeholders and agrees that it is important that domestic take does not compromise volumetric water entitlements.

The committee notes that capacity exists under the Water Act for restricting use of water during water shortages, however is concerned that domestic water management may receive little attention outside of these times.

The committee further considered the potential for cumulative impact in relation to the proposed deregulation of watercourses, and has made recommendations that will go in some part towards addressing the concern raised here.

Clause 68 inserts a new Chapter 2 dealing with the management and allocation of water. There are four reform areas highlighted in submissions as being of significance and which have been considered by the committee. These matters are detailed in the following discussion. The remaining amendments are largely of an administrative and/or streamlining nature such that stakeholders did not identify any adverse or consequential impacts and as such have not been discussed in this report.

Water Resource Planning

The reform proposes a transformation of the current WRP and ROP framework to a simpler suite of regulatory plans and processes, by consolidating and streamlining the provisions of the existing 23 WRPs and ROPs.

The water planning outcomes and key management policies and strategies for an area will be presented in a streamlined statutory water plan. Operational matters will be contained in either a water management protocol (for unsupplemented water) or an operations manual (supplemented water).

The processes to amend or establish the new water planning instruments has also been amended with the intent to improve water planning efficiency and reduce the time taken to undertake planning activities. Water plans will continue to be subject to broad public consultation when making and significantly amending a plan, and will require Ministerial and Governor-in-Council approval.

Water management protocols may be made and/or amended by the chief executive in consultation with persons affected by the protocol; a water operations manual may be developed by a resource operations licence or distribution operations licence holder (e.g. SunWater) in consultation with affected persons and be submitted to the chief executive for approval.

All stakeholders noted the critical importance of maintaining an effective planning and management framework for water in Queensland. Stakeholders were generally satisfied with the approach and intent of the new framework.

For example, Canegrowers noted:

The changes to replace resource operations plans should provide the flexibility needed to respond to plan implementation issues in different catchments.

The proposed changes will save time and it is understood that the conditions of existing resource operations plans will continue to apply through transition provisions in the Bill.[30]

[29] Lee, J., *Submission No. 9*, p. 1.

AgForce noted that the timing of the reform was appropriate given the cumulative progress in water planning across catchments:

> *Given that first generation water planning processes have been undertaken in most surface water catchments across the state, the Bill seeks to now introduce more flexibility in the future reviewing of those water plans...* [31]

There were, however, some concerns raised regarding the removal of the requirement to prepare a statement of proposals, and the circumstances where the Minister's discretion to undertake preliminary public consultation processes may apply.

For example, Gecko, Environmental Defenders Office of Queensland (EDOQ) and WWF noted with concern that early consultation with the public is not a requirement in the initial preparation of a water plan and it is left to the discretion of the Minister whether public consultation on the proposal is required:

> *Gecko is concerned that public views, expertise and information about on-ground factors should be included in early planning stages.*[32]

AgForce and QFF, whilst comfortable with the amendments, noted the importance of and the circumstances where preliminary consultation on a water plan amendments would be expected:

> *A minimum process for public consultation removes the requirements for the preparation of a statement of proposals and submissions on the proposals. The Minister may give notice of the intention to prepare a water plan (Notice of Proposal to Prepare).*
>
> *If there are significant issues to address in a plan review it will be important that this Notice is released so that interested parties can make submissions on what they consider the preparation of the water plan should address. Also it would be important that key stakeholders were informed about investigations and monitoring that will be considered for the plan review.*[33]
>
> *In developing and reviewing water plans it is vital that the community and existing primary producer water users are consulted effectively. This is proposed to be achieved through a non-mandatory preliminary public consultation process initiated by the Minister (new s44) but more clearly via the requirement to publish a draft water plan and take submissions (new s46) for at least 30 business days, then consider those submissions and report on how raised issues were addressed…These consultation arrangements generally provide adequate opportunity for landholder comment on any potential impacts to the reliability and security of their allocation and other matters,… However, if significant issues have been identified in a water plan area, a more intensive process of key stakeholder and community consultation, including activating the preliminary consultation (new s44), should be undertaken so that these issues can be fully characterised and addressed.*[34]

DNRM commented in regards to consultation on water plans:

> *The process for developing a water plan continues to provide for community consultation and a formal submission process. As with the current framework, where the development or amendment of a water plan is likely to be contentious or addresses parts of the State that have not previously been through a planning process, the Minister has discretion to notify the affected communities and undertake preliminary consultation on the proposal to prepare a plan.*

[30] Canegrowers, *Submission No. 43*, p. 2.
[31] AgForce, *Submission No. 45*, p. 2.
[32] Gecko, *Submission No. 15*, p. 2.
[33] QFF, *Submission No. 44*, p. 4.
[34] AgForce, *Submission No. 45*, pp. 2-3.

> *As provided in the Water Act currently, prior to the making of a water plan a draft plan must be published for public consultation. Under the Bill, the draft plan must be accompanied by a statement of the intent and effect of the plan. The current prescribed minimum submission period of 30 business days is retained. Submissions received on the draft plan must be considered in finalising the plan.*
>
> *Once the water plan is approved a report will be released stating the considerations which were made in finalising the water plan including how submissions were dealt with.*[35]

Whilst SunWater supported the framework placing responsibility for operations manuals with the scheme operators, they expressed concern that additional costs associated with consultation and planning may need to be passed onto water users if there was an expectation that such activities went beyond their current ambit:

> *SunWater sees the benefits of the proposed 'operations manual' approach, whereby the ROL holder (such as SunWater) has the flexibility to prepare operations manuals to meet requirements in the water plan. However, it should be noted that the Queensland Competition Authority (QCA), the economic regulator of SunWater's costs and water prices for irrigation customers, will need evidence that the costs incurred by SunWater in preparing and amending operations manuals are both 'prudent and efficient'. SunWater believes that more detail is needed in regard to the requirements for adequate consultation with affected stakeholders.*
>
> *While the explanatory notes for section 198 accompanying the Bill do provide further information on what constitutes 'adequate consultation', SunWater suggests that some examples could be included e.g. one example which indicates a small scale consultation process and a second example outlining where a more detailed consultation is required.*[36]

In response to a question from the Member for Thuringowa, DNRM confirmed:

> *I think your assessment, [that it is up to them to choose and you cannot have everyone like that explicitly put into the Bill], is correct. If a proposal was significantly going to affect an existing ROL holder or a scheme operator like SunWater, naturally you would undertake such consultation, but equally there would be many other entities that would be interested and would reasonably be consulted as part of that process. Certainly they would need to be engaged as part of a detailed EIS process that led from any issue of a water development option in that case.*[37]

Committee comment

The committee notes that the changes proposed in this Bill represent the next stage in water planning, which builds upon advances in catchment knowledge and science since the initial planning framework was introduced in 2000.

The committee notes that the majority of catchments have had water resource plans and resource operations plan in place for some years. Timely review of these plans will facilitate transition to and benefits realisation of this new framework.

The committee is satisfied that the new process retains necessary opportunities for consultation with all relevant water interests. This includes broad consultation in the development of water plans, and targeted consultation with current and potential water users in the development of operational matters.

[35] DNRM, 2014, *Correspondence*, 24 October, p. 146.
[36] SunWater, *Submission No. 24*, p. 2.
[37] Hinrichsen, L., 2014, *Draft hearing transcript*, 29 October, p. 4.

The committee acknowledges that the water planning framework includes a number of new elements, and trusts that the department will continue to work through any implementation issues with catchment-based authorities and stakeholders.

Water Entitlement Notice

The Bill provides for fast tracked conversion of water licences to water allocations. This is achieved through two key changes.

Firstly, it is proposed to decouple the granting and amending of water allocations from the ROP process through the introduction of a new water entitlement notice (WEN).

The Explanatory Notes state that:

> *Water entitlement notices replace the conversion, granting and amending schedules in resource operations plans prepared under the existing framework. This notice will be able to be used to convert, grant and amend as well as refuse and cancel or repeal (in certain situations) entitlements.*[38]

Under this framework, water users affected by the water entitlement notice will be able to submit on the notice before it is finalised. The Bill also requires the chief executive to establish a referral panel to review the draft WEN and the submissions and make recommendations to the chief executive.

Secondly, the Bill amends the definition for water allocation security objective. The current definition in the Water Act is:

> ***water allocation security objective*** *means an objective that may be expressed as a performance indicator and is stated in a water resource plan for the protection of the probability of being able to obtain water in accordance with a water allocation.*

The amended definition in the Bill is proposed as follows:

> ***water allocation security objective*** *means an objective stated in a water plan to protect the share of water available to the holder of a water allocation.*

The Decision Regulatory Impact Statement (RIS) argues that *'the provision of flexibility in the specification of water allocation security objectives will allow principle- and rule-based approaches to the creation of water allocations and trading rules in areas where insufficient data exists to develop comprehensive hydrological models. Principle- and rule-based conversion processes would apply to areas where adequate information does not exist to provide confidence in statistically-based modelling approaches.'*[39]

This, combined with the introduction of a streamlined process for WEN (thereby avoiding the lengthy process of amending the WRP and ROP), is intended to fast track the conversion of water licences to water allocations necessary to facilitate expansion of water trading market in Queensland.

Stakeholders were generally comfortable with the intent of the proposed WEN as a separate instrument and process for the conversion of water licences and allocation of water entitlements. However, stakeholders expressed a number practical implementation concerns relating to the possible impacts on water security and supply, particularly arising from the amended definition for water allocation security objective.

WSQ, Dr Baldwin and numerous others argued that there was significant risk to existing allocation holders, competing industries, environmental flows and water quality that may arise from the allocation of water in the absence of adequate understanding of available water resources.

[38] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 13.
[39] DNRM, 2014, *Decision Regulatory Impact Statement: Strategic Review of the Water Act 2000*, p. 16.

> *Given the lack of robust hydrological models and long-term water resource data for many parts of the State – including areas like Queensland's Gulf Country that have already been identified as targets for greenfield agricultural development - claims in the Explanatory Notes that converting water licences to tradable water allocations will not compromise water entitlement holders' existing security or cause environmental impacts cannot be verified or substantiated.*[40]

> *Any allocation of water needs to be supported by adequate research to thoroughly understand the potential impacts on ecosystems and existing water entitlement holders. Tradable water rights must be based on a guarantee of long-term sustainable use… No water licences should be converted to tradeable water allocations without sufficient baseline data and hydrological modelling to provide community certainty that water entitlements and natural values will not be compromised.* [41]

> *EDOQ submit that it is essential that any conversion does not take place without having recourse to hydrological modelling, which is needed to analyse the impacts of these conversions on the environment or the security of existing un-supplemented water allocation holders. The Bill however, does not appear to require hydrological modelling as a precondition to conversion. Nor does it allow merits appeals to the Land Court on the Water Entitlement Notice decision.*[42]

QFF acknowledged that need for alternative options to facilitate conversion of licences to water allocations in areas where the information available is not adequate, but noted that:

> *The security of the converted water entitlement must be adequately defined and there must be a transparent conversion process which keeps all parties involved well informed.*[43]

AgForce raised similar concerns, noting the following:

> *…As some catchments lack robust data for modelling, the Bill proposes to alter the definition of a WASO (Clause 202) to be based on protecting the share of water that is available to the holder of an allocation from within the consumptive pool. It is important during this redefinition process that the security, certainty and reliability of existing water allocations are not adversely affected by this more flexible approach. As such, the process of conversion of non-volumetric licenses to volumetric allocations should be done on a catchment by catchment basis using an equitable and fully consultative approach to ensure negative impacts on existing farming business models are avoided or minimised.*[44]

Submitters also expressed significant concern in relation to WEN in relation to: the absence of review or appeal rights for affected parties; the restricted definition of who is regarded as an "affected person" under the Bill which they believed may exclude other water entitlement holders in the catchment, industries such as the fishing industry, and other groups with an interest in the environmental flows and water quality and who may be impacted by water allocation and trading; and the extent to which assumption, allocative decisions and trading information is transparent and available to all stakeholders to allow full consideration of impacts.

Accordingly, stakeholders including QFF, AgForce and WSQ argued the need for more adequate monitoring and reporting provisions associated with the allocation of water entitlements:

> *Appropriate monitoring and management controls must be put in place by the department to avoid 'creep' in usage and the eventual problem of having to address a potential significant overuse problem. The need for monitoring and management will be particularly*

[40] WSQ, *Submission No. 25*, p. 5.
[41] Baldwin, C., *Submission No. 10*, p. 2.
[42] EDOQ, *Submission No. 40*, p. 8.
[43] QFF, *Submission No. 44*, p. 9.
[44] AgForce, *Submission No. 45*, pp. 6-7.

> *important if licence conversion areas could affect downstream areas where intense irrigation activity is closely managed e.g. upper catchments of irrigation schemes.*[45]
>
> *In addition, the Bill fails to contain any provisions to ensure that appropriate monitoring, reporting, compliance or management measures will be introduced to ensure that any issues or impacts arising from converting water licences to tradeable water allocations will be properly managed... The Bill needs to clearly outline the monitoring, reporting and compliance frameworks that will be put in place to ensure early warning and proper management of issues and impacts arising from trading.*[46]

The National Water Commission has also highlighted compliance and enforcement *'*as *an important tool in providing protection and instilling a sense of confidence and certainty for water users and entitlement holders'.*[47]

Related to this also, the Bill includes a new provision to allow for water entitlement holders to surrender their water allocations in certain circumstances. This provision applies equally to all catchments and water resources; though it raises a number of operational issues for supplemented water systems that are not an issue for unsupplemented systems.

Specifically, there is concern that, due to the regulation of supplemented water systems which requires full recovery of network costs through regulated pricing, the potential withdrawal of entitlement holders from a scheme may increase overall costs and impact on reliability of flow/supply for other entitlement holders within the catchment area.

As noted by Canegrowers:

> *Implementation of proposals for surrender of water allocations must be carefully managed where it is possible that significant numbers of customers could seek to surrender their allocations particularly where opportunities to trade water are very limited. Similar issues may arise with existing provisions regarding the cancellation and forfeiture of allocations in schemes.*[48]

DNRM advised:

> *DNRM recognise that the surrender and cancellation of a water allocation, while necessary under certain circumstances, potentially can have an impact on the viability of a water supply scheme. For this reason, cancellation of a water allocation can only occur where a water allocation has been surrendered to the chief executive. Surrender of a water allocation is conditional on the consent of the water supply scheme operators, that is the holder of a resource operations licence or distribution operations licence.*[49]

Committee comment

The committee considers that the proposed decoupling of water allocation from water planning processes, through the introduction of a water entitlement notice, has merit as a discrete instrument that can be used to support a simpler process of local allocation and trading.

Separate to administrative improvements advanced through the introduction of the water entitlement notice, the committee considers that the security of the converted water entitlement is paramount. The committee accepts that data certainty has, in part, restricted the full conversion of water licences to allocations and that the proposed adoption of rules-based principles provides an

[45] QFF, *Submission No. 44*, p. 10.
[46] WSQ, *Submission No. 25*, p. 5.
[47] National Water Commission, 2014, *Australia's water blueprint: national reform assessment 2014*, p. 86. Available at http://www.nwc.gov.au/publications/topic/assessments/australias-water-blueprint-national-reform-assessment-2014. Accessed 3 November 2014.
[48] Canegrowers, *Submission No. 43*, p. 2.
[49] DNRM, 2014, *Correspondence*, 24 October, pp. 110-111.

alternative method for moving forward. However, stakeholders questioned whether the priority is to fast track conversions, at greater risk to maintaining market integrity and security and sustainability of allocations.

The committee accepts concerns raised by stakeholders with respect to the amendments that, in some circumstances, may allow for water to be allocated without detailed hydrological modelling and cautions against the issuing of water allocations where a lack of robust data creates uncertainty. Moreover, the committee considers that there is risk and liability to consider in the event that defined water assets are not sustainable and are devalued in the water market.

Point of clarification

The committee invites the Minister to comment on the nature of issues associated with the volumetric security and sustainability of rules-based water allocations, and implications for water trading under the proposed framework.

Water Development Option

The Bill introduces new provisions under the Water Act to help facilitate large-scale water related development projects. This is delivered in two parts.

Firstly, the Bill provides the ability for the government to grant a 'water development option' to the proponent of a declared 'major water infrastructure project', which effectively provides an upfront commitment of access to water for the project, but only where that project meets certain conditions.

The Explanatory Notes describe the benefit of the water development option as follows:

> *A water development option would provide the project proponent with assurance and exclusivity over future access to water resources while assessments are being undertaken.*[50]

The Bill requires that an applicant provide a pre-feasibility assessment and that the chief executive, in deciding whether to grant the water development option to the applicant, must consider matters including the availability of alternative water supplies, other commitments or future demands for that water, and whether significant impacts on the water resource and water users can be mitigated.

Secondly, the Bill provides for a streamlined assessment and approvals process for the granting of water entitlements to water development option holders. New provisions in the Bill will allow the Environmental Impact Assessment (EIA) to inform Ministerial decisions to amend the water plan to reserve unallocated water for the purpose intended by the major project. This would negate the need to undertake the full/regular water plan amendment process, which involves publishing a draft/amended water plan and inviting public submissions. A 'short form plan amendment process' would instead be used (refer new section 51(2) that explains that the Minister may amend a water plan without standard consultation provisions applying; section 68(3)-(4) outlines that the chief executive may amend a water management protocol and publish a statement of changes following the amendment).

The Bill will also allow the EIA to inform the chief executive's decisions to grant a water entitlement to a water development option holder, with the volume and conditions informed by the outcomes of the EIA.

The Explanatory Notes explain the benefit of this approach as follows:

> *Allowing the environmental impact assessment to inform the chief executive in deciding to grant a water entitlement avoids overlapping work between the two processes such as*

[50] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 14.

> *assessing the compliance of the water development proposal with statutory water plan outcomes and measures.*[51]

The Explanatory Notes highlight the conditions which must be met for the execution of the water development option:

> *Note that the short form process for amending a planning instrument and granting a water entitlement would only be used where the environmental impact assessment has demonstrated that there is sufficient water to support the project, the volume of water required has taken into account the most efficient use of the resource, any adverse impacts on existing water users or the environment are adequately mitigated, and that there has been sufficient opportunity for community consultation.*[52]

The introduction of a water development option and the short form process for amending water plans and granting water entitlement was one of the more contentious elements in the Bill, attracting comment from a large majority of submitters. The key objection to these amendments arises from what stakeholders perceive to be a reversal of the standard assessment and approval process and the potential implications for competing water interests where a project is provided a guarantee of water rights prior to impact assessment and a public interest test.

As noted by the Great Barrier Reef Marine Park Authority (GBRMPA):

> *Regional water planning needs to consider both the quality and quantity of water required to sustain ecologically viable and fully functional aquatic and coastal ecosystems. Allocation of water resources prior to the full and open assessment of the potential cumulative impacts on groundwater, surface waters and the Great Barrier Reef World Heritage Property may lead to unacceptable impacts to coastal waterways and Great Barrier Reef ecosystems. It is not clear how independent scientific advice regarding the cumulative impacts associated with the implementation of a development option for large scale water users will be obtained and considered in the decision making process.*[53]

Ferrier & Co, a regionally based law firm representing landholders, submitted:

> *We can see a potential for conflict between the grant of water development options and current water allocations and uses under the Water Act if the chief executive provides water development options with precedence over other existing uses.*
>
> *In this regard, we note new section 85(c), which requires the chief executive when deciding whether to grant a water development option to take into account "other commitments or future demands for the water, including existing water development options".*
>
> *While this subsection goes some way toward protecting the future demands for water for existing users, we submit that this section should go further by recognizing the value of water uses that are already in existence (particularly existing agricultural uses), and planning for their future demand.*[54]

Whilst some stakeholders supported the overall objective/concept of a water development option, Agforce, QFF and Canegrowers raised concern that there is no public consultation requirements in relation to the chief executives decision to grant the initial water development option, which, as WSQ highlighted, means that:

[51] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 14.
[52] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 14.
[53] GBRMPA, *Submission No. 23*, p. 1.
[54] Ferrier & Co, *Submission No. 11*, pp. 2-3.

> *…other water users in the catchment will be excluded from a discretionary and subjective process that prioritises the water aspirations of external developers over the aspirations of regional communities, Traditional Owners and existing industries.*[55]

AgForce also argued for greater transparency and stronger consultation requirements submitting:

> *The Bill currently does not require direct consultation of potentially-affected water users or the community in granting a [water development option] (WDO), and a WDO can even be granted without application through a process described in a regulation, which potentially lacks transparency (new s84)*
>
> *… Unless it contains a specific and clearly delineated section dealing with the same considerations as required under a water plan consultation, including the impacts on other water users and the environment, AgForce does not view the EIS process to be equivalent consultation to that undertaken under a water plan process (new s52(3b)). Greater transparency is required in the WDO application and approval process with the views of other water users more clearly taken into account.*[56]

EDOQ expressed a view that the environmental impact assessments are not sufficiently detailed or targeted to inform water plans and water allocations:

> *The guarantee of access to water for large scale water users prior to full assessment is dangerous. The environmental assessment undertaken by large scale water users for the purposes of seeking approval of their projects is not an adequate and reliable basis for amending regional water planning. The assessment of large scale water users should not be weakened and should remain consistent with all water licencing and assessment processes currently.*[57]

There was also concern that water related matters/amendments may no longer be transparent or accessible for landowners when considered within and as part of an EIA due to the typical size of relevant EIA reports and documentation. QFF urged the government to consider the resulting shift of burden from the mining sector onto the agriculture/landholder sector, which would now be required to wade through significant EIA documentation to determine possible water impacts.

> *I think there are some concerns about the use of an EIS as a replacement for consultation around the water issues themselves. The feedback I get from members is that you are hit with potentially a 6,000-page document and the water information could be spread thinly throughout that and the onus is on the individual to try to piece that all together versus a very targeted process, which would look at those specific water issues as a separate category and then address specifically the impacts on other users in that catchment and the environmental elements, too. So I think we would probably prefer to see a separate consultation process that looks specifically at those water impacts and through that then try to avoid that primarily but then, secondly, mitigate any impacts that would occur through that.*[58]

A number of submitters also questioned the extent to which decision criteria provided for in the Bill in relation to amending the water plans and the granting of water entitlements were adequate.

The current decision criteria include:

> ***52 Amending a water plan to implement a water development option***

[55] WSQ, *Submission No. 25*, p. 2.
[56] AgForce, *Submission No*. 45, p. 4.
[57] EDOQ, *Submission No. 40*, p. 2.
[58] Miller, D., 2014, *Draft hearing transcript*, 29 October, p. 32.

(1) The Minister may amend a water plan so that it is consistent with the commitment for a major water infrastructure project under a water development option.

(2) In making a decision under subsection (1), the Minister must consider the criteria mentioned in section 91(5).

(3) The Minister may only act under subsection (1) if—

(a) the proposed amendment advances the responsible and productive management of water; and

(b) equivalent consultation to that required under sections 44 to 46 has been undertaken.

90 Cancelling a water development option

(1) The chief executive may cancel a water development option for a project if the chief executive is satisfied—

(b) the environmental assessment for the major water infrastructure project does not—

(i) demonstrate that there is sufficient water available to support the project; and

(ii) demonstrate that any significant impacts on flows that would affect the environment or existing water authorisations can be adequately mitigated.

91 Implementing a water development option

(1) The chief executive must give effect to a water development option by granting authorisations under section 92 if consistent with the water plan and any moratorium notice relevant to the major infrastructure project.

(5) The chief executive may amend a protocol under subsection (3)(a) only if the chief executive is satisfied—

(a) that adequate consultation has been undertaken by the holder of the water development option; and

(b) that the proposed arrangements following implementation will mitigate any significant impacts on flows that would affect the environment or existing water authorisations.

AgForce and QFF argued for greater onus on the proponent to source water from existing sources such as unallocated water or water trading and for criteria to be enhanced to ensure no disadvantage to existing water users, especially given the circumstances in many catchments where there is very little remaining available water:

…it will be important at the earliest stage of project investigations that the opportunities to secure water for a major project are adequately considered. These opportunities could be limited to strategic water reserves defined in water resource plans. There may also be an opportunity to access additional unallocated water in a catchment that has not been considered as part of the initial water resource plans. The current review of the Gulf Water Resource Plan focusing on the Flinders and Gilbert catchments is examining this opportunity. However, there are catchments where most of the available water is held under entitlements leaving project developers very little opportunity to secure water for a project development. The Murray-Darling Basin Plan places significant constraints on further water development in the Queensland Murray-Darling catchments.[59]

[59] QFF, *Submission No. 44*, p. 5.

> *The most effective way to ensure existing users are not disadvantaged is if the proponent was firstly required to avoid having an impact on them and the environment rather than relying on subsequent mitigation of those impacts. Opportunities to access water would therefore largely be in the context of the available existing strategic reserves or yet to be allocated water that can be sustainably taken. However, to the extent that avoidance of impacts cannot be achieved, there needs to be enough flexibility to ensure mitigation is effective, such as enabling movement of water to affected users or requiring investment in measures delivering sustainable improvements in water use efficiency. There are heavily developed catchments where the available water is already held under entitlements leaving little to no options to secure water without an impact. However water is identified and allocated to a WDO it should be consistent with the proposed purpose of the Act, which is build confidence in the security and value of water entitlements.* [60]

EDOQ urged the government to consider strengthening/tightening the decision criteria for granting water entitlements to water development option holders. They noted that the Decision RIS acknowledges previous submissions requesting the same and that this had not been addressed in the Bill as introduced:

> *Currently the Bill provides that the chief executive, in deciding whether to grant a water licence, must consider 'whether an environmental assessment is likely to demonstrate that any significant impacts on flows that would affect the environment or existing water authorisations can be adequately mitigated'. This is not a strict enough test. Further, acknowledging that there is the power to cancel the option if it is demonstrated that there is not sufficient water or the ability to mitigated impacts, this power must be obligatory and not at the sole discretion of the chief executive.*[61]

There were also a number of operational matters raising in relation to water development options. These included:

- The provision allowing for an extension to the term of a water development option. Submitters including WSQ, EDOQ and AgForce noted concern that any extension may disadvantage current and future users of water and submitted that extensions of a water development option should require reassessment of impacts this might pose on water availability and of impacts on any current or future uses of the water.
- In a similar sense, there was also concern that the Bill allowed for the transfer of water development options between persons/holders. Accordingly, AgForce sought assurances that water development options could not be used for 'water banking' or to disadvantage current water entitlement users or competitor businesses/industries. (e.g. predatory market behaviours). WSQ/EDOQ argued for a requirement to be included in Bill to ensure that water entitlements granted as a result of the water development option are actually used for the project for which they were originally granted.

Committee comment

The committee notes that water security is a consideration in attracting investment in the development of large-scale water-related infrastructure projects, and considers that there is merit in aligning the timing of consultation, assessment and decision-making where there is duplication in the Environmental Impact Assessment and Water Act requirements.

The committee notes that new section 82 of the Bill, as drafted, provides for the chief executive to consider the intersection of water planning and other regional and local planning activities in determining whether to declare a project to be a major water infrastructure project. The committee

[60] AgForce, *Submission No. 45*, pp. 3-4.
[61] EDOQ, *Submission No. 40*, p. 6.

supports this coordinated approach to identify highest priority use for economic, social and environmental development.

Viewed within this broader framework of water planning, the committee considers that the Bill must therefore make sufficient provision to consider other priorities for water use.

In the first instance, the committee accepts the views of stakeholders that consideration of water development options should be limited to where unallocated water reserves exist in a catchment or relevant area. This recognises the importance of also 'guaranteeing' water entitlements for the security of existing activities.

Secondly, the committee considers that this process must still allow for consideration of competing priorities for any unallocated water. The committee notes that new section 85 of the Bill includes relevant considerations for the chief executive in deciding to grant a water development option, including other commitments or future demand for the water. The committee believes that this process would be served by public notification of the application, so that the chief executive could receive submissions in respect to other potential high value ventures. This would act to support highest priority use within the existing resource, rather than a 'first in, first served' approach.

Given the length of time that large-scale projects can take in initiation, periodic review is also warranted to prevent water assets being 'locked-up' for extended periods of time. The committee notes that the Bill outlines a process of review of the project only by the chief executive, should an extension be required. While this precludes fresh consideration of other priorities, the committee is satisfied with this approach, given the intent is to provide a commitment to facilitate the progress of large-scale projects and there exists separate provision to cancel an option should the option fail to deliver on milestones or environmental assessment.

The committee agrees with the points raised, that the Bill needs to limit the opportunity for water banking and ensure any option is only transferred for the same or similar project outcomes. The committee considers that new section 89(3), in requiring a transfer to be conditional upon notice to the Coordinator General of change of the proponent for the project, provides for the latter.

The committee also accepts the views expressed by stakeholders that any granting of a water development option remains dependent upon good standard of evidence on water requirements and impacts being satisfied and validated. This may be practically achieved through setting key matters for the Environmental Impact Assessment to align to the desired outcomes from the water allocation. Given the potential value of the decision and consequences, the committee considers that clarity in the criteria for decision-making in the exercise of administrative power is appropriate in drafting of these provisions.

Point of clarification

With respect to clause 68 new sections 82(2)(d) and 90(1)(b)(i), the committee invites the Minister to comment on the feasibility of limiting water development options to where there are sufficient unallocated water reserves, to preserve existing entitlements of other water users and the environment under water plans.

Recommendation 3

The committee recommends that clause 68 new section 85 of the Bill be amended to provide that the chief executive may seek public submissions, as part of assessing whether to grant a water development option.

Point of clarification

The committee invites the Minister to comment on the feasibility of including criteria for decision-making within the Bill, to provide clear terms of reference for Environmental Impact Assessment and comprehensively integrate water-related matters.

Point of clarification

The committee invites the Minister to liaise with the Minister for Environment and Heritage Protection to ascertain how water-related matters can be best presented within an Environmental Impact Assessment, such as a discrete section or schedule, so that the information is accessible to review.

Regulation of taking and interference with water

The Bill also reforms the framework for the regulation of take and interference with water. There are three components to the reform, addressing the regulation of take and interference of water in minor watercourses, take of water where the purpose or volume of take is of low risk, and take and interference where the two activities are linked.

The first component will deregulate the take and interference of water from certain watercourses and for certain low risk activities where the need to manage water resource through a licensing framework is low. The Bill enables this in two parts:

- identifying and categorising minor watercourses where taking water either does not need to be regulated or can be regulated under the simpler framework that applies to the taking of overland flow water. The new watercourse identification map will be used to identify which reaches of watercourses are deregulated, and
- identifying and categorising certain activities, removing the requirement for a water licence and providing a new state-wide statutory authorisation for these activities, including for the:
    - take of overland flow water that is contaminated agricultural runoff
    - take or interference with overland flow water for an environmental authority (all sectors)
    - interference with the flow of water by impoundment for an environmental authority (all sectors), and
    - interference with the flow of water by impoundment for state/commonwealth structures for collecting monitoring data.

The second component proposes to provide for catchment-based water plans or regulations to identify low risk activities that would not require licensing. These activities might be determined through the identification of particular activities or water uses that would pose little risk to the resource, or through the establishment of a threshold for the volume of take below which licensing would not be required.

The final component will provide for a single licence to authorise both take of, and interference with, water where these two activities are linked, such as the building of a weir (interference works) and the subsequent take of water from that weir. This will remove the requirement for a water user to hold two entitlements for what is effectively a single activity.

The key issue raised in relation to these reforms is the risk of cumulative impacts to water resources and existing water users.

For example, Cotton Australia expressed concern for third party impacts, favouring the retention of the existing licencing framework:

> *While Cotton Australia has some sympathy for deregulating small licences in Upper Catchments, it cannot support this if it could have any negative third party impacts on downstream irrigators. Cotton Australia recommends extreme caution in this area, with a high level of consultation required before any action is taken in specific water catchments. Even if there is no immediate risk of third party impacts, Cotton Australia would need assurances that a process is in place to deal with any impacts that may occur from increased take in future years. On the balance, Cotton Australia would favour keeping the licencing framework, even if a lower level of administration and compliance was put in place. That would make it a lot easier to address any cumulative impacts in the future.*[62]

QCC and WSQ expressed similar concerns:

> *Re-defining watercourses will mean that many watercourses will be de-regulated and the need for water licences removed. This could have serious implications, remove identified management regimes and lead to an unsustainable take. Downstream users could be badly impacted. There is no detail provided on criteria on how watercourses will be assessed, if they are to be re-defined.*[63]

> *The proposal to reduce the number of watercourses regulated by the Water Act is likely to have major environmental and economic implications for downstream water users, flow-dependent industries and receiving environments…At a practical level, the Wilderness Society is aware of issues already emerging in Lakeland Downs on Cape York Peninsula for downstream pastoralists as a result of previously regulated watercourses becoming unregulated and upstream users no longer being subject to licencing requirements…The criteria by which the Chief Executive will assess and determine which watercourses will be "de-regulated" need to be made available, and stakeholders given the opportunity to comment, before this proposal proceeds.*[64]

DNRM responded to these concerns as follows:

> *For the most part, this reform is simply improving clarity of existing provisions in the Water Act 2000 and Water Regulation 2002. The chief executive already has the ability to declare upstream and downstream limits on a water courses. In addition, schedule 1 of the Water Regulation already enables the chief executive to identify low risk activities for general authorisation to take water.*

> *Under the proposed amendments, removing the need for an entitlement from a watercourse could occur via the identification of designated watercourses or via prescription of authorised exemption thresholds to take or interference. A rigorous assessment undertaken on a catchment by catchment basis will inform any decision to reduce regulation. It will be undertaken in close consultation with affected stakeholders involving detailed analysis of the needs of existing users and the environment. In most cases, this will be undertaken through the development of a water plan.*

> *Risks will be monitored and if the risk profile changes then stronger regulation may be reintroduced.*[65]

The GBRMPA, EDOQ and others noted concerns also for the absence of transparent and evidence-based decision making criteria to guide the deregulation of watercourses and low-risk activities:

[62] Cotton Australia, *Submission No. 39*, pp. 1-2.
[63] QCC, *Submission No. 18*, pp. 1-2.
[64] WSQ, *Submission No. 25*, p. 4.
[65] DNRM, 2014, *Correspondence*, 24 October, pp. 94-95.

> *It is not clear how independent scientific advice regarding the cumulative impacts associated with the deregulation of water use will be obtained and considered in the decision making process.*[66]
>
> *…Reductions in regulation of water use should only be undertaken if informed by thorough hydrological studies and broad consultation, otherwise they may lead to high risk impacts. There is no evidence to demonstrate that such studies or extensive consultation have been undertaken, despite an indication in the explanatory notes that 'deregulation will occur after a 'rigorous assessment process', to ensure that risks are low and mitigated'… Water use impacting on all watercourses should require an application and assessment under the Water Act, to ensure that water use is well regulated and able to be monitored, and cumulative impacts are able to be adequately calculated and mitigated.*[67]

DNRM commented in relation to the decision criteria:

> *The mapping of identified features will continue to be subject to rigorous quality assurance processes to ensure accurate mapping. Specifically, the mapping protocol will ensure that only experienced technical officers will be involved in identifying designated watercourses.*
>
> *The identification of any designated watercourses will only be undertaken in close consultation with affected stakeholders, In most cases, the designated watercourse identification process will be undertaken on a catchment by catchment basis in conjunction with the development of water plans, involving stakeholder consultation in tandem with the identification of any other opportunities to remove the need for an entitlement from a designated watercourse. This analysis will take into account the needs of existing users and the environment.*[68]

A number of submitters recommended that the criteria under which the chief executive will make the decision to deregulate activities impacting certain watercourses be clearly set out in the legislation.[69]

EDOQ also recommended that, should the government proceed with the proposal to deregulation watercourses and low risk activities, that:

> *…proponents should be required to notify the relevant department of their intended 'low risk' water usage and an obligatory publically available register be maintained by a government department of each activity being undertaken in deregulated areas.*[70]

QFF/AgForce argued that concern for the cumulative impacts of deregulation may be mitigated if the government was to ensure adequate monitoring and environmental impact management programs were in place; however, QFF noted that at present they were not confident in the department's capacity of the effectiveness of current monitoring programs.[71]

Finally, a number of submitters noted concern for the effect of deregulating watercourses on the vegetation management protections for native vegetation in watercourses:

> *We also note that by deregulating watercourses, protections afforded by the Vegetation Management Act 1999 (VMA) for riparian regrowth vegetation will be removed. There is a significant risk that currently protected riparian vegetation in the Burdekin, Wet Tropics and Mackay Whitsunday catchments will be cleared if watercourses in these catchments are deregulated. Clearing riparian regrowth vegetation in these and other Great Barrier Reef*

[66] GBRMPA, *Submission No. 23*, p. 1.
[67] EDOQ, *Submission No. 40*, p.2, 4, 5.
[68] DNRM, 2014, *Correspondence*, 24 October, p. 96.
[69] WSQ, *Submission No. 25*, p. 4; WWF, *Submission No. 38*, p. 3; EDOQ, *Submission No. 40*, p. 5.
[70] EDOQ, *Submission No. 40*, p. 5.
[71] QFF, *Submission No. 44*, p.13.

catchments is likely to cause significant land degradation, which will substantially increase the amount of sediment transported to the Great Barrier Reef, accelerating its decline.[72]

There is considerable risk that riparian re-growth in the Burdekin, Wet Tropics and Mackay Whitsunday catchments will be cleared, if watercourses are re-defined. This could pose additional risk of sediment run-off into the GBR zone.[73]

Committee comment

The committee accepts the concerns raised by stakeholders in relation to the proposed deregulation of take and interference as part of the Bill. When viewed in conjunction with other proposed changes in the Bill, including the proposed increase in area for domestic purposes and introduction of a consistent statutory right to associated water for mining, the committee is concerned to ensure that the cumulative impacts are considered sustainable, and can be measured and monitored.

The committee supports the department's approach to proceed on a catchment-by-catchment basis through the development of a water plan, but also sees merit in the suggestions by stakeholders to establish criteria to guide decision-makers and promote equity (to the extent possible) across the state.

Again, the committee points to the need to rely upon available data to inform future planning and deregulation activities.

Point of clarification

The committee invites the Minister to comment on the merits and feasibility of including criteria within the Bill to guide decision-making for deregulation.

Point of clarification

The committee invites the Minister to comment on the merits and feasibility of registering intended use of water, under a deregulated approach.

Point of clarification

The committee invites the Minister to comment on proposed actions to improve monitoring and evaluation of cumulative impacts of deregulation within and across catchments, as part of planned implementation of the Bill.

Riverine Protection and Quarry Materials

Clause 68 new Part 4 Riverine protection and Part 5 Quarry materials largely transpose the existing provisions from the Water Act, to fit within the restructuring of the Bill.

Notwithstanding this, submitters suggested amendments aimed at strengthening the consideration of environmental impacts in granting a riverine protection permit or allocation of quarry material.

Recommendations included expanding the list of criteria for deciding whether to grant or refuse the application and requiring the applicant to prepare an environmental management plan.[74]

With respect to riverine protection, DNRM advised:

In deciding whether to grant to a riverine protection permit the chief executive considers a range of matters including the effects of the proposed activity on water quality, seasonal

[72] WSQ, *Submission No. 25*, p. 4.
[73] QCC, *Submission No. 18*, p. 2.
[74] QCC, *Submission No. 18*, p. 3; SEQ Catchments, *Submission No. 32*, p. 4; WWF, *Submission No. 38*, p. 6; EDOQ, *Submission No. 40*, p.3.

factors influencing the watercourse, the quantity and type of vegetation that may be destroyed, the position of the activity in the watercourse and any adverse impacts on the physical integrity of the watercourse. These considerations both directly and indirectly ensure that environmental impacts are indeed assessed as part of the decision making process.

Riverine protection permits are granted with conditions which the holder of the permit must comply with. These conditions are included to avoid, minimise or mitigate impacts of the activity on the watercourse and surrounding riverine environment. As such an environmental management plan is not required.[75]

Similarly, with respect to quarry materials, DNRM advised:

The department acknowledges concerns in relation to sand and gravel extraction in rivers, particularly in the south east of Queensland. The criteria in the provisions relate to availability of the quarry material as a resource. The provisions in the Bill therefore reflect considerations in relation to resource availability and sustainable extraction of that resource. In addition to the quarry allocation under the Water Act, such operations require a development approval under the Sustainable Planning Act 2009. Some operations will also trigger thresholds for dredging, which is an environmentally relevant activity under the Environmental Protection Act 1994 and for which an additional development approval under the Sustainable Planning Act 1999 is required. A number of the matters suggested for inclusion relate to addressing considerations or impacts of the actual operations rather than a resource assessment. These matters can be addressed through the development approval process.[76]

SEQ Catchments, QCC and WWF raised a further concern with respect to riverine protection that:

Under Section 228 of the Bill the Chief Executive can amend or cancel a permit if the conditions are not being complied with or it becomes evident that the adverse effect of the permitted activity is greater than was anticipated when the permit was issued. While this provision is supported it should be noted that the Bill contains no make good provisions enabling the chief executive to instruct the applicant to remediate the greater than expected outcomes….[77]

DNRM advised:

Riverine protection permits generally authorise minor low risk works and include conditions minimising and managing impacts of the activity and requiring site stabilisation and rehabilitation. Where these conditions have not been met or if the permittee has caused a greater level of impact than expected, DNRM can commence compliance action. This can include the issuing of a notice to rectify under which the permittee is required to act to rectify any damage. If this is not met, further compliance action may be taken through the courts.[78]

Committee comment

The committee notes the evidence submitted in relation to riverine protection, and water quality more broadly, and is satisfied with the department's advice that the current criteria are appropriate relative to the level of activity under riverine protection permits and development approvals. However, the committee considers that adequacy of monitoring processes is important, to support timely and effective compliance and enforcement action with respect to these provisions.

[75] DNRM, 2014, *Correspondence*, 24 October, p. 98.
[76] DNRM, 2014, *Correspondence*, 24 October, p. 160.
[77] SEQ Catchments, *Submission No. 32*, p. 5.
[78] DNRM, 2014, *Correspondence*, 24 October, p. 159.

The committee notes that references to the repealed *Wild Rivers Act 2005* within these Parts are drafting errors.

Recommendation 4

The committee recommends that references to 'wild river' in clause 68 of the Bill, including in new sections 220(h), 227(3), and 229(2) and (4), be updated consistent with the *Regional Planning Interests Act 2014* and consequent repealing of the *Wild Rivers Act 2005*.

Special Agreement Acts

Clauses 3-8 amend the *Alcan Queensland Pty., Limited Agreement Act 1965* and *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 195*7 to specify the conditions associated with volume, location and timing of water entitlements under these Agreements.

Clause 116 of the Bill, which amends the Water Act, also enables the chief executive to grant a water licence to a special agreement Act company without the requirement for a water licence application and public notification of the application. For special agreement Acts, this is on the basis that the licence reflects the company's existing entitlements under legislation and the granting of a licence is an interim step in transition into the Water Act framework.

As the Explanatory Notes advise:

> *The original purpose of these [special agreement] Acts was to provide the specified business with clear state government support for development. It is not always clear how much water could potentially be taken under these rights, which has led to uncertainty about the security of access to water for surrounding water users.*
>
> *In particular, the water rights in special agreement Acts are not well specified and excess water cannot be traded (or transitioned to allow for trading). It is desirable to have a clearly defined set of rights, and to potentially allow these companies to trade water allocations in the same manner as other businesses.*[79]
>
> *This will bring water allocation and management for special agreement Act companies under a single framework and provide certainty for water planning activities.*[80]

This approach is supported by evidence at a national level. The National Water Commission has conceded that, while special management arrangements have been permitted under the National Water Initiative, the value of integrating the arrangements for those industries into the water sharing framework is apparent.

> *….management arrangements for water-impacting industries that are implemented separate to the water planning process lack transparency and limit the capacity of water planning to sustainably and transparently manage water extraction. The security of existing users' entitlement to water can be compromised by water rights outside of the entitlement regime, as can water quality outcomes. Uncertainties over cumulative water impacts and water quality can pose a risk to the social licence for extractive industries. Governments and the industry have done much to allay this concern through enhanced regulatory processes and better communication, but the Commission remains concerned that these industries'*

[79] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 9.
[80] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 19.

water use is not always well integrated with broader regional water management processes.[81]

The Decision RIS for the Bill indicates that, of the six special agreement Acts that confer water rights on companies, three have commenced or have already transitioned to the framework under the Water Act.[82]

In their submissions to the committee, the resources sector indicated a general willingness to negotiate to effect a transition to the new water management framework, conditional upon the transition being voluntary and mutually agreed, and the preservation of existing rights.

Rio Tinto Alcan is willing to work with the Queensland Government to support the policy for transition of its water rights, where that ensures those rights are fully protected.

We note that both the draft legislation and discussions Rio Tinto Alcan has had to date with the Queensland Government confirm that there will be no obligation upon Rio Tinto Alcan (or any other holder of a special agreement with the Queensland Government) to transition their water rights to the Water Act and that participation by relevant mining companies will remain optional. It is obviously of critical importance to Rio Tinto Alcan that any restatement or alteration of existing rights, and any transition out of Special Agreements is by negotiation between willing parties and replaced with a secure water entitlement, mutually agreed.

We note that there is not a fixed timeframe for transition and negotiations will occur as required. The Special Agreements have now underpinned in excess of 50 years of Weipa operations, substantial investment in Queensland and employment for thousands of Queenslanders including significant Traditional Owner employment. Rio Tinto Alcan intends for Weipa to remain a key operation for many more generations, and accordingly our view is that any transition of rights needs to be driven by the substance of the existing rights and future needs of the operations subject to the Special Agreements, rather than arbitrary timing milestones.[83]

The process of transitioning water rights allocated under special agreement legislation to the Water Act has some appeal; however the inherent complexity of these bilateral discussions needs to be recognised. QRC emphasises the importance of this reform continuing to provide an option for companies rather than dictating a new direction. QRC suggests that a directive approach would not be consistent with fundamental legislative principles.

The rights secured under special agreement legislation are fundamental to the significant investments of the special agreement holders in Queensland and those rights in respect of water should be preserved and recognised under the Water Act. As the water rights already exist under the special agreement legislation, it is essential that section 206 of the Water Act not apply. In addition, other powers of the Chief Executive, such as the ability to unilaterally amend water licences, should not apply where their exercise would impact existing water rights.[84]

DNRM confirmed that any transition would be by agreement, but that a future water entitlement would not be exempt from the operation of the water management framework.

The Department recognises the already existing rights held by companies in a Special Agreement Act and the role these agreements have played in the economic development of

[81] National Water Commission, *Australia's water blueprint: national reform assessment 2014*, p. 10. Available at http://www.nwc.gov.au/publications/topic/assessments/australias-water-blueprint-national-reform-assessment-2014. Accessed 3 November 2014.
[82] DNRM, 2014, *Decision Regulatory Impact Statement: Strategic Review of the Water Act 2000*, p. 31.
[83] Rio Tinto Alcan, *Submission No. 27*, p. 2.
[84] QRC, *Submission No. 41*, p. 5.

the State. The provisions being introduced in the Bill to transition water rights held under Special Agreement Acts recognise this by ensuring that the process for transition is negotiated and agreed and not subject to arbitrary timeframes.

Transitioned rights will be reflected as secure water entitlements under the Water Act framework. The process is designed such that the State and company need to agree for transition to occur. The process is not designed to diminish a company's ability to access water it requires for its current or future operations.

The transition process occurs outside of the water licencing framework such that the water licence application process does not apply [section 206].

Once rights have been transitioned and replaced by a water entitlement, these water entitlements will be part of the overall water entitlement framework. The chief executive powers in relation to water entitlements would then apply to the entitlements as they do for any other water entitlement in the State. However, any changes to water entitlements cannot be made unilaterally and affected parties are notified and can make submissions to the chief executive in relation to any proposed changes. Rights of review and appeal apply to such matters should the water entitlement holder disagree with a decision of the chief executive.[85]

In the context of the chief executive's powers in the Bill, it is noted that the Queensland Ombudsman recommended that (a) any conversion to a new water entitlement or (b) any consideration of water licence applications in circumstances where the water resource is over-allocated, be accompanied by a fresh consideration of whether the proposed entitlement can be expected to advance the efficient use of water.[86]

Committee comment

The committee commends the collaborative approach being undertaken between the department and resources sector with respect to the current issues and exposures with respect to special agreement Acts. The committee supports this approach as proposed, at this time.

Recommendation 5

The committee recommends that the department review the progress of voluntary negotiations to transition existing entitlements under special agreement Acts into the Water Act, after a reasonable time frame (for example, three years or similar).

[85] DNRM, 2014, *Correspondence*, 24 October, pp. 28-29.
[86] Queensland Ombudsman, 2014, *The Water Licences Report*, May, p. xii.

4. Underground water rights for the resource sector

The Bill implements a new framework for the take and management of underground water by the resources sector. This includes a statutory right for the take of associated water, a water entitlement for the take of non-associated water, and Chapter 3 underground water impact management obligations to apply equally across the mineral resources and petroleum and gas sectors. Key provisions that give effect to this new framework are outlined below.

Clauses 9-12 amend the *Mineral Resources Act 1989* (Mineral Resources Act) to reflect the new arrangements for underground water rights for the holder of a mining lease.

Clause 11 inserts new Chapter 12A into the Mineral Resources Act. New Chapter 12A provides provisions about water for the holder of a mineral development licence or mining lease.

New Part 1 (sections 334ZP – 334ZS) establishes a statutory authority for the holder of a mineral development licence or mining lease to take or interfere with underground water where the take/interference is 'incidental' to the mining activities/operations.

> *The intent is that this underground water right is limited to incidental take that is reasonably necessary and can't be reasonably avoided in carrying out the authorised activities to extract the mineral resource. The authority is not intended to provide a right to take underground water for the purpose of using the water for any consumptive purpose, although the right does allow for the holder to make use of any water incidentally taken. As such, any take of underground water that does not 'happen during the course of, or result from, the holders authorised activities, would be required to be authorised in accordance with the Water Act.*[87]

The statutory right for the take of associated water is conditional upon the holder complying with the water obligations established by the Bill in Chapter 3 of the Water Act.

New Part 2 provides for water monitoring authorities to ensure that the mineral development licence or mining lease holder has a right of access land and other tenements to undertake their obligations in relation to water take and water monitoring.

New Part 3 provides for the works constructed in connection with a water monitoring bore to be owned by the holder of the mining lease or mineral development licence that constructed the water monitoring bore, and creates an offence in relation to unauthorised interference with a water monitoring bore.

Clauses 13 – 18 amend the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas Act) to reflect the new arrangements for underground water use for petroleum tenure holders.

Clause 14 amends section 185 to remove part of the statutory right for petroleum tenure holders to take or interfere with underground water. Any take of underground water for a consumptive purpose (non-associated water) will now, subject to new section 186, need to be authorised under the Water Act, consistent with all other water users.

Clause 15 inserts a new section 186 which is a transitional provision to allow for the limited continuation of the component of the existing underground water rights that are being removed by clause 14 of the Bill.

> *This section continues the right for a petroleum tenure holder to take or interfere with underground water in the area of the tenure for use in carrying out another authorised activity for the tenure (non-associated water right). However, this right is only continued for five years after commencement for petroleum tenure holders within the Surat cumulative management area, and for two years for petroleum tenures outside of the cumulative management area. After the two or five years, petroleum tenure holders will be required to*

[87] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 37.

> *be authorised in accordance with the Water Act for any underground water take, other than associated water take authorised under section 185.*[88]

Clauses 69 – 140 amend key provisions across Chapter 3 to reflect the expanded application of the chapter to the mineral resources sector, in line with the new approach to underground water rights for the resources sector. Chapter 3 already had application for the purposes of the petroleum and gas sectors use of water resources.

Clause 73 amends section 365 to allow for a cumulative management area to be declared over petroleum and gas, and mineral resources tenures. The cumulative management framework in Chapter 3 provides a process to manage the cumulative impacts on bores where two or more tenures have overlapping impacts, through declaring an area in which the Office of Groundwater Impact Assessment prepares one underground water impact report on behalf of the tenure holders within the area.

> *Consistent with the existing declaration requirements, the amended section will allow for a cumulative management area to be declared where the chief executive considers that the area may be affected by the exercise of underground water rights by two or more resource tenures.*[89]

The Bill also provides for future cumulative management areas to have effect only on specified tenures within their area, enabling the cumulative management areas to be tailored so that it applies to just those tenures which are contributing to the cumulative impacts.

However, new section 1278 provides transitional arrangements for the existing Surat cumulative management area, and makes it clear that it continues to be a cumulative management area applying to petroleum tenure holders only.

Clauses 77 and 78 set out the extent to which a tenure holder is responsible for undertaking various obligations under the Water Act in relation to underground water. In particular, it clarifies that mining tenure holders are responsible for providing underground water impact reports to the chief executive (except where a cumulative management area applies, in which case the Office of Groundwater Impact Assessment is the responsible entity) for complying with make good obligations for water bores, and for complying with reporting obligations for water bores.

However, *clause 79* provides an exemption to the holders of existing mineral development licences or mining leases, who are taking water in accordance with a water licence or water permit issued prior to the commencement of the Bill. These holders are fully except from the requirement to prepare underground water impact reports. The chief executive does, however, have powers under the act to issue a notice requiring a tenure holder to comply with reporting obligations.

Clause 80 amends section 370 to expand the obligation to prepare an underground water impact report to mining tenure holders.

Clause 85 amends section 374 to reflect the application of Chapter 3 to the mineral resources sector. It imposes an obligation on the responsible entity to give the chief executive a final report for the tenure. Further this amendment provides for a final report to be accompanied by the prescribed fee.

Clause 92 amends section 386 to introduce the requirement for the responsible entity to publish a notice about the approval of an underground water impact report and give a copy of the notice to the owner of any water bores within the area to which the report relates. The responsible entity must notify the chief executive once the entity has complied with these requirements.

Clause 99 inserts new section 394A to provides for how Part 3 – obligations to undertake baseline assessments applies in relation to the holders of existing mineral development licences or mining

[88] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 43.
[89] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 111.

leases on commencement of the Bill. The holders of a mineral development licence or mining lease that hold a water licence or water permit for their associated water take are exempt from the requirement to prepare a baseline assessment plan while the holder continues to take associated water under the authority of the licence or permit.

Clause 101 amends section 397 to expand the obligation to prepare a baseline assessment plan to mining tenure holders. This obligation includes the requirement to undertake baseline assessments in accordance with a statutory baseline assessment timetable (clause 102). Baseline assessment plans must be submitted to the chief executive for approval (clause 103). It is an offence for tenure holders not to comply with an approved baseline assessment plan (clause 104).

Clause 110 amends section 406 to expand the obligation to negotiate a general agreement about make good to mining tenure holders:

> *Under section 406, a resource tenure holder is obliged to use best endeavours to negotiate and enter into an agreement with the owner of a water bore the holder reasonably believes has an impaired capacity because of the holders exercise of underground water rights. The agreement, similar to a make good agreement, is to be about make good measures, and or compensation payable in relation to the impaired capacity of the water bore. An agreement made under this section is taken to be a make good agreement, and as such a tenure holder is not required to undertake a bore assessment, or enter into a further agreement about make good after the approval of an underground water impact report.*[90]

Clause 112 amends section 409 to provide for the make good obligations for water bores to extend to mining tenure holders:

> *The make good obligations require tenure holders to undertake assessments of water bores, enter into make good agreements with water bore owners about the make good measures to be undertaken in relation to their water bores and to comply with the make good agreements.*
>
> *The make good obligations can be initiated through the approval of an underground water impact report which identifies an immediately affected area, a final report which identifies a long term affected area or through a chief executive direction to undertake a bore assessment.*[91]

Clause 119 amends section 423 to require the tenure holder to notify the chief executive when they have entered into the make good agreement. This notification will allow the chief executive to more effectively monitor compliance with the obligation.

The Bill further contains a number of amendments to improve the operation of Chapter 3. These amendments include:

- relaxing the regulation of low risk activities, such as conventional exploration activities
- linking spring impact mitigation strategies to risk assessments
- providing for data to be submitted in digital format, and
- enabling public access to baseline and bore assessment information.

The Bill also includes new/amended minor penalty provisions applicable for breaches under Chapter 3 provisions. In particular, it is an offence for a tenure holder not to comply with obligations to notify the chief executive of the execution of underground water rights, to prepare underground impact report and baseline assessment plans and to comply with underground assessment plans. A maximum penalty of 500 penalty units applies.

[90] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 120.
[91] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 121.

Statutory right for take of associated water

The extension of the statutory right for the take of associated water raised a number of concerns across stakeholder groups, who largely objected in principle to any take of water that is not subject to volumetric control and which sits outside of regular water management and planning processes.

For example, Dr Johns Standley, EDOQ and others expressed concerns for the inherent risks associated with deregulated take of associated water:

> *As the drought continues and urban expansion in the Toowoomba area continues, it becomes critically important to conserve underground water resources for the survival of agriculture and urban population in future. The bill, instead, allows for mining and CSG companies almost unfettered access to water resources (at a time when increasing restrictions on water use are being applied to irrigators)...*[92]
>
> *The move to give mineral resource projects a statutory right to take associated water is unwarranted and risky… All resource projects, including mineral, gas and petroleum projects, must be required to undertake standard, publically notified, water licence assessment processes under the Water Act to ensure equality between users and to limit environmental impacts from these large water users.*[93]

Basin Sustainability Alliance (BSA) expressed significant concern that the proposed extension of the statutory right for the unlimited take of associated water endangered existing landholders water rights and reflected a significant bias/inequity between the resources and agricultural sectors in the regulation of water:

> *The Bill will compound a fundamental flaw in water planning in Queensland, namely the fact that the impact of CSG activities is effectively ignored due to the emphasis on the unlimited take concept. Under the Bill that flaw is now to be extended to mining as well – and for projects that could have enormous impacts on bore users for many kilometres as recent cases acknowledge…*
>
> *... By allowing mining to stand with petroleum and gas outside of the general licensing and water planning regime applicable to all other water users in the various catchments, the Bill will only further exacerbate the inherent flaws in ignoring the effect of enormous quantities of water being withdrawn from some catchments, and further ensure inevitable expansion of the individuals whose rights will be lost or severely affected. That is an unacceptable approach by legislative standards without appropriate counter balancing and/or justification.*
>
> *… The Bill would currently see the incredible situation whereby these large water users are exempted from moratoriums, emergency measures and all the other ways in which agriculture, town, and other users are subject to changing water circumstances and availability. That leaves a gaping hole in the ability of water planning in catchment areas to be reliable and meaningful.*[94]

Ferrier & Co raised concern that the approach adopted under the Bill is to deregulate the taking of associated water under the Mineral Resources Act, rather than looking at ways to enhance the management and regulation of the taking of associated water under the Petroleum and Gas Act:

> *We submit changes to the Bill to reflect these matters would be a more responsible and sustainable approach to take in the circumstances, particularly given the continued*

[92] Standley, J, *Submission No. 30*, p. 1.
[93] EDOQ, *Submission No. 40*, p. 3.
[94] BSA, *Submission No. 26*, p. 4-5.

> *expansion of natural resource extraction in Queensland and the associated pressures this has, and will continue to have, on Queensland's water reserves.*[95]

WSQ rejected the proposal to extend the "statutory right to take water" to the mineral resources sector on the basis that they did not support the existing provision of a "statutory right to take water" afforded to the petroleum and gas sector:

> *…all resources sector projects should be required to secure a water entitlement for the take of "associated" and "non-associated" water prior to the grant of a mining lease or a P&G tenement to ensure all sectors across Queensland are subject to the same consistent framework in relation to access to water.*[96]

These objections are consistent with similar observations made by the National Water Commission, which noted in its 2013 assessment report of Queensland's water planning and management, that there was continued risk to groundwater resources from statutory rights to water for coal seam gas extraction:

> *Tenure holders under the Petroleum and Gas (Production and Safety) Act 2004 continue to be provided with 'underground water rights' that are not volumetrically controlled and are outside of the WA 2000 and the water planning process. Chapter 3 of the WA 2000 places conditions on these water rights, including the requirement to minimise adverse impacts on the environment and other authorised users, as well as the need to prepare an underground water impact report with predictions of impacts over a threshold level for a three-year period. Make good provisions also may apply where impacts occur.*
>
> *The Queensland Government maintains there is transparent accounting of groundwater extraction associated with coal seam gas and that requiring water access entitlements for this purpose would not achieve any additional benefits beyond those under the current management framework.*
>
> *It is the Commission's view that despite the management arrangements developed, significant water use that is undertaken outside the water planning process – and not accounted for within this process – reduces the transparency of water allocation decisions. As evidenced by public debate, the current approach has the potential to undermine confidence in the water planning process as well as reduce the security of existing water entitlements and water for the environment.*[97]

This was apparent from the submission from AgForce:

> *Primary producers must have confidence that there will be a proactive protection of their access to water for livestock and domestic uses as well as other agricultural business purposes, such as irrigation. This confidence comes from having:*
>
> - *Accurate pre-development baselines on their agricultural water bores*
> - *Underground water impact reports that establish clear obligations*
> - *Robust monitoring programs and accurate assessment of potential and actual impacts on water bores*
> - *Negotiation and entering into acceptable 'make good' agreements*
> - *Plans for dealing with cumulative and post-activity impacts over the longer term.*

[95] Ferrier & Co, *Submission No.11*, p. 3.
[96] WSQ, *Submission No. 25*, p. 6.
[97] National Water Commission, 2013, *Water Planning Report Card 2013*, p. 269. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0016/37222/5.-QLD.pdf. Accessed 11 November 2014.

> *AgForce supports the requirement for new mining tenure holders to prepare Underground Water Impact Reports (UWIR), baseline assessment plans (BAP) prior to the exercise of underground water rights, undertake bore assessments for immediately affected bores and the negotiation of make good agreements as necessary. The capacity to establish cumulative management areas (CMA) for mineral developments and the involvement of the Office of Groundwater Impact Assessment (OGIA) is also supported.*[98]

Conscious of the potential risks to sustainable water management and security of existing users water allocations, the National Water Commission developed/issued a nationally agreed Coal Seam Gas (CSG) and water position statement. In it the Commission stated:

> *The Commission believes that wherever there is potential for significant water resource impacts, CSG activities should be incorporated into NWI consistent water planning and management regimes from their inception. Given the high level of uncertainty around water impacts, and the temporal nature of CSG developments, this will likely require a precautionary approach that demands innovation from water managers and planners, and significantly greater coordination with existing project approval processes.*[99]

Specifically, the Commission advised state and territories that interception of water by CSG extraction should be licensed to ensure it is integrated into water sharing processes from their inception.[100]

DNRM justified the basis of the policy position/approach and argued that the protections afforded to landholders were adequate:

> *The Bill proposes different arrangements for the management of associated and non-associated underground water take or interference because of the different nature of the two forms of water take or interference.*
>
> *Non-associated water can be appropriately managed through the planning and allocation framework, as it is consistent with the type of take of other water users in that the source of water is optional and the volume of water can be anticipated upfront and limited. The Bill proposes that all non-associated water be managed in this way.*
>
> *For associated water take, the volume of water is often unknown until the activity occurs and the source and location of take is not optional as the take or interference is consequential to the mining activity. For these reasons, a water licence is not the most appropriate mechanism to manage this form of take or interference. For example, an issue with managing associated water take under a water licence is that bore owners are not protected through a statutory make good requirement and have to rely on conditions being attached to the water licence about make good. The Bill will remove uncertainty for landholders by ensuring bore owners are protected by statutory make good obligations as well as having access to a formal dispute resolution process.*
>
> *…Associated water rights provided by the Bill to the mineral resource sector are limited to the taking or interfering with water that happens during the course of, or results from, the carrying out of mining activities. As such, the right does not authorise a mineral resource operator to take water for the purpose of use in their activities, this type of take (i.e. for a consumptive purpose) must be authorised under the Water Act 2000 consistent with other water users.*

[98] AgForce, 2014, *Submission No. 45*, p. 8.
[99] National Water Commission, 2010, *Position statement – Coal Seam Gas and Water'* p. 2. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0003/9723/Coal_Seam_Gas.pdf, Accessed on 12 November 2014.
[100] National Water Commission, 2010, *Position statement – Coal Seam Gas and Water'* p. 2. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0003/9723/Coal_Seam_Gas.pdf, Accessed on 12 November 2014.

> *In addition, the associated water rights are not unfettered as they are subject to the holder complying with the underground water obligations under chapter 3 of the Water Act. This includes preparing underground water impact reports (which are released for public comment, approved and assessed by the Department of Environment and Heritage Protection), underground water monitoring, spring impact assessment, baseline assessments and entering make good arrangements with potentially affected bore owners. Chapter 3 of the Water Act provides an adaptive management regime, in that it requires frequent review of predictions made within underground water impact reports, continued monitoring of impacts and reporting. Further, where impacts of multiple operations are occurring, the framework allows for a cumulative management area to be established where there is regional oversight of the Office of Groundwater Impact Assessment.* [101]
>
> *…The Bill acknowledges that as a consequence of mining operations there may be impacts on underground water and therefore, the water users that rely on these underground water supplies. This is why the Bill proposes to introduce a statutory obligation on mining companies to make good any impacts that may occur on these water users. The obligations include preparing an underground water impact report on which landholders and the broader community may make submissions before the report is finalised and approved. Because all the management requirements have been placed in Chapter 3 of the Water Act, there is no further benefit that could be achieved through licence conditions. Accordingly, the need to obtain a licence will be removed to prevent duplication.*
>
> *Chapter 3 of the Water Act also includes access to a dispute resolution process, which can be accessed to support bore owners in undertaking make good negotiations. It also allows for arrangements to be considered by the land court where agreements cannot be reached.* [102]

Management of impacts on underground water

Providing holders of a mining lease or mineral development licence with a statutory right to take associated water, aligns the take of associated water with the same arrangements for the petroleum and gas sector. At the same time amendments to Chapter 3 expand its scope from its current application only to petroleum tenure holders to include the mineral resources sector. Specifically, holders of mining leases and mineral development licences will be required to notify the chief executive when they commence taking associated water, and will be subject to an obligation to submit an underground water impact report and baseline assessment plan and to enter into a make good agreement with the owner of a water supply bore if the bore is likely to be impaired by their take of associated water.

The Explanatory Notes argue that the extension of Chapter 3 underground water impact management requirements adequately balances any possible impact from the deregulation of associated water for the mineral resource sector with increased security and certainty for landholders:

> *They [the new provisions] will provide certainty and consistency to landholders whose bores may be affected by mine dewatering activities; as the 'make good' obligations within chapter 3 will apply to the take of associated water by all holders of mining leases and mineral development licences.* [103]

AgForce noted in their submission and hearing evidence that the extension of Chapter 3 requirements for the management of impacts on underground water bores was consistent with representations made by the agriculture sector over numerous years:

[101] DNRM, 2014, *Correspondence*, 24 October, pp. 31-32.
[102] DNRM, 2014, Correspondence, 24 October, p. 33.
[103] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 17.

> *In 2014 AgForce approached the government about providing greater certainty for landholders in relation to underground water impacts by the mining sector through a more consistent framework including make-good provisions. Landholders, including those off tenure, have been seeking more proactive provisions—in other words, baseline testing the bores, and I am talking about both stock and domestic in this case—assessing the water that is there and setting trigger points and trigger values through monitoring as to a proactive approach. Currently the make-good provisions are a reactive approach after the bore has gone dry. You then have to ascertain who caused the problem and who is going to fix the problem, but in the meantime there could be thousands of head of livestock requiring a drink on a daily basis, so we are just trying to get upfront and more proactive.*[104]

However, a number of groups representing landowners including QFF, AgForce, BSA, PRA and others do not appear to be fully satisfied with the underground water impact management obligations are currently proposed in the Bill. The primary areas of concern for these stakeholders was ensuring that 'make good' arrangements were fit for purpose, that pre-development baseline reports and underground water impact reports (UWIR) and bore monitoring requirements are robust and that exemptions for existing licence holders, low risk activities and area exclusions do not erode the benefit and protection for bore owners. Based on the evidence provided to the committee, the general/in-principle support for the overall underground water rights framework is considered conditional upon further discussion and resolution of these matters, as discussed in more detail below.

Obligations to enter into 'make good' agreements

Make good water agreements are agreements between bore owners and resource companies entered into before activities commence. They can more accurately be described as a 'settlement deed' for loss of bore as they establish the conditions which trigger agreed settlement (or restitution) measures. Successful/appropriate make good agreements detail the current characteristics of a bore such as its capacity and recharge rate, outline the required testing and monitoring programs, establishes trigger thresholds (point of impairment) and details the make good actions, alternative water sources and any compensation expected.

There were concerns raised that, despite the intent, make good agreements did not provide sufficient protection for landholders and there are a number of flaws in the legislative provisions for make good which require review by the government.

Mr Peter Shannon of BSA submitted:

> *It [the statutory right for associated water] also affects the compulsory resumption, in effect, of the water entitlement of those people who are going to be impacted who have the right to make good. The justification, which does not seem to have been recognised in the Parliamentary Counsel's report to the committee, is presumably that the make-good regime will be the compensation process. What I would like to do is emphasise to you that that is not justification without an examination of whether the make-good process works, and it does not. It has major flaws and major problems.*[105]
>
> *No doubt many in Government intend to truly allow landholders the ability to secure "make good" however the inadequate drafting of the existing legislation lets down both Government and landholders.*
>
> *… Make good is a phrase that belies its complexity. It infers more than it delivers. It is no more than a process whereby those considered to have been impacted by resource activity*

[104] Anderson, P., 2014, *Draft hearing transcript*, 29 October, p. 30.
[105] Shannon, P., 2014, *Draft hearing transcript*, 29 October, p. 39.

> *have an opportunity to negotiate make good measures if they can overcome significant obstacles and uncertainties in the legislation.*[106]

Property Rights Australia (PRA) submitted:

> *Property Rights Australia has ongoing concerns about the "make good" provisions and their as yet untested effectiveness. It has been our long term position that there is no substitute for a reliable source of clean water for agriculture where that is customary and that all other options are an inferior option.*
>
> *…The "make good" arrangements are totally inadequate to ensure the full and fair recompense of affected bore owners in every single case with possible blocks to fair outcomes at every step of the process. With such an impact on the primary resource required by agriculture the Government needs to do more than employ a catchy phrase and give actual legislative grunt to provisions to compensate for such loss.*[107]

The QMDC expressed similar concerns, submitting:

> *Groundwater required take for mining purposes does not produce new water. Retrospective 'make good' actions cannot be undertaken to right impacted surface and groundwater systems. The systems have evolved over many years that renders current 'make good' provisions ineffective in long term, sustainable water resource planning. Make good arrangements should therefore at a minimum require the purchase and transfer of an allocation under the relevant Water Resource Plan (WRP).*[108]

At the heart of the concerns was the fact that the any obligation to 'make good' on bore impacts requires proof that the bore has an 'impaired capacity' and that this impact has been caused as a direct result of the mining companies activities in exercising their underground water rights (refer section 412 of the Water Act). This is the case for bores located both within and outside the immediately affected areas identified in the underground water impact report prepared by the mining company prior to the commencement of mining activities.

As Mr Shannon indicated in his tabled paper, titled 'Make Good Flaws', this process is managed/undertaken by the resource company who is the 'water monitoring authority':

> *The relevant resource company is in control of that [bore monitoring and impact assessment] process because it is the entity that undertakes the critical bore assessment that determines eligibility for make good measures. Unless the resource company comes to the conclusion that not only is the bore impaired but that it is also due to the resource company's activity, the landholder has no entitlement to make good measures (i.e. a source of water, compensation, new bore etc.)*
>
> *…Invariably the causes are attributed to any number of factors including drought, over pumping by landholders, poor aquifer characteristics, poor bore siting as well as gas activity. They are invariably inconclusive.*[109]

If a bore owner disagrees with the mining company's assessment, then the burden of proof subsequently rests with them to disprove the mining company's assessment and link bore impairment directly to the resource company's activities, usually through dispute resolution and court processes.

> *If a landholder wishes to apply pressure to a company [to deliver on the agreed make good arrangements] they have to disprove the assessment or establish the most likely cause is gas*

[106] Shannon, P. 2014, *Tabled paper 'make good flaws'*, 29 October, p. 1.
[107] PRA, *Submission No. 28*, p. 1, 4.
[108] QMDC, *Submission No. 17*, p. 2.
[109] Shannon, P. 2014, *Tabled paper 'make good flaws'*, 29 October, p. 1.

> *activity… To understand how difficult the process of attributing cause can be in this area, one only needs to consider the enormous amount of money that the Government has spent on ascertaining the cause of the Condamine River seeps only to still have an inconclusive report – notwithstanding the apparently obvious connection with the extensive gas activity in the area.*
>
> *…To do this properly the landholder and/or his legal representative needs to understand the hydrogeology of the area, examine the companies bore assessment, challenge the assessment where appropriate (almost always), have a detailed understanding of the bores role in the landholders operation, have a detailed understanding of the likelihood of alternative underground water being available and/or in what quantities and/or quality and/or reliability. That is not a process properly undertaken in a short period of time nor without the assistance of independent hydro geologists and water engineers.*
>
> *…There is no automatic provision under the legislation for a landholder to have the professional help of an hydro geologist in the make good process, notwithstanding that the onus is upon the landholder to establish not only that impairment has occurred, but also more frequently that it is due to the resource activity. This is a glaring inadequacy.*[110]

As suggested by a number of submitters, this burden of proof is further made difficult as the resource company is the holder of the bore monitoring data and other relevant information about the mining activities, and there is no legislative obligation for the tenure holder to release this information publically or directly to the landowner.

This point was made by Ms Rea at the public hearing:

> *Landowners bear the onus of proof that resources companies are responsible for loss of quality or quantity of water in the event of a serious dispute. Reasonable access to proof has been curtailed, if anything, by this bill. The water monitoring authority, rather than being the government or an independent authority, is to be the resources company… this legislation has one party on an uneven footing already, with the resources company the holder of the hydrogeological and water monitoring information, with severe penalties for anyone who may interfere with a monitoring bore, which remains the property of the resources companies and may be plugged by such company at any time without reference to anyone.*[111]

Mr Shannon also expressed considerable concern in respect of the transparency of associated water consumption/take and hydrogeological assessment information:

> *In this process the companies also have the benefit of extensive repeat player experience, and control of much of the information a landholder needs to properly assess the causes of impairment. Government does little to help access critical information. The companies resist disclosure of the Fracture Risk Assessments they are meant to provide to Government under their Environmental conditioning. There is absolutely no reason for that. They should contain critical information as to the underground stratigraphy. The companies also do not provide easy access to information concerning reinjection undertaken in areas nor the history and extent of fracking (including in particular shallow fracking undertaken in the past) or a host of like information that could be critical in understanding the behaviour of the underground water in response to resource activity. They are also often aware of the location of fractures and fissures under the ground due to their repeat experience but do not readily disclose that – again notwithstanding that the onus is effectively on the landholder if the company's assessment is considered inadequate. It is only with independent hydro geological advice*

[110] Shannon, P. 2014, Tabled paper 'make good flaws', 29 October, pp. 1-2.
[111] Rea, J., 2014, *Draft hearing transcript*, 29 October, p. 40.

> *and access to this information that landholders can be properly equipped to challenge or evaluate bore assessments.*[112]

There is no explicit provision within the legislation which requires or compels a bore monitoring authority to provide the results of bore assessments or other relevant underground hydrological information to bore owners. This is despite there being reverse onus on landowners to provide any relevant bore water information to tenure holders upon request.

> ***416 Bore owner must give information***
>
> *(2) If there are water bores located on the owner's land, the owner of the land must comply with any reasonable request by a holder made under subsection (1), if the person has the information.*

A further concern noted by PRA was the legislative provision that does not make a mandatory requirement for monitoring bores to have a baseline assessment prior to use for monitoring purposes:

> *It is also one of the basic tenets of science and agriculture that you cannot monitor anything without measuring it, so the bill making it clear that monitoring bores do not need to have a baseline assessment is, quite clearly, not suitable for the purpose.*[113]

Mr Shannon also identified a need to reflect penalty provisions for the failure to comply with make good agreement conditions, as is currently the case under the Mineral Resources Act in relation to breech of conduct and compensation agreement conditions:

> *…fundamentally, section 276 of the Mineral Resources Act at the moment makes it, in effect, a breach of your mining lease if you do not comply with the compensation agreement. It has to be amended so that is a breach of your mining lease if you do not comply with the make-good agreement.*[114]

Based on the above evidence and concerns, there was shared support from stakeholders to review the operation and effectiveness of make good obligations with respect to its single application to the petroleum and gas sector, prior to the extension of these provisions broadly across all resources sectors/mining operations. This point was summarised by Mr Shannon at the public hearing

> *It behoves this committee, in my view, to make sure that if that [extension of make good obligations] is going to be the justification for all that you are removing from landholders in this process, you make sure it works.*

<u>Chapter 3 exemptions</u>

A number of stakeholders questioned the provision of numerous exemptions to the full application of Chapter 3 monitoring and reporting obligations related to the resource sectors statutory right to take associated water.

In particular, AgForce expressed concern that the underground management framework would fail to manage cumulative impacts on water take if exemptions for existing lease holders who take water under the new statutory right are allowed and indicated a preference for all mines to fully transition to provide the greatest certainty to potentially affected landholders:

> *However, the requirement to prepare UWIRs (new s369A) and BAPs (new s394A) does not apply to holders of a mineral development license (MDL) or mining lease (ML) if they have a water licence or permit to take or interfere with underground water or have a lawful entitlement to do so immediately before commencement, such as in an unregulated area.*

[112] Shannon, P. 2014, Tabled paper 'make good flaws', 29 October, p. 2.
[113] Rea, J. 2014, *Draft hearing transcript*, 29 October, p. 40.
[114] Shannon, P., 2014, *Draft hearing transcript*, 29 October, p. 40.

> *AgForce understands that the government's intention to provide a statutory right to take associated water will be extended to all MDL and ML holders (new Chapter 12A in the Mineral Resources Act 1989). Given this universal right it is reasonable to expect that all the associated obligations around underground water impacts would also be universally applied, without exempting existing mines that may already be having an impact on the water supplies of surrounding landholders. Acknowledging the difficulties in understanding past groundwater impacts, developing robust baselines is an important component in establishing associated impacts on landholder bores and associated responsibilities.*[115]

AgForce and PRA also noted concern for the low risk tenure and low risk area exemptions provided for in the Bill. New s370A provides for an exemption from the need to prepare UWIR and BAP for low-risk mining and petroleum tenures, whilst new s397(5)(b) allows the chief executive to approve baseline assessment plan that excludes an area if the tenure holder assesses that the relevant bores in that area are not at risk of impairment.

> ***370A When obligation to give underground water impact report does not apply—exemption for low risk resource tenures***
>
> *A regulation may identify circumstances in which a resource tenure is taken to be a low risk resource tenure for this division.*
>
> *…*
>
> *(3) The holder of a low risk resource tenure is not required to give the chief executive an underground water impact report under section 370 while the resource tenure remains a low risk resource tenure.*
>
> ***Amendment of s 397 (Obligation to prepare baseline assessment plan)***
>
> *(5) Despite subsection (4)(b), the chief executive may accept a baseline assessment plan—*
>
> *(b) generally—that excludes an area if the resource tenure holder can demonstrate to the chief executive's satisfaction that any relevant aquifer in the area is not affected, or likely to be affected, because of the exercise of the holder's underground water rights.*

AgForce submitted:

> *…The definition of what comprises 'low risk' activities is to be identified in a regulation and is not included in the Bill nor is a process to monitor their low risk status over time. This is concerning and needs to be addressed… Any mining activity exclusions to the application of this framework should only occur where there is a high degree of confidence, based on robust and objective knowledge, that there is little to no risk of adverse impacts on other water users.*
>
> *Following the Land Court's recent questioning of hydrological modelling it is concerning that the Chief Executive can accept a baseline assessment plan that excludes an area on the basis that a tenure holder can 'demonstrate' aquifers are not likely to be affected by more than the bore trigger threshold (new s397 (5b)). Potentially-affected landholders should be consulted for their views prior to this exclusion being granted and the precautionary principle applied to these decisions, particularly given the identified need for amendment if this exclusion proves incorrect (new s401(2A)). This adaptive process is not proactive enough to protect vital stock and domestic water access and cannot deliver robust baselines over time, particularly when a producer seeks to establish other new water developments on their property.*[116]

Ms Rea of PRA submitted:

[115] AgForce, *Submission No. 45*, p. 8.
[116] AgForce, *Submission No. 45*, p. 9.

> *…One of the main determinants of whether or not a bore has been affected is based on the underground water impact assessment report, which sets out the obligations to monitor and manage impacts on bores and springs. The fact that small low-impact or no-impact mines or resources companies in unregulated areas are not required to complete an underground water impact assessment report or a baseline assessment, in spite of having make-good obligations, leaves a gaping hole with no clear path on how such obligations are to be realised.*[117]

Conduct relating to underground water

In relation to make good obligations, it was further noted that they go only to what can be considered compensation for loss of water and its financial implications such as loss of produce or farm productivity. Stakeholders including Cotton Australia, WWF and EDOQ expressed concern that management obligations coupled with the statutory right to take associated water imposed little to no conditions on the conduct of mining tenure holders to protect or maintain the long term sustainability of the underground water resource and to manage impacts on water resources other than bores (e.g. springs and groundwater dependent ecosystems) in the same way that water licences/allocations include conduct conditions.

QFF and Cotton Australia submitted:

> *Questions are being raised about how project investigations will address issues that may significantly constrain mining or CSG project development beyond the scope of detailed environmental assessments of a project proposal. In particular, stakeholders want to understand how for example how sustainable development limits imposed by the Murray-Darling Basin Plan would be considered under any investigations for a mining development likely to affect sub artesian aquifers in the Queensland Murray-Darling catchments. Also there is the issue of how Priority Agricultural Areas under the Regional Planning Interest Act 2104 would be protected.*[118]
>
> *Cotton Australia makes the point the "make good' provisions may provide adequate protection to individual water users, but does not by its nature protect the long-term viability of the resource. Cotton Australia will be looking to extend the water resource protection provided under the Regional Planning Interest Act for Regionally Significant Water Sources to other water such as Callide Groundwater.*[119]

WWF submitted:

> *While mine operators will be required to 'make good' any impacts to bores on adjacent properties, the Bill does not contain provisions requiring mine operators to 'make good' any impacts to springs or groundwater dependent ecosystems as CSG operators are required to do.*
>
> *Making good impacts to affected bores is an agreement between the bore owner and the responsible mine operator that may result in the bore owner receiving financial compensation, which will not remediate the impact to the affected aquifer.* [120]

Moreover it is not clear how the make good obligations under the Water Act will interact with similar conduct and compensation agreement obligations under the *Mineral and Energy Resources (Common Provisions) Act 2014* (Common Provisions Act). Most impacts of mining and petroleum activities on private land are regulated under the Mineral Resources Act and "affected persons" are compensation under a conduct and compensation agreement. Underground water impacts are

[117] Rea, J., 2014, *Draft hearing transcript*, 29 October, p. 40.
[118] QFF, *Submission No. 44*, p. 11.
[119] Cotton Australia, *Submission No.39*, p. 2.
[120] WWF, *Submission No. 38*, p. 7.

regulated under Chapter 3 of the Water Act and affected bore owners as identified through the underground water impact report are compensated under a make good agreement. With the extension of make good agreement obligations to mineral resource mining tenures, there is potential for certain landowners to be subject to duplicate agreements.

Additional complexity and uncertainty may prevail for landowners outside of the immediate mining tenure boundary. Affected persons provisions under the Mineral Resources Act only apply to the owners of land over which the tenure applies or to owners of land required for access whereas due to the nature of underground water resources/aquifers the area of impact may potentially be much broader. It is therefore important that firstly landowners are not subject to duplicate negotiation/agreement processes for the two agreements, and that there is adequate reflection of legal rights across the two processes.

Committee comment

The committee accepts that there are divergent views between on the statutory right to take and interfere with associated water for the resources sector. The committee, however, notes that the amendments proposed in the Bill are consistent with the government's policy direction to reduce red tape for the mining industry, as is evident in the *Mineral and Energy Resources (Common Provisions) Act 2014*. The committee further notes that the amendments proposed in the Bill are consistent with the government's policy towards a consistent framework as part of progressing common provisions, in so far as they harmonise the arrangements between mining and petroleum and gas sectors.

As part of its inquiry therefore, the committee revisited the definition of affected person, and provisions around conduct and compensation agreements within the Common Provisions Act to examine the effect of related amendments in this Bill associated with make good arrangements. The committee concluded that there is opportunity to streamline the consultation and negotiation of compensation agreements for all parties as part of a mining lease tenure application. To do so, however, requires acknowledgment that the definition of affected person requires broadening for the purposes of assessing impact on other water users and consideration of the application of conduct as well as compensation across the make good arrangements.

The committee heard concerns regarding the limitations of what can be achieved through make good for interference with clean water supply, as well as the arrangements expressly provided for in the Bill. The committee accepts these concerns such that, in the short term, the committee considers that amendments may improve the likely success of make good arrangements in balancing the interests of both parties.

In the longer-term, the committee considers that process and outcomes evaluations of conduct and compensation agreements or make good agreements would be beneficial.

In both respects, the availability of baseline and subsequent monitoring data is necessary to promote sound management of any impact on groundwater and fairness in make good arrangements. The committee notes the department's advice that bore data will be available online through the Queensland Globe project.

Point of clarification

The committee invites the Minister to comment on the need for to review the definition of affected person within mining laws to ensure that consultation as part of a mining lease application includes consultation with affected persons with respect to water impacts, whom may be different from those affected by land-based activities.

Recommendation 6

The committee recommends that the Bill be amended to universally require the preparation of an underground water impact assessment report or baseline assessment, as the basis for the introduction of make good arrangements. This necessitates the omission of exemptions proposed in the Bill with respect to existing mines, low risk activities (not yet defined), and bore trigger thresholds.

Point of clarification

The committee invites the Minister to comment on the onus of proof for make good agreements under the Bill in providing equity for affected parties, such that:

1. Where the resource company accepts that a bore will, or will likely be, impacted at some stage in the project, make good measures are specified immediately and provided.

2. If a landholder can demonstrate through water impact reports or modelling that there are reasonable grounds to consider that their bore could be adversely impacted by the mining activity in the life of the project; if the resource company cannot prove otherwise, make good measures are to be specified immediately and provided.

3. If a landholder can demonstrate through water impact reports or modelling that there are reasonable grounds to consider that their bore could be adversely impacted by the mining activity in the life of the project; if this is not accepted by the resource company, then a make good agreement should provide an appropriate monitoring regime, unless impairment then arises which require make good measures.

4. If a landholder can demonstrate through water impact reports or modelling that there are reasonable grounds to consider that their bore could be adversely impacted by the mining activity in the life of the project; if the resource company can prove that the bore/s will not be impaired, then the landholder must await an actual impairment before being entitled to make good measures.

Point of clarification

The committee invites the Minister to comment on the onus of proof for make good agreements under the Bill in providing that a project need only be a cause or contributor to the impairment for an entitlement to make good measures, in recognition of hydrogeological uncertainties.

Point of clarification

That committee invites the Minister to comment on options to improve confidence in the arrangements set out for water monitoring authorities, including the use of accredited third party bodies.

Point of clarification

The committee invites the Minister to comment on the efficacy of existing make good agreements programs, in proposing their introduction under the Water Act, and to comment on any plans for an outcomes evaluation after a reasonable period when negotiation of a number of make good agreements has occurred.

Entitlement for take of non-associated water

There was broad support from submitters representing agriculture, legal, environmental and catchment management organisations, as well as individual submitters, for the proposed change to the Petroleum and Gas Act to remove the existing right of the petroleum industry to extract non-associated water.

> *The expected continued growth of the [petroleum and gas] sector, including new areas of unconventional operations, is likely to require a significant increase in their take of [non-associated water] with an associated potential risk to the security of access to water for existing agricultural water users in those areas….The Government has decided to address this issue by bringing [non-associated water] use by the resource sector under the water planning and allocation framework that applies to other consumptive uses and remove the current statutory right to [non-associated water] and replace it with licences and permits. This will promote the delivery of certainty and security for existing stock and domestic and other agricultural water entitlements holders using the same sources of water. As such AgForce are supportive of the removal of any existing right for the [petroleum and gas] sector to take unlimited volumes of [non-associated water].*[121]

> *In relation to the changes of the Petroleum and Gas Act, very briefly, we are very happy to see that there will be a need for petroleum and tenure holders to have a water entitlement licence before they can extract non-associated water... All we would ask in that respect is that the grant of any such water licence is consistent with responsible and sustainable management of the water, which would be consistent with the overarching principles of the Water Act.*[122]

While introduced as part of a consistent framework for underground water rights for the resources sectors, it also redresses a perceived deficit in the current framework:

> *Tenure holders under the Petroleum and Gas (Production and Safety) Act 2004 continue to be provided with 'underground water rights' that are not volumetrically controlled and are outside of the [Water Act] and the water planning process….As evidenced by public debate, the current approach has the potential to undermine confidence in the water planning process as well as reduce the security of existing water entitlements and water for the environment.*[123]

> *The introduction of a requirement for capture within the regulatory regime of non-associated consumptive water is applauded in order to at least partially reduce the "gaping hole" effect (i.e. at least that use will become part of the general water planning regime with other water users in the relevant catchments presumably).*[124]

This was acknowledged in DNRM's advice during the inquiry:

> *While the Bill continues the current management for the unavoidable take of underground water that results from petroleum and gas production, the Bill does enhance the management and regulation of the non-associated water taken by the petroleum and gas sector, bring[ing] the management into line with all other water users.*[125]

The resources sector advised of its acceptance of the intent, but raised a practical concern associated with its implementation:

> *As we said, we can see the rationale for what the government is doing. Our main issue is defining what the alternative is and how the petroleum industry will secure non-associated water under the new system. [DNRM} ha[s] been doing what they can to get that process started. As I said, there is quite a lot that needs to happen, and a lot of other stakeholders will have a view on it as well. So we are working through that process, but our focus is*

[121] AgForce, *Submission No. 45*, p. 10.
[122] Wood, C., 2014, *Draft hearing transcript*, 29 October, p. 22.
[123] National Water Commission, 2013, *Water Planning Report Card 2013*, p. 269. Available at http://www.nwc.gov.au/__data/assets/pdf_file/0016/37222/5.-QLD.pdf. Accessed 10 November 2014.
[124] BSA, *Submission No. 26*, p. 8.
[125] DNRM, 2014, *Correspondence*, 24 October, p. 29.

> *getting to the end of that and defining how the industry will get non-associated water in the future.*[126]

Without this detail, there were divergent views expressed to the committee in respect of the timeframes in the Bill provided for transition.

The resources sector advised:

> *We do not oppose the timelines set by the Bill to transition to the new framework - five years for the Surat Cumulative Management Area (CMA) and two years for other areas of Queensland – on the basis that government has stated it will use the transitional period to review the water planning regime and provide an appropriate framework for exemptions and licensing of petroleum industry water extraction. However, given that there is a considerable body of work to undertake before the end of the transitional period we consider the two year and five year deadlines to be ambitious.*[127]

However, other stakeholders considered the timeframe too long, and a risk to water planning and security for potentially other high priorities and other water users:

> *…As I understand it, they are looking at a five-year transition period. In our view that is a fairly long time and if that can be transitioned sooner, that would be better for all. This transition should occur promptly and with greater transparency.* [128]

> *…In our view the five (5) year period is inordinate, unwarranted, and will see to a rush of water use and activity in that time.*[129]

> *…It is unclear why a 5-year-period is being applied when the Surat CMA is currently the most active development area and as such will have the greatest immediate demand for NAW. The Explanatory Notes indicate that this is to enable the GAB WRP to be reviewed to ensure water is available to meet the requirements of the sector and so that a general 'risk based' exemption is available for licences to access deeper GAB aquifers. The continuation of the existing NAW rights during this extended period does not seem to effectively take into account the interests or future development aspirations of other water users in the GAB, with the bulk of this NAW take potentially occurring before the transition period ends.*[130]

DNRM advised:

> *The transitional period is proposed to be extended to 5 years in the area of the Surat CMA because of the greater industry development in this area, and because of the requirements attaching to the Cumulative Management Areas.*
>
> *Tenure holders have existing make good agreements and obligations established by the underground water impact report that may be affected by the reforms, and amending these obligations may require the review and amendment of the UWIR. Some tenure holders have committed to water management infrastructure and some time is needed to allow these investments to be reviewed and if necessary, altered.*[131]

Concerns were also raised in response to the potential fundamental legislative principle issue that no public notification process was required under the special transition provision that provided a licence or permit to cover the need to take non-associated water for tenure holders which request an authority during the transition period:

[126] Paull, M., 2014, *Draft hearing transcript*, 29 October, p. 4.
[127] APPEA, *Submission No. 22*, p. 1.
[128] Anderson, P., 2014, *Draft hearing transcript*, p. 30.
[129] BSA, *Submission No. 26*, p. 9.
[130] AgForce, *Submission No. 45*, p. 10.
[131] DNRM, 2014, *Correspondence*, 24 October, pp. 64-65.

> *… AgForce would support including more consultation with potentially-affected landholders, particularly as these NAW licences will not attach to a specific land area (tenure holders are a prescribed body under new s106(2)). Where planned P&G activity occurs in areas where the water resource is already fully or close to fully allocated (e.g. the Condamine Alluvium) it is unclear how existing users will be considered and prioritised if the Chief Executive is required to provide a licence or permit in these locations. Existing users and the environment must not be disadvantaged through this special transition process and this implementation issue needs further work.*[132]

DNRM provided the following justification:

> *The transitional process proposed under the new s1277 does not require public notification because it provides an authorisation that recognises the extent to which an existing petroleum tenure holder has demonstrated that they have been exercising their existing right, or have committed to work programs that will exercise the right. Any further increase in water requirements after the transitional period, and any take of water for use by new tenure holders, will be assessed under the normal licence application process including public notification.*
>
> *Under the new s113, if considering the granting of a licence, the chief executive must consider the relevant water plan and – if the application relates to the Murray-Darling Basin – the sustainable diversion limits (SDLs).*
>
> *The same matters are considered under the transitional process under s1277 in considering the grant of a licence or permit respectively. These considerations ensure that the volumes granted under the transitional process are justifiable on the same basis as other grants of licences and permits.*[133]

Committee comment

The committee notes the broad support for the proposed change to the *Petroleum and Gas (Production and Safety) Act 2004* to remove the existing right of the petroleum industry to extract non-associated water. The issues raised with the committee were largely in respect of the transitional provisions.

Recommendation 7

The committee recommends that the application of transitional provisions is limited to existing tenures upon commencement.

Point of clarification

The committee invites the Minister to comment on how information on water entitlements throughout the transition period will be available for water planning, should public notification not occur and in response to concerns raised by stakeholders.

[132] AgForce, *Submission No. 45*, p. 10.
[133] DNRM, 2014, *Correspondence*, 24 October, pp. 66-67.

5. Matters of governance

In respect of remaining provisions within the Bill, there were several matters of governance identified during the inquiry that attracted particular attention from stakeholders and the committee, which are outlined in this section. Other matters did not raise the same concerns, and so are not discussed.

River Improvement Trusts

Clauses 19 – 51 amend the *River Improvement Trust Act 1940* to streamline the administration and operation of the river improvement trusts in conducting their river improvement activities/responsibilities.

Clause 22 New section 2A outlines more clearly the objects of the RIT Act, and describes the way in which the objects will be achieved. Former objects are brought forward such as repair and prevention of damage to rivers, and prevention and mitigation of flooding. New objects include the protection of water security and improvement of water quality in rivers and streams.

> ***2A Object***
>
> *(1) The object of this Act is to provide for the responsible management of river catchment areas through—*
>
> *(a) planning for and implementing measures that improve the protection, health and resilience of rivers and their catchments; and*
>
> *(b) repairing, and preventing damage to, rivers and their catchments; and*
>
> *(c) restoring natural resilience to flooding and cyclones in rivers and their catchments; and*
>
> *(d) protection of water security; and*
>
> *(e) improving water quality and river system function in rivers and their catchments.*

Points raised in submissions from catchment and environmental groups indicate support for the proposed broadening of activities in which trusts will be able to invest:

> *While supporting a reduction in regulatory requirements applying to River Improvement Trusts, the Great Barrier Reef Marine Park Authority would request that the Queensland Government ensure that proposed regulatory amendment do not result in a downgrading of the current protections afforded to wetlands and water quality in the Great Barrier Reef Region. Modification to these protections could lead to significant cumulative impacts on the outstanding universal value of the Great Barrier Reef World Heritage Area.*[134]
>
> *The modernisation of the Act will provide a powerful instrument for tackling the serious issues of river degradation in South East Queensland which impacts heavily on the region's economic and environmental health. Examples of the negative impacts of the region's degrading river include loss of agricultural productivity, cost and reduced reliability of the potable water supply, siltation of shipping channels and reduced tourism and recreation opportunities. The expansion in the object of the Act to include river catchment areas is an important change to allow for the implementation of modern catchment management techniques.*[135]
>
> *The River Improvement Trust (RIT) Act could be improved by basing catchments plans on existing regional NRM Plans. These catchment plans should incorporate water quality and*

[134] GBRMPA, *Submission No. 23*, p. 2.
[135] SEQ Catchments, *Submission No. 32*, p. 2.

> *environmental value objectives and management strategies, land erosion reductions and ecosystem protections and resource condition targets.*[136]

The new inclusion of protection of water security raised questions for the Scenic Rim Regional Council, which advised:

> *Council does not believe a future RIT entity ought be directly involved with responsibility for water security within its coverage area, particularly as the majority of local government areas within South East Queensland are not the principal providers of potable water to the community.*[137]

In response, DNRM clarified:

> *The inclusion of "water security" within the objects of the Bill is intended to apply to trusts only as appropriate in the context of a trust playing a role in minimising any stream (and water quality) induced impediments that may interfere with the efficient operations of any water treatment plant intake systems. This is a direct response to the near failure in 2013 of the Mt Crosby treatment plant intakes on the Brisbane River. The amendments are not intended to compel all trusts to consider water "supply" security as core business.*[138]

Agforce raised concerns about the potential impact of the expanded interests on relationships with landowners and occupiers:

> *…The RIT work is required to focus on activities that directly benefit the health and resilience of rivers and could provide landholders with access to the additional skills and resources required to effectively address water quality issues.*
>
> *AgForce is concerned about the potential future exercise of these catchment-wide powers across the state where they are used to apply onerous requirements on landholders, ranging from compulsory acquisition (clause 36), power of entry (clause 37), applying mandatory enforceable improvement notices (clause 38) and binding voluntary agreements on land (clause 37). We are of the strong view that voluntary approaches to catchment management and collaborative approaches with landholders are the most effective in ensuring long term catchment health. Indeed, the Minister's Introductory Speech stated that the amendments will 'allow trusts to work cooperatively with landholders and other catchment groups to plan for and implement activities beyond the bed and banks of a watercourse' and 'working with landowners to implement best practice sediment management practices'.*
>
> *AgForce requests that where the Bill enables trusts to operate outside of the bed and banks of watercourses that the Bill also includes provisions that require that [trusts] only do so with the voluntary agreement of the landholders involved, or only in emergency circumstances where consent is not available.*
>
> *Further, that the compensation provision (Clause 11D) applies beyond crop damage and includes damage to other agricultural attributes such as pastures or agricultural infrastructure. Landholder hardship provisions in the case of cost recovery by the RIT should also be included if not provided for elsewhere.*[139]

DNRM advised:

> *Current experience from existing river trusts indicates that activities are typically carried out with the consent of landowners or occupiers.*

[136] QCC, *Submission No. 18*, p. 3.
[137] Scenic Rim Regional Council, *Submission No. 46*, p. 1.
[138] DNRM, 2014, *Correspondence*, 24 October, p. 83.
[139] Agforce, *Submission No. 45*, p. 11.

> *While various powers have existed in the Act for decades via improvement notices and compulsory acquisition of land, no acquisitions have been recorded in recent times and very few improvement notices exist. It should be noted that these are exceptional powers, rarely if ever used. It is more the case that land owners request the support of river trusts to protect land or provide remediation solutions where a flood event or other disaster has compromised stream integrity or seriously affected nearby adjacent land.*[140]

Clauses 23 - 33 amend/insert provisions relating to the establishment of trust areas and appointments to the trust.

New section 3 retains the use of local government areas to define the establishment of river improvement areas.

> ***3 River improvement areas***
>
> *(1) A regulation may establish a river improvement area, and may change or abolish the area.*
>
> *(2) A river improvement area must be made up of—*
>
> *(a) all or part of a local government area; or*
>
> *(b) all or part of each of 2 or more local government areas.*

SEQ Catchments commented:

> *..local government boundaries are used as the basis of the trust boundaries. In some instances this may exclude key areas of a river catchment from being included in the scheme and be against established understandings of integrated catchment management and the changes to the object of the Act. Therefore SEQ Catchments suggest that under clause 23 part 2 section 3 (2) the wording should be changed to include 'A river improvement trust must be made up of all or part of a river catchment'.*[141]

DNRM advised that the section, as drafted, would achieve this same end:

> *The amendment words "all or part of a local government area" achieves the same outcome – a catchment-based area, that is, part of a local government area, may be recommended under the proposed wording. This wording provides an efficient mechanism to define a future trust area, either by local government boundary or some other way such as by catchment.*[142]

In its advice, the Council of Majors (SEQ) highlighted a number of clauses within the Bill that may vary the role of local government in determining its contribution to trusts, including in respect of the establishment and naming of river improvement areas.

> ***3 River improvement areas***
>
> *…*
>
> *(3) A local government, or 2 or more local governments acting jointly, may apply to the Minister for the establishment, change or abolition of a river improvement area.*
>
> *(4) The Minister must consider an application under subsection (3) and make a recommendation on the application to the Governor in Council.*
>
> *(5) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1) whether or not an application has been made under subsection (3), and*

[140] DNRM, 2014, *Correspondence*, 24 October, p. 82.
[141] SEQ Catchments, *Submission No. 32*, p. 2.
[142] DNRM, 2014, *Correspondence*, 24 October, p. 77.

whether or not the regulation recommended is consistent with an application under subsection (3).

(6) A regulation establishing a river improvement area must assign a name to the area.

…

The Council of Mayors (SEQ) stated:

The Minister's powers in Clause 23, Section 3(5), section 3 are new and enable the State to override or sideline local governments in making decisions about river improvement areas. Council of Mayors (SEQ) does not support this extension of the Minister's powers, and considers that it is essential that a local government's role in the establishment, change or abolition of river improvement areas affecting their local government area be continued.

…Regarding Clause 23, Section 3(5), section 4, despite existing provisions which allow the Governor in Council (upon the Minister's recommendation) to assign a name to a river improvement area, the relevant local governments should be able to determine the name of the trust for the river improvement area. Council of Mayors (SEQ) does not support this provision.[143]

DNRM advised:

It is intended that all local governments that may be affected by any proposal to establish a catchment based river improvement trust will be fully consulted prior to approval to make a regulation creating such trust, being sought. The powers provided in the Bill have been framed in the context that where 100% agreement by all affected local governments is not available, the Minister may make a submission of his own accord to establish such a trust.

As noted previously, all relevant stakeholders will be consulted in regard to the extent and name of any new trust being proposed by a Minister.[144]

Amendments to the provisions relating to membership of a trust also raised concerns by local government.

Clause 24 Amendment of s 5 (Membership of trust)

(1) Section 5(1)—

omit, insert—

(1) A trust may be established as a trust made up of—

(a) 2 councillors of each constituent local government for the trust's river improvement area, appointed by the local government; and

(b) up to 3 persons, as stated in the regulation establishing the trust, appointed by the Minister.

(1A) Alternatively, a trust may be established as a trust made up of the members, up to the number as stated in the regulation establishing the trust, who are appointed by the Governor in Council from either or both of the following—

(a) persons nominated by entities stated in the regulation as being entities entitled to nominate members for the trust;

(b) persons nominated by the Minister.

(1B) The regulation establishing a trust as a trust under subsection (1A)—

[143] Council of Mayors (SEQ), *Submission No. 19*, p. 5.
[144] DNRM, 2014, *Correspondence*, 24 October, p. 73.

(a) may provide that the members of the trust for the trust's river improvement area are to be known as directors or another term stated in the regulation; and

(b) is not required to provide—

(i) for any entity mentioned in subsection (1A)(a) to be a local government; or

(ii) for any person mentioned in subsection (1A)(b) to be a councillor of a local government.

(1C) The Minister can not appoint a councillor of a constituent local government as a member under subsection (1)(b).

(1D) It is not necessary for a person appointed under subsection (1)(b) to be a resident of the local government area of a constituent local government for the trust.

(1E) It is not necessary for a person appointed under subsection (1A) to be a councillor of, or a resident of the local government area of, a constituent local government for the trust.

The Council of Mayors (SEQ) and Ipswich City Council advised:

Clause 24, Section 5(1A) is new and enables a trust to be made up with no local government appointees and for "entities" to be entitled to nominate members for the trust. There is no indication about what these entities might be. There is no provision for any local government councillor representation if a trust is established under section 5(1A) and no provision for any member of the trust to be resident in a constituent local government area. Council of Mayors (SEQ) does not support these amendments. It is undesirable for river improvement trusts to be set up with no local government input, no local government membership and with no members resident in the local government areas covered by the trust.[145]

Under the new membership arrangements in Clause 24 Section 5(1A- 1E), it is possible that a constituent local government or local government area may not have representation on the trust. Council does not support this amendment and considers it is essential for a constituent local government to have representation on the trust and for the local government to nominate their representative.[146]

DNRM advised that the amendment has been proposed to practically address the situation where multiple local government areas form part of a river improvement area:

The Bill provides flexibility regarding the membership of a trust where a multi-local government trust is being proposed. In these circumstances it may not always be necessary or appropriate for all constituent local governments to be simultaneously represented on the trust at the same time. Unlike existing trusts where each local government must be represented, for a multi-local government trust the legislation provides flexibility to allow such a trust to be formed whilst keeping the trust or board composition at a manageable level of participants.[147]

Environmental groups also raised the option of establishing Community Reference Panels.[148]

DNRM advised:

… river trusts may have up to three "community " members and these persons together with any local government appointees forming the trust may provide an appropriate mechanism for…views to be put forward….that may guide trusts in their activities.[149]

[145] Council of Mayors (SEQ), *Submission No. 19*, p. 5.
[146] Ipswich City Council, *Submission No. 29*, p. 2.
[147] DNRM, 2014, *Correspondence*, 24 October, p. 78.
[148] QCC, *Submission No. 18*, p. 3; WWF, *Submission No. 38*, p. 7.
[149] DNRM, 2014, *Correspondence*, 24 October, p. 80.

Local government also raised concerns regarding the apparent inconsistent approach to its role in trusts as provided in the Bill, particularly in terms of the liability of local government to contribute to trusts.

Clause 41 Amendment of s 14 (Liability of local government to contribute to trust)

(1) Section 14(1B), from 'shall be'—

omit, insert—

is the amount negotiated and agreed each financial year by the trust and each of the local governments.

(2) Section 14(1C)—

omit, insert—

(1C) If there is a failure under subsection (1B), within a time the Minister considers reasonable, to negotiate and agree an amount to be contributed by a local government, the amount the local government must contribute is the amount decided by the Minister.

The Local Government Association of Queensland (LGAQ) advised:

The LGAQ is unable to support legislative provisions that will introduce the possibility of excluding local governments from the work encouraged by the River Improvement Trust Act 1940. Specifically, the provisions proposed in this legislation (clause 23, 24, and 41) would provide ministerial powers that can exclude local governments from the decision to form a river improvement area, exclude local government representation on river improvement trusts, and still maintain the financial liability for local governments to support the trusts on which they have no representation. The LGAQ feels strongly that local government involvement has been and remains an essential part of the successful implementation of the River Improvement Trust Act 1940…[150]

The Council of Mayors (SEQ) stated:

Regarding Clause 41, amendment of Section 14 - Liability of local government to contribute to trust, Council of Mayors (SEQ) is concerned that the liability of local governments to contribute to a river improvement trust will continue unabated even if, under the amended sections 3 and 5, the river improvement area and trust have been established without local government support and with no local government councillors on the trust. If the river improvement area covers more than one local government area, section 14(1B) as amended allows for negotiation between the trust and the relevant local governments to determine contribution amounts. If there is no local government councillor on the trust, this provides a very limited local government contribution to the trust's decision about the amount the constituent local governments will be required to contribute. There is no requirement for the amount to be "reasonable". While the amended section 5 provides for "entities" other than local governments to nominate members for a trust, these "entities" do not share the liability of local governments to contribute to the trust.[151]

DNRM advised:

The amendments are intended to reflect the current practice of negotiated arrangements between a trust and its constituent local government, whereas the current Act allows a trust to unilaterally set a precept.

However, in prescribing such a process, the State Council River Trusts Queensland suggested in consultation that there needed to be a circuit-breaker in case a negotiated result was not

[150] LGAQ, *Submission No. 35*, p. 2.
[151] Council of Mayors (SEQ), *Submission No. 19*, p. 5.

available. The Minister is proposed to hold that power of intervention and it is suggested that in exercising that discretion as a last resort that a form of mediation would be effected by the Minister to achieve an outcome acceptable to both parties.[152]

Committee comment

The committee notes the general support of stakeholders for the proposed broadening of activities in which trusts will be able to invest, as part of amendments to the *River Improvements Trust Act 1940*. The committee is satisfied with the department's advice as to the intended implementation of these changes, in terms of the importance of continuing relationships with landowners.

The committee is satisfied that the continued use of local government areas to define river improvement areas is practical, both in terms of reliance on these commonly used boundaries and relevance to membership of trusts; yet, it still provides the opportunity to take a catchment-based approach by including all or parts of local government areas.

The committee is concerned, however, by the divergent outcomes achieved by the Bill in terms of the intent and perceived impact on local government. The committee trusts that the department will continue its consultation with local government to address the issues raised. The committee notes that this is already underway with the department's advice during the inquiry of a negotiated outcome to amend the Bill with respect to local government's contribution to a trust. The committee supports the outcome of this negotiation.

Recommendation 8

The committee recommends that references in the *River Improvement Trust Act 1940* to the *Local Government Act 2009* be updated by adding a reference to the *City of Brisbane Act 2010* as appropriate.

Recommendation 9

The committee recommends that clause 2A(2)(b) be amended to replace '…subsection (1)(a) to (d).' with '…subsection (1)(a) to (e)' so that activity towards 'improving water quality and river system function in rivers and their catchments' is included within the functions of the area trusts. This committee considers that this may be a drafting error only.

Point of clarification

The committee invites the Minister to comment on ongoing consultation with local government to resolve an acceptable method of determining funding contribution by local government(s) to the trust, where initial negotiations between the trust and local government fail to reach agreement.

Recommendation 10

The committee recommends that the department consider further discussion with local government to confirm the intent of clause 23 section 3(5), for the Minister to be able to make a submission of his own accord to establish, change or abolish a river improvement area.

Recommendation 11

The committee recommends that clause 24 of the Bill be amended to expressly provide for constituent local government(s) to retain powers to appoint local government representatives on a trust where there are more than two local government areas that make up a river improvement area. A new section 5(1)(b) could provide that these appointments would be limited to a number agreed by the Minister and stated in the regulation establishing the trust. This may obviate the requirement for section (1A) to provide for an alternative process of nomination.

[152] DNRM, 2014, *Correspondence*, 24 October, p. 75.

Health and Safety for Overlapping Tenure

Part 9, clauses 203 – 241 include safety and health amendments to the *Coal Mining Safety and Health Act 1999* and Petroleum and Gas Act for the overlapping tenure framework.

An overlapping tenure framework for coal and petroleum was introduced through the Common Provisions Act, where a resource authority for one resource type (that is, coal mining lease) overlaps a resource authority for another resource type (that is, petroleum lease). At that time, the committee was advised that work was continuing on amendments to cover safety and health requirements for overlapping tenures. The Explanatory Notes to the Bill state:

> *[t]he amendments improve the current framework for overlapping activities by requiring joint interaction management plans and provide for an alternative dispute resolution process. Disputes between the respective industry parties will be able to be resolved in a fast, final (as between the industry parties) and fair manner through this process but this will not limit the Mines and Petroleum and Gas inspectorates' ability to regulate safety and health.*
>
> *AND*
>
> *…there is harmonisation of some key terminology across these industries, to clarify the approach and language to safely manage interactions across overlapping coal and coal seam gas tenures under the Coal Mining Safety and Health Act 1999 and Petroleum and Gas (Production and Safety) Act 2004.*[153]

The submissions from the resources sector confirmed general support, following the policy development between industry and government.

QRC advised:

> *The Bill contains a number of provisions related to mining and petroleum health and safety, particularly in relation to amendments developed by industry to better ensure the management of risk in areas of overlapping coal and CSG tenure. QRC is largely supportive of the safety and health overlapping tenure amendments. QRC has been closely involved in the development of these amendments that are part of the new regime proposed by industry in 2012 for a new overlapping tenure framework in Queensland.*[154]
>
> *Amendments to the qualifications required for someone to be appointed to the role of Commissioner are supported by QRC as this would widen the pool of eligible persons to include those who hold a legal qualification with experience in the law relating to mine safety, as well as those who have at least 10 years professional experience in senior positions relating to operational mine safety management (e.g. Site Senior Executive).*[155]

However, concerns regarding powers were raised:

> *DNRM have advised that proposed changes to the current exclusive role of the Commissioner in commencing prosecutions are necessary given the Government's intent to appoint a part time Commissioner. The amendments will mean that the Chief Executive, or "another appropriately qualified person" who is authorised by the chief executive will also be able to commence offence proceedings.*
>
> *QRC objects to such an open ended power to delegate this role on the basis that the Inspectorate should place greater emphasis on undertaking supportive and enabling functions, rather than taking a prosecutorial based approach. During the consultation on these amendments QRC recommended that such a function should only be undertaken by*

[153] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 8.
[154] QRC, *Submission No. 41*, p. 4.
[155] QRC, *Submission No. 41*, p. 4.

senior departmental officials and should therefore be limited by the legislation to the Commissioner, the Chief Executive and the relevant Chief Inspector under each of the Acts.[156]

DNRM advised:

The provisions are drafted in an open ended way as this is the established drafting practice. The chief executive's discretion is limited to appropriately qualified persons and the explanatory notes provide some examples. The explanatory notes confirm that the names of positions in which there would be other appropriately qualified persons are not specified (for example, the position of Deputy Director-General or Chief Inspector) because position names can change and this drafting approach avoids cumbersome definitions. This approach extends the persons beyond just the commissioner who can undertake this function. This is necessary because the function and role of the commissioner may vary i.e. be more advisory or part time in nature. This amended approach is similar to the approach in other safety jurisdictions where more than one person can also take proceedings for an offence.

In comparison, under the Queensland Work Health and Safety Act, proceedings for an offence may be taken by the regulator or an inspector with the written authorisation of the regulator.

Allowing multiple parties to be able to authorise has no bearing on the approach to compliance which is governed by the Inspectorates' regulatory enforcement policy. The foundation of this approach is constructive guidance (supportive and enabling functions). Prosecutions are the last tier of compliance and other used where circumstances warrant.[157]

One practical administrative matter was raised with the committee:

Amended s675 introduces a new requirement to update a site's safety management plan every time a Site Safety Manger (SSM) rotates at each site. The personnel filling SSM positions are often on rotation and different individuals fill the SSM position from one day to the next…[158]

DNRM clarified in its advice:

…The record of the rostering of Site Safety Managers is already part of the records kept at a site or elsewhere. This record would be part of the resulting records for the safety management system.[159]

Committee comment

The committee noted during the course of its inquiry the cooperative approach in this area between industry and government, as was evident in the original provisions introducing the overlapping tenure, and the broad support for these remaining provisions of the framework.

The committee accepts the advice provided by the department in relation to the issues raised by submitters, and supports these provisions of the Bill as drafted.

The committee notes that the amendments are proposed specifically to the *Coal Mining Safety and Health Act 1999* and *Petroleum and Gas (Production and Safety) Act 2004*, and not the Common Provisions Act, on the basis that the former Acts will be retained for health and safety provision in each of the industries. Given then the relevance in harmonising the language across these Acts, the committee noted an apparent drafting inconsistency between the Explanatory Notes and the Bill.

[156] QRC, *Submission No. 41*, p. 4.
[157] DNRM, 2014, Correspondence, 24 October, pp. 166-167.
[158] APPEA, *Submission No. 22*, p. 4.
[159] DNRM, 2014, Correspondence, 24 October, p. 166.

Recommendation 12

The committee recommends that amendment be made to the Explanatory Notes or relevant clauses /schedule 3 in the Bill for consistency, as to the updating of the term safety management plan in the *Petroleum and Gas (Production and Safety) Act 2004* with either the term 'safety management system' or 'safety and health management system'.

Publishing under the Act

Clause 189 inserts a new section 1009A to allow flexibility when publishing public notices. As the Explanatory Notes state:

> *The Water Act stipulates circumstances where public notification is required to inform interested parties and the wider community about water planning and management activities. This typically involves publishing a notice in a newspaper, publishing a gazette notice, or in some instances, placing information online or making radio announcements. The type of notification required in a particular circumstance is specified in the definition of 'publish' in schedule 4 of the Water Act. The Bill amends the definition of 'publish' to provide the flexibility to tailor the notification method to the intended audience. Providing this flexibility will also ease the regulatory burden on the departments and clients by enabling innovative, effective and cost effective methods of publication to be used.*[160]

Two submitters commented to the committee on the changes proposed to publishing under the Act, raising concern that the opportunity to vary methods or use cheaper electronic media options may have unintended consequences:

> *EDOQ generally supports the move to ensure provide notification methods are suitable to ensure they reach those parties who may be concerned with a decision making process. However, we are concerned that the discretion to choose any method for notification in various instances may lead to uncertainty for concerned stakeholders in knowing where to look to ensure they remain informed of possible impacts that may be of concern to them….We recommend that at least one form of public notification be made standard for all notification processes, such as one point on the internet with provision made also for those who might not have internet access.*[161]
>
> *...While supportive of broadening out the methods available to notify relevant parties, such as the use of electronic communication, it is vital that landholders continue to be notified in ways that are relevant to them. For example, it is not considered sufficient to simply upload notifications onto a Departmental website and so expect potentially-affected parties to continually review the website for changes or to go actively searching for that information. Given the specific needs and limitations in rural and remote areas, proactive communication approaches remain necessary and this could still entail timely newspaper publication in conjunction with other options.*[162]

DNRM advised:

> *The Bill expands the current definition of "publish" to enable information to be published in a wider range of mediums, particularly to take advantage of cheaper electronic media options.*
>
> *The chief executive will still have the discretion to consider, having regard to the intended audience when making a decision about the most appropriate medium for the information or notice being published.*

[160] Water Reform and Other Legislation Amendment Bill, Explanatory Notes, p. 140.
[161] EDOQ, *Submission No. 40*, p. 15.
[162] AgForce, *Submission No. 45*, p. 12.

The ability for information to be published in local newspapers and for hard copies to be picked up at local departmental offices will not change.

The amendment to publishing requirements will simply expand the options available, beyond the more traditional options that are currently available.

These arrangements will ensure that the public will continue to have the same opportunities to participate in consultation and make submissions on proposed planning instruments.[163]

Committee comment

The requirement for public consultation or engagement was raised with the committee in various aspects of the water management framework.

The committee supports the proposed changes to broaden the communication methods used by the department to publish public notices, and trusts that the methods used will continue to be well targeted to ensure all interested parties receive information in a timely way.

[163] DNRM, 2014, *Correspondence*, 24 October, p. 164.

6. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from the Department of Natural Resources and Mines in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.[164]

Rights and Liberties of Individuals

Administrative power - Section 4(3)(a) *Legislative Standards Act 1992* - Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

New section 67 provides that a water management protocol is an instrument for giving effect to the intent of a water plan and may state any of following for a plan area:

- if provided for in the water plan—the volumes of unallocated water reserved for stated purposes or stated locations, or a process for releasing unallocated water
- for water allocations managed under a resource operations licence—the water allocation dealing rules
- for water allocations not managed under a resource operations licence:
  - the water allocation dealing rules
  - the water sharing rules, and
  - the seasonal water assignment rules
- the criteria for deciding applications for water licences, and
- anything else the chief executive considers necessary for implementing the water plan.

Pursuant to section 68(2)(c), a water management protocol for a water plan must be developed with adequate consultation with persons affected by the protocol as it implements the plan.

New section 70 provides for a water entitlement notice that establishes a process to implement a water plan through the converting, granting, cancelling, amending or repealing of water entitlements and through refusing applications for water licences.

The Explanatory Notes advise that a water entitlement notice can, where directed by a water plan:

- covert to a water allocation a water licence, interim water allocation or other water authorisation
- grant a water allocation or water licence either to give effect to an unallocated water release process, or to implement a water development option amend a water licence to the extent necessary to give effect to a water plan
- repeal a water licence where a water licence is no longer necessary to authorise a particular take of, or interference with water

[164] DNRM, 2014, *Correspondence*, 4 November.

- cancel a water allocation surrendered under section 162
- refuse outstanding water licence applications where a water plan provides for the refusal of a particular category of applications
- replace a water licence with another water licence (for example replacing a water licence to take water from a watercourse with a licence to take overland flow water) where a change such as the declaration of an upstream limit makes such a replacement necessary. [165]

Potential FLP issues

It arguable that both sections 67 and 70 are in breach of section 4(3)(a) *Legislative Standards Act 1992* which provides that the rights, obligations and liberties of individuals be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states "*Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision.*"[166]

The former Scrutiny of Legislation Committee (SLC) took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.[167]

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states, "*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*"[168]

The former Scrutiny of Legislation Committee (SLC) was opposed to clauses removing the right of review, and took particular care to ensure the principle that there should be a review or appeal against the exercise of administrative power. Where ordinary rights of review were removed, thereby preventing individuals from having access to the courts or a comparable tribunal, the SLC took particular care in assessing whether sufficient regard had been afforded to individual rights, noting that such a removal of rights may be justified by the overriding significance of the objectives of the legislation. [169]

The Explanatory Notes provide the following justification for the new sections:

> *For the chief executive water management protocol, this is considered a potential breach because there is less rigour around the development and approval of a water management protocol than under its predecessor, the resource operation plan. This is considered justified as there will still be consultation around the development of the operational protocol, providing opportunity for stakeholder input, and the legislation explicitly states this.*
>
> *For the water entitlement notice, this is considered a potential breach because the notice does not have a review process or appeal rights for affected parties. This breach is justified as the water entitlement notice provisions will incorporate a right of reply for interested parties by including a submission process. In addition to this, the Water Act provides a framework for an independent referral panel to provide advice to the chief executive on*

[165] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 67.
[166] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 15.
[167] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 15; citing Scrutiny Committee Annual Report 1998-1999, para. 3.10.
[168] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 18.
[169] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 19.

submissions relating to water entitlements. In making any final notice, the chief executive will be required to consider the submissions and any recommendations of the panel.[170]

In relation to section 70, water entitlement notice provisions will allow for a submission process and a framework for an independent referral panel, pursuant to new section 241, to provide advice to the chief executive on a draft water entitlement notice. As provided by section 241(2), the panel can consist of a number of individuals and has functions as decided by the chief executive. New section 74 provides that submissions are to be forwarded to a referral panel, which must review the draft water entitlement notice and the submissions and make recommendations to the chief executive within 40 business days after receiving the material. Section 74(4) provides exemptions to this process.

Request for advice:

The committee sought information from the department as to how, in practice, the consultation process will work with those persons affected to ensure that the broad powers afforded to the chief executive are justified.

The committee also sought information as to the persons who will potentially make up the independent referral panel, and their qualifications to carry out this role, to ensure that an appropriate review of a water entitlement notice will take place.

DNRM advice:

A water management protocol implements those aspects of a water plan detailed in new section 67. The chief executive may only make or amend a water management protocol if it is consistent with the water plan's outcomes and objectives and following adequate consultation with affected persons. The Bill does not define what constitutes "adequate consultation" as the nature and form of the consultation that is necessary to ensure that affected persons understand the implications of the water management protocol and are able to provide input and comment on the protocol is likely to vary with the scope and purpose of each water management protocol.

In circumstances where the chief executive intends to make a new water management protocol for an unsupplemented area (i.e. water not managed under a resource operations licence), the chief executive would consult with affected water entitlement holders through group meetings and in writing and would afford entitlement holders the opportunity to provide comment on a draft protocol before it is finalised. The consultation process would effectively be that which currently occurs in the development of a Resource Operations Plan under the existing Water Act. However, as the protocol has a more specific focus, the consultation effort would tend to be targeted to a specific part of the plan area.

Equally, if the chief executive were to make a water management protocol to apply to a supplemented scheme (i.e. water managed under a resource operations licence), then consultation would occur with resource operations licence and distribution operations licence holders for the scheme as well as with water entitlement holders and other water users in the scheme.

In all cases, adequate consultation will require that persons reasonably considered to be directly affected by the water management protocol be afforded an opportunity to be made aware of the proposal to prepare a water management protocol in advance of its making, to have an opportunity to make comment on the arrangements proposed to be implemented, and to have those comments considered in making the final water management protocol. To ensure affected persons are afforded that opportunity, the department would write to them

[170] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 27.

notifying of the making of a water management protocol and seeking their feedback on the proposed arrangements, e.g. on a draft protocol.

As consultation is to be undertaken with water entitlement holders, other water users and water supply scheme operators in the making of a water management protocol, the powers afforded to the chief executive are justified.

Membership of the proposed independent referral panel remains the same for the current term of their appointment, i.e. the members of the two existing panels (the Resource Operations Plan Referral Panel and Moratorium Panel) under the current Act are identical. It is intended that the existing membership of these two panels is retained for the new combined panel which will consider a broad range of matters associated with water entitlements, water allocations and water licences.

The current membership of the referral panel consists of a pool of panel members drawn from a broad range of backgrounds and experience in the following:

- *Irrigated agriculture;*
- *Local government;*
- *Water resource management;*
- *Dry land farming;*
- *Landcare;*
- *Agribusiness;*
- *Regional development;*
- *Private industry;*
- *Community organisations; and*
- *Scientific and technical assessments.*

All current panel members have provided a high level of independent advice and recommendations on a range of complex and sensitive issues in respect to water entitlements, water allocations and water licences under the current Act and will continue to do so as part of the new arrangements associated with the proposed referral panel. The backgrounds and experience of the panel members will ensure that they are able to carry out an appropriate review of a water entitlement notice.

Committee comment

The committee notes and is satisfied with the department's advice.

Natural justice - Section 4(3)(b) *Legislative Standards Act 1992* - Is the Bill consistent with principles of natural justice?

Clause 68, new section 114 - Deciding application for water licence, provides for how the chief executive should decide an application for a water licence and how to notify the applicant of a decision, including the circumstances which would support granting, granting in part, or refusing the application. The chief executive must give the applicant a decision notice in circumstances where no other decision could have been made.

Where another decision could have been made the chief executive must give the applicant an information notice. Where the decision is to grant the application, or grant the application in part, the chief executive must give the applicant the licence along with the notice. The applicant may appeal a decision included in an information notice but may not appeal a decision notice.

Potential FLP issues

The inability of an applicant to appeal or have a right of review of the decision notice is a potential breach of section 4(3)(b) *Legislative Standards Act 1992* in relation to natural justice.

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; (2) the decision maker must be unbiased; (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.[171]

The Explanatory Notes provide the following justification for the potential FLP breach:

> *This breach is considered justified as a water plan is the instrument that provides a person with natural justice in relation water allocation and management in a plan area. For example, a water plan can state limitations on taking or interfering with water in the plan area and it can state criteria for deciding licence applications. As a draft of a water plan is released for public consultation, a person is able to make a submission to the Minister to express their views on a plan and its contents for consideration by the Minister in finalising a water plan. If a plan therefore gives no discretion to the chief executive in making a particular licensing decision then there is no need for that decision to be subject to a merits based review. This is also justified for granting a water licence or allocation from an unallocated water process as the agreement is already reached between the applicant and chief executive with the granting process simply giving effect to the agreement.*[172]

Although they deal with different matters, there are several sections of the Bill that allow for appeal mechanisms of particular decisions, for example, appeal to the Magistrates Court in relation to a bore driller's licence (section 983) and appeal to the Land Court in relation to an allocation notice (sections 236, 235 and 238).

Request for advice:

The committee sought further information from the department as to the rationale for not allowing a right of review by an independent body or court, including in terms of due process.

DNRM advice:

> *As part of the replacement of chapter 2 of the Water Act, the Bill continues the power to issue decision notices or information notices for particular decisions made by the chief executive.*
>
> *In the context of a water licensing decision in accordance with new section 114(4)(a), a decision notice is issued for a decision where the chief executive has no discretion to make an alternative decision. This occurs in a water licensing decision where a water plan applies to the application. In this case, the chief executive must decide the application (either approve or refuse) in accordance with the water plan. Where the application is inconsistent with the plan or where the application is consistent and no alternative decision could have been made, the chief executive decides the application and gives a decision notice to the applicant. In these circumstances the applicant does not have a right of review of the administrative decision but retains the right to seek review of due process through judicial review.*
>
> *The potential breach of this fundamental legislative principle is considered justified as a water plan, like the existing water resource plans, is subordinate legislation that establishes catchment wide management framework for a plan area. A water plan may contain criteria or requirements in relation to how particular matters such as water licence decisions should be carried out in order to give effect to the catchment wide management framework put in place by the plan. If a plan gives no discretion to the chief executive in making a particular*

[171] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 25.
[172] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 27.

licensing decision, then a merit based review is not warranted, as there was no other possible decision the chief executive could have made.

A person within that plan area is provided the opportunity to have input to the development of a water plan containing such requirements through the public consultation processes prescribed for the making of a water plan. This process allows a person to make a submission to the Minister to express their views on a draft water plan and have those views considered by the Minister in finalising a plan.

In relation to a decision by the chief executive that is consistent with a water entitlement notice under new section 114(4)(b), a draft water entitlement notice is developed in consultation with water entitlement holders and is then subject to review by the independent referral panel. The consultation process allows affected persons to make submissions to the chief executive about matters in the notice. The draft water entitlement notice and submissions received on the notice are then provided to the independent referral panel for review and the panel makes recommendations to the chief executive for consideration in finalising the water entitlement notice.

The consultation process with affected persons on a draft water entitlement notice, the further review of the notice and submissions received about the notice by the referral panel and consideration of the submissions and referral panel recommendations by the chief executive in finalising the notice justify the issuing of decision notice for water licensing decisions consistent with a water entitlement notice.

A decision notice is considered justified for a decision under new section 114(4)(c) – a decision consistent with the terms of grant or sale for unallocated water release process – as through this process the chief executive enters into a binding agreement with the proposed entitlement holder for the grant or sale of water prior to the licencing decision. As a result of that agreement, the chief executive must decide the licence consistent with the agreement so a decision notice is appropriate.

In these circumstances of new section 114(4), the applicant retains the right to seek review of due process through the judicial review process.

Where the chief executive makes a decision and an alternative decision consistent with a water plan could have been made under new sections 114(6) and (7), the applicant is given an information notice about the decision. In this circumstance the decision is subject to a right of review and appeal, including to the Land Court.

Committee comment

The committee notes and is satisfied with the department's advice.

Natural justice - Section 4(3)(b) *Legislative Standards Act 1992* - Is the Bill consistent with principles of natural justice?

Clause 201 - Amendment of Chapter 9 (Transitional provisions and repeals) inserts a new part 8 dealing with transitional provisions. New section 1277 provides a special process for requesting and granting water authorities for petroleum tenure holders during the transitional period established by new section 186 of the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 1277 enables a petroleum tenure holder to make a request to the chief executive to grant an authority under the *Water Act 2000* to authorise the take of water, other than associated water. In making a decision to grant an authority, the chief executive must take into account the historical take of non-associated water and any take that would be reasonably required for the holder to carry out their future activities and development commitments in addition to the other relevant considerations.

The section only applies to the holder of a petroleum tenure that is in existence on commencement of the provision; a petroleum tenure granted after commencement if the application for the tenure was made before commencement; or a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004*. The ability to make a request under this provision is available only within a transitional period. This period is two years from the date of commencement of the section, except where the tenure is within the Surat cumulative management area, in which case the period is five years from the date of commencement of this section.

The Explanatory Notes advise that

> *…the request by a petroleum tenure holder for an authorisation for the take of non-associated water made during the transitional period will not be subject to public notification requirements.*[173]

Potential FLP issues

Although section 1277 allows for transitional measures, not allowing for a public notice requirement is a potential breach of section 4(3)(b) *Legislative Standards Act 1992* in relation to natural justice.

The Explanatory Notes provide the following justification for the new section.

> *No adverse effect on other parties: the provision permits the chief executive to consider the historical take of non-associated water by the tenure holder, as well as the take that is necessary to carry out the holder's work program (for an authority to prospect) or development plan (for a petroleum lease), and further requires the chief executive to grant an authority or authorities for the take to the extent that the tenure holder demonstrates the need for the authority. As such the licence or permit issued cannot authorise more take of non-associated water than would have occurred under the previous statutory right applying in the absence of the amendments. The issue of the licence or permit would not, therefore, result in any greater impact on the water rights or availability of water for any other person, than would occur in the absence of the amendments.*
>
> *Limited to the transitional period: the ability to request an authorisation for take of non-associated water under this provision is available to petroleum tenure holders only during the transitional period of 2 years, or 5 years within the Surat cumulative management area. After this time, a tenure holder who requires further authorisation for non-associated water would be required to apply for a licence or permit under the processes provided by chapter 2, part 3 for these authorisations, including public notification where required.*[174]

Request for advice:

The committee sought further information from the department as to the rationale behind not having a public notification requirement, given the not insignificant time periods involved.

The committee also sought information as to the rationale for time periods involved.

DNRM advice:

> *The proposed section 1277 establishes a process for an existing petroleum tenure holder to request the chief executive to grant an authority for the take of non-associated water. This process applies only during the transitional period. The proposed transitional process does not require public notification because it provides an authorisation that recognises the extent to which an existing petroleum tenure holder has demonstrated that they have been exercising their existing right, or has committed work programs that will exercise the right.*

[173] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 28.
[174] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 28.

The absence of a requirement for public notification is justified because of the provisions made to reduce the potential impact of the measure, and because of the consequences that would arise if the measure is not adopted.

The authority granted under section 1277 process is limited to the extent to which the tenure holder is already exercising their statutory right, or would need to exercise it to carry out its work program (for an Authority To Prospect) or development plan (for a Petroleum Lease). This means that the extent of any impact on third parties is limited, as the take already occurs under the existing statutory right, or was already planned and authorised to occur.

It should also be noted that the chief executive is not obligated to grant a licence, but may decide that it is appropriate to grant only a permit. Ordinary applications for permits are not subject to public notification.

The request for an authority is assessed having regard to (if a licence is being considered) the requirements of the relevant water plan and, if relevant, the long term average Sustainable Diversion Limits (SDL) under the Murray Darling Basin Plan. If a permit is being considered, the request is assessed having regard to existing licences and permits, impacts on natural ecosystems; impacts on the physical integrity of springs or aquifers; and the public interest. The chief executive may set conditions on the licence or permit to ensure the authorised take of water meets the requirements of the water plan and SDL or minimise impacts on existing users, springs and aquifers.

Any proposal to commence take or to increase the take of non-associated water after the transition period will require an application for licence or permit that would be assessed under the ordinary process including (in the case of a licence) public notification.

The consequences that would arise if public notification was provided for requests made under section 1277 are as follows:

- *The Bill is removing the tenure holders' existing statutory right to take the water after the transition period. Without this measure to recognise and provide authorisation for the current exercise of this right, and the future exercise of the right based on committed plans, there would be a greater breach of the FLP not to abrogate established statute law rights and liberties without justification.*
- *Tenure holders have made investment decisions on the basis of their work programs and development plans prepared under the requirements of the Petroleum and Gas (Production and Safety) Act. Obstructing the tenure holder's ability to carry out these programs and plans could be a further breach of the FLP not to abrogate established statute law rights and liberties without justification.*
- *Section 1277 provides that, to the extent that the tenure holder demonstrates the need for the authorisation, the chief executive must grant an authorisation. In this circumstance, it is not appropriate to consider objections to the grant of a licence since the chief executive has no discretion on this matter.*
- *The time required to seek and consider public submissions would add to the time required to finalise the authorisations which must be achieved before the end of the transitional period. Providing for public notice would therefore require an extension of the transitional period, which delays the full achievement of the policy objective to provide a consistent framework of underground water rights across the resources sectors.*
- *Allowing public submissions would, under the normal process, provide standing for the submitters to appeal the decision to issue a licence. For the reasons discussed above, an appeal if successful would create a greater breach of FLP. The opening of an appeal process would also create an extended period of uncertainty for tenure*

holders, and would require an extension of the transitional period to allow for the exhaustion of possible appeals.

The transitional period is proposed to be 2 years, except within the area of the Surat CMA where it is proposed to be 5 years. These timeframes were determined as appropriate in consultation with resource sector and agriculture industry stakeholders through the groundwater management working group.

The transition period provides opportunity for the review of the relevant water planning instruments so that they can specifically address the requirements of the petroleum and gas sector. Importantly, the department is preparing to review the Great Artesian Basin Water Resource Plan (GAB WRP) within this period, with the intention to complete the review by mid 2016 (i.e. 6 months before the end of the shorter transition period). This plan covers the major areas used by Queensland's petroleum and gas industry including the Surat and the Cooper basins, and it is likely that the review will consider incorporating subartesian areas used by the industry (currently managed under separate Declared Subartesian Area rules) into the plan. This will enable tenure holders to have their request assessed on the basis of a single water plan that has been reviewed to address their needs. It is also proposed to develop a Cooper Basin industry water strategy to articulate the water demands of the industry across the whole of the Cooper Basin. This strategy would form an important input to the review of the GAB WRP.

The transition period also provides time for tenure holders to prepare applications for an authorisation. During this period, it is proposed that tenure holders will measure and report on their take of non-associated water, and this data will provide a basis for making and assessing the subsequent requests.

The Surat cumulative management area is afforded a longer timeframe due to the complexity and the more advanced development in the area. Additionally, the water use in this area is overseen by the Office of Groundwater Impact Assessment and petroleum tenure holders are well down the path of establishing make good agreements with bore owners in the area. The Office will reflect the new framework in the next revision of the Surat underground water impact report and, following this, some existing make good arrangements may need to be reviewed. Companies may also wish to review their existing investments and strategies for water management. As such, a longer transition period is considered appropriate for this area.

Committee comment

The committee notes the department's advice. Refer to section 4 for further consideration of this matter.

Institution of Parliament

Amendment of an Act only by another Act – Section 4(4)(c) *Legislative Standards Act 1992* - Does the Bill allow or authorise the amendment of an Act only by another Act?

Clause 64 inserts new section 5AA allowing the chief executive to prepare a watercourse identification map showing the extent of watercourses, designated watercourses, drainage features, lakes and springs as defined by the *Water Act 2000* (the Act).

The features identified on the map are taken to be the features as defined by the Act. The Explanatory Notes advise that the map will be publically available on the department's website[175] and will be progressively updated over time to show the extent of further watercourse, designated

[175] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 30.

watercourse, drainage feature, lake and spring, as the extent of additional features are mapped throughout the state.

Clause 65 inserts a new section 6 into the Act to define 'domestic purposes'. The new section 6 replaces and expands on the definition in schedule 4 of the Act before commencement. The current definition of domestic purposes was that it included 'irrigating a garden, not exceeding 0.25ha, being a garden cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden'. The new definition at section 6(3) includes the following changes:

- increasing the area of garden able to be watered from 0.25ha to 0.5ha;
- water plans to have the ability to define (including a volume) 'domestic purposes'; and
- the reference to 'not for the sale, barter or exchange of goods produced in the garden' has been removed from the current definition of 'domestic purposes'.

Clause 68, new section 39 provides a head of power for common planning provisions to be included in a water regulation. Provisions proposed to be included provide for: reserving unallocated water, stating a process to release unallocated water, criteria for establishing elements on water allocations, prescribe water allocation dealing rules, prescribe a process for granting seasonal water assignments for water allocations, identifying types of works that are regulated as assessable or self-assessable development, and monitoring and reporting requirements for resource operations licence holders and distribution operations licence holders.

Clause 68, new section 102 provides that a water plan, moratorium notice or regulation can allow a person to take or interfere with water up to a volume or to a specified extent as stated in the plan, notice or regulation. Pursuant to section 49 a final statutory water plan takes effect only after it is approved by the Governor in Council as subordinate legislation, and as the statutory water plan for an area.

Clause 81 inserts new section 370A which provides a regulation making power to identify low risk resource tenures that are not required to prepare an underground water impact report. The circumstances may relate to one or more of the following:

- the likely impacts of the exercise of underground water rights on water bores and springs;
- the nature and scale of a mining or petroleum operation;
- the characteristics of the underground water resource; and
- the location of the resource tenure.

Clause 101 amends section 397 of the *Water Act 2000* - Obligation to prepare a baseline assessment plan. A mining tenure holder will be required to give the chief executive a baseline assessment plan for the area of the holder's tenure before the day the holder exercises its underground water rights, unless a later day is agreed to by the chief executive. Failure to give a baseline assessment plan under this section is an offence, and attracts a maximum penalty of 500 penalty units. There is no requirement for a resource tenure holder to prepare a baseline assessment plan while there are no water bores in the area of the resource tenure.

Amended section 397 also introduces exceptions to what must be included in a baseline assessment plan, where there are low risks of impacts occurring. A resource tenure holder that is the holder of an authority to prospect under the petroleum legislation may provide a baseline assessment plan that excludes a dis-contiguous block of the tenure where no production testing is being undertaken, or is planned to be undertaken.

The amended section will provide the chief executive with the power to issue a notice to an existing mining tenure to override an exemption.

Potential FLP issues

Clauses 64, 65, 68, 81 and 101 all allow either a regulation, plan or map to modify the operation of the *Water Act 2000*. Clause 101 allows the chief executive to override an exemption by issuing a notice, which if exercised, would override the operation of the Act.

The above-mentioned clauses breach the fundamental legislative principle pursuant to section 4(4)(c) of the *Legislative Standards Act 1992* that a Bill should only authorise the amendment of an Act by another Act.[176]

A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action, is defined as a Henry VIII clause. The former Scrutiny of Legislation Committee's approach to Henry VIII clauses was that if an Act is purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the Committee would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament.[177] The Committee considered the possible use of Henry VIII clauses in the following limited circumstances:

- To facilitate immediate executive action
- To facilitate the effective application of innovative legislation
- To facilitate transitional arrangements
- To facilitate the application of national scheme legislation.[178]

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the former Scrutiny of Legislation Committee classified the clause as 'generally objectionable'.[179]

For clauses 64, 65 & 68(102), the Explanatory Notes provide the following justification:

> *This breach is considered justified because the provisions contained in the Water Act establish a broad framework for the management of water across the State. However, resources risks vary from catchment to catchment and therefore should be addressed through a catchment based instrument. The water plan (for low risk activities) and the Water Regulation (for de-regulation of watercourses) are the instruments utilised to provide for various catchment specific regulation. There is strong consultation undertaken during development of catchment specific regulatory frameworks which offsets the effect of modifying the operation of the Water Act by subordinate legislation. Subordinate legislation is tabled and therefore remains subject to Parliamentary scrutiny and disallowance motions, therefore having sufficient regard to the institution of Parliament.*[180]

In relation to clauses 68(39) & 81 and their regulation making power, the Explanatory Notes advise the following:

> *This breach is considered justified as the underground water management framework is to be expanded to apply to the associated water take of the mineral resources sector. The nature scale and impact of associated water take by the mineral resources sector can vary substantially, and as such, there may be types of mineral resources tenure that are of a low*

[176] *Legislative Standards Act 1992*, section 4(4)(c).
[177] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 159.
[178] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 159.
[179] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 159; Alert Digest 2006/10, p. 6, paras 21-24; Alert Digest 2001/8, p. 28, para 31.
[180] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 25.

risk nature and it is considered an unnecessary burden for the holder to prepare an underground water impact report.

Further, regardless of whether a regulation is made exempting low risk tenures from the underground water impact report requirements, the general obligation to enter a make good with affected bore owners will still apply to the tenure holder. This will ensure that, if there is an impacted bore owner despite the low risk nature of the tenure, the bore owner has the right be made good.

Further, the provision is not unbounded as it identifies the circumstances for a regulation may identify a low risk tenure. Identification of low risk tenures must have regard to the impact considerations (as per the purpose of chapter 3 of the Water Act) and the circumstances include the likely impacts of the water take on water bores and springs; the nature and scale of the mining or petroleum operation; the characteristics of the underground water resource and the location of the resource tenure.[181]

In relation to clause 101, the Explanatory Notes advise the following:

This breach is considered justified as there may be scenarios where the current management arrangements relating to the associated water take of an existing mine are not considered sufficient to monitor, predict or manage the impacts. Associated water take by existing mining tenures may be subject to a range of different management requirements depending on the location of the mining operation. While some mines have water licences which authorise the take of associated water, with make good, monitoring and reporting requirements, others may be in an unregulated area in relation to underground water and have no requirements. While it is considered important to recognise existing operations and allow them to continue under the current regime where there are no issues (subject to the general obligation to make good), it is also appropriate to have the ability to apply the new regime in circumstances where the current regime does not sufficiently protect water bores and springs from the impact of the industry.

The chief executive notification provision is not unbounded. The amendment requires that the chief executive must make the decision having regard to the impact considerations and must issue an information notice about the decision. The information notice gives the tenure holder a right to appeal the decision.[182]

Request for advice:

The committee sought further information from the department as to the specific consultation undertaken during development of catchment specific regulatory frameworks.

The committee also sought information as to when it might be expected that regulations for low risk resource tenures will be finalised.

DNRM advice:

New section 64 requires the chief executive to publicly notify water users in a water use plan area as to the requirements of the plan. The chief executive must also conduct public meetings to explain the requirements. This consultation process would generally involve holding public meetings at locations within the plan area, providing water users with easy to understand information about a water use plan such as fact sheets and publishing information on the department's website. This consultation on an approved water use plan is in addition to the statutory consultation requirements in new section 61 which require public notification of and receipt of submissions on a draft water use plan.

[181] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 25.
[182] Water Reform and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 26.

New section 65 relates to the process for amending or replacing a water use plan. The process for this is that outlined section 61 which would involve consultation on a new draft plan. The consultation requirement in new sections 64 would also apply after a plan has been amended or replaced.

New section 68 relates to the making of water management protocol. Adequate consultation with persons affected by the making of a water management protocol cannot be prescriptively defined, as it will vary with the scope and purpose of each water management protocol. (See previous comments in relation to how, in practice, the consultation process for water management protocols will work.)

A declaration under new section 81 is linked to the declaration of coordinated projects under the State Development and Public Works Organisation Act 1971. As with the relevant provisions of the State Development and Public Works Organisation Act 1971 relating to the declaration of a coordinated project, there is no statutory requirement for consultation in making a declaration under new section 81. The process in new section 81, by which the chief executive declares a major water infrastructure projects, intentionally aligns with the established process for declaring coordinated projects. To do otherwise would create divergent requirements for the project proponent which is contrary to the policy intent of these amendments.

Consultation in relation to the project, as a major water infrastructure project and a coordinated project, is provided for through the environmental impact assessment process which allows for the receipt and consideration of submissions about the project, including about the draft terms of reference and draft environmental impact statement. The receipt of and consideration of submissions is managed by the Coordinator General in consultation with other State Government agencies. If new section 81(2)(a)(ii) applies and the project does not become a coordinated project then any water development option granted for the project expires under section 87(b)(i). Section 24AA of the Acts Interpretation Act 1954 provides for any original decision to be repealed in that same way it was originally made (via gazettal notice).

New section 101 allows a planning instrument to limit statutory authorisations. Moratorium notices are generally used at the commencement of a water planning process for a catchment. These notices are used to maintain the status quo in relation to the take or interference with water in an area so that water plans can be developed and completed with certainty. While water plans may limit the statutory authorisation stated in new section 101, a water plan is developed with extensive consultation, as is prescribed in new sections 44 to 46. Any limitations on statutory authorisations by a plan are subject to this consultation process in development of the plan.

The Water Regulation may also limit statutory authorisations under section 101. The making of a regulation generally requires a Regulation Impact Statement, or equivalent consultation with any affected parties, before the regulation is made.

Subject to the passage of the Bill, an amended Water Regulation 2002 is intended to commence at the same time as the Bill. Transitional provisions in the Bill facilitate the transition of water resource plans to water plans. New low risk exemptions or thresholds for take and interference with water in catchments will be subject to catchment-by-catchment consultation as water plans or the water regulation are amended or reviewed into the future.

Committee comment

The committee notes and is satisfied with the department's advice.

Appendix A – List of submitters

1 - Shay Dougall

2 - Jude Roberts

3 - Joan Vickers

4 - Raymond Gledhill

5 - Wambo Cattle Company Pty. Ltd.

5 - Wambo Cattle Company Pty Ltd - Supplementary submission

5 - Wambo Cattle Company Pty Ltd - Second supplementary submission

6 - Sarah Moles

7 - Don and Alma McAllister

8 - Colleen Boreham

9 - Jackie Lee

10 - Dr Claudia Baldwin

11 - Ferrier & Co Law

12 - Withdrawn

13 - Queensland Bulk Water Supply Authority (trading as Seqwater)

14 - Genevieve Gall

15 - Gecko - Gold Coast and Hinterland Environment Council

16 - Integrated Food & Energy Developments Pty Ltd

17 - Queensland Murray-Darling Committee Inc.

18 - Queensland Conservation

19 - Council of Mayors - South East Queensland

20 - North Queensland Conservation Council

21 - Queensland Dairyfarmers' Organisation

22 - Australian Petroleum Production & Exploration Association

23 - Great Barrier Reef Marine Park Authority

24 - SunWater Limited

25 - The Wilderness Society

26 - Basin Sustainability Alliance

27 - Rio Tinto Alcan

28 - Property Rights Australia

29 - Ipswich City Council

30 - Dr John Standley OAM

31 - Condamine Catchment Management Association

32 - SEQ Catchments

33 - Pioneer Valley Water Board

34 - Sarah Gall

35 - Local Government Association of Queensland

36 - Erica Siegel

37 - Janice Smith

38 - WWF-Australia

39 - Cotton Australia

40 - Environmental Defenders Office Qld and NQ

41 - Queensland Resources Council

42 - Lock the Gate Alliance

43 - Canegrowers

44 - Queensland Farmers' Federation

45 - AgForce Queensland

46 - Scenic Rim Regional Council

47 - Confidential

48 - Cape York Land Council Aboriginal Corporation

Appendix B – Briefing officers

Briefing officers at a public briefing held on 15 October 2014

Department of Natural Resources and Mines
Mr Russell Albury, Deputy Chief Inspector of Mines (Coal) Mine Safety and Health
Ms Leanne Barbeler, Director, Strategic Water Policy
Ms Rachel Barley, Principal Policy Officer, Strategic Water Programs
Ms Tanya Bartlett, Director, Compliance and Systems
Mr Jason Douglas, Team Leader, Water Policy (South)
Ms Sharon Gillard, Manager, Policy and Coordination, Mine Safety and Health
Mr Simon Hausler, Team Leader, Strategic Water Policy
Mr Lyall Hinrichsen, Executive Director, Water Policy
Ms Bernadette Hogan, Director, Water Services Support
Mr Saji Joseph, Director, Strategic Water Programs
Mr Peter Lazzarini, Manager, Vegetation Management Policy, Land and Vegetation Strategic Reform
Mr Stephen Matheson, Chief Inspector, Petroleum and Gas, Mine Safety and Health
Mr Darren Moor, Executive Director, Central Region
Mr Mick O'Donoghue, Director, Policy and Coordination, Mine Safety and Health
Mr Errol Ross, Manager, Water Services Support
Ms Sue Ryan, Deputy Director-General, Policy and Program Support

Department of Environment and Heritage
Mr Justin Carpenter, Manager, Energy Regulation and Implementation

Witnesses at a public hearing held on 29 October 2014

Mr Andrew Barger, Director Industry Policy, Queensland Resources Council
Ms Frances Hayter, Director Environment Policy, Queensland Resources Council
Mr Matthew Paull, Policy Director Queensland, Australian Petroleum Production and Exploration Association
Mr Gordon Delaney, Manager HSEQ for Bulk Water and Irrigation Systems, SunWater
Mr Paul McDonald, Manager Offsets, SEQ Catchments
Mr Simon Warner, CEO, SEQ Catchments
Mr Bryce Hines, Sport, Recreation and Natural Resources Manager, Ipswich City Council
Mr Craig Maudsley, Chief Operating Officer (Works Parks and Recreation), Ipswich City Council
Dr Claudia Baldwin
Mr Peter Olah, Executive Director, SEQ Council of Mayors
Mr Scott Smith, Project Manager, SEQ Council of Mayors
Mr Nigel Parratt, Queensland Conservation Council
Ms Revel Pointon, Solicitor, Environmental Defenders Office of Queensland
Ms Karen Touchie, Campaigner, Wilderness Society Queensland
Ms Camille Wood, Lawyer, Ferrier and Co. Lawyers, Roma
Mr Max Winders, Director, Wambo Cattle Co.
Ms Annie Jarrett, CEO, Northern Prawn Fishery Industry Association
Ms Joy Marriott, Pastoralist, North Queensland
Mr Stewart Peters, General Manager, Integrated Food and Energy Developments Pty Ltd
Mr Ian Burnett, President, AgForce
Mr Peter Anderson, Central Qld Regional President, AgForce
Mr Kim Bremner, Water Spokesperson, AgForce
Dr Dale Miller, Senior Policy Adviser, AgForce
Mr Dan Galligan, CEO, Queensland Farmers Federation
Mr Warren Males, Head – Economics, Canegrowers

Ms Rachel Chalk, NRM Project Manager, Queensland Dairyfarmers Organisation
Mr Adrian Peake, Executive Officer, Queensland Dairyfarmers Organisation
Mr Graham Clapham (Clapham Farming Co Pty Ltd), President, Central Downs Irrigators Ltd, rep. Cotton Australia
Ms Joanne Rea, Treasurer, Property Rights Australia
Mr Peter Shannon, Committee Member, Basin Sustainability Alliance

Briefing officers at a public briefing held on 29 October 2014

Department of Natural Resources and Mines
Ms Leanne Barbeler, Director, Strategic Water Policy
Mr Simon Hausler, Team Leader, Strategic Water Policy
Mr Lyall Hinrichsen, Executive Director, Water Policy
Mr Saji Joseph, Director, Strategic Water Programs
Mr Stephen Matheson, Chief Inspector, Petroleum ad Gas, Mine Safety and Health
Mr Errol Ross, Manager, Water Services Support
Ms Sue Ryan, Deputy Director-General, Policy and Program Support
Mr Lloyd Taylor, Executive Director, Operations Support

Department of Environment and Heritage
Ms Rachel Burgess-Dean, Director, Energy Regulation and Implementation

Dissenting Report

Ms Jackie Trad MP, Member for South Brisbane
Deputy Chair, Agriculture, Resources and Environment Committee

Water Reform and Other Legislation Amendment Bill 2014

Dear Mr Rickuss,

I write to lodge a dissenting report on the Agriculture Resources and Environment Committee's report on the *Water Reform and Other Legislation Amendment Bill 2014* (Bill).

The Labor Opposition has a fundamental objection to the purpose of the Bill, which seeks to change the focus of Queensland's water legislation from laws based on ecologically sustainable development principles, to laws designed to "provide for the responsible and productive management, allocation and use of Queensland's water and riverine quarry resources." In essence, this Bill:

- significantly deregulates water take in Queensland;
- allows secret development agreements to be made on large water takes without preceding scientific hydrological analysis or public notification and consultation; and
- permits broad-scale "low-risk activities" to occur in catchments without regulation or licencing and without statutory assessment of cumulative impact.

This Bill is another Newman Liberal National Party Government wind back of important protection and conservation laws for Queensland's environment and natural resources. The Bill appears to take the mistakes made in the management of the Murray Darling Basin system and seeks to repeat them.

Of chief concern, is the impact these new laws will have on the Great Barrier Reef catchment systems. The over-allocation of water from Reef catchment systems for large-scale agricultural and resource activities will ultimately decrease the volume and increase the nutrient loads flowing into the Reef.

I now turn to the Committee's Report in detail.

I am unable to support Recommendation 1 of the Committee's report that the Bill be passed with only a point of clarification requested on the feasibility of limiting the new provision of water development options to where there are unallocated water reserves, to both preserve the existing entitlements of other water users and the overall environment.

In consideration of the significant impacts of granting the new entitlement of a water development option – for large scale resource or agricultural proposals – Recommendation 3 should also mandate a period of public consultation, ensuring proper notification periods and time for public submissions, rather than recommending an amendment to merely provide the chief executive with the discretion to seek public submissions.

The Committee Report's third point of clarification inviting the Minister to comment on the feasibility of including criteria for decision-making within the Bill (to provide clear terms of reference within an Environmental Impact Assessment for a water development option), does not go far enough in responding to the significant concerns raised by expert stakeholders.

In relation to the new provision of a water development option, The Great Barrier Reef Marine Park Authority (GBRMPA) in their submission stated:

> *"Allocation of water resources prior to the full and open assessment of the potential cumulative impacts on groundwater, surface waters and the Great Barrier Reef World Heritage Property may lead to unacceptable impacts to coastal waterways and Great Barrier Reef ecosystems."*

Dr Claudia Baldwin, a water policy expert at the University of the Sunshine Coast who had input into the Water Act 2000 stated in her submission that:

> *"We do not want to repeat the costly struggles and buybacks which were required to remediate the Murray-Darling system. Yet this legislation sets up the guarantee that this is precisely what we will be forced to do. The ease of release of this asset to large mining companies that do not provide an adequate financial return to the community or public purse, or compensation for either the current or future degradation is absolutely unthinkable. Water is a public good, not private and should be available for our long term use."*

I am unable to support Clause 68 of the Bill that only requires that the chief executive arbitrarily consider whether an "environmental assessment is likely to demonstrate that any significant impacts on flows that would affect the environment or existing water authorisations can be adequately mitigated", prior to the granting of a water development option.

As the Environmental Defenders Office state in their submission:

> *"Informed decision making should not be sacrificed to a policy of streamlining approvals and assessment processes for projects that will have some of the biggest impacts to water resources. Inadequate assessment of impacts prior to approval will lead to impacts in the future to ecology and other water users which will create far more complications than simply undertaking thorough assessment prior to approval."*

Further, Ferrier & Co Lawyers in their submission recommended that:

> *"...section 85 should expressly require the chief executive to have regard to current or potential future water shortages and existing water use patterns in the relevant area to be affected by the water development option".*

AgForce in their submission also requested that a water development option involve "no disadvantage to existing water users" and "equity for small sale, local developers and guarding against 'water banking".

In response to these concerns the Department advised that:

> *"A water development option can be cancelled if the assessment does not identify the water to be available for the project or adequately mitigate the impacts on environmental flows or existing water entitlement holders."*

However, this conflicts with the statement at page 14 of the explanatory notes that:

> *"A water development option would provide the project proponent with assurance and exclusivity over future access to water resources while assessments are being undertaken."*

Moreover as the Wilderness Society state in their submission there:

> *"...appears to be nothing in the Bill preventing proponents from simply selling off their water allocations to the highest bidder once their EIA is approved by the Coordinator-General…"*

I support Recommendation 2 of the Committee's Report for the Minister to consider an amendment to the Bill to include circumstances and events that are likely to impact the limits

and features of a watercourse and riverine environment, which would trigger a review of the watercourse identification mapping.

However, the Committee's point of clarification inviting the Minister to comment on the nature of volumetric security and sustainability of rules-based water allocations, and implications for water trading under the proposed framework does not go far enough.

As the report notes:

> *"The committee accepts concerns raised by stakeholders with respect to the amendments that, in some circumstances, may allow for water to be allocated without detailed hydrological modelling and cautions against the issuing of water allocations where a lack of robust data creates uncertainty. Moreover, the committee considers that there is risk and liability to consider in the event that defined water assets are not sustainable and are devalued in the water market."*

These concerns should be addressed prior to the debate of this Bill.

Just as the Committee's point of clarification below should be consulted on and discussed prior to Parliamentary debate:

> *"The committee invites the Minister to comment on proposed actions to improve monitoring and evaluation of cumulative impacts of deregulation within and across catchments, as part of planned implementation of the Bill."*

The Opposition questions the Government's motivations for pushing forward with this legislation despite concerns from stakeholders about the consultation time frames provided, and the absence of the accompanying regulation, which will substantially determine how the Bill will work in practice.

The Queensland Resources Council described this time frame as "aggressively ambitious" and submitted that:

> *"QRC remains concerned that it is difficult to reconcile the caution of stakeholders with the pace at which reforms to the Water Act are being developed. In considering the Bill, it is essential that the Committee understand this sudden step-change in pace of reform is unsettling. All water users have been accustomed to deep and on-going consultation at a catchment level; which has simply not been possible in the time allowed for the development of this Bill."*

The Queensland Resources further advised that:

> *"The other thing that comes through regularly in the submissions is the fact that this is a whole-of-package reform. It is a complex set of reforms and a lot of the detail is in regulations and practices. So we are taking a bit of a leap of faith at the moment. We have seen legislation, but we do not have the full picture of how it will work. Certainly that is something that we would emphasise."*

It is nonsensical to debate legislation within hours of the regulation being tabled that will guide how that legislation is implemented in practice. This Government has a track record of moving primary legislation into regulation in order to claim that it is removing red tape while circumventing Parliamentary scrutiny.

I also share the concerns of stakeholders such as the Bowen Basin Sustainability Alliance who want to see proper regulatory oversight where a water monitoring authority is to be the holder of a mining tenement.

I am broadly supportive of Recommendation 6 and the accompanying points of clarification relating to make good arrangements, as well as Recommendations 8, 9, 10 and 11 relating to local government powers over River Improvement Trusts, and recommendation 12 on the drafting terminology for health and safety for overlapping tenure.

I would like to acknowledge the hard work of the AREC Secretariat in coordinating the inquiry and consultation on the *Water Reform and Other Legalisation Amendment Bill 2014*.

The Opposition will be outlining further concerns with the *Water and Other Legislation Amendment Bill 2014* when it is considered by the Parliament.

Yours sincerely

Jackie Trad MP
Member for South Brisbane