

# Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Short title

The short title of the Bill is the *Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Bill 2012*.

### Policy objectives

The objectives of the Bill are to

- amend the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) to implement recommendations of the Queensland Floods Commission of Inquiry relating to dam safety and flood mitigation matters;
- amend the *Water Act 2000* (Water Act) to relocate provisions for declaring temporary full supply levels for flood mitigation dams to the Water Supply Act;
- amend the Water Supply Act to:
  - change the criteria determining which dams must carry out failure impact assessments;
  - extend the due date for when certain low risk recycled water schemes must have an approved recycled water management plan or exemption from a plan in place; and
  - provide exemptions for small non-urban water service providers from certain planning and reporting requirements;
- amend the *Electricity Act 1994* (Electricity Act) to align the operation of the Solar Bonus Scheme with Government policy to reduce the feed-in tariff for new small customers after 9 July 2012 and clarify the conditions for the feed-in tariff entitlement.

## **Reasons for the Policy Objectives**

### **Queensland Floods Commission of Inquiry**

Prolonged and intensive rainfall across Queensland in late 2010 and early 2011 led to significant flooding across the state. Three quarters of the state was declared a disaster zone, 2.5 million people were affected; 35 people lost their lives and 29 000 homes and businesses were inundated. The Queensland Reconstruction Authority estimated that restoration and reconstruction costs would exceed \$5 billion.

The scale of the disaster led to the establishment of the Commission of Inquiry into the Queensland floods of 2010-11 (the Commission). In accordance with its 'terms of reference' the Commission released its interim report on 1 August 2011 and its final report on 16 March 2012.

The Government has committed to implementing all 177 recommendations of the Commission's final report. Although this represents a considerable task for the State over coming months and years, much has already been achieved.

Many of the Commission's recommendations have been implemented, ensuring that the State is better placed to deal with future flood events and emergencies; while others will take longer to be fully implemented. The Commission made a number of findings and recommendations relating to the operational procedures for dam safety and flood mitigation of referable dams. The Queensland Government response to the Commission's final report agreed to make appropriate amendments to the Water Supply Act before the next wet season.

A 'referable dam' is a water supply dam that would put more than two persons at risk if it were to fail, as determined by a 'failure impact assessment'. These dams are regulated under the Water Supply Act, which enables the chief executive to apply safety conditions on dam owners relating to, for example, operation and maintenance manuals; emergency action plans; periodic safety inspections; reporting and record keeping.

The Commission specifically recommended that there should be a legislative obligation on owners of referable dams to have emergency action plans and that these be assessed and approved by a State agency; that the Minister should be responsible for approving flood mitigation manuals, rather than the chief executive; and that processes for receiving and assessing flood event reports and emergency event reports triggered under emergency action plans and flood mitigation manuals be formalised and

consistent. In reviewing the Commission's recommendations, the Government has determined that dam safety regulatory arrangements could be further improved by embedding these key safety requirements in legislation.

The Bill also relocates provisions allowing the responsible Minister to temporarily reduce or increase the full supply level for a dam from the Water Act to the Water Supply Act to consolidate these provisions under one Act and better align responsibilities with current administrative arrangements.

#### Flood mitigation manuals content and approval

Currently, approved flood mitigation manuals are in place for Wivenhoe and Somerset dams and North Pine Dam, which set out different operating strategies for operating the dams during flood events. The manuals are approved by the chief executive for a period of five years. Where an approved flood mitigation manual exists, the dam's owner, operator and employees are protected from civil liability for any act or omission done honestly and without negligence in observance of the procedures in the manual.

Because choice of operating strategies under flood mitigation manuals has the capacity to affect millions of people and the need to balance competing interests when determining these strategies, the Commission recommended that the Minister, as the representative of the people, should approve the manual for use by dam operators rather than the chief executive. The Commission considered that departmental officers should maintain the role of assessing flood mitigation manuals and provide information and advice in order for the Minister to make the decision, but that the assessment should be conducted by an independent person who has had no involvement in a manual's development, at any stage, and who can be seen to be independent of all individuals who were so involved.

In response to these recommendations the Bill designates the Minister as the person responsible for approving a flood mitigation manual; specifies the mandatory content requirements for a manual and establishes criteria for approval. The Bill establishes related powers for the chief executive or dam owner to approve departures from the procedures authorised in the manual if there are unforeseen circumstances during a flood event. It also empowers the chief executive to set minimum qualification, experience and training requirements for key flood operations personnel, and requires the dam owner to report annually on the preparedness of the dam for flood

mitigation operations before each wet season. Under existing provisions, the Minister may also establish and seek the advice of an advisory council before approving a flood mitigation manual.

#### Nomination of dams which should be operated under a flood mitigation manual

North Pine Dam is one of three water supply dams in South East Queensland required to operate in accordance with a flood mitigation manual during flood events. In its final report the Commission recommended that, as part of the longer term review of the flood mitigation manual for North Pine Dam, consideration be given to whether the dam should be operated for flood mitigation purposes.

In response, the Bill introduces criteria for deciding which dams should be operated for flood mitigation purposes and are therefore required to be operated under an approved flood mitigation manual. The criteria will help to inform the consideration of whether North Pine Dam should continue to be operated under a flood mitigation manual. The policy intent is for the Minister to retain the discretion to determine whether particular dams should be assessed against these criteria to determine whether they should have a manual or not. It is not the intention to use the criteria to assess all referable dams.

#### Emergency action plans

Emergency action plans are currently required to be prepared by owners of referable dams under either development conditions (applied to a permit for the dam's construction) or safety conditions applied under the Water Supply Act. The Commission recommended that the Water Supply Act be amended to provide a legislative requirement for emergency action plans to be prepared for all referable dams and for these plans to be approved and periodically reviewed. The Bill introduces a legislative requirement for all referable dam owners to have an approved emergency action plan; specifies mandatory content requirements for the plans and requires a review of an approved plan after five years. The approval process allows for review of plans, through the chairperson of the relevant local or district disaster management group, and the chief executive can seek advice from Emergency Management Queensland before approving a plan. For owners of existing referable dams, an emergency action plan must be submitted to the chief executive for approval by 1 October 2013.

### Legislative requirement for flood event and emergency event reports

A flood event report is triggered where flood releases occur in accordance with an approved flood mitigation manual, while emergency event reports can be required if an emergency action plan for a dam is triggered. The Bill introduces a legislative requirement for emergency event reports and flood event reports to be prepared by dam owners and submitted to the chief executive within 30 business days after the end of an event. Emergency event reports are currently required under development or safety conditions while flood event reports are required under an approved flood mitigation manual. Flood and emergency event reports provide important feedback to the chief executive about the adequacy and effectiveness of operations during such events. Moving these requirements into legislation will assist in clarifying the timing, content and form of the reports and improve the transparency of the regulatory framework.

### Temporary full supply level

The Bill relocates provisions for declaring a temporary full supply level for flood mitigation dams from the Water Act to the Water Supply Act. These provisions were introduced in response to the Commission's interim report. The declaration process will be streamlined to allow for an abbreviated decision-making process if a new full supply level is to be declared more than once in six months, and to reflect the Government's election commitment to restructure the bulk water supply arrangements in South East Queensland. The relocation will better align responsibility for dam safety and flood mitigation under one Act and reflect current administrative arrangements.

## **Other dam safety related amendments**

### Failure impact assessment criteria

Criteria requiring owners of water supply dams to have their dam failure impact assessed are contained in section 343(1) of the Water Supply Act. The criteria are based on the height and storage capacity of the dam or proposed dam after its construction. The current criteria require many dams to be failure impact assessed despite there being no obvious risk to the public because many of these dams are located in sparsely populated areas. Dams which exceed the trigger criteria for assessment but are found to have no persons at risk, as well as category 1 referable dams (determined to have more than two but less than 100 persons at risk) must ensure another failure impact assessment is carried out for the dam at the frequency determined by the chief executive.

Around 80 per cent of the dams captured by the current criteria in section 343(1)(b) have been assessed as having no persons at risk—these dams are therefore not classified as referable dams. However, because of the current criteria, these dams will need to be reassessed for their failure impact in the future. Failure impact assessments can impose considerable costs on dam owners due to the specialised technical skills required to complete the assessments; a single assessment can be in the order of \$50 000. Where there is confidence particular dams will have no persons at risk, the requirement for failure impact assessments to be conducted is an unreasonable and unnecessary regulatory requirement. The Bill amends section 343 of the Water Supply Act to ease the criteria and reduce the burden of assessments and reviews on owners of smaller dams.

While this change will remove the mandatory requirement for failure impact assessments from a range of water supply dams, the chief executive can however, under existing powers, require any dam owner to have their dam failure impact assessed if there is a reasonable belief the dam would have persons at risk should the dam fail.

### **Reducing regulatory burden**

#### Recycled water scheme approval timeframes

Regulation of recycled water provision was introduced in 2008 when the Water Supply Act was enacted. Under the regulatory framework, a range of schemes supplying for lower risk uses are required to have an approved recycled water management plan or an exemption from doing a plan in place by 1 July 2013. These schemes supply recycled water for uses such as irrigation of highly processed food crops (e.g. sugar cane), irrigation of open spaces and non-food crops, dust suppression and road works. The Bill will extend the timeframe by one year to 1 July 2014 to provide sufficient time to review the framework and to develop a new regulatory approach for these schemes, which balances the regulatory framework with the level of risk posed by these schemes. This review may recommend simplified and reduced regulatory requirements for these types of schemes.

#### Statutory exemptions for small non-urban water service providers

The Water Supply Act regulates water and sewerage service providers imposing, among other things, a requirement for registration and the development of a range of management plans. There are around 60 registered small non-urban water service providers that typically provide non-potable water for irrigation or stock and domestic purposes and drainage services.

Small water service providers can apply to the regulator for an exemption from planning requirements, but this process places an administrative burden on service providers as well as government.

The Bill reduces the regulatory burden on these small non-urban water service providers, and the administrative burden on government, by introducing a statutory exemption from the requirements under the Water Supply Act to have an approved strategic asset management plan, approved system leakage management plan and drought management plan.

### **Solar Bonus Scheme**

Government announced changes to the Solar Bonus Scheme (the Scheme) on 25 June 2012 to limit the rapidly escalating future costs of the Scheme and its contribution to increasing residential electricity bills in Queensland.

Currently, section 44A(1)(b) of the Electricity Act obligates a distribution entity to credit a prescribed amount against the charges payable by a small customer for electricity produced by small photovoltaic generators that is in excess of the electricity used by the small customers and is supplied to the Queensland electricity network.

The Bill provides a framework to administer cost saving measures for the Scheme, as part of a broader Government policy agenda to reduce cost of living pressures for Queenslanders. The Bill enables a regulation to limit the circumstances in which a small customer is entitled to receive a prescribed credit amount (feed-in tariff) and to prescribe an end date for the payment of a feed-in tariff. The amendments provide a framework to end existing practices that transfer the 44c/kWh entitlement between property owners and tenants on change of property ownership or tenancy, require the installation of approved systems for customers of the 44 cents Scheme by 30 June 2013, and end the 8c/kWh feed-in tariff on 1 July 2014. Amendments support the Government policy decision, and subsequent amendment regulation, to close the 44c/kWh feed-in tariff for new customers and prescribe a tariff of 8c/kWh, to operate from 10 July 2012 to 1 July 2014.

## **Achievement of policy objectives**

The Bill achieves the policy objectives by:

### **Queensland Floods Commission of Inquiry**

1. Amending the Water Supply Act dam safety regulatory framework to implement recommendations of the Floods Commission of Inquiry, specifically to:
  - establish the Minister as the approving authority for flood mitigation manuals, and provide criteria for the approval;
  - introduce a legislative requirement for owners of referable dams to have an emergency action plan approved by the chief executive;
  - introduce a legislative requirement for dam owners to submit flood event reports and emergency event reports within 30 business day after the end of an event;
  - set legislative criteria that outline which dams should be operated under a flood mitigation manual; and
  - relocate and streamline the provisions for declaring temporary full supply levels for flood mitigation dams to mitigate potential emergencies.

### **Other dam safety related amendments**

2. Amending to Water Supply Act to:
  - change the criteria determining which dams must carry out failure impact assessments; and
  - make minor consequential amendments to sections 561 and 562 for referral of operational works applications for referable dams and appeal provisions respectively.

### **Reducing regulatory burden**

3. Amending to Water Supply Act to reduce regulatory burden, by:
  - extending the due date for recycled water management plans or an exemption from doing a plan by one year for recycled water schemes supplying for lower risk uses to 1 July 2014 to allow time to simplify regulatory arrangements; and

- providing exemptions for small non-urban service providers from certain regulatory requirements.

### **Solar Bonus Scheme**

#### 4. Amending the Electricity Act to:

- align the operation of the Solar Bonus Scheme with Government policy to close the 44c/kWh feed-in tariff to new entrants from midnight on 9 July 2012 and replace it with an 8 c/kWh feed-in tariff;
- insert a head of power in section 44A(2) to prescribe the circumstances in which different categories of small customers are no longer entitled to be credited with a feed-in tariff; and an end date of 1 July 2014 for the 8 c/kWh feed-in tariff;
- insert new transitional provisions that clarify ongoing eligibility to the 44c/kWh credit amount for qualifying generators covered by section 328 of the Act;
- update sections 44A and 55DB of the Act as a result of the *Electricity Amendment Regulation (No. 3) 2012*, gazetted on 6 July 2012, prescribing two credit amounts (44c/kWh and 8c/kWh) for section 44A(1)(b) of the Act. This includes updating distribution and retail authority reporting requirements for each prescribed credit amount, and removing redundant Scheme review provisions.

### **Alternative ways of achieving policy objectives**

#### **Queensland Floods Commission of Inquiry**

The Bill amends legislation in response to the Queensland Floods Commission of Inquiry recommendations in relation to dam safety and flood mitigation and is consistent with the Government's response to the Commission's final report.

There are no alternative ways of achieving the policy objectives associated with these matters.

#### **Other dam safety related amendments**

There are no alternative ways of achieving the policy objectives in relation to these matters.

### **Reducing regulatory burden**

There are no alternative ways of achieving the policy objectives in relation to these matters.

### **Solar Bonus Scheme**

There are no non-legislative methods by which the policy objectives can be achieved. As the Scheme is administered under the Electricity Act and Electricity Regulation, changes to the Scheme can only be achieved through legislative change.

### **Estimated cost for government implementation**

The proposals in the Bill will be implemented by the department from within existing resources.

### **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

### **Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation allows for delegation of administrative power only in appropriate cases and to appropriate persons.**

A fundamental criterion in evaluating a proposed delegation of administrative power for consistency with this fundamental legislative principle is the significance of the relevant powers. Under current legislation, a flood mitigation manual approved by the chief executive for a relevant dam delegates functions and powers to the chief executive, for example, to approve of the persons to operate the dam during a flood event and authorise departure from the operational procedures under the approved manual in certain circumstances.

The relevant power to be exercised by the chief executive to authorise departure from the operational procedures is significant. Also, under the Bill, the Water Supply Act is amended to vest authority for approving a flood mitigation manual in the Minister rather than the chief executive. Consistency with this fundamental legislative principle can be best achieved by providing the relevant powers to the chief executive under the Bill. As such, the Bill includes powers for the chief executive to authorise departure from the operational procedures under a flood mitigation manual

and also for the chief executive, if he or she considers it appropriate, to determine minimum qualifications, experience and training requirements for key flood operations personnel under a flood mitigation manual for a dam. However, it will be the dam owner's responsibility to ensure those persons comply with any such requirements specified by the chief executive and to approve persons to operate the dam in the event of a flood affecting the dam.

**Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice.**

Under the Bill particular dam owners must prepare and submit flood mitigation manuals to the Minister for approval. The Minister can exercise discretion to refuse to approve a flood mitigation manual but there is no internal review of that decision. The consequences of a decision to refuse to approve a manual are significant as the dam owner is protected by immunity from civil liability if the owner observes the operational procedures in an approved manual. A decision to approve a flood mitigation manual is also significant as choice of operating strategies under flood mitigation manuals has the capacity to affect millions of people as it necessarily balances competing interests when determining operational strategies and their priority.

A right of review of an adverse decision is a recognised element of procedure fairness. However, the Bill provides for mandatory preparation of a new flood mitigation manual in the event of refusal. While there is no merits review of a refusal, a dam owner is not prevented from seeking judicial review of the decision. In the circumstances, it is considered justifiable to limit the dam owner's right of review to procedural matters.

**Whether legislation has sufficient regard to the institution of Parliament depends on whether, the Bill authorises the amendment of an Act only by another Act.**

The inserted section 44A(2) in the Electricity Act may be a breach of fundamental legislative principles as a 'Henry VIII' clause.

The insertion of this section is considered justified on the grounds that the amendments are future looking and do not affect the rights of Scheme customers based on previous events.

The insertion is also justified because the Scheme is subject to highly changeable market factors (such as photovoltaic prices) that influence its

application in ways that are counter to the Scheme's policy intent and that escalate its future costs. As these costs are borne by the community as a whole, the Executive requires the capability to respond quickly with adjustments via regulatory rather than legislative amendment.

Section 44A(2) allows a regulation to further clarify the policy objectives for when a feed-in tariff payable under the Electricity Act is not intended to apply to a small customer. It operates within parameters set in the Electricity Act for the type of customer entitled to the feed-in tariff, the size of qualifying generators, the premises and metering requirements, and the end date for the Scheme.

### **Penalty provisions**

The Bill provides for a number of new offences in chapter 4 of the Water Supply Act relating to dam safety with maximum penalties of 1665 penalty units, for example, for failure of relevant dam owners to prepare emergency action plans, flood mitigation manuals and emergency and flood event reports. Given the potential consequences that may arise in the event of a non-compliance with these legislative requirements, application of the maximum financial penalty is considered justified. While these are significant offences, the defence of a reasonable excuse is available in most instances.

### **Consultation**

#### **Queensland Floods Commission of Inquiry, other dam safety and reducing regulatory burden amendments**

The Departments of The Premier and Cabinet, Queensland Treasury and Trade, Local Government, Justice and Attorney-General, Community Safety and Emergency Management Queensland were consulted.

There has been consultation with Seqwater, SunWater, the Local Government Association of Queensland, Agforce and Queensland Farmers Federation.

#### **Solar Bonus Scheme**

The Departments of the Premier and Cabinet and Queensland Treasury and Trade Justice and Attorney-General were consulted.

There has been consultation with electricity distributors ENERGEX and Ergon Energy.

## **Results of consultation**

### **Industry stakeholders**

Industry stakeholders provided a positive response to the amendments in the Bill.

### **Government**

All departments and agencies consulted support the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is not part of national scheme legislation.

The Solar Bonus Scheme is similar to South Australia's Feed-in Mechanism as described in the *Electricity (Feed-In Scheme-Solar Systems) Amendment Act 2008* (SA) and *Electricity (Miscellaneous) Amendment Act 2011* (SA).

## **Notes on provisions**

### **Part 1                      Preliminary**

#### **1 Short title**

*Clause 1* cites the short title of the Act as the *Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012*.

#### **2 Commencement**

*Clause 2* provides for commencement of part 2 of the Bill.

## **Part 2**                      **Amendment of Electricity Act 1994**

### **3 Act Amended**

*Clause 3* provides that this part amends the *Electricity Act 1994* (Electricity Act).

#### **4 Replacement of s 44A (Additional condition to allow credit for electricity produced by small photovoltaic generators)**

*Clause 4* inserts a replacement section 44A of the Electricity Act.

Section 44A(1)(b) is amended to remove provision for a credit amount of 44c/kWh where no amount is prescribed in regulation. The amendment is a consequence of the *Electricity Amendment Regulation (No. 3) 2012*, which inserted a new section 30AA into the *Electricity Regulation 2006* (Electricity Regulation) prescribing two credit amounts payable under the Scheme. The new section 30AA removes the need for the Electricity Act to prescribe the credit amount of 44c/kWh.

The new section 44A(1)(b) replaces the word ‘a’ with the word ‘the’ in the sentence ‘...customer connection services provided to a small customer...’. This amendment clarifies that the small customer receiving connection services (that is the electricity account holder for the premises) is the customer entitled to the credit for exported solar energy.

Section 44A(1)(b)(i) replaces the word ‘a’ with ‘the’ and inserts the word ‘when’ after the word ‘generator’ in the sentence ‘...being produced by a qualifying generator connected to the distribution authority’s supply network’. This amendment clarifies the intent that only one qualifying generator can be connected to the supply network per premise under the Scheme. It also clarifies that the credit entitlement is only activated at the point the qualifying generator is connected to the supply network, irrespective of any written approval for that entitlement.

Section 44A(1)(b)(iii) replaces the word ‘a’ with ‘the’ in the sentence ‘being used by a small customer’. This amendment clarifies that the small customer receiving connection services (that is the electricity account holder for the premises) is the customer entitled to the credit for the net amount of solar energy exported to the grid.

Section 44A(1)(c) is amended to require a distribution authority to provide two reports to the regulator every six months, one for each prescribed tariff

rate. Clauses (i) to (vi) are amended to specify the reporting period of six months. In addition to the existing reporting requirements under this section, new clauses (ii) to (v) have been inserted to require the distribution entities to provide the Regulator with information for each tariff about:

- the total number of small customers with qualifying generators connected to the network;
- the number of small customers who stopped being credited with a tariff during the reporting period and to date; and
- the total amount of credit payable to each retailer for the relevant period, itemised by retailer.

The clauses have also been reordered. This amendment is required to align reporting with other amendments in the Bill that change the operation of the Scheme, and to facilitate monitoring of both feed-in tariffs.

Section 44A(2) is amended to omit subsection (2) which set out review requirements for the Scheme. A regulatory review of the Scheme has occurred and this section is no longer required. A new section 44A(2) is inserted.

Section 44A(2)(a) provides a head of power to make a regulation prescribing the circumstances in which a small customer is entitled, or stops being entitled, to be credited with the prescribed credit amount for that customer. This will enable a Regulation to limit the future circumstances in which a small customer of the 44c/kWh feed-in tariff can continue to receive that feed-in tariff rate.

Section 44A(2)(b) provides a head of power to make a regulation prescribing an end date for a prescribed credit amount that is earlier than the Scheme end date of 1 July 2028 set out in section 44A(5). This will enable a regulation to set an end date of 30 June 2014 for the 8c/kWh tariff in accordance with the June 2012 Government policy decision and will provide more flexibility for the future management of the Scheme.

Section 44A(3) is amended to become section 44A(5) and a replacement section 44A(3) is inserted.

New sections 44A(3) and 44A(4) set out the obligation of distribution authorities to credit or not to credit a prescribed amount under section 44A(1)(b) where a category of small customer becomes entitled to a prescribed credit amount or stops being entitled to a prescribed credit amount under section 44A(2)(a).

## **5 Amendment of s 55DB (Additional condition about electricity produced by small photovoltaic generators)**

*Clause 5(1)* amends section 55DB(1)(d) to obligate a retail authority to provide a report to the regulator every six months for each prescribed tariff rate detailing the number of small customers receiving credit and the amount credited to small customers under section 44A(1)(b) in the previous six month period.

*Clause 5(2)* amends section 55DB to omit section 2 which set out review requirements for the Scheme. A regulatory review of the Scheme has occurred and this section is no longer required. Section 55DB(3) is amended to become section 55DB(2).

## **6 Amendment of s 328 (Qualifying generators connected, or about to be connected, to supply network)**

*Clause 6* inserts a new section 328(4) to apply the provisions set out in a new section 335 to this section.

## **7 Insertion of new ch 14, pt 14**

*Clause 7* inserts a new 'Part 14 Transitional provision for the *Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012*' into Chapter 14 Transitional and validation provisions.

# **Part 14 Transitional provision for Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012**

## **Section 335 When s 328 stops applying or does not apply to qualifying generators as previously defined**

The Electricity Act was amended in 2011 to limit the size of qualifying generators connected to the Scheme after 8 June 2011 to 5kW rated

capacity. Section 328 allows small customers with qualifying generators as mentioned in that section to continue under their existing conditions of connection. A new section 335 is inserted into part 14 to provide the circumstances in which the provisions at section 328 stop applying to a small customer's qualifying generator under section 328. New section 335 specifies the circumstances under which the conditions of connection for section 328 qualifying generators will no longer apply.

Under new sections 335(1) and 335(2), section 328 stops applying to an affected small customer's qualifying generator connected at their premises where the name on the electricity account for the premises is changed to a person other than the spouse of the small customer. The intent of this amendment is to prevent any transfer of the 44c/kWh entitlement on the transfer of property ownership or tenancy at a premises where a section 328 qualifying generator is connected to the network.

New section 335(2) provides an exception to 335(1) where the name on the electricity account for that premises is changed directly from the small customer for the premises to their spouse, and not via another person. If, for example, the name of a person other than the spouse of the existing small customer is added to the electricity account for the premises, the provisions at section 328 stop applying to the qualifying generator. To clarify further, if on the death of the small customer for the premises, the electricity account for the premises is transferred into the name of that small customer's estate and then into the spouse's name, the provisions at section 328 will continue to apply and the spouse is entitled to the prescribed credit amount of 44c/kWh. The intent of this provision exists regardless of the administrative practices or processes required to enable the account name change (such as where a new account for the premises was established).

Under a new section 335(3), section 328 does not apply to a small customer's qualifying generator where the qualifying generator is not connected to or readied for connection to the network by 30 June 2013. The intent is for a small customer with a qualifying generator under section 328 to stop being entitled to the 44c/kWh prescribed amount if they fail to connect or ready their system for connection before this date.

For the purpose of section 335(3), a qualifying generator is ready to be connected at the small customer's premises to the distribution entity's supply network if the small customer has notified their electricity distributor by completing and lodging the relevant form requesting connection. On this form, the small customer must indicate that their

qualifying generator is ready for meter connection before 30 June 2013. This form must be received by the electricity distributor by midnight on 30 June 2013.

New sections 335(4) and 335(5) set out the treatment of section 328 qualifying generators that also meet the Schedule 5 definition of ‘small photovoltaic generators’ as in force (systems with a total rated inverter capacity of 5kW or less), where section 335 is triggered. Section 335(5) confirms the obligation of an electricity distributor to credit the amount under section 44A(1)(b) as in force to section 328 small photovoltaic generators, until a day prescribed in regulation.

To be clear, where section 328 stops applying to a small customer’s small photovoltaic generator under section 335, the small customer is entitled to the prescribed credit amount mentioned in section 44A(1)(b) as in force. The policy intent is for the prescribed credit amount to be 8c/kWh and the day prescribed in regulation to be 1 July 2014 for the purpose of section 335.

Where section 335 applies to a small customer’s qualifying generator under section 328 and the qualifying generator does not meet the Schedule 5 definition of ‘small photovoltaic generator’ as in force, that is the generator has a rated inverter capacity above 5kW, the generator stops being entitled to a credit under section 44A(1)(b) for electricity produced by the generator and exported to the network.

New section 335(6) clarifies the meaning of qualifying generator for the purpose of this section.

## **8 Amendment of sch 5 (Dictionary)**

*Clause 8* inserts wording in Schedule 5 to provide a reference to section 44A(1)(b) for the term ‘prescribed credit amount’. Section 44A(1)(b) refers to the regulation prescribing the credit amount payable under the Scheme.

# **Part 3                      Amendment of Water Act 2000**

## **9 Act amended**

*Clause 9* provides that this part amends the *Water Act 2000*.

## **10 Replacement of ch 2, pt 2, div 4 hdg**

*Clause 10* replaces the heading for chapter 2, part 2 division 4.

## **Division 4            Effect of declaration of temporary full supply levels on relevant dams**

### **11 Amendment of s 31 (Application of, and definitions for, div 4)**

*Clause 11* amends section 31 to reflect the relocation of provisions for declaring temporary full supply levels to the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

### **12 Omission of ss 32-34A**

*Clause 12* omits sections 32 to 34A. These sections are omitted and, by other provisions of the Bill, relocated to the Water Supply Act.

### **13 Amendment of s 34B (Effect of temporary full supply level on resource operations plan)**

*Clause 13* amends section 34B to reflect the relocation of provisions for declaring temporary full supply levels to the Water Supply Act.

### **14 Amendment of s 34C (Obligations of operator if temporary full supply level declared)**

*Clause 14* amends section 34C to reflect the relocation of provisions for declaring temporary full supply levels to the Water Supply Act.

### **15 Omission of s 34D (Chief executive must review safety requirements)**

*Clause 15* omits section 34D. This section is omitted and by other provisions of the Bill relocated to the Water Supply Act.

### **16 Renumbering of ss 34B–34E**

*Clause 16* renumbers sections 34B to 34E as sections 32 to 34.

## **17 Amendment of s 345 (Main functions of commission)**

*Clause 17* omits paragraph (b) which states a function of the Queensland Water Commission (the Commission) is to provide advice relating to temporary full supply levels. Government policy is that the Commission is to be abolished and therefore it will no longer have a role in providing this advice.

## **18 Insertion of new ch 9, pt 5, div 18**

*Clause 18* inserts new chapter 9, part 5, division 18.

## **Division 18            Transitional provision for Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012**

### **Section 1209 Continuation of existing temporary full supply level**

New section 1209 provides that an existing temporary full supply level declared under section 34A in force immediately before the commencement of this Act continues in force until it ceases to have effect or the declaration is revoked.

The section also applies the new provisions for declaring temporary full supply levels inserted by the Bill into the Water Supply Act to an existing declaration. However subsection (5) states that new section 396 of the Water Supply Act only applies if the existing temporary full supply level has been declared for the dam for no longer than one month as the obligation imposed by 396, to review safety conditions, should have been complied with within the one month timeframe.

## **19 Amendment of sch 4 (Dictionary)**

*Clause 19* amends the dictionary by replacing two definitions for 'temporary full supply level' and 'water security' with amended definitions as a consequence of relocating certain provisions for declaring temporary full supply levels to the Water Supply Act.

## **Part 4**                      **Amendment of Water Supply (Safety and Reliability) Act 2008**

### **20 Act amended**

*Clause 20* provides that this part amends the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act).

### **21 Amendment of s 70 (Requirement for strategic asset management plan)**

*Clause 21* amends section 70 to provide an exemption from the requirement to have a strategic asset management plan for small non-urban providers.

### **22 Replacement of s 78 (Application of div 2)**

*Clause 22* replaces section 78 to provide an exemption from the requirement to have a system leakage management plan for small non-urban providers, in addition to providers that only provide a drainage service.

### **23 Amendment of s 122 (Application of div 6)**

*Clause 23* amends section 122 to provide an exemption from the requirement to have a drought management plan for small non-urban providers, in addition to providers already exempted.

### **24 Amendment of s 123 (Preparing drought management plans)**

*Clause 24* amends section 123 to omit subsection (5) which contains a definition of 'resource operations plan' for the section. The definition is relocated to schedule 3 (Dictionary) by other provisions of the Bill for general application.

### **25 Amendment of s 133 (Particular water service providers to have outdoor water use conservation plans)**

*Clause 25* amends section 133 by omitting subsection (5) which provides a definition of 'water security' for the section. The definition is relocated by

other provisions of the Bill to schedule 3 (Dictionary) for general application.

## **26 Amendment of ch 4 hdg (Referable dams and flood mitigation)**

*Clause 26* amends the heading of chapter 4.

## **27 Amendment of s 343 (When dam must be failure impact assessed)**

*Clause 27* amends section 343 to change the criteria that specify which dams are required to carry out failure impact assessments. The height and storage capacity criteria are increased so that relatively small dams will no longer be required to carry out failure impact assessments, unless the chief executive is satisfied there would persons at risk if the dam failed and as such issues a notice requiring an owner to carry out an assessment.

## **28 Insertion of new ch 4, pt 1, div 2A**

*Clause 28* inserts new chapter 4, part 1, division 2A dealing with emergency action plans and emergency event reports.

# **Division 2A      Emergency action planning and reporting**

## **Subdivision 1      Preliminary**

### **Section 352A Definitions for div 2A**

New section 352A provides definitions for division 2A.

### **Section 352B What is a *dam failure hazard***

New section 352B provides a definition of '*dam failure hazard*' for division 2A.

### **Section 352C What is a *downstream release hazard***

New section 352C provides a definition of ‘downstream release hazard’ for division 2A. The policy intent is that this definition captures only those spillway or other releases which cause substantial enough downstream flow to make it appropriate to notify local authorities and persons who might be affected.

### **Section 352D What is the *relevant disaster management group* for an emergency action plan**

New section 352D provides a definition of ‘relevant disaster management group’ for division 2A. Government policy is that emergency action plans should be reviewed by disaster management groups to ensure the plans are consistent with disaster management arrangements.

The policy intent is that only one disaster management group, through the group’s chairperson, should review a dam owner’s emergency action plan before it is submitted to the chief executive for approval, either the local or district group but not both groups. Which group’s chairperson will be called upon to review an emergency action plan will depend on the scale of the potential impacts from an emergency event should it happen. If an emergency condition that is a ‘dam failure hazard’ or a ‘downstream release hazard’ identified in a dam owner’s emergency action plan happens, this is an emergency event.

## **Subdivision 2 Requirements for emergency action plans**

### **Section 352E Requirement for approved emergency action plan**

New section 352E provides that the owner of a referable dam must have an approved emergency action plan. This section is however subject to section 352F and transitional section 645 which specify timeframes for submission of plans in particular circumstances.

The main role of the emergency action plan is to specify what the dam owner must do in an emergency to notify people who are at immediate risk, notify emergency services, and to rectify or mitigate the emergency at the dam.

## **Section 352F Requirement to prepare emergency action plan**

New section 352F specifies the timeframes for when owners of referable dams must submit emergency action plans to the chief executive for approval. New section 352F specifies timeframes for different situations. Generally, after first being approved, plans will need to be resubmitted for approval every five years as the approval period for a plan cannot be more than five years. Requirements for emergency action plans in respect to existing referable dams is dealt with under a transition provision, see section 645. The first plans to be required of owners of existing referral dams are required to be submitted to the chief executive for approval by 1 October 2013. It is likely that the first emergency action plan approved for each dam under these provisions will be approved for a substantially shorter period than five years, as the process of improving the quality and effectiveness of these plans will take a number of iterations of development and approval.

Under subsection (2) it is an offence for a dam owner to not comply with the requirements to submit an emergency action plan within the required timeframe for approval unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

## **Subdivision 3 Preparation of emergency action plans**

### **Section 352G Disaster management review of plan**

Section 352G requires dam owners, in preparing their emergency action plan, to give a copy of their plan to the chairperson of the relevant disaster management group to enable the chairperson to review the plan for consistency with the relevant disaster management plan. If the chairperson reviews the plan, he or she must complete the review within 10 business days of receiving the plan and give the dam owner a report (a disaster management review report) of the review. In turn, the dam owner may prepare a written response to the chairperson's report and attach it the report. Under new section 352H (Content of plan), when the dam owner submits the emergency action plan to the chief executive for approval, the plan must be accompanied by report.

## **Section 352H Content of plan**

New section 352H provides for the mandatory content of emergency action plans, including the identification of emergency conditions, actions to be taken by the dam owner if the plan is activated and the details of notifications to be made by the dam owner in relation to the emergency conditions should they happen.

Subsection (2) specifies the entities that the dam owner must identify in their emergency action plan and in accordance with subsection (1) indicate when and how they will be notified if an emergency condition happens.

If the dam owner has been given a disaster management review report by the chairperson of the relevant disaster management group under section 352G, the plan must be accompanied by the report.

## **Subdivision 4 Approving emergency action plans**

### **Section 352I Chief executive to consider plan**

New section 352I provides that the chief executive must consider an emergency action plan and decide to approve it or to refuse to approve it. In deciding whether to approve a plan the chief executive may seek advice from Emergency Management Queensland and an advisory council. The chief executive must also have regard to a disaster management review report and disaster management review response if they accompany the plan that is submitted for approval.

### **Section 352J Criteria for approving plan**

New section 352J provides the chief executive with criteria for approving an emergency action plan. The section states the matters the chief executive must have regard to in considering an emergency action plan. The criteria include that the emergency action plan meets the content requirements specified in section 352H and effectively addresses emergency conditions that have the potential to affect the dam.

### **Section 352K Approval of plan**

New section 352K provides that if the chief executive approves an emergency action plan the chief executive must give a notice to the dam

owner advising the dam owner and give a copy of the approved plan to Emergency Management Queensland. If the decision is to approve the emergency action plan, the chief executive must also publish the approved emergency action plan in accordance with section 352M and the approval must be for a period of no more than five years.

### **Section 352L Refusal to approve plan**

New section 352L provides that if the chief executive refuses to approve the emergency action plan the chief executive must give the dam owner an information notice about the decision and a notice directing the owner to prepare a new emergency action plan within a period stated in the notice of at least 30 business days. An information notice gives the dam owner the right to appeal the decision. Under subsection (2) it is an offence to not comply with the requirement to submit a new plan for approval within the stated period unless the owner has a reasonable excuse with a maximum penalty of 500 penalty units.

## **Subdivision 5 Keeping and publishing emergency action plans**

### **Section 352M Register of approved emergency action plans**

New section 352M requires that the chief executive keep a register of approved emergency action plans. The section states that these emergency action plans must be publicly available; however, personal information such as names addresses and phone numbers of persons identified in a plan must not be disclosed in the publicly available part of the register.

### **352N Dam owner must ensure particular individuals have access to plan**

New section 352N provides that an owner of a referable dam must keep a copy of their approved emergency action plan and make it available to relevant persons identified in the plan; this may include residents downstream potentially affected in the event of an emergency at the dam. It is an offence for a dam owner to not comply with the requirement to keep a copy of the emergency action plan and make it available to persons who have a function or are named in the plan as being someone to be personally

notified of an emergency condition with a maximum penalty of 500 penalty units.

## **Subdivision 6 Reviewing emergency action plans**

### **Section 352O Review by chief executive and direction to prepare and submit new plan**

New section 352O empowers the chief executive to require a dam owner to prepare a new emergency action plan where he or she considers the emergency action plan no longer deals effectively with an emergency condition at the dam including, for example, because the chairperson for a relevant disaster management group advises that the plan is not consistent with the local or district disaster management plan.

If a new plan is required, the chief executive must give the dam owner a notice to prepare a new emergency action plan and submit the emergency action plan to the chief executive for approval within the time stated in the notice, which must be of at least 30 business days. Under subsection (3) it is an offence for a dam owner to not comply with a direction to prepare and submit a new emergency action plan within the stated period unless the owner has a reasonable excuse with a maximum penalty of 500 penalty units.

### **Section 352P Review by dam owner**

New section 352P creates an obligation on the owner of a referable dam to review the approved emergency action plan for their dam before 1 October of each year and to advise the chief executive the results of the review. The purpose of the review is to ensure the plan is current and is in readiness for the forthcoming wet season, which commences notionally on 1 November each year.

The dam owner must by written notice tell the chief executive, whether because of the review, they propose to amend their plan or not. If an amendment is proposed, the dam owner must also submit a copy of the plan reflecting the proposed amendment. Where a proposed change is not a change of substance and the chief executive agrees, the plan as amended is taken to be the approved emergency action plan in accordance with section 352Q. If the proposed change is a change of substance, the owner will be

required to submit a new plan for the chief executive's approval in accordance with section 352R.

It is an offence for a dam owner to not comply with the requirements for the annual review of their emergency action plan with a maximum penalty of 500 penalty units.

## **Subdivision 7 Amending emergency action plans**

### **Section 352Q Amending plan by agreement**

New section 352Q provides that an owner of a referable dam may, with the chief executive's agreement, amend the emergency action plan for their dam under the provision if the amendment is only to correct a minor error in the plan or is another change that is not a change of substance.

If the chief executive agrees, the plan as amended is taken to be the approved emergency action plan.

### **Section 352R Substantive amendment of plan**

New section 352R provides that where an owner of a referable dam proposes an amendment to their emergency action plan and the chief executive considers the amendment to be a change of substance, the chief executive must give the dam owner a notice stating:

- the chief executive considers the proposed amendment is a change of substance and the reasons why; and
- that, if the owner proposes to include the amendment in the plan, the owner must prepare a new emergency action plan including the amendment under subdivision 3 and give it to the chief executive.

## **Subdivision 8 Renewing emergency action plans**

### **Section 352S Renewal of plan**

New section 352S requires that if an emergency action plan for a referable dam has been approved, the owner of the dam must prepare and submit a new emergency action plan to the chief executive under subdivision 3

(Preparation of emergency action plans), no later than one month before the approval period for the plan expires.

Under subsection (2) it is an offence for a dam owner to not comply with the requirement to prepare and submit a new emergency action plan for approval within the specified timeframes before expiry of the approved plan unless the owner has a reasonable excuse with a maximum penalty of 500 penalty units.

## **Subdivision 9 Emergency event reporting**

### **Section 352T Preparation and submission of emergency event report**

New section 352T(1) specifies in what circumstances an emergency event report is required to be prepared by owners of referable dams. A report is required where an emergency event relating to the dam happens. An emergency event is defined under section 352A to mean a 'dam failure hazard' or a 'downstream release hazard' that has happened. These hazards are 'emergency conditions' that must be identified in an emergency action plan. An emergency condition is also 'a circumstance that potentially indicates an increase in the likelihood of a dam failure hazard or downstream release hazard happening'. However, an emergency event report is only required where either a dam failure or downstream release hazard happens, that is, where an emergency event relating to the dam happens.

Subsection (2) specifies when an owner of a referable dam must prepare and submit an emergency event report to the chief executive. Normally, an emergency event report is required to be submitted to the chief executive within 30 business days after the end of an emergency event; however a longer time applies if the chief executive and dam owner agree in writing to a longer period.

Subsection (2) provides a reference to transitional section 646 which deals with the timeframes for when the requirements for emergency event reports apply to owners of existing referable dams.

Under subsection (2) it is an offence for a dam owner to not comply with the requirement to prepare and submit an emergency event report to the chief executive within the specified or agreed timeframes unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

Subsection (3) states what ‘end’ of an emergency event’ means for the section.

### **352U Preparation and submission of emergency event interim report**

Section 352U provides power for the chief executive to require an emergency event interim report before the end of an emergency event if the chief executive considers an event will be protracted and will continue for at least one month.

In the circumstances, the chief executive may give the owner of the dam a notice requiring an interim report to be given to the chief executive within 10 business days.

Under subsection (3) it is an offence for a dam owner to not comply with the requirement to prepare and submit an emergency event interim report to the chief executive within the specified timeframes unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

### **Section 352V Content of report**

New section 352V provides for the mandatory content of emergency event and emergency event interim reports. Among other things, a report must include a description of the event and describe the implementation of the emergency action plan including communications during the event, a description of damage to the dam resulting from the event and an assessment of how effectively the plan dealt with the emergency event, and any other matters prescribed under a regulation.

Subsection (2) provides that an emergency event report and interim report may deal with two or more emergencies if the events are related and the chief executive agrees to this.

### **29 Replacement of ch 4, pt 2 hdg and ss 370 and 371**

*Clause 29* replaces chapter 4, part 2 heading and sections 370 and 371.

## **Part 2                      Flood mitigation manuals and reporting**

### **Division 1                Preliminary**

#### **Section 370 Definitions for pt 2**

New section 370 provides definitions for part 2.

#### **Section 371 What is a *flood event***

New section 371 provides a definition for '*flood event*' which is based around the need to use the gates on a dam to manage excessive releases. Normal operational releases through regulator valves or other mechanisms are not considered to be flood events.

#### **Section 371A Application of pt 2**

New section 371A provides that part 2 applies to a referable dam prescribed under a regulation.

Subsection (2) provides criteria that the Minister must give consideration to before prescribing a dam under a regulation as a dam that must have and be operated under a flood mitigation manual in a flood event.

The section provides a reference to transitional section 649 which deals with application of this section to existing referable dams which currently have approved flood mitigation manuals.

### **Division 2                Preparation of flood mitigation manuals**

#### **371B Requirement for approved flood mitigation manual**

New section 371B requires that the owner of a dam prescribed under section 371A must have an approved flood mitigation manual for the dam.

The policy intent is that a combined single manual would satisfy this obligation where two or more dams are operated as an integrated system for flood mitigation purposes, such as the Wivenhoe and Somerset Dams.

### **Section 371C Requirement to prepare flood mitigation manual**

New section 371C provides for when relevant dam owners that do not have an approved flood mitigation manual must prepare and submit a flood mitigation manual to the Minister for approval within six months after being prescribed under section 371A.

It is an offence for a dam owner to not comply with the requirements to submit a flood mitigation manual within the required timeframe for approval with a maximum penalty of 1665 penalty units.

### **Section 371D Content of manual**

New section 371D provides for the mandatory content requirements for flood mitigation manuals. Among other matters, a manual must state:

- the objectives for flood mitigation for the dam and their importance relative to each other;
- the operational strategies to achieve the objectives for flood mitigation for the dam;
- how the operational strategies achieve an appropriate balance in relation to the matters in section 371F(c); and
- state the operational procedures to achieve the operational strategies for flood mitigation for the dam;
- describe the roles and responsibilities of personnel with functions under the manual and their qualifications and experience; and
- any other relevant matter prescribed under regulation.

## **Division 3            Approving flood mitigation manuals**

### **Section 371E Minister to consider manual**

New section 371E provides that the Minister must consider a flood mitigation manual given to the Minister and decide to approve it or refuse to approve it.

The Minister may get advice from an advisory council for deciding whether or not to approve a manual.

### **Section 371F Criteria for approving manual**

New section 371F provides criteria for the Minister to consider in deciding to approve a flood mitigation manual given to the Minister.

The Minister may approve a manual only if it complies with the content requirements under section 371D; minimises risk to human life and safety and achieves a balance in relation to each of the following:

- preventing failure of the dam, including, for example, by protecting the structural integrity of the dam;
- minimising risk to property;
- minimising disruption to transport;
- maintaining the full supply level for the dam after a flood event; and
- minimising environmental impacts on the stability of banks of watercourses and on riparian flora and fauna.

### **Section 371G Approval of manual**

New section 371G provides that if the Minister approves a flood mitigation manual, the approval must be notified in the gazette and approved for a period stated in the notice of not more than five years.

### **Section 371H Refusal to approve manual**

New section 371H provides that if the Minister decides to refuse to approve a flood mitigation manual, the Minister must give the dam owner a notice to prepare a new flood mitigation manual and give it to the Minister within the stated period in the notice, which must be at least 30 business days.

Under subsection (2) it is an offence for the dam owner to not comply with the requirement to submit a new manual for approval within the stated period with a maximum penalty of 1665 penalty units.

## **Division 4            Amending and reviewing flood mitigation manuals**

### **30 Amendment of s 372 (Amending flood mitigation manual)**

*Clause 30* amends section 372 to give the Minister power to require a dam owner to amend the flood mitigation manual for the dam, rather than the chief executive.

### **31 Amendment of s 373 (Regular reviews of flood mitigation manual)**

*Clause 31* amends section 373 to require a dam owner to, before the approval for the flood mitigation manual expires, review, and if necessary, update the flood mitigation manual for the dam and give it to the Minister, rather than the chief executive for approval.

### **32 Replacement of ss 374 and 375**

*Clause 32* omits sections 374 and 375 (section 374 becomes sections 386 and 387) and in replacing the sections, inserts new divisions, a new part and uses currently unused sections 375 to 399, as follows:

Division 5 (Renewing flood mitigation manuals) section 374;

Division 6 (Annual preparedness reports) sections 375 and 376;

Division 7 (Qualifications, experience and training for responsible persons); section 377;

Division 8 (Authorising alternative operational procedures) sections 378 to 382;

Division 9 (Flood event reporting) sections 383 and 385;

Division 10 (General matters) section 386 and 387;

Part 3 (Declaring temporary full supply levels to mitigate flood or drought)

Division 1 (Preliminary) sections 388 and 389;

Division 2 (Obtaining information and advising Minister) sections 390 to 394;

Division 3 (Declaring temporary full supply level) section 395;

Division 4 (Reviewing safety requirements for temporary full supply level) sections 396 to 398.

Division 5 (Miscellaneous provision) section 399.

## **Division 5           Renewing flood mitigation manuals**

### **374 Preparation and submission of new manual**

New section 374 requires that if a flood mitigation manual is in force for a dam, the owner of the dam must prepare and submit a flood mitigation manual to the chief executive no later than one month before the approval period for the manual expires.

Under subsection (2) it is an offence for a dam owner to not comply with the requirement to prepare and submit a flood mitigation manual for approval within the specified timeframes before expiry of the approved manual with a maximum penalty of 1665 penalty units.

## **Division 6           Annual preparedness reports**

### **Section 375 Dam owner must prepare and submit report**

New section 375 provides that a dam owner must, after 1 August but before 1 September each year, prepare and submit an annual preparedness report about the level of preparedness of the dam for a flood event under the flood mitigation manual for the dam. Under the current arrangements, an ‘annual statement of preparedness’ is required to be submitted to the chief executive by relevant dam owners as a requirement of their approved flood mitigation manual for the dam. The Bill makes the annual report a separate legislative requirement under this section and section 376 specifies the content requirements for these reports.

It is an offence for a dam owner to not comply with the requirement to prepare and submit an annual preparedness report within the specified timeframes each year with a maximum penalty of 1665 penalty units.

## **Section 376 Content of report**

New section 376 provides for the content of the annual preparedness report. Among other things, the report must include details of the ‘responsible persons’, the key personnel responsible for operating the dam during flood events, their qualifications, experience and training including evidence of these, an assessment of the suitability of the communications system and an assessment of the adequacy of the forecast system for the dam.

The section provides a reference to transitional section 650 which deals with the reporting period for owners of dams with existing approved flood mitigation manuals.

## **Division 7                      Qualifications, experience and training for responsible persons**

### **Section 377 Chief executive may require dam owner to ensure responsible person has qualifications etc.**

New section 377 provides a power for the chief executive to determine the qualifications, experience and training that ‘responsible persons’ (persons with responsibilities for operating referable dams under flood mitigation manuals during a flood event) must have.

If the chief executive exercises this power, he or she must issue a notice to the dam owner stating the required qualifications, experience and training for the responsible persons or class of responsible persons.

Under subsection (4) it is an offence for a dam owner to not comply with the qualification, experience and training requirements if specified by the chief executive with a maximum penalty of 1665 penalty units.

The policy intent is to empower the chief executive to specify minimum qualifications, experience or training; the dam owner may still express in a flood mitigation manual, higher or additional qualifications for responsible persons, but they must ensure that the responsible persons at least meet the chief executive’s requirements.

## **Division 8                    Authorising alternative operational procedures**

### **Section 378 Application of div 8**

New section 378 provides for the application of new division 8. Division 8 applies if there is a flood event and the owner of a dam considers it is necessary, in operating the dam during the event, to depart from an operational procedure under the flood mitigation manual for the dam. The division enables the dam owner to seek authorisation from the chief executive to depart from an existing operational procedure under a flood mitigation manual and observe an alternative procedure.

### **Section 379 Dam owner must seek authorisation for alternative procedure**

New section 379 states the information the owner of a dam must give to the chief executive in seeking authorisation to depart from an existing operational procedure under a flood mitigation manual.

The dam owner must state the grounds for considering it is necessary to depart from an existing procedure and observe an alternative procedure and the facts and circumstances that are the basis for the grounds.

The dam owner may give the chief executive the information orally but must as soon as practicable after giving the information orally, record the information given to the chief executive in writing.

### **380 Chief executive must decide whether or not to authorise alternative procedure**

New section 380 provides that the chief executive must, as soon as practicable after receiving a request from the owner of a dam, decide whether or not to authorise the owner to disregard the existing procedure and observe the alternative procedure.

If the chief executive decides to authorise the alternative procedure, the procedure is an *'authorised alternative procedure'*.

The chief executive may advise the dam owner orally of his or her decision but must, as soon as practicable, give the dam owner written notice of the decision including—

- a summary of the information given by the dam owner to the chief executive in making the request; and
- the reasons for the decision having regard to the information provided by the dam owner.

### **381 Authorisation to observe alternative procedure if chief executive can not be contacted**

New section 381 applies in the circumstance where the owner of a dam makes all reasonable efforts to contact the chief executive to seek authorisation for an alternative procedure but cannot contact the chief executive within a reasonable time to respond to a flood event.

In these circumstances, the dam owner may adopt an alternative procedure, also an *'authorised alternative procedure'*.

However, as soon as practicable after failing to contact the chief executive, the dam owner must record the authorisation request information in writing and give it to the chief executive.

The dam owner's internal processes for complying with this provision, including any delegation of authority to a responsible person, are to be expressed in the flood mitigation manual as outlined in section 371D(c) and (d).

### **382 End of authorisation of alternative procedure**

New section 382 states that an authorised alternative procedure ends when the flood event to which the procedure relates has ended.

## **Division 9            Flood event reporting**

### **Section 383 Preparation and submission of flood event report**

New section 383 provides for when relevant dam owners (owners of dams for which there is an approved flood mitigation manual) must prepare and submit a flood event report to the chief executive. Normally, a flood event report is required to be submitted to the chief executive within 30 business days after the end of a flood event; however a longer time applies if the chief executive and dam owner agree in writing to a longer period.

Under subsection (2) it is an offence for a dam owner to not comply with the requirement to prepare and submit an emergency event report to the chief executive within the specified or agreed timeframes unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

### **Section 384 Preparation and submission of flood event interim report**

Section 384 provides power for the chief executive to require a flood event interim report before the end of a flood event if the chief executive considers an event will be protracted and will continue for at least one month.

In these circumstances, the chief executive may give the owner of the dam a notice requiring an interim report to be given to the chief executive within 10 business days.

Under subsection (3) it is an offence for a dam owner to not comply with the requirement to prepare and submit a flood event interim report to the chief executive within the specified timeframes unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

### **Section 385 Content of report**

New section 385 provides for the mandatory content requirements for flood event reports. Among other matters, a report must include a description of the event and implementation of the flood mitigation manual including communications made, strategies used and actions taken in response to the flood event, a description of damage to the dam resulting from the event and an assessment of how effectively the manual dealt with the flood event and any other relevant matter prescribed under regulation.

Subsection (2) requires that, if the owner has carried out or purported to carry out an authorised alternative procedure in relation to the flood event, the flood event report or interim flood event report must also include the authorisation request information for the procedure.

Subsection (3) provides that a flood event report may deal with two or more flood events if the events are related and the chief executive agrees to this.

## **Division 10      General matters**

### **Section 386 Protection from liability under pt 2**

New section 386 (which partially replaces current section 374) extends to the Minister immunity from civil liability for an act done, or omission made, honestly and without negligence under part 2 to recognise that the Minister is made responsible for approving a flood mitigation manual by the Bill, rather than the chief executive.

### **Section 387 Protection from liability for complying with flood mitigation manual**

New section 387 (which partially replaces current section 374) provides a relevant dam owner immunity from civil liability for an act done, or omission made, honestly and without negligence in observing the operational procedures of an approved flood mitigation manual or the authorised alternative procedures, during a flood event.

## **Part 3                      Declaring temporary full supply levels to mitigate flood or drought**

Under the *Water Act 2000* (Water Act), the full supply level of a dam is the level of water surface when the water storage is at maximum operating level when not affected by flood. The full supply level is specified for particular dams in a resource operations plan. The Bill creates new part 3 and relocates provisions for declaring temporary full supply levels for flood mitigations dams from the Water Act to the Water Supply Act and makes a number of changes to streamline the declaration process.

The new part provides for the declaration of full supply levels for relevant dams to mitigate the impacts of a potential flood or drought. These provisions were first enacted in response to recommendations of the Floods Commission of Inquiry interim report; specifically the Commission recommended that control over temporary alteration of the full supply level of Wivenhoe, Somerset and North Pine dams should be a function of the

responsible Minister and that for the purposes of making any decision about a temporary alteration to a full supply level, the Minister should receive advice from a number of entities.

## **Division 1            Preliminary**

### **Section 388 Definitions for pt 3**

New section 388 provides definitions for part 3.

### **Section 389 Application of pt 3**

New section 389 provides for the application of part 3 to relevant dams. The part applies to a dam (a relevant dam), if there is an approved flood mitigation manual for the dam. At present, the dams that meet these requirements are Wivenhoe, Somerset and North Pine dams.

## **Division 2            Obtaining information and advising Minister**

### **Section 390 Minister must require information about impacts of proposed temporary full supply level**

New section 390 applies if the Minister considers the declaration of a new full supply level (a *proposed temporary full supply level*) may mitigate the impacts of a potential flood or drought. In considering whether a change to a full supply level would mitigate such impacts, the Minister may have regard to any matter the Minister considers appropriate including, for example, meteorological forecasts and the public interest. In practice, it is intended that consideration would occur as a result of the seasonal outlook issued by the Bureau of Meteorology indicating a potential emergency situation for the season under consideration. If the Minister considers a new full supply level may mitigate the impacts of a potential flood or drought, the Minister must ask the chief executive to require the owner of the dam to provide information about how it would impact the safety of the dam and how the dam operates.

### **Section 391 Chief executive must issue notice for information about impacts of proposed temporary full supply level**

New section 391 provides that if the Minister decides to initiate the process to declare a new full supply level, and asks the chief executive to seek information from the dam owner, the chief executive must give the dam owner a notice requiring the owner to give the information to the chief executive.

The notice must state a reasonable period for the information to be given and include a warning that it is an offence to fail to comply with the notice without a reasonable excuse.

Under subsection (3) it is an offence for a dam owner to not comply with the requirement to provide information to the chief executive within the specified timeframes unless the owner has a reasonable excuse with a maximum penalty of 200 penalty units.

### **Section 392 Chief executive must consult with dam owner**

New section 392 provides that as soon as practicable after the chief executive has given the dam owner the notice under section 391, the chief executive must consult with the operator of the dam about:

- the extent to which the proposed temporary full supply level is likely to mitigate the impacts of a potential flood or drought; and
- the impacts of the proposed temporary full supply level on the water security of the dam.

### **Section 393 Chief executive must give feasibility advice to Minister**

New section 393 provides that as soon as practicable after the chief executive has consulted the dam owner under section 392, the chief executive must give the Minister advice (a *feasibility advice*), about whether declaring the proposed temporary full supply level for a relevant dam is likely to mitigate the impacts of a potential flood or drought.

In giving the advice the chief executive must have regard to the matters listed in subsection (2). Under subsection (3), the advice must include:

- details of the matters under subsection (2);

- the likely implications of declaring the proposed temporary full supply level on the water security and safety of the dam; and
- a recommendation about whether the proposed temporary full supply level should be declared.

### **Section 394 Chief executive can give later feasibility advice**

New section 394 provides for the chief executive to give a further feasibility advice to the Minister, without complying with sections 391 and 392, provided the further advice is given within a period of six months following the giving of a feasibility advice under section 393. This is intended to allow for a change to a recommendation about a temporary fully supply level or a declaration where circumstances change, for example, predicted rainfall does or does not occur in the catchment and as such allows the chief executive to provide updated advice to the Minister in a timely manner where circumstances dictate.

## **Division 3            Declaring temporary full supply level**

### **Section 395 Minister may declare temporary full supply level**

New section 395 enables the Minister, following consideration of advice from the chief executive and the public interest, by notice in the gazette, declare a new full supply level for the relevant dam that was the subject of the chief executive's advice.

Subsection (3) provides that the temporary full supply level has effect from the day stated in the declaration and ceases to have effect on the day that is six months after the declaration is made, or an earlier day stated in the declaration, or if the declaration is sooner revoked, on the day it is revoked. To ensure that continuing adverse weather conditions can be adequately dealt with, the Minister may declare a temporary full supply level more than once for a particular dam.

## **Division 4            Reviewing safety requirements for temporary full supply level**

### **Section 396 Chief executive must review safety requirements**

New section 396 applies if a temporary full supply level declared for a dam exceeds the full supply level in the resource operations plan under which the dam operates.

The chief executive must review, within one month after the temporary full supply level is declared or a shorter period if the Minister requires it in writing, the safety requirements applying to the dam under the safety conditions or the flood mitigation manual for the dam.

### **Section 397 Changing safety conditions in response to review**

New section 397 applies if the chief executive reviews the safety requirements applying under the safety conditions and considers it is necessary to amend the safety requirements for the dam. In such case, the chief executive must arrange for an amendment to be made to the safety conditions applying to the dam under section 356.

### **Section 398 Amending flood mitigation manual in response to review**

New section 398 applies if the chief executive reviews the safety requirements applying under the flood mitigation manual and considers it is necessary to amend the safety requirements for the dam. In such case, the chief executive must give advice to the Minister and the Minister may then require the dam owner to amend the flood mitigation manual under section 372.

## **Division 5            Miscellaneous provision**

### **Section 399 No compensation payable**

New section 399 provides that no compensation is payable to any person because of the operation of the new chapter 4, part 3, being inserted by this Bill.

### **33 Amendment of s 538 (Sections 538–559 not used)**

*Clause 33* provides that sections 538 to 558 are not used.

### **34 Insertion of new s 559**

*Clause 34* inserts new section 559 for chapter 8, part 2.

### **Section 559 Definition for pt 2**

Section 559 inserts a definition for part 2, for '*relevant operational work*'.

### **35 Amendment of s 561 (Development applications for referable dams)**

*Clause 35* replaces the heading and subsection (1) to update the reference in the section to '*relevant operational work*'. This amendment is needed for consistency with recent changes describing the triggers for referring applications for assessable development relating to referable dams.

### **36 Amendment of s 562 (When applicant may appeal to Land Court)**

*Clause 36* replaces subparagraph (a) to update the reference in the section to '*relevant operational work*'. This amendment is needed for consistency with recent changes describing the triggers for referring applications for assessable development relating to referable dams.

### **37 Amendment of s 633 (Application of particular provisions—other schemes)**

*Clause 37* amends section 633 to extend the timeframe for when certain recycled water schemes must have an approved recycled water management plan or an exemption from having a plan. These schemes supply recycled water for lower risk uses such as irrigation of highly processed food crops (e.g. sugar cane), irrigation of open spaces and non-food crops, dust suppression and road works. The Bill extends the timeframe by one year to 1 July 2014 to provide sufficient time to complete a review of the recycled water regulatory framework for these schemes and to develop a new regulatory approach.

### **38 Insertion of new ch 10, pt 5**

*Clause 38* inserts a new chapter 10, part 5 dealing with transitional provisions for the Bill.

## **Part 5 Transitional provisions for Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012**

### **Section 644 Definitions for pt 5**

New section 644 provides definitions for part 5.

### **Section 645 Owner of existing dam must prepare and submit emergency action plan**

New section 645 provides for when an emergency action plan is required to be submitted to the chief executive for approval by owners of existing referable dams (that is, a dam which is a referable dam immediately before the commencement).

An owner of an existing referable dam is obliged to submit an emergency action plan to the chief executive for approval by 1 October 2013.

Under subsection (2) it is an offence for a dam owner to not comply with the requirement to prepare an emergency action plan and submit it to the chief executive within the specified timeframes unless the owner has a reasonable excuse with a maximum penalty of 1665 penalty units.

### **Section 646 Emergency event reporting for owner of existing dam**

New section 646 provides for when the owner of an existing referable dam is required to prepare and submit an emergency event report and an emergency event interim report should an emergency event happen, which is linked to the first of:

- (a) the day an emergency action plan is approved for the dam; or

(b) 1 October 2013.

### **Section 647 Particular safety conditions and development conditions taken to have been complied with**

New section 647 provides that safety conditions or development conditions which impose requirements relating to preparation and review of emergency action plans and preparation of emergency event reports are taken to be complied with when the equivalent requirements under the Bill have been complied with.

### **Section 648 Continuation of existing flood mitigation manuals**

New section 648 provides for the continuation of existing flood mitigation manuals approved before the commencement of the Bill as if they were approved under the amended approval provisions and continues in force for the period it was approved under pre-amended section 371.

### **Section 649 Application of particular provisions to dam with existing flood mitigation manual**

New section 649 allows for a regulation to be made to prescribe a referable dam for which there is an approved flood mitigation manual, without the Minister being obligated to consider the criteria under new section 371A before making a regulation. Existing dams are Wivenhoe, Somerset and North Pine dams.

However, the provision requires any further decision about whether the three dams so prescribed should be operated as flood mitigation dams, to give consideration to the criteria under section 371A. The provisions are intended to clarify that Wivenhoe, Somerset and North Pine dams must have and operate under flood mitigation manuals but allow the Minister to give due regard, at the completion of the current optimisation study, as to whether North Pine Dam should continue to be operated for flood mitigation purposes. Determination of other dams in the future that should be operated under a flood mitigation manual will need to give consideration to the criteria stated under section 371A.

### **Section 650 Reporting period for first annual preparedness report for dam with existing flood mitigation manual**

New section 650 states the reporting period for the first annual preparedness report for owners of existing dams for which there is an existing flood mitigation manual immediately before the commencement.

### **Section 651 Effect of regulation amendment**

The Bill, under clauses 40 to 42, amends the *Water Supply (Safety and Reliability) Regulation 2011* (the Regulation). New section 651 provides that the amendment of the Regulation made by the Bill, does not affect the powers of the Governor in Council to further amend the Regulation or to repeal it.

### **39 Amendment of sch 3 (Dictionary)**

*Clause 39* provides definitions for the purposes of the Bill.

## **Part 5                      Amendment of Water Supply (Safety and Reliability) Regulation 2011**

### **40 Regulation amended**

*Clause 40* provides that this part amends the *Water Supply (Safety and Reliability) Regulation 2011*.

### **41 Renumber of s 2 (Prescribed CSG environmental authorities)**

*Clause 41* renumbers section 2 as section 3.

### **42 Insertion of new s 2**

*Clause 42* inserts new section 2 to prescribe Wivenhoe, Somerset and North Pine dams as dams which must have flood mitigation manuals under section 368(1) of the Water Supply Act as amended by the Bill.

## **Section 2 Prescribed dams for submitting flood mitigation manuals and flood event reports—Act, s 371A**

New section 2 provides that each of the following dams is prescribed for section 368(1) of Water Supply Act:

- North Pine Dam
- Somerset Dam
- Wivenhoe Dam

## **43 Amendment of schedule (Prescribed CSG environmental authorities)**

*Clause 43* amends the schedule to replace the reference to section 2, with section 3, to reflect insertion of new section 2.