

# Fairer Water Prices for SEQ Amendment Bill 2011

## Explanatory Notes

### General Outline

### Policy Objectives

The objectives of the Bill are to amend:

- (a) the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to provide for:
  - prices charged by Distributor-retailers for certain water and wastewater services supplied to residential and small business customers in South East Queensland (SEQ) to be capped annually by the Consumer Price Index (CPI) and related amendments;
  - extending the period in which the Minister may make a transfer notice; and
  - the portability of Long Service Leave entitlements when staff move from one Distributor-retailer to another;
- (b) the *Queensland Competition Authority Act 1997* to provide for removing the price determination role of the Queensland Competition Authority (QCA) for water and wastewater prices charged by Distributor-retailers, that was to apply from 1 July 2013;
- (c) the *South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010* to provide for the removal of uncommenced amendments to the *Water Act 2000*; and
- (d) the *Water Act 2000* to extend the period in which the Minister may make a grid contract document.

## **Reason for the Policy Objectives**

Stage Two of the South East Queensland (SEQ) water reform program, which commenced in July 2010, involved the separation of the distribution and retail functions for water and wastewater from the 10 SEQ local governments (Councils) and the establishment of three separate vertically integrated distribution-retail businesses (Distributor-retailers) under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (D-R Act).

The Distributor-retailers, through the economies of scale that occurred with amalgamated water businesses, had the opportunity to:

- (a) improve water supply coordination and management;
- (b) deliver improved and more efficient water services and wastewater services to customers;
- (c) improve the management of water and wastewater infrastructure.

The Distributor-retailers remain under Council ownership. Councils, in exchange for their transferred assets and resources, received participation rights, that is, a right to participate in receiving returns on equity and tax equivalent payments from their Distributor-retailer.

The Distributor-retailers have increased water and wastewater prices to residential and small business customers by amounts significantly in excess of the increase in their State bulk water input costs which are associated with the investment in the SEQ water grid.

Residential bills (which include both State bulk water costs and distribution and retail water and wastewater charges) increased across the majority of SEQ council areas. While the State bulk water charge increased by approximately \$60 per annum for a household using 200 kilolitres per year, water and wastewater increases of over \$200 per annum occurred in Gold Coast, Logan and Moreton Bay. While Moreton Bay Regional Council did use some of its financial returns from the Distributor-retailer to provide a rebate to customers in 2010-11, even after providing that rebate the effective bill increase in Redcliffe was over \$300 for a household using 200 kilolitres, or approximately five times the amount required to pass through the increase in the bulk water charge.

The bulk water charge, which is set by the State Government to recoup some of the costs of the establishment and operation of the SEQ Water Grid and the long-term water security it is already delivering, represents around one quarter of the average water and wastewater household bill.

The primary intent of the Bill is to implement the price cap policy announced in Parliament by the Premier and Minister for Reconstruction on 7 April 2011, in order to address community concerns about the significant increases in water and wastewater prices and the level of accountability for setting water and wastewater prices in SEQ.

The Council owners of the Distributor-retailers have not responded to community concerns about high water and wastewater prices. Despite the legal ability to do so, SEQ councils have not directed their Distributor-retailers to better manage price increases through the implementation of price paths. Most Councils have also failed to use their financial returns from their Distributor-retailers to provide price relief to their community through rebates or subsidies.

This Bill introduces a price cap to constrain water and wastewater distribution and retail price increases to a CPI increase per annum for residential and small business customers from 1 July 2011 to 30 June 2013.

SEQ Councils as owners of the Distributor-retailers will also be required to submit a plan for how they intend to mitigate price impacts on customers after the two year CPI price cap period. These price mitigation plans will be published. The Council is responsible for price mitigation for its Council area and the publishing of the price mitigation plan.

Councils are also required to publish a quantifiable price path for residential and small business customers by 1 March 2013. The price path must cover at least five years' increases.

The requirements imposed on Council for a price mitigation plan and price path are consistent with the State's approach to bulk water prices, whereby a 10 year bulk water price path was published in May 2008.

The publishing of a price mitigation plan and a five year price path will ensure price increases are transparent and subject to public scrutiny and therefore ensuring Councils remain accountable to their community.

The removal of the QCA's price determination role from 1 July 2013, ensures that Councils and their Distributor-retailers take hands-on responsibility and accountability for distribution and retail water and wastewater prices.

Councils and their Distributor-retailers need to be mindful of the affordability issues facing households and businesses and together deliver improved and more efficient water and wastewater services to their customers.

## **How the Policy Objectives will be achieved**

The policy is to be achieved by:

- (a) providing a legislative price cap on distribution and retail water and wastewater price increases of residential and small business customers for two years;
- (b) delivering long term management and public accountability of distribution and retail water and wastewater prices through publishing of price mitigation plans and implementation of price paths;
- (c) providing improved transparency of the costs of water and wastewater services by identifying State government charges and local government owned charges on customer bills; and
- (d) protecting long service leave entitlements for employees transferring from one Distributor-retailer to another Distributor-retailer.

## **Alternatives to the Bill**

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

## **Estimated administrative cost to the Government for implementation**

There will be no new or additional costs to the Government as a result of this Bill.

## **Consistency with Fundamental Legislative Principles**

There are no issues with fundamental legislative principles in relation to this Bill.

## **Consultation**

### **Community and industry stakeholders**

Consultation occurred throughout the development of the Bill with SEQ Councils, the Council of Mayors SEQ and the three SEQ Distributor-retailers (Allconnex Water, Queensland Urban Utilities and Unitywater).

## **Government**

Consultation has occurred with relevant agencies, including the Department of the Premier and Cabinet, the Department of Environment and Resource Management, the Department of Justice and Attorney-General, the Department of Local Government and Planning, and Queensland Treasury.

Consultation has also occurred with the Queensland Competition Authority and the Queensland Audit Office.

## **Results of consultation**

### **Community and industry stakeholders**

The Queensland Government has already made public announcements on the proposed price cap. No other community consultation has occurred.

During consultation, the SEQ Distributor-retailers and Councils raised issues in relation to the Bill's implementation. These issues were addressed wherever possible.

## **Government**

The State government agencies consulted supported the Bill.

# **Notes on Provisions**

## **Part 1 Preliminary**

**Clause 1 Short title** provides that the Act may be cited as the *Fairer Water Prices for SEQ Amendment Act 2011*.

**Clause 2 Commencement** provides for the commencement of certain provisions of the Act on 1 July 2011, with the remaining provisions to commence on assent.

## **Part 2                      Amendment of Queensland Competition Authority Act 1997**

**Clause 3 Act amended** provides that this part amends the *Queensland Competition Authority Act 1997*.

**Clause 4 Omission of pt 5A, div 2, sdiv 4A (Other declarations)** omits this subdivision containing section 170QA (Particular monopoly water supply activities) which declared candidate water supply activities carried out by the three Distributor-retailers (Allconnex Water, Unitywater and Queensland Urban Utilities) to be monopoly water supply activities. Omitting this section has the effect of removing one of the provisions that underpinned the role of the Queensland Competition Authority making water pricing determinations for the Distributor-retailers.

**Clause 5 Omission of pt 13 (Transitional provision for Queensland Competition Authority Amendment Act 2010)** omits part 13 containing section 251 which provided that the Queensland Competition Authority was to undertake its first water pricing determinations for the monopoly water supply activities of the three Distributor-retailers, to take affect from 1 July 2013. This commencement of the Queensland Competition Authority's price determination role was to apply from the ending of the Authority's price monitoring role for the Distributor-retailers in respect of prices.

The QCA will continue to undertake price monitoring during the price cap, and will, for example, investigate whether there are any cross subsidies between classes of customers.

**Clause 6 Insertion of new pt 15**

## **Part 15                      Declaratory provision for Fairer Water Prices for SEQ Amendment Act 2011**

**Section 253 Revocation of declaration** Clause 6 inserts a new part 15 containing a new section 253 which repeals the declaration made under the repealed section 170QA that the candidate water supply activities carried

out by the three Distributor-retailers (Allconnex Water, Unitywater and Queensland Urban Utilities) were monopoly water supply activities.

**Clause 7 Amendment of sch 2 (Dictionary)** omits the definitions of “Allconnex Water”, “candidate water supply activity”, “monopoly water supply activity”, “Queensland Urban Utilities”, “Unitywater” and “water supplier” and includes new definitions of the terms “candidate water supply activity”, “monopoly water supply activity” and “water supplier”.

## **Part 3                      Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

**Clause 8 Act amended** provides that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**Clause 9 Insertion of new ch 2A, pt 3, div 1 and div 2 hdg**

### **Division 1                      Restriction on charges in capped prices period**

This Division provides for a cap on Distributor-retailer water and wastewater charges for properties used as residences or for small businesses by applying the Consumer Price Index (CPI) for a two year period commencing on 1 July 2011. The price cap to apply to charges will be in line with the standard State Government policy for escalation of fees and charges, that is ‘March to March’ Brisbane All Groups CPI. In effect the maximum increase for 2011-12 is calculated based on applying a CPI increase to the distribution and retail components of the previous year’s bill. However, the change in the customer’s bill will also take into account the effect of any change in Council rebates provided.

This cap is to apply only to the distribution and retail component of the charges for water and wastewater services, that is, it will exclude the bulk water component of the charge that is passed on by the Distributor-retailer.

It will not apply to charges for trade waste or for recycled water or to charges on overdue bills.

In effect, any increases in the Distributor-retailer water and wastewater charges cannot result in a customer, based on the same consumption level as the previous year, receiving total net charges (after taking into account any changes in relevant local government rebates or subsidies) for the period 1 July 2011 to 30 June 2012, which are greater than the previous year's charges plus no more than the price cap quantum. This does not preclude a council from reducing its rebate amount, however, the quantum of the distribution and retail charges must then be reduced such that the total outcome is still only a CPI increase. For the purpose of applying the CPI cap, a residential customer is a customer who uses premises as a place of residence. The cap will apply both to residential customers (ie persons who receive a direct bill from the Distributor-retailer) and persons residing in premises where the Distributor-retailer water and wastewater bill is received by a landlord or property owner. Therefore the cap on charges is intended to apply to a multi-residential unit complex such that an individual resident would still only pay no more than a CPI increase for water and wastewater charges passed on by a body corporate or centre management. It will also apply to persons residing in an old age complex operated by a corporation.

For the purpose of applying the CPI cap, a small business customer is defined by a consumption threshold of no more than 100 kilolitres per annum (which is consistent with the definition under the SEQ Customer Water and Wastewater Code). The cap will also apply to persons operating a small business within premises where the Distributor-retailer bill is received by a landlord or property owner. This threshold will be used as a minimum, that is, a Distributor-retailer will be required to provide the CPI cap to at least these business customers, but may elect to provide CPI cap increases to business customers that use greater than 100 kilolitres per annum.

Nothing in the application of a CPI cap precludes a Distributor-retailer from setting an annual increase to a charge that is less than the applicable CPI increase.

**Section 53ARA Definitions for div 1** includes new definitions for “2010-11 financial year”, “2011-12 financial year”, “2012-13 financial year”, “base year”, “bulk water component”, “capped charge”, “capped prices period”, “charged premises”, “relevant services”, “relevant year”, “small business customer” and “variable measures”.

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**Section 53ARB Application of div 1** provides for the application of the division to certain types of customer and services, within a set period (the capped price period). The division applies to both residential customers (which are defined in section 99AQ(2)) and to small business customers. A customer is a person who receives a direct bill from a Distributor-retailer. This division also applies to customers who receive a bill and pass it on to persons operating small businesses or residing in residential premises.

It caps the charges for distribution and retail water and wastewater services, but not the charges for trade waste, recycled water or any charges for overdue bills. It applies for the period of 1 July 2011 to 30 June 2013, and applies despite any other provisions in the Act or a participation agreement between a Distributor-retailer and participating local government.

**Section 53ARC Cap for 2011-12 financial year** provides for the components of a CPI capped water and wastewater charge for the financial year 2011-12 by applying two formulas.

Firstly, to calculate the overall cap for charges in 2011-12, the formula is:

**Cap = (2010-11 base component – 2010-11 Council rebate/subsidy) + 2011-12 Increase for CPI + 2011-12 bulk water component**

This means that you start the calculation with the previous year's charges (ie for 2010-11). Take the Distributor-retailer's fixed access charges and the 2010-11 consumption charge rates for water supply and wastewater disposal based on the customer's consumption/disposal in 2011-12 to arrive at the 2010-11 base component. The next step is to deduct any local government subsidies or rebates for that year. Then add in the relevant annual CPI increase plus the bulk water charge for the current year (2011-12).

To determine how to derive the relevant annual CPI increase based on applying CPI figure, use the following formula.

**2011-12 Increase = (2010-11 base component – 2010-11 Council rebate/subsidy) x CPI for the relevant year**

Again, you start the calculation with the previous year's charges (ie for 2010-11). Take the Distributor-retailer's access charge and fixed access charges and the consumption charge rates (2010-11 charges) for water supply and wastewater disposal based on the customer's consumption/disposal in 2011-12 (the 2010-11 base component), and deduct any local government subsidies or rebates for that year. This sum is then multiplied by 3.6% which is the applicable CPI figure to arrive at the

increase to be added to the Distributor-retailer charges under the first formula.

**Section 53ARD Cap for 2012-13 financial year** provides the calculation of the capped charge for the 2012-13 financial year on the same basis as explained for the previous section. It provides for a CPI increase on the 2011-12 distribution and retail charges. The calculation of the capped charge for the 2012-13 year provides for a cumulative addition of CPI increases for this second year. This section also provides for determining the relevant annual CPI figure for Brisbane from the Australian Bureau of Statistics published data. Also the reference to deducting a 2011-12 rebate or subsidy refers to a new rebate or subsidy offered for the first time in 2011-12, but not a change to the 2010-11 subsidy. Where there is an existing 2010-11 subsidy, and it is removed, continued or changed, then section 53ARE applies.

**Section 53ARE Caps not affected by rebate or subsidy change** provides that a cap calculated and set under this subdivision is not affected by any change in any local government rebate or subsidy in either of the two financial years making up the capped period. The overall intent of the provision is that a customer (assuming the same annual consumption), cannot receive an increase of more than CPI for the distribution and retail charges.

### **Subdivision 3 Provisions for no or partial base year**

**Section 53ARF Application of sdiv 3** applies for the inclusion of new customers – either through the change in the classification of the customer on the premises or the supply of water and wastewater services to new premises – after the beginning of the 2011-12 financial year. This means there is no, or limited, customer history on which to base the calculation of capped charges

**Section 53ARG Notional base component required for working out cap** provides that the Distributor-retailer must work out the cap as if there were the necessary customer history on which to base it.

**Section 53ARH Criteria if no base year** provides that, where there is no customer history, the Distributor-retailer is to work out the applicable cap by considering charges imposed on similar customers for similar premises.

**Section 53ARI Criteria if partial base year** provides that, where there is only customer history for part of a base year, the Distributor-retailer is to work out the applicable cap by considering the charges imposed on the customer for the part of the year.

## **Division 2            Overdue charges**

**Clause 10 Amendment of s 53AS (Application of pt 3)** renames the Part 3 heading as Division 2.

**Clause 11 Amendment of s 53AW (Quarterly CPI indexation for distributor-retailer's charge)** omits definitions for "CPI" and "quarter".

**Clause 12 Amendment of s 63 (Period of transfer notices)** extends the time for the Minister to make a transfer notice from 30 June 2011 to 30 June 2012. The transfer notices that are the subject of the extension of time, will only relate to matters arising out of the establishment of the Distributor-retailers and the transfer of assets from Councils to the Distributor-retailers. Transfer notices are to rectify any omissions in the transfer schemes made by the Councils for the establishment of the Distributor-retailers in 2010.

**Clause 13 Amendment of s 99AV (Matters required to be stated in account)** further clarifies that charges are identified as arising from the State Government or local government customer accounts. Section 99AV already requires that there be two entries in a customer's account indicating distribution and retail charges and bulk water component. This clause adds that the heading for distribution and retail charges must state "Local Government Distributor-retailer price". The heading for the bulk water component of the charge must state "State bulk water prices".

This provides customers with clear information about the level of government responsible for each category of charges. Note under transitional requirements in section 117 (as inserted by this Bill), the changes to section 99AV will not commence until 1 July 2012 – providing time for the Distributor-retailers to make the necessary system changes to underpin this change to customer accounts.

**Clause 14 Renumbering of ch 5, pt 2 (Other matters)** re-numbers Chapter 5 Part 2 as Chapter 5 Part 4.

**Clause 15 Insertion of new ch 5, pts 2 and 3**

## **Part 2                      Participating local government price mitigation documents**

**Section 99BW Price mitigation plans** provides that each SEQ local government must prepare a price mitigation plan and provide a copy to the Minister by the resolution day.

Under subsection (6) the resolution day may be either 1 July 2011 or a later date notified by the Minister by a notice in the Government Gazette.

These price mitigation plans are intended to provide information to address community concerns about how a council intends to deliver long term price mitigation after the CPI cap period, as well as how vulnerable customers such as pensioners will be supported. The plans must show how councils will implement price paths. This is an essential step to ensure the accountability of the SEQ councils to their communities, which is why councils are being required to publish their plans and have proposals to continue to keep their communities informed about price increases.

Therefore, under subsection (2), price mitigation plans must provide information about the initial price path the local government intends to use to moderate the impact on customers of price increases after the two year CPI price cap period. A plan must show how the local government intends to help customers who will be particularly vulnerable to price increases such as pensioners or those experiencing financial hardship. Examples of vulnerable customers could include a person who has been issued a Commonwealth or State identification card indicating their entitlement to a financial benefit such as Commonwealth seniors' health card, health care card, pensioner concession card, or repatriation health card. Examples of support could be providing a subsidy or rebate to particular customers.

The plan must also indicate how the local government is going to keep its community informed about price increases. It must indicate the extent to which the local government will apply its share of a Distributor-retailer's profits to fund subsidies or rebates to the water and wastewater customers in its local government area. The local government must inform its community about the price mitigation plan by a notice in a local newspaper, publishing the plan on its website and providing a copy for inspection at its offices. This notification and publication is to be by either 1 September 2011 or a later date notified by the Minister by a notice in the

Government Gazette. Councils are required to take reasonable steps to implement their plans.

**Section 99BX Final price paths** provides for a local government to prepare, adopt and publish a price path by 1 March 2013. The local government must also provide a copy to the Minister and provide it to their community in the same way as a price mitigation plan. This price path is to provide detailed information on the gradual introduction of price increases over the minimum five year period commencing on 1 July 2013. The price path is intended to moderate the impact of price increases on customers and together with the price mitigation plan (which may provide for additional support to vulnerable customers) provides a means to express how a local government will support its community.

## **Part 3                      Portability of long service leave**

**Section 99BY Definition for pt 3** provides a definition for “accrued right to long service leave” to include a person’s entitlement to take such leave after a minimum period with an employer.

**Section 99BZ Application of pt 3** provides that this part applies where a person is employed by one Distributor-retailer and moves to employment by a different Distributor-retailer, on two conditions. These conditions are that any gap between the two employments is not more than a year, and that the person did not receive a cash payout for accrued long service leave from the first employer.

**Section 99BZA Continuation of accrued rights to long service leave** provides that a person’s accrued long service leave from the first Distributor-retailer employer is continued for the employment by the second Distributor-retailer employer. Any new long service leave accrued while employed by the second Distributor-retailer is subject to the rules applying to long service leave of that Distributor-retailer.

**Section 99BZB Recognition of previous periods of employment** provides for how to calculate a person’s accrued right to long service leave in relation to the new Distributor-retailer employer.

**Section 99BZC Payment by former employer to new employer towards long service leave entitlements accrued with former employer** provides

that the first (former) Distributor-retailer employer must pay the second (new) Distributor-retailer employer, the monetary equivalent of the leave that the person is now entitled to take under the preceding sections 99BY to 99BZB. The first Distributor-retailer employer must also provide necessary information about the long service rights of the person to the second Distributor-retailer employer.

**Clause 16 Insertion of new ch 6, pt 4**

## **Part 4                      Transitional provisions for Fairer Water Prices for SEQ Amendment Bill 2011**

**Section 116 Application of s 99ATA for charges applying in capped prices period** makes some practical changes for the capped change period about the requirements for a Distributor-retailer to publish information regarding its proposed and final charges.

For the first year (2011-12) the Distributor-retailer need not publish its final prices until 31 July 2011.

For the second year (2012-13) the Distributor-retailer is not required to publish its proposed charges.

**Section 117 Application of s 99AV to accounts for charges** relates to amendments made to section 99AV under clause 13 of this Bill. Clause 13 provides that section 99AV(3) and (4), which require that customer accounts contain headings indicating that the distribution and retail charges are Local Government Distributor-retailer prices, and the bulk water components of the charge are State bulk water prices. Section 117 defers the application of these requirements until 1 July 2012.

**Clause 17 Amendment of schedule (Dictionary)** provides new definitions.

## **Part 4                      Amendment of South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010**

**Clause 18 Act amended** provides that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010*.

**Clause 19 Omission of s 101 (Replacement of ch 2A, pt 5A, div 3, sdiv 2 (Grid contract documents and registered grid participants))** omits the uncommenced section 101 that was to replace subdivision 2 (Default grid contract) of the *Water Act 2000*.

The replacement provisions were to deem existing grid contract documents to be negotiated contracts and allow the Water Grid Manager to negotiate amendments to these contracts. Given the imposition of the SEQ price cap, it is considered appropriate to delay changes to existing contractual arrangements.

**Clause 20 Omission of s 102 (Amendment of s 360ZDI (Limited liability of grid participant))** omits the uncommenced section 102 that was to amend s 360ZDI (Limited liability of grid participant) of the *Water Act 2000*. The amended provisions were to make reference to new negotiated grid contracts and default grid contracts. Given the omission of section 101, this amendment is no longer required.

**Clause 21 Amendment of s 117 (Insertion of new ch 9, pt 5, div 15)** omits an uncommenced provision that was, among other things, to amend section 1178 of the *Water Act* providing for some transitional arrangements that are no longer required.

**Clause 22 Amendment of s 118 (Amendment of sch 4 (Dictionary))** omits, to the extent it inserts, the definitions of “default grid contract”, “mandatory term”, “negotiated grid contract” and “non-market contract”.

## **Part 5                      Amendment of Water Act 2000**

**Clause 23 Act amended** provides that this part amends the *Water Act 2000*.

**Clause 24 Amendment of s 360ZDD (Grid contract document)** extends the Minister's ability to make a grid contract document from 1 July 2011 to 1 July 2013.

**Clause 25Amendment of sch 4 (Dictionary)** inserts a new definition for "grid contract document".

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