

South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011

Explanatory Notes

General Outline

Policy Objectives

The objectives of the Bill are to:

- (a) enable the withdrawal of a council water business from its South East Queensland (SEQ) distributor-retailer and re-establishment of the water business within direct council operations;
- (b) apply certain requirements of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (DR Act) to these specific council water businesses;
- (c) apply additional requirements to the continuing SEQ distributor-retailers to provide greater clarity for councils' pricing and decision-making role with respect to their distributor-retailers;
- (d) provide that the Queensland Competition Authority (QCA) will have a price monitoring/oversight role of the new council water businesses; and
- (e) make minor consequential changes.

Reason for the Policy Objectives

On 7 April 2011, the Premier and Minister for Reconstruction announced proposed amendments to the DR Act to address community concerns about the responsibility for setting water and wastewater prices in SEQ. Two key changes were proposed:

- Firstly, the DR Act would be amended to introduce a price cap to constrain the three SEQ council-owned distributor-retailers' water and wastewater (excluding trade waste and recycled water) price increases to a Consumer Price Index (CPI) increase per annum for residential households and small business customers from 1 July 2011 to 30 June 2013. The *Fairer Water Prices for SEQ Amendment Act 2011* (Fairer Water Prices Act) implemented this decision.
- Secondly, the SEQ councils were provided a once-only decision to opt out of their distributor-retailer and re-establish council-owned and operated water and wastewater businesses. Where councils made a final decision to withdraw from the distributor-retailer, the transaction must be completed by the end of 30 June 2012.

Councils were also required to submit a price mitigation plan for how they intend to manage price increases after the two-year CPI price cap period, whether or not they choose to opt out of their distributor-retailer. The Fairer Water Prices Act set out the requirements for a price mitigation plan and at least a five-year price path, to ensure councils took responsibility for, and were accountable for, future price increases. The price mitigation plans, including price paths, are not to be assessed by the State Government as a pre-condition to the future structure, but councils must publish these plans which will then be open to community scrutiny.

The Gold Coast City Council has decided to withdraw from its distributor-retailer, Allconnex Water (Allconnex). The two remaining participating councils of Allconnex – Logan and Redland City Councils – have assessed the ongoing viability of retaining their water businesses within Allconnex. On the basis the Gold Coast City Council is the significant shareholder of Allconnex with approximately 62% of equity, Logan City Council and Redland City Council undertook a business assessment and concluded that Allconnex, even in a streamlined Allconnex structure, was not a viable commercial alternative. Both councils have decided to withdraw from Allconnex. The Queensland Government agreed, in these circumstances, that Gold Coast City Council should bear certain costs incurred by Redland City Council or Logan City Council, as a result of the making of their decision to then also withdraw from Allconnex.

Further amendments to the DR Act and other relevant legislation are necessary to enable the re-establishment of these council water businesses, enabling councils to be water service providers but ensuring councils continue to comply with key requirements of the DR Act. Consistent with

the remaining distributor-retailers, these council water businesses will be subject to price monitoring and public reporting by the QCA.

Additional amendments to the continuing distributor-retailers are also included in the Bill. The bulk of these amendments are in response to councils' requests to provide greater clarity for councils' pricing and decision-making role with respect to their distributor-retailers.

The Bill provides that the new council water businesses must be re-established and operational by 1 July 2012.

How the Policy Objectives will be achieved

The policy is to be achieved by:

1. providing legislation to, among other things:
 - (a) establish council specific water businesses for Gold Coast City Council, Logan City Council and Redland City Council;
 - (b) enable the transfer of the assets, liabilities and employees from Allconnex to these council water businesses by 1 July 2012;
 - (c) require Gold Coast City Council to pay the consequential costs of Logan and Redland City Councils to re-establish their water businesses (including portions of Allconnex costs);
 - (d) approve a Workforce Framework to transfer employees from Allconnex to councils; and
 - (d) facilitate greater understanding of community issues by enabling councillor representation on the boards of their distributor-retailers; and
2. ensuring councils remain responsible and accountable for their pricing decisions and that such decisions do not impact on other councils or if relevant, their 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

The then Energy Ombudsman was provided \$533,330 in 2010-2011 from consolidated funding for its establishment costs to expand its responsibilities from solely energy disputes to include water and wastewater disputes of households and small businesses in SEQ. Much of this funding was used to re-design existing databases and workflows to cater for these new work activities.

The changes in water business structures (i.e. re-establishing council water businesses) will necessarily mean amendments to the Energy and Water Ombudsman Queensland's (EWOQ) databases, workflows and customer information, including fact sheets. Additional funding from consolidated revenue will be sought to enable such changes to occur. The estimated additional funding required is approximately \$140,000.

Consistency with Fundamental Legislative Principles (FLPs)

There were a small number of FLP issues that arose in the creation and regulation of the distributor-retailers. In moving these obligations, some of these issues will arise as FLPs in relation to their application to council water businesses, as functions and responsibilities return from Allconnex to these council businesses. Therefore the FLP issues for this Bill are similar (but reverse in effect) to those for chapter 3 in the DR Act.

These FLP matters were previously considered by Parliament and were the subject of responses to the Scrutiny of Legislation Committee with respect to the original DR Act. However, these FLP issues are addressed again in these Explanatory Notes.

Whether legislation has sufficient regard for the rights and liberties of individuals (a) affect on third parties of retransfer scheme or notice

The Bill requires Allconnex and the withdrawn councils to enter into a 'retransfer scheme' to transfer Allconnex's assets and liabilities to the councils to allow them to perform water and wastewater functions.

There is also provision for 'step in powers' enabling the Minister to make retransfer notices and directions which are designed to address errors or shortcomings in the retransfer schemes.

The Minister can also provide for the same matters by a 'retransfer notice' if this obligation is not complied with or not performed satisfactorily. A retransfer scheme or notice has effect despite any other instrument.

Allconnex and the withdrawn councils must negotiate arrangements ('a retransfer scheme') governing the terms of the transfer between the parties of assets, liabilities, instruments and employees. All parties will be required to certify that they have met the retransfer scheme requirements set out in this Bill. These retransfer schemes will be approved by the Minister and given effect by way of notification in the Gazette.

Also, parties are protected from liability arising from things done as part of their own retransfer scheme or the Minister's retransfer notice or direction.

This replicates, but in reverse, the 'transfer schemes', 'transfer notices' and 'transfer directions', which were relied upon to transfer assets, liabilities, instruments and employees from the SEQ councils to distributor-retailers in 2010.

Although actions under these retransfer schemes or retransfer notices or directions directly relate to Allconnex and the withdrawn councils, they may affect third parties (i.e. those entities not party to the retransfer schemes or retransfer documents themselves). For example, a retransfer notice providing for the retransfer of an asset could override a contract under which Allconnex has agreed with a third party not to transfer the asset without that third party's consent.

Requiring a retransfer scheme or notice to firstly obtain third party consent to the retransfer (i.e. to changing the parties to the contract), could lead to delays in the reestablishment of the operations of council water businesses by the end of 30 June 2012. Any rights or obligations under the contracts will continue to be met by the relevant successor council after the retransfer process.

Allconnex and the withdrawn councils are required to take actions to ensure assets are appropriately identified and transferred, to provide the public with adequate notice and to seek third party consent to a transfer where there would be a material prejudice to the third party. Material prejudice in this context means a third party is prejudiced in a way which is due to more than just the transfer of the right or obligation to the withdrawn council.

Therefore, this power is required to allow for the retransfer of all assets, liabilities and functions to the withdrawn councils and to provide for the dissolution of Allconnex. To provide for the rights of such third parties, the proposed new chapter 3A in the Bill provides for public notice of the retransfer scheme, including notice of any third party interests affected. Also, before the retransfer scheme can take effect, Allconnex and the

withdrawn councils are required to certify to the Minister that third party interests have not been materially prejudiced without the consent of such third parties.

Allconnex is eventually to be dissolved, once the retransfers and its residual functions (such as conducting last financial accounts and reports) are complete. Unlike the original transfers, it is essential that these matters be provided for as Allconnex will no longer exist to hold any asset, liability, right or obligation.

Whether legislation has sufficient regard for the rights and liberties of individuals (b) power to disclose confidential information

The Bill gives broad powers to those involved in the retransfer to disclose to other parties involved any information needed for the retransfer. It provides that a person acting honestly under these provisions, who discloses or uses information, is absolved from liability. Potentially, this information could concern and affect third parties, by disclosing information relevant to their commercial affairs or personal information about Allconnex's customers.

Similar provisions in Chapter 3 of the original DR Act were necessary to give effect to the transfer of functions and setting up of Allconnex. In the current situation, there is the same need to provide councils and their water businesses with access to information to allow them to perform water functions and take over these functions from Allconnex.

Whether legislation makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review

The Bill empowers the Minister to issue a direction ('a retransfer direction') to Allconnex or a withdrawn council requiring it to execute an instrument or disclose information. A disclosure could have an adverse effect on a third party which has had dealings with a local government or entity, by disclosing information relevant to their commercial affairs.

The Bill also provides that a retransfer direction must be in writing and signed by the Minister. The purpose of such a direction and the receipt of relevant information are to assist in the re-establishment of council water businesses and facilitate the necessary transfers.

The Bill does not provide for any appeal rights on the merits against Ministerial decisions under the proposed chapter 3A, on matters such as issuing a retransfer notice. Also, the Bill provides that no decision under

the chapter is subject to review under the relevant provisions of the *Judicial Review Act 1991*. A person directly or indirectly affected could be an individual.

As with the original DR Act, delays resulting from the review of decisions under the chapter may have significant adverse financial implications for the State and the performance of the transferred functions. Therefore this approach is necessary.

Retrospective impact of retransfer staff support framework (Workforce Framework)

As was the case for the transfer of council employees to Allconnex in the original water reform process, the Bill provides for the making of a new Workforce Framework to provide certain industrial relations protections for certain affected employees. Under the provisions of the Bill, a new 'retransfer staff framework' will be made, with the main focus being to transition employees from Allconnex, back to withdrawn councils (although the existing 2009 framework will continue for the other distributor-retailers).

As it is necessary to provide employment security around this time of change, Clause 23, inserting chapter 3A, in proposed Section 92ED of the Bill effectively provides for the retrospective commencement of the retransfer staff framework, by allowing the framework to set its own commencement date. While the framework will only be legally effective once the Bill is assented to, the provisions will be taken to be in force from the time stated in the retransfer framework itself. The FLP associated with these provisions are beneficial retrospective provisions created to provide industrial relations certainty and are therefore necessary. All affected recognise the need to provide certainty for affected employees and all parties support the earlier commencement of the retransfer staff framework.

Consultation

Community and industry stakeholders

Following the Premier's announcement on 7 April 2011, consultation commenced with the three distributor-retailers and their participating local governments. No direct consultation was undertaken with the community, as these decisions were made as a result of decisions made by the communities' duly elected representatives. Some councils consulted

directly with their communities before making their decision either to stay with or withdraw from their distributor-retailer.

Government

Since the Government's announcement about councils opting out of their distributor-retailer, there has been ongoing consultation with key Government agencies such as the Department of the Premier and Cabinet, Queensland Treasury, Queensland Treasury Corporation, Department of Environment and Resource Management and Department of Justice and Attorney-General. Consultation has continued with these agencies/entities during the councils' decisions to opt in or remain within a distributor-retailer and the development of the Bill.

Consultation on aspects of the Bill has been undertaken with the EWOQ, Land Titles Office, Office of State Revenue, Department of Employment, Economic Development and Innovation, the Department of Local Government and Planning and the Queensland Competition Authority.

Results of consultation

Community and industry stakeholders

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

The main areas of possible ongoing concerns relate to the inclusion of councillors on the board of their distributor-retailer and disputes on consequential costs.

The SEQ councils and distributor-retailers accept that many residents of the SEQ community favour councillor representation on the board of the distributor-retailers. The argument from the SEQ community is two-fold:

- councillor representation brings a high level of local issues and understanding to the attention of other board members; and
- councillors are able to have direct and timely contribution to the strategic and operational decisions of the board.

The proposed legislative amendments mitigate these concerns in the following ways:

- councillors on Distributor-retailer board provisions - the Bill does not mandate councillor representation, but merely facilitates this, should councils wish to use the opportunity. Secondly, the participation agreement made between the councils and their distributor-retailer, will provide councils themselves with a degree of control over the appointments as the councils' own participation agreements are to detail the process for appointing a councillor, dealing with board meetings and reporting to all council owners.
- Withdrawal costs – while there is likely to be disagreement regarding which costs should be able to be claimed, the Bill provides for a process of independent arbitration where agreement cannot be reached by councils about the payment of consequential costs. The provisions also encourage resolution of these disputes by providing appropriate limitations periods for claims against the Gold Coast City Council.

Government

All Government agencies consulted concurred with the proposed legislation.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title provides that the Act may be cited as the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2011*.

Clause 2 Commencement provides that sections 24 to 74, and parts 5 to 8 commence at the end of 30 June 2012. Section 77, to the extent it inserts section 123, commences on a day to be fixed by proclamation. Section 78(3) commences on the later of assent of this bill or assent of the *Waste Reduction and Recycling Act 2011*. The remainder of the Bill's provisions commence on assent. Note that several parts or divisions come into effect on specified dates.

Part 2 **Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

Clause 3 Act amended provides that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Clause 4 Amendment of s 4 (Achievement of purposes) adds to the provisions for the restructure of the SEQ water industry, to provide that from 1 July 2012, the Gold Coast City Council, Logan City Council and Redland City Council will be responsible for delivering services to customers in their local government areas.

Clause 5 Amendment of s 5 (Who are a distributor-retailer's participating local governments) provides that a reference to a participating local government means that it is a reference to a participating local government for the board's distributor-retailer.

Clause 6 Insertion of new ch 1, pt 3, div 3 inserts a new division 3.

Division 3 **Functions**

Section 7A References to functions provides that a reference to a function includes a power or jurisdiction and that a reference to performing a jurisdiction includes exercising a power or jurisdiction.

Clause 7 Amendment of s 8 (Establishment) inserts two explanatory notes under section 8(c) pointing to the provisions about the dissolution of Allconnex, the Southern SEQ Distributor-retailer Authority.

Clause 8 Insertion of new s 18B

Section 18B (Joint local government activity power for LGA 2009 and CBA 2010) provides that for section 10 of the *Local Government Act 2009* (LGA) and section 12 of the *City of Brisbane Act 2010* (CBA) (which both deal with the power to conduct joint local government activities), a reference to a local government is taken to include a reference to a distributor-retailer. Agreements between withdrawn councils would already come within the ambit of section 10 of the LGA.

Clause 9 Amendment of s 20 (Requirement for agreement) replaces a reference to persons with the right to participate in the profits of a distributor-retailer, with a reference to participating local governments having the right to participate in the profits. This provision is necessitated by the fact that under the ‘no privatisation’ clauses in amendments to section 28, no ‘person’ could be a participant of the distributor-retailer.

Clause 10 Amendment of s 22 (Particular matters agreement may provide for) provides that a participation agreement between a distributor-retailer and its participating local governments may provide for matters that include the terms of office for councillor-members on a distributor-retailer’s board, or additional requirements for their appointment or removal.

Clause 11 Amendment of s 28 (General power to amend by agreement) amends the heading to this section and adds a new subsection (2) which prohibits amending a participating agreement to allow anyone other than a participating local government for the distributor-retailer to become a participant. For example, for a distributor-retailer one of its participating local governments could dispose of its participation rights, but only to one of the other participants for that distributor-retailer, and not to the participant for another distributor-retailer or anyone else. This, in effect, provides that a distributor-retailer may not be privatised.

Clause 12 Replacement of ss 33–36 replaces the following sections.

Section 33 Membership in general provides for the membership of a distributor-retailer board to be appointed by its participating local governments.

Board membership may include councillors from its participating local governments, with each participating local government able to appoint one of its councillors to be a board member. However this is subject to not more than 3 board members in total being councillor-members (i.e. councillors from its participating local governments).

A board is to have at least 5 members, of which at least 3 are to be independent members, that is, not councillor-members.

Section 34 Councillor-members provides for the process and constraints on appointing councillor-members.

Firstly, the participation agreement between the distributor-retailer and participating local governments can provide for when, and for how long a

term, a councillor-member can be appointed – and whether a unanimous vote of all participating local governments is required.

However, if the participation agreement does not provide otherwise, the default position is that a councillor-member can only be appointed and serve on the board for a 4 year term or for terms that added together total 4 years (equivalent to the term of a local government councillor). The participation agreement could allow the serving of consecutive terms or non-consecutive terms totalling more than 4 years.

Vacancies can arise on the board for councillor-members as follows:

- A councillor-member is appointed on the basis of being a councillor of a participating local government. Therefore, under subsection (2)(a), if the councillor-member ceases to be a councillor, their appointment as a councillor-member also automatically ceases.
- A councillor-member's appointment on the board may also be ended (under subsection (2)(b) if the participation agreement provides a process for this, or all the participating local governments agree and resolve to do this.
- Also a councillor-member may simply resign from the distributor-retailer board while remaining a councillor.

If a vacancy arises under either of the first two dot points above (i.e. under subsection (2)), there are two ways it can be filled – but in both cases the participation agreement must provide a process to be able to fill the vacancy.

- Firstly, the vacancy may be filled by another councillor from the same participating local government, in the way provided for in the relevant participation agreement.
- Secondly, the participation agreement may specifically provide for an alternative solution, and the filling of the vacancy by a councillor from a different participating local government. This is subject to the general rule that a participating local government can have only one councillor-member on the board. If a distributor-retailer has five participating local governments, it can only have three councillor-members on its board, however the participation agreement can provide that where vacancies appear, the responsibility for furnishing a councillor-member can move to a different participating local government.

Under subsection (4), if a councillor is suspended under the *Local Government Act 2009*, the councillor is also suspended from appointment as a councillor-member of the board for the period of the suspension. There is no provision for temporarily replacing a suspended councillor-member on the board.

Section 35 Independent members provides for the minimum matters to be considered when participating local governments agree to appoint independent board members (i.e. not councillor-members), such as a person's relevant expertise and experience. Other matters to those listed in this section may be considered in appointing independent members.

The appointment of an independent member can be for any term, and the member can be re-appointed. However an independent member's appointment automatically ceases if the person becomes disqualified.

Section 36 Disqualifications for independent member provides that a person is barred from appointment as an independent member of a distributor-retailer's board if the person is an employee of the public service or of a SEQ local government, is a member of the Queensland Water Commission, or is already a board member for another distributor-retailer or a bulk water entity. Also, a person who is bankrupt or has a conviction for an indictable offence (that is not a spent conviction) cannot be appointed.

Section 36A Terms of membership provides that a board member holds office on the terms of their appointment as provided for in a relevant participation agreement and under the Act.

A councillor-member may not receive from the distributor-retailer any remuneration or a benefit as a councillor-member or in connection with retirement or other ending of their appointment as a councillor-member. Any payment that contravenes this is of no effect. However, councillor-members may receive remuneration or benefits from their council in recognition of the extra duties they undertake as board members. This remuneration would be subject to the provisions of the *City of Brisbane Act 2010* or for another council, subject to a submission to the Local Government Remuneration Tribunal under the *Local Government Act 2009*.

Independent members may receive remuneration or benefits, including upon retirement, from the distributor-retailer if this is provided for in the relevant participation agreement. Benefits means payments or an interest in property or other valuable consideration or a benefit given or transferred.

Section 36B Chairperson provides that only an independent member can be the chairperson of the board. Either the chairperson is appointed under rules in the relevant participation agreement, or if the participation agreement does not make provision for this, the board elects the chairperson.

Clause 13 Amendment of s 40 (Conduct of meetings) adds a new requirement that a quorum for the board must be at least one independent member.

Clause 14 Amendment of s 42 (Disclosure of Interests) adds a proviso to the matters constituting disclosure of conflicts of interest, that merely because a council has an interest in an issue does not mean the councillor has a conflict of interest.

Clause 15 Amendment of s 49 (Reserve power to give directions in public interest) renames section 49 and provides that the reserve power that participating local governments have to agree to give a direction to their distributor-retailer about performing its functions will now be termed a “group direction”.

Clause 16 Insertion of new s 49A

Section 49A Individual directions provides an addition to the power under section 49 for participating local governments to agree on a direction to their distributor-retailer. Under section 49A individual local governments can give a written direction on particular matters to their distributor-retailer, termed an “individual direction”.

An individual direction is to be about the way the distributor-retailer performs its functions within the area of the local government giving the direction, with regard to a number of matters which are not likely to be in effect until 1 July 2013, being:

- infrastructure charges contained in the charges schedule of a netserv plan;
- complying with a final price path; and
- matters in a distributor-retailer’s annual capital works program under section 100B.

This power for a local government to give a direction to the distributor-retailer about performing functions is subject to a number of conditions and requirements. Firstly, a local government must be satisfied

that the individual direction is necessary and in the public interest for the local government area.

Secondly, the process to be followed before the local government can give the individual direction, requires the local government to notify the board and the other participating local governments of its intention. It must also seek the board's written advice, which can be about the local government's potential liability to compensate the distributor-retailer or other participating local governments for financial detriments that could be reasonably anticipated to arise from the direction. While the other participating councils are not given the 'right of reply' in the way that the board is, under section (4) the board can incorporate the compensation issues for its participating councils. This would not preclude a council proposing to give the direction from taking other councils' direct advices into account.

The board is to provide this advice within 1 month of the notice or another period set under the participation agreement.

Thirdly, the compensation liability must be agreed to or decided under section 99BZB, before the local government can give the direction.

Taken together, these provisions will deter a local government from using this power frivolously and will ensure that the financial consequences of a direction are borne by the local government making the direction.

Clause 17 Amendment of s 50 (Publication of directions) provides in section 50 (which regulates the publication of directions) for the new categories of directions given to a distributor-retailer, i.e. group directions and individual directions.

Clause 18 Replacement of s 51 (Local government directions relevant to duty)

Section 51 Compliance with directions provides that distributor-retailer must take reasonable steps to comply with either a group direction or an individual direction. A direction is a relevant matter to consider when assessing whether a board member has exercised appropriate care and diligence in discharging their duties.

Clause 19 Insertion of new s 52A

Section 52A Relationship between councillor-member functions and councillor functions provides that if a councillor-member acts in a way that complies with the duties of a board member under the DR Act provisions while on the board, the councillor-member does not contravene

their responsibilities as a councillor under the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

Clause 20 Amendment of s 53 (Delegation) provides that a regulation may be made to alter the end of the sunset period for a particular development assessment regime. Under this regime, a distributor-retailer may delegate to its participating local governments, the distributor-retailer's functions as a concurrence agency under the Sustainable Planning Act. The scope of the concurrence agency role is the water and wastewater components of development. This delegation would, under section 53(5), otherwise cease on 30 June 2013, which was the date anticipated for the introduction of a replacement approach, the 'utility model'.

Clause 21 Amendment of s 53ARA (Definitions for div 1) omits definitions that are now defined elsewhere in this Bill.

Clause 22 Amendment of s 53BA (Ownership of water infrastructure that becomes part of the land) provides that this section applies subject to any retransfer of Allconnex's water infrastructure under Chapter 3A.

Clause 23 Insertion of new ch 3A

Chapter 3A Replacement of Allconnex by councils

Part 1 Preliminary

Section 92AA Application of ch 3A provides that Chapter 3A applies despite any other provision of the DR Act, any other law, transfer document, participation agreement, contract or other instrument.

Section 92AB What is *Allconnex* provides that Allconnex is the Southern SEQ Distributor-retailer Authority.

Section 92AC What is a *withdrawn council* provides that these are the Gold Coast, Logan and Redland City Councils.

Section 92AD What is Allconnex's *successor* provides the rules for establishing a particular council (from Gold Coast, Logan and Redland City Councils) as the successor to Allconnex for a range of situations, including for:

- (a) customers – this is the council where the customer receives or wanted to receive the services;
- (b) assets, liabilities or matters under a retransfer document or Part 4, Division 2 – the council nominated in the transfer scheme or the Division to be the successor;
- (c) infrastructure agreements that deal with water infrastructure (note water infrastructure includes wastewater infrastructure) – the council where the infrastructure is located, to be the successor; and
- (d) other matters such as the other provisions in the Bill which are not dealt with above – the successor is the council in whose area or jurisdiction the matter is located .

If a matter is located within, or refers to more than one, withdrawn council's local government area – the provisions make each of those local governments a proportional joint successor to Allconnex.

It provides that where the withdrawn councils are proportional joint successors, that their responsibilities are in accordance with their participation rights that existed immediately before the retransfer under the participation agreement.

Matters that are subject to dispute referral or a liability under an order under the *Energy and Water Ombudsman Act 2006* are not covered under this section as the Bill contains specific provisions for transitioning EWOQ matters.

Matter is defined in this section to include an authority, application, document, proceeding, water infrastructure, various actions under the Planning Act and other acts about planning, and infrastructure charging by Allconnex.

Part 2 General provisions for retransfer to withdrawn councils on 1 July 2012

Division 1 Preliminary

Section 92AE Application of pt 2 provides that Part 2 applies from the end of 30 June 2012.

Division 2 General service provider provisions

Section 92AF Allconnex ceases to be service provider provides that Allconnex ceases to be a service provider.

Section 92AG Withdrawn councils become service providers provides that each withdrawn council (i.e. Gold Coast, Logan and Redland City Councils) becomes a service provider for their respective local government areas. Section 20 of the *Water Supply (Safety and Reliability) Act 2008* (which relates to who must apply for registration as a service provider), does not apply to the withdrawn councils. However, as soon as practicable, a withdrawn council must give the regulator under the Water Supply Act, the information required under section 12 of that Act.

Section 92AH No notice to regulator required provides that sections 24 and 25 of the Water Supply Act (which ordinarily require notification and a process to register the transfer of infrastructure between service providers) do not apply to Allconnex or the withdrawn councils.

Section 92AI Withdrawn council's initial service area provides that the service area of Allconnex as it exists at the end of 30 June 2012, is to be divided into the service areas of each withdrawn council, based on that part of the Allconnex service area that lies within a withdrawn council's local government area.

A withdrawn council will then be subject to Chapter 2, Part 5, division 2 of the Water Supply Act which provides for service areas. However the application of that division will cease on 1 July 2013 under section 92DB which provides that from the adoption of its netserv plan, the provisions of

the Water Supply Act about declared service areas will no longer apply to a withdrawn council.

Section 92AJ Creation of commercial business units for withdrawn councils provides that each withdrawn council is deemed to have established a commercialised water business, and the relevant resolutions under the Local Government Act (and its regulations) are deemed to have been made to commercialise their water and wastewater businesses.

This makes those businesses subject to the ordinary requirements for other commercialised council businesses regulated under the Local Government Act. All of the ordinary corporate and regulatory arrangements for councils will apply (e.g. the regulatory regime for Participation Agreements and corporate regulation under the DR Act will no longer apply), except where specific arrangements are continued for the withdrawn council under the amended DR Act. The section provides for a default business name for the commercialised businesses to be the business names used prior to the establishment of Allconnex. This does not prevent the withdrawn councils from changing those names.

The withdrawn council's water business must consult with other withdrawn councils or Distributor-retailers where these entities have adjoining areas, before developing significant infrastructure.

Section 99AJ does not limit or otherwise affect the capacity of a withdrawn council to create such a corporate entity to acquire and undertake its water service provider business.

Section 92AK Migration of customers provides who is the service provider for customers. The customer base of a withdrawn council is those customers of Allconnex as at the end of 30 June 2012, which are in the council's local government area. These customers become customers of the relevant successor council at 1 July 2012.

Section 92AL Migration of appointments and delegations provides that a person who, at the end of 30 June 2012, holds an appointment or delegation from Allconnex is taken to hold this appointment or delegation from Allconnex's successor. The successor can end or change the appointment or delegation.

Division 3 Transfer of Allconnex's trade waste and seepage water functions under Water Supply Act

Section 92AM Application or particular provisions of ch 2C provides that sections 53CL(c) (Functions), 53CN (Power to enter), 53DA (Application of div 7), part 2, division 7 (Personal details requirements) and part 3 (Trade waste compliance notices) apply to a withdrawn council.

This is subject to the following changes, that a reference to:

- a discharge officer refers to a local government worker under the Local Government Act, who is authorised to perform functions for the withdrawn council mentioned in section 53CL; and
- a distributor-retailer includes a reference to the withdrawn council; and
- other necessary changes.

Section 92AN Other functions not affected declares that Divison 3 does not limit or otherwise affect the functions of a withdrawn council or of a local government worker under the Local Government Act.

Division 4 Allconnex's status, functions and board

Section 92AO Legal status unaffected until dissolution declares Allconnex's ongoing status as a distributor-retailer until it is dissolved. This is necessary as Allconnex will have residual functions, even though it is not carrying out activities as a service provider, after 1 July 2012. The section also clarifies, as was always the case, that the State has no liabilities for the council-owned Allconnex.

Section 92AP Residual functions provides for Allconnex to continue operation for residual functions after 1 July 2012 when the withdrawn councils will start providing water and wastewater services instead of Allconnex. These residual functions are merely those activities needed to wind up Allconnex (e.g. last annual report and financial report, winding up of tax equivalent requirements for Allconnex). Allconnex will not be providing any water or wastewater services after 1 July 2012.

Section 92AQ Board provides for the regulatory arrangements for boards for Allconnex water to be those applying before relevant parts of this Bill commences. This is necessary to ensure that the existing provisions around participation agreements and board members' duties already provided for in the DR Act, continue to apply to the Allconnex board during the residual function period.

However, there are exceptions to the application of the existing law, so that restrictions on the number of associated employees on the Allconnex board under the pre-Bill provisions of the DR Act in sections 33(4) and (5) and section 35(3) do not apply. This will potentially allow for Allconnex board members who resign before Allconnex ceases to exist, to be replaced, if the participating councils consider this to be appropriate, by council officers.

Part 3 Retransfer provisions

Division 1 Retransfer scheme

Subdivision 1 General provisions

Section 92AR Requirement to make scheme requires Allconnex and the withdrawn councils to enter into a single agreement for retransfer (the retransfer scheme) before 30 April 2012. The retransfer scheme could contain different schedules for matters relating to each of the withdrawn councils. The scheme is to provide for the relevant retransfers at 30 June 2012 of assets, employees (with the exception of the Allconnex chief executive officer), instruments or liabilities and to do everything else necessary for the transfer or dissolution of Allconnex and provide for financial, staffing or other arrangements prior to its dissolution (e.g. during the residual period).

Subsection (3) provides that, as nearly as practicable, the retransfer scheme enable each withdrawn council to receive back the assets, employees, instruments and liabilities that were originally transferred to Allconnex from the relevant council. Subsection (4) provides that this approach can differ if Allconnex and all the withdrawn councils unanimously agree.

These provisions are intended to ensure that there are no assets or liabilities left with Allconnex in the wake of the dissolution.

If assets, employees, instruments, liabilities or other matters are not dealt with in a retransfer scheme, the default provisions in Part 4, Division 1 would apply.

Also the Minister would be able to make a retransfer notice or direction to apply where necessary.

Section 92AS Restriction on scheme taking effect provides that the retransfer scheme is not effective until the Minister has published a gazette notice. The gazette notice would refer to the certification statement by Allconnex and the withdrawn councils under section 92AZ(2). That certification requires those parties to certify certain matters in relation to the transfer scheme. The retransfer scheme takes effect upon publication of the gazette notice, however under section 92AR(1), the transfers will take place at the end of 30 June 2012.

Subdivision 2 Contents

Section 92AT Requirements to deal with proceedings and claims requires that the retransfer scheme must provide for:

- (1) which of the withdrawn councils is to be the successor to Allconnex:
 - for any claims and proceedings by or against Allconnex that are on foot (e.g. lawsuits, workplace health and safety claims); and
 - any proceedings that Allconnex could have started against another entity or person by the end of 30 June 2012 (but has not started);
- (2) how the withdrawn councils intend to deal with contingent and other liabilities (to avoid the unintended imposition of the default provisions where they did not intend for the liability to be dealt with as outlined in those default provisions); and
- (3) for all liabilities to be assumed or assigned to one or more of the withdrawn councils (so that no liability is left unassigned when Allconnex is wound up).

The ability of the parties to transfer proceedings and claims to a particular council is constrained by two requirements:

- firstly, where a transition document transferred the responsibility for a proceeding from a council to Allconnex upon its establishment in 2010, the retransfer scheme must provide that the council is again the party to the proceeding; and
- secondly, the retransfer scheme must provide that where there is a proceeding or cause for action in the Planning and Environment Court or the Land Court and is in relation to land, Allconnex must be replaced by the withdrawn council in whose local government area the land is located that is the subject of the proceedings or cause for action.

The provision expressly indicates that a liability under this section does not apply to liabilities under the *Energy and Water Ombudsman Act 2006*, which are specifically provided for elsewhere in the Bill.

Section 92AU Accounting for assets and liabilities provides for further mandatory content requirements for the retransfer scheme. This is to ensure that the retransfer scheme effectively provides for the transfer of all assets and liabilities to enable Allconnex to be wound up. This includes ensuring that liabilities between the parties are effectively dealt with.

The retransfer scheme must provide for a process to account for the liabilities, including unrealised assets and liabilities of Allconnex and the liabilities of withdrawn councils to Allconnex. It must also take the requirements of chapter 3A into account (e.g. the operation of the staff retransfer framework, the default provisions and the rules around transfer of land).

Finally it must provide for all of Allconnex's unrealised assets to be transferred to one or more of the withdrawn councils.

Unrealised assets are defined in the section. An unrealised asset includes both infrastructure charges and service charges that are not yet paid. This can relate to the right to infrastructure charges, costs or any other conditions relating to infrastructure, matters under an infrastructure agreement or otherwise under the Integrated Planning Act or the Sustainable Planning Act, that had been levied or imposed by a withdrawn council and transferred to Allconnex on its establishment in 2010. It could be any of those charges, costs, conditions or matters levied by Allconnex since 1 July 2010 under the Sustainable Planning Act but not yet due. It could be service charges (i.e. to ensure that the default split of monies under section 92BH(1) and (2) do not apply).

An unrealised liability is one that Allconnex may have, but its existence or the quantum has not been ascertained or is contingent (e.g. where the existence or amount of a contingent liability depends on the outcome of a proceeding).

Section 92AV Requirement to retransfer particular land to same withdrawn council provides for assets that are attached to land. It provides for the reversal of certain transactions that put land or assets into Allconnex's ownership (either in fee simple or under trust). This has the effect that the land (with the assets), either owned or held in trust by Allconnex, must revert to the council in which the land is located. This is to ensure that the land on which any water related asset is located goes back to the council which owns the land, e.g. a sewerage treatment plant owned by Allconnex on land owned by Allconnex and located in Logan City Council must go back to Logan City Council.

Section 92AW Required transfers for after-acquired land provides that the retransfer scheme must transfer any land that was acquired by Allconnex since its establishment in 2010, to the withdrawn council in whose local government area the land is located.

Section 92AX Particular matters scheme may provide for outlines the non-mandatory content for a retransfer scheme. This includes providing for the transfer or retransfer to a withdrawn council or councils of:

- Allconnex's trusteeship for land held in trust;
- any matter not provided for in chapter 3A, which council is to be the successor and if there is more than one, how they will share the matter;
- instruments and any benefits or rights under the instrument;
- employees and their rights, entitlements and associated matters;
- access to Allconnex's records and responsibilities under the *Public Records Act 2002*;
- providing for certain instruments and participation rights as follows:
 - varying or terminating instruments and extinguishing certain instruments; and
 - extinguishing the council's participation rights in Allconnex and providing certain consideration for transferred assets or extinguished participation rights.

These provisions may be necessary in a retransfer scheme to finalise any outstanding loans between parties such as internal shareholder loans or loans between parties to allow Allconnex to finalise debt with external parties such as Queensland Treasury Corporation.

This section does not limit section 92AR which requires the making of a retransfer scheme, and is subject to other provisions in chapter 3A.

Subdivision 3 Certification statement

Section 92AY Requirement to give statement to Minister provides that Allconnex and the withdrawn councils must, together, give the Minister a certification statement certifying all the assets and liabilities that under the retransfer scheme are to be transferred to each of the withdrawn councils. The certification statement must comply with section 92AZ regarding its contents.

This statement is to be provided as soon as practicable after Allconnex and the withdrawn councils enter into the retransfer scheme (which section 92AR requires to be entered into by 30 April 2012).

Section 92AZ Content requirements provides mandatory content requirements for the certification statement which is intended to deal with all assets, liabilities and instruments that are to be transferred to the relevant withdrawing councils under the retransfer scheme. This includes the following:

- the parties to the retransfer have identified all of Allconnex's assets, liabilities and instruments for transfer;
- whether any of those transfers would materially prejudice a third party and if it does, that the party has been notified and their consent has been sought;
- that the asset, liability or instrument can be lawfully transferred;
- identify which of the assets are to be jointly used or accessed and that agreements have been made for joint access and use;
- that the transfers are consistent with the retransfer staff support framework;
- parties have consulted with the State Archivist about the way in which records are to be dealt with; and

- that certain public notice and access requirements have been met, subject to restrictions that confidential or personal information must not be included in a certification statement.

It is likely that the certification statement will contain a number of schedules, each relating to specific matters for a withdrawn council and Allconnex.

The parties signing the statement must also state that, after making all due enquiries, the statement is correct to the knowledge, information and belief of the person signing it. This is to provide protection in relation to a jointly certified document, where not all of the matters within that document will be within the knowledge of each person signing it. For example, the councils may not have knowledge of the accuracy of the Allconnex asset register and therefore could not certify that all of the assets had been correctly identified, although the Allconnex representative signing the certificate should be able to do this.

Section 92BA Ministerial notice of retransfer requires the Minister to publish a gazette about the certification statement of Allconnex and the withdrawn councils.

The statement may only be published if the Minister is of the opinion that the statement contains the matters required under section 92AZ. If the statement contains the necessary information, then the Minister, as soon as practicable after receiving the statement, must publish a gazette notice stating the matters in subsection (2). This will include that the retransfer scheme has been made and the certification statement given. It will also include details of where copies of the certification statement can be obtained (other than private or confidential information). It will note that the retransfer scheme has effect from the date of the Gazette Notice, but under section 92AR the retransfer itself will not take place until the end of 30 June 2012.

Subsection (4) obliges the withdrawing councils to place the information stated in the Gazette notice on their website as soon as practicable, and keep this on their website for at least one year.

Subdivision 4 Miscellaneous provision

Section 92BB Discharge of liabilities provides that once the retransfer scheme takes effect, all liabilities from Allconnex to the withdrawn

councils and vice versa, are discharged (except for the things provided for in the retransfer scheme). This does not, however, discharge the Gold Coast City Council's obligation to pay Allconnex's withdrawal costs under section 92BY.

Section 92BB does not end the liabilities of councils as between themselves for any default provision or for costs associated with disestablishment.

Division 2 Ministerial functions for retransfer

Section 92BC Retransfer notice provides for the circumstances in which the Minister is able to make a retransfer notice to retransfer matters, by publishing a notice in the Government Gazette. These circumstances are where, in the Minister's opinion, a requirement under division 1 has not been complied with, or something ought not to have been done or ought to have been done differently.

The Minister's power to make a retransfer notice comes into force after receiving the certification statement from Allconnex and the withdrawn councils, which they must provide as soon as practicable after they enter into the retransfer scheme (which must be by 30 April 2012). The Minister can make a retransfer notice up to 30 June 2013, which allows a mechanism and a time period in which errors, omissions or other matters can be addressed after the retransfer takes effect.

The retransfer notice may do anything to effect the retransfer; do anything that may have been done by any of the parties; rectify or undo things that ought to have been done differently or not at all; or impose a condition on any of these matters. The retransfer notice may also refer to and call up another document that is signed by the Minister provided it is publicly available (where the matter is inappropriate to deal with in a transfer notice e.g. because of its size or nature).

The effective date of a retransfer notice is the Gazetted date or a later date stated in the notice. However, this section must be read with section 92AR(1)(a) where the actual retransfer of assets, liabilities and instruments takes place at the end of 30 June 2012.

Section 92BD Retransfer direction provides powers for the Minister to give a signed, written, retransfer direction to direct Allconnex or a withdrawn council to do anything necessary to achieve the retransfer. This

may be to execute an instrument, disclose information, for Allconnex to deal in a particular way with its employees and anything else considered necessary to remedy a contravention of the retransfer staff support framework.

The Minister is able to issue a retransfer direction until 30 June 2013. Unlike a retransfer notice which provides for a transfer of assets or other matters, a retransfer direction actually directs an entity to undertake actions necessary to achieve the transfer. Allconnex and the withdrawn councils must comply with a retransfer direction and penalties apply for non-compliance.

Division 3 Miscellaneous provisions for retransfer documents

Section 92BE Discharge of liabilities provides for a discharge of liability for the transfer where the transfer has occurred under a retransfer document (which includes a Minister's retransfer notice, a Minister's retransfer direction and retransfer schemes made by the parties themselves). The liability is discharged to the extent stated in the retransfer document.

Section 92BF Effect of retransfer document provides that the retransfer document has effect despite other laws, contracts or instruments. However, a retransfer scheme takes effect subject to any retransfer notice or retransfer direction. Also under separate provisions dealing with the workforce framework (see section 92EH), the retransfer staff support framework takes precedence over inconsistent terms in a retransfer scheme or notice.

Part 4 General provisions facilitating retransfer

Division 1 Preliminary

Section 92BG Application of Pt 4 provides that part 4 (except for divisions 4 and 5) applies from the end of 30 June 2012.

Division 2 Default Provisions

Subdivision 1 General provisions

Section 92BH Allconnex's service charges provides a default mechanism, for where a retransfer document does not apply, to determine which withdrawn council owns outstanding debts for water and wastewater charges (i.e. unpaid customer bills).

Subsections (1) and (2) apply that in the absence of a transfer document, the service charges are owned jointly by the withdrawn councils in proportion with their shares under their participation agreement, i.e. the councils are the proportional joint successors.

However, subsections (3) and (4) deal with which of the successor councils are to do the work to physically collect or bill any unpaid charges or unbilled charges. The withdrawn council responsible is where the customer is located, i.e. within the council's local government area. The effect of subsections (3) and (4) is that customers must pay any outstanding Allconnex bills (e.g. for their water and wastewater charges or for trade waste matters) to the relevant withdrawn council. It is this council which has the power to bill or collect unbilled charges where Allconnex may have failed to bill the customer before the end of 30 June 2012.

These sections do not provide default arrangements for infrastructure charges for developers, as those infrastructure charges are not service charges related to services provided pursuant to the Water Supply Act or this Act. Provisions for the recovery of infrastructure charges are separately provided for in the Bill.

These default provisions regarding service charges are complemented by provisions in section 92DP. Section 92DP provides that once the charge is owed to the withdrawn council instead of Allconnex, that the provisions of the Local Government Act apply to the withdrawn councils for collection of charges and overdue charges.

Section 92BI Allconnex's other assets and liabilities provides a default mechanism for where a retransfer document does not apply, to determine who owns Allconnex's assets and liabilities from 1 July 2012 (except for the outstanding service charges dealt with in section 92BH).

In these circumstances, the default scheme automatically returns the assets and liabilities to a particular successor council, under the following rules:

- if the asset or liability was transferred to Allconnex under the original transfer scheme, the asset or liability would go back to the council that transferred it; and
- if the asset or liability was newly created during Allconnex's operations, or simply was not transferred by any council under the original transfer schemes, it becomes owned jointly by the withdrawn councils in proportion with their participation rights under their participation agreement.

Subsection (4) enables the Minister to override the default provision by a retransfer notice or retransfer direction.

These provisions do not apply if the asset or liability was something that was not created by, or in relation to, Allconnex or if the matter was not transferred to Allconnex in 2010. For example, a workplace health and safety cause of action which was not claimed and therefore not transferred to Allconnex, nor was it in relation to Allconnex, would remain unaffected by the provisions and the cause of action would continue to relate to the relevant council where the action occurred.

It should be noted that while the provision does not expressly say that it is not a default provision for assets and liabilities relating to infrastructure agreements, as there are more specific provisions dealing with who is a successor for infrastructure matters under subdivision 2, those provisions would apply rather than the provision in subdivision 1.

Section 92BJ Allconnex's replacement for proceedings provides a default mechanism, for where a retransfer document does not apply, to determine which council is to be a replacement party for certain proceedings on foot.

Where the proceeding is in the Planning and Environment Court (e.g. for most Sustainable Planning Act matters) or the Land Court (e.g. for Acquisition of Land Act matters), the successor council is the council in whose local government area the land the subject of the proceedings is located.

If the proceeding relates to a proceeding in circumstances where a council originally transferred that matter to Allconnex in the water reform process, that council is to become the party to the proceeding.

In all other cases, (i.e. the matter arose during Allconnex's operation and is not in the above stipulated courts) all of the withdrawn councils become proportional joint successors and hence parties to the proceeding. The councils are jointly responsible for the expenses of the proceeding. While this provision joins the parties to the proceeding, nothing prevents their individual settlement of their own liability.

Section 92BK Proceedings not started provides a default mechanism for a replacement (for Allconnex) for an uncommenced cause of action that Allconnex may have wished to commence but where no proceeding has been started - but only in circumstances where no retransfer document provides for this.

Where proceeding would be in the Planning and Environment Court (e.g. for most Sustainable Planning Act matters) or the Land Court (e.g. for Acquisition of Land Act matters), the successor council is the council in whose local government area the land that would be the subject of the proceedings is located.

In all other cases *all* of the withdrawn councils become parties to the proceeding. Where the councils are jointly proportional successors in this manner, they are jointly responsible for the expenses of the proceeding. Nothing prevents their individual settlement of their own liability in the future running of the proceedings.

Subdivision 2 Provisions for infrastructure agreements and actions under Acts about planning

Section 92BL Application of sdiv 2 provides, subject to any retransfer documents relating to Allconnex, for the transfer of water infrastructure provided, or to be provided, under an infrastructure agreement. It also provides for the retransfer of rights or liabilities in relation to a range of infrastructure agreements, charges, conditions, approvals and related matters that were transferred to Allconnex from its participant councils at its establishment on 1 July 2010.

Section 92BM Novation if only 1 successor provides that where there is only one successor to Allconnex for an infrastructure agreement, the successor becomes party to the agreement instead of Allconnex, assuming all rights and liabilities and becoming responsible for enforcement. It also

provides for the successor to become responsible for rights or liabilities in relation to a range of infrastructure agreements, charges, conditions, approvals and related matters that were transferred to Allconnex from its participant councils at its establishment on 1 July 2010. It also provides for discharging rights and liabilities under this section.

Section 92BN Negotiation required if more than 1 successor provides for the situation where there is more than one successor in relation to an infrastructure agreement and requires the councils to negotiate in good faith to reach an agreement about sharing the rights and liabilities of Allconnex in this regard. This extends to negotiations about responsibility for rights or liabilities in relation to a range of infrastructure agreements, charges, conditions, approvals and related matters that were transferred to Allconnex from its participant councils at its establishment on 1 July 2010.

Section 92BN also provides for resolving any disputes, by any party referring the matter to the Minister, who may rely on an arbitration process or delegate his or her jurisdiction to an appropriately qualified public servant to resolve the matter.

Section 92BO Effect of negotiated agreement or Minister's decision provides that an agreement or an outcome resulting from referring a dispute to the Minister is binding on the successors and anyone else against whom a right is exercisable or to whom liability is owed.

Section 92BP Discharge of Allconnex provides that Allconnex ceased to be bound by the infrastructure agreement or other right and liability under sections 92BL, 92BM and 92BN and is discharged from the liability.

Section 92BQ Other necessary changes to be made for transition provides that section 92BO applies subject to other provisions in this Division. References in the infrastructure agreement to Allconnex are taken to be changed to reflect the retransfer.

Section 92BR Provision for things done before retransfer provides that the transfer of water infrastructure under a retransfer document does not affect the validity or anything done before the retransfer in relation to:

- under section 77H – an action by the local government under the Sustainable Planning Act or the repealed Integrated Planning Act to:
 - levy an infrastructure charge or cost;
 - impose a condition; and

- any other decision, charge, condition, contribution or agreement made, levied or imposed; and
- under sections 77A to 77D – enforcement of a right or the discharge of a liability in relation to:
 - unbundled infrastructure agreements;
 - bundled infrastructure agreement with terms relating only to water infrastructure;
 - bundled infrastructure agreements with mixed rights; and
 - bundled infrastructure agreements with mixed liabilities.

Division 3 Information provisions

Section 92BS Authorised exchange of information provides that any of Allconnex or the withdrawn councils may exchange information to provide for the any withdrawn council’s service provider functions. For example, a council may require information from Allconnex during the residual function period or the withdrawn councils may require information of each other to be able to continue their operations. The section provides that customer or other person's consent is not necessary for the exchange of that information, nor for the recipient councils use or storage of the information.

Section 92BS should be read having regard to section 92BV which provides for ordinary privacy protections to apply, once the information has been disclosed for the purpose of section 92BS.

Section 92BT Disclosure and use of information for retransfer allows those involved in retransfer (e.g. Allconnex or any of the withdrawing councils) to disclose or use information in their control for the retransfer or for performing their service provider function. Provision is also made for disclosure and use by councillors, employees or agents of a withdrawn council. The section also places a positive requirement on Allconnex's board to disclose information if the Minister requests and provides protections for those who honestly disclose or use information in accordance with the section.

This section should be read having regard to section 92BV which provides for ordinary privacy protections where the disclosure of information is not for the service provider function.

Section 92BU Provision for continued access to Allconnex's records provides for the responsibility under Chapter 5, part 1 to apply to the successor council (i.e. its infrastructure charges register and approved inspection program).

Section 92BV Relationship with Information Privacy Act 2009 and Right to Information Act 2009 applies despite those Acts, so that the relevant parties may disclose, use and store information subject to the provisions in this Bill. Nothing limits the application of those Acts for the proper use, disclosure and storage of information once the information has been provided to the recipient for the intended purpose.

For example, Allconnex may provide a withdrawn council with customer details to enable the withdrawn council to once again provide that customer with a water and wastewater service. That customer's consent is not required for the transfer as would ordinarily be the case under the Information Privacy Act. However, once the withdrawn council has the information, it is subject to the usual requirements under the Information Privacy Act to use and store that information.

Division 4 Withdrawal costs

Subdivision 1 Preliminary

Section 92BW What are *withdrawal costs* defines the withdrawal costs which are to be recoverable by Logan City Council and Redland City Council from the Gold Coast City Council. Costs are defined to include other types of losses and damage, but are limited to the types of costs, loss or damage outlined in subsection (1).

Subsection (2) limits withdrawal costs by excluding:

- the recovery of revenue or profits (real or anticipated);
- failure to make anticipated savings; and
- types of costs prescribed under a regulation.

Subdivision 2 Entitlements

Section 92BX Gold Coast City Council bears its own withdrawal costs provides that the Gold Coast City Council must bear its own withdrawal costs. This reflects the fact that the dissolution of Allconnex was a decision of Gold Coast City Council, so it is responsible for its own costs and must compensate Allconnex and the other participating local governments for elements of the dissolution (see sections 92BY and 92BZ).

Gold Coast City Council must also bear its own costs for matters under section 92BW(2). The other withdrawn councils cannot recover their costs under section 92BW(2) from the Gold Coast City Council.

Section 92BY Allconnex's withdrawal costs provides that Gold Coast City Council is responsible for the withdrawal costs incurred by Allconnex (subject to the duty to mitigate and the relevant limitation periods).

After 1 July 2012, the relevant portion of the costs relating to Allconnex (while still claimable) must be paid directly to either Logan City Council or Redland City Council. The proportional costs due to each council will depend on how the liability has been allocated under a transfer document or under the default provisions if the parties have failed to deal with it under the transfer scheme.

Section 92BZ Other withdrawn councils provides that Gold Coast City Council is responsible for the withdrawal costs incurred by Logan City Council and Redland City Council (subject to the duty to mitigate and the limitation period under sections 92CB and 92CC).

Section 92CA Claiming withdrawal costs allows Logan City Council and Redland City Council to make progressive claims for a part period or for parts of liabilities due from Gold Coast City Council. This will enable running the claims process in a similar way to progress payments under other types of contracts, rather than waiting for lump sum payments at the end. Nothing in this section requires Gold Coast City Council to agree to a periodic claim and the usual arbitration provisions for each disputed claim would apply.

The section contains an example of another withdrawn council providing a monthly bill to Gold Coast City Council for consultancy fees to create a billing system to comply with the service provider requirements under the DR Act.

Section 92CB Duty to mitigate requires Allconnex or any of the withdrawn councils to take all reasonable steps to mitigate the actual costs for which they are entitled to be compensated by Gold Coast City Council.

Section 92CC Limitation period limits recovery of any of the recoverable withdrawal costs by Logan City Council or Redland City Council to 30 June 2013 unless they have an agreement or have moved to commence arbitration.

The first instance is where Logan City Council or Redland City Council have reached an agreement with Gold Coast City Council for the payment of agreed costs (including the agreements for periodic payment indicated by payment of those amounts) as a debt due and payable.

The second instance is where Logan or Redland City Councils have given Gold Coast City Council a notice under subdivision 3 of their intention to refer a disputed matter to an arbitrator.

These provisions are to ensure that claims are progressed expeditiously and claims settled as quickly as possible.

Section 92CD Exclusions excludes the operation of the *Commercial Arbitration Act 1990* to an arbitration under section 92CC. It also makes the withdrawal costs matters that are non-justiciable by a court or tribunal (other than to bring proceedings for the costs agreements). As the arbitration orders are already taken to be orders of the Supreme Court, any action to enforce them is not a reference to a proceeding for this section.

Subdivision 3 Arbitration

Section 92CE Application of sdiv 3 provides for arbitration of disputes regarding Gold Coast City Council's liability for withdrawal costs for a council or for Allconnex (including any periodic claim) where there is a dispute about the liability for the cost or the amount of the cost. For matters arising before 1 July 2012 with a dispute requiring arbitration, the withdrawn councils would be able to refer the matter to arbitration. Section 92CE continues to apply after Allconnex is dissolved. Allconnex cannot make a claim for a cost in its own right.

Section 92CF Referral to arbitrator provides that the parties to the dispute may refer a dispute to an independent agreed arbitrator, or if one

cannot be agreed, the arbitrator appointed by the Institute of Arbitrators and Mediators Australia (provided the arbitrator has no conflict of interest).

Should no agreement or arbitration be progressed, the parties' right to claim would expire under the stated limitation period.

Section 92CG Conduct of arbitration provides that a regulation may provide for how arbitration is to be conducted. Subject to any procedures laid out in the regulation, an arbitrator may set their own rules for the conduct of arbitration. The arbitrator is not bound by the rules of evidence. The arbitrator and the parties to the arbitration must make all reasonable endeavours to ensure that the arbitration ends before 1 December 2013.

Section 92CH Ordinary protection and immunity allowed provides for certain protection and immunity for arbitrators, representatives and documents used in arbitration - as if the matter were heard in a supreme court proceeding.

Section 92CI Orders requires the arbitrator to a withdrawal costs dispute to make an order fixing the cost of the liability (if any). Discretion is given to the arbitrator in deciding consequential orders and in making orders for who bears the costs of the arbitration itself. The arbitrator would also have discretion regarding offset costs under ordinary principles regarding loss and damage.

Section 92CJ Order final provides that an order made by an arbitrator on withdrawal costs and any incidental or consequential matters, is final and binding and cannot be appealed against.

Section 92CK How order enforced provides that an arbitrator's order may be filed in the Supreme Court and on filing becomes an order of that court, to be enforced in the ordinary way.

Division 5 Other provisions

Section 92CL Application of Judicial Review Act 1991 to particular decisions provides that any decision made by the Minister to give a retransfer notice or direction, or to approve the retransfer staff support framework, is not subject to certain provisions of the Judicial Review Act. These provisions relate to there being no statutory order for review, no reasons for decisions required and no prerogative order or injunctions provided for.

This is not stated for the retransfer scheme made by the entities as they are not entities to which the Judicial Review Act would ordinarily apply.

Section 92CM Effect on legal relationships outlines that nothing done under the chapter or the retransfer documents has an effect on certain legal relationships specified in the section, except as provided for by the documents themselves. Consents are deemed to have been given for the retransfer documents if they would be necessary to give effect to things under chapter 3A.

Section 92CN References to Allconnex provides that where the context permits, a reference to Allconnex in an act or a document is to be taken to be a reference to its successor as defined by chapter 3A.

Section 92CO Registering authority to register or record transfer requires a registering authority (such as the Titles Office for land or the Department of Transport and Main Roads for vehicle registration) to register the transfers of particular assets, liabilities or instruments which have been legally effected under this Bill. Land transactions are to be processed on appropriate forms (general requests). Other transfers which do not require particular forms (such as transferring vehicles) will require that all the relevant information that would be required be provided in writing.

Subsection (3) provides certain exemptions for transfer of vehicles from Allconnex, so that things such as Certificates of Inspection and Gas Safety Certificates do not have to be obtained.

Section 92CP Non-liability for State taxes, charges or fees provides an exemption for stamp duty or taxes under another State Act or charges or fees under other State Acts in relation to retransfers done under a retransfer document.

Section 92CQ Tax equivalents provides for the ending of the Tax Equivalent Regime (TER) for Allconnex for functions performed after the end of 30 June 2012. It clarifies that this regime applies to liabilities accrued for functions performed before that date (e.g. TER payments made after the end of 30 June 2012) but in relation to functions undertaken before the end of 30 June 2012).

The withdrawn council businesses, as local governments, operate under the Local Government Act TER.

Section 92CR Existing trade waste compliance notices provides for the 'roll over' of a trade waste compliance notice delivered by Allconnex so that it is deemed to have been given by the successor council.

Part 5 Provisions for other laws and instruments

Division 1 Preliminary

Section 92CS Application of pt 5 provides for Part 5 to apply from the end of 30 June 2012, i.e. the date when Allconnex ceases to be a service provider and the withdrawn councils become operational as service providers.

Division 2 Water Act

Section 92CT Provision for market rules provides for Allconnex to cease being a grid customer under the market rules. In its place the withdrawn councils become registered as grid customers and as distribution service providers under the market rules. This section applies all instruments under the market rules (e.g. approved protocols, grid water management plans, and notices given by the SEQ Water Grid Manager or rules administrator) to the withdrawn councils.

Section 92CU New grid contract documents for withdrawn councils applies where Allconnex was a party to a grid contract with the SEQ Water Grid Manager before the end of 30 June 2012. In the place of the Allconnex contract, there are deemed to be 3 new grid contracts.

The terms of these 3 new grid contracts are taken to be the same terms as applied in the contract with Allconnex, but read with necessary changes to reflect that they operate only:

- in relation to each withdrawn council; and
- for the withdrawn council's local government area rather than the whole of Allconnex's geographic area.

Subsection (4) clarifies that the Minister's power to change grid contracts under section 360ZDD remains. It should be noted that the other provisions regarding time limitations on amending multi-area documents in section 92DH do not apply here as the parties are unable to amend their own contract, given this power is reserved to the Minister under section 360ZDD.

Section 92CUA Water efficiency management plans provides for 'rolling over' from Allconnex to the relevant successor of a range of documents or matters in train in relation to Water Efficiency Management Plans (WEMPS) under Chapter 2A, part 5, division 3. The section deals with rolling over at the end of June 2012 of:

- Allconnex's notices to customers;
- draft WEMPS awaiting a decision by Allconnex;
- approved WEMPS; and
- customer applications awaiting a decision by Allconnex; and
- any outstanding liability or obligation of a customer to Allconnex.

Section 92CUB Migration of other actions provides for "rolling over" Allconnex's other actions (including decisions, notices or other documents) to the relevant successor. These actions are those under the Water Act which are not covered under section 92CUA. This is subject to the other provisions of Chapter 3A and does not affect the successor's power under the Acts Interpretation Act to amend or repeal a decision given by Allconnex and transferred under this section.

Division 3 Water Supply Act

Subdivision 1 Existing trade waste and seepage approvals

Section 92CV Existing trade waste and seepage water approvals provides that all such approvals given by Allconnex are taken to be given by its successor (the withdrawn council where the trade waste occurs). The provision also requires a successor to give a notice to the holder of the trade waste or seepage approval if the regulator under the Water Supply Act has

given Allconnex a notice requiring the trade waste approval be amended, but Allconnex has not yet provided this notice to the holder.

Section 92CW Power to amend existing trade waste approvals for particular purposes provides for consistency amendments to be given where necessary to reflect the transfer of a trade waste or seepage water approval to a particular withdrawn council. This might be necessary for interpretation of the trade waste approval, noting that there are other provisions in the Bill allowing for references to Allconnex to be read as a reference to a successor council where the context permits.

Any consistency amendments must be made by 1 July 2013.

The section requires the withdrawn council to go through the ordinary procedures for doing consistency amendments such as giving the holder a show cause notice as to why the amendment should not be done and providing information notices.

Subdivision 2 Other matters

Section 92CX Migration of other applications provides for “rolling over” to Allconnex’s successor at 1 July 2012, any applications made to Allconnex which had not been decided at the end of 30 June 2012. This ensures the applicant need not re-apply despite the change of deciding entity. This section includes applications to connect to Allconnex’s infrastructure and applications for trade waste or seepage water approvals.

Section 92CY Migration of Allconnex’s actions provides for “rolling over” Allconnex’s actions under the Water Supply Act (including decisions, notices or other documents) to the relevant successor for up to 1 July 2013.

This enables a successor to rely on decisions made by Allconnex or an Allconnex document (such as a customer charter, drinking water management plan, or strategic asset management plan) for a period of one year. The successor thus has up to 1 July 2013 in which to make their own document for their local government area. A regulation can extend this period for a document beyond one year.

The section also clarifies that this does not limit the successor's ability to later change the decision or document if they otherwise would have had the power to do so. The section does not change the time at which the decision or document was made (e.g. for any appeals, the ordinary time would run).

Section 92CZ Compliance and other notices effectively rolls over any of Allconnex's compliance, information and regulator notices given under the Water Supply Act, that have not been complied with. A notice is taken to have been given on 1 July 2012.

Section 92DA Plans under the Water Supply Act—generally applies so that the withdrawn councils are in the same position as Allconnex. Therefore, the withdrawn councils are not required to undertake audits or report on certain plans, including strategic asset management plans and system leakage management plans. They are still required to do so for drinking water quality management plans and recycled water management plans. Withdrawn councils are not required to have drought management plans or outdoor water use plans.

Once a withdrawn council has adopted its netserv plan (by 1 July 2013) the requirements relating to certain plans (except for drinking water management plans and recycled water management plans) will no longer apply to the withdrawn councils.

Section 92DB Provision about service areas—after water netserv plan is in effect provides that once a withdrawn council has a netserv plan in place, the provisions regarding declared service areas under the Water Supply Act do not apply. Also the provisions regarding access to services and connection to services under the Water Supply Act will no longer apply due to being replaced by the connections policy and related provisions in the relevant netserv plan. Similarly the restriction of supply provisions under the Water Supply Act would no longer apply to a withdrawn council, although there are provisions continued for withdrawn councils under this Bill.

Section 92DC Strategic asset management plan applies the relevant parts of Allconnex's strategic asset management plan to the local government area of a withdrawn council, until the council has its netserv plan in place. The provision clarifies that the ordinary approvals by the regulator for the strategic asset management plan are not required for the transfer.

Section 92DD Recycled water management plan applies the relevant parts of Allconnex's recycled water management plan to the recycled water management schemes in the local government area of a withdrawn council.

Section 92DE System leakage management plans applies the relevant parts of Allconnex's system leakage management plan to the local government area of withdrawn council, until the council has its netserv

plan in place. The provision clarifies that the ordinary approvals by the regulator for the system leakage management plan and certification are not required for the transfer.

Section 92DF Drinking water quality management plan applies the relevant parts of Allconnex's drinking water quality management plan to the local government area of withdrawn council, until the council has its own drinking water quality management plan in place.

Division 4 Water EPP

Section 92DG Trade waste management plans and managing wastewater services provides that once a withdrawn council has made a netserv plan (which is due by 1 July 2013), certain provisions of the *Environmental Protection (Water) Policy 2009* will not apply to the council as a sewage service provider. The effect will be that the councils do not, in their Total Water Cycle Management Plans, provide for sewage management or trade waste management as these matters will be dealt with in their netserv plans.

However a withdrawn council is not required to have a Total Water Cycle Management Plan in place until 1 July 2013, the same date as its netserv plan. This is because each withdrawn council is taken to be a large local government for the purposes of the *Environmental Protection (Water) Policy 2009* and is therefore not required to have its Total Water Cycle Management Plan in place until 1 July 2013.

For the period from the end of 30 June 2012 (i.e. 1 July 2012) to 30 June 2013, a withdrawn council can rely on the relevant components of the Allconnex trade waste and sewage management plans.

Division 5 Amending particular documents to reflect transition

Section 92DH Amendment power allows councils to continue to rely on certain Allconnex documents (multi-area documents) for a year after transfer, that is, until 1 July 2013 by which time each withdrawn council is to make their own documents.

A withdrawn council can amend a multi-area document within that time, provided that the council complies with the other provisions in the part and it is done in the same way as the document would ordinarily be amended or made.

Division 6 Planning Act

Section 92DI Cessation of Allconnex's functions provides that Allconnex's functions cease under the Sustainable Planning Act, including its:

- concurrence agency power;
- functions under Chapter 9, Part 7A to deal with development applications, decisions notices, negotiated decision notices, compliance assessment, conditions about non-trunk infrastructure, funding trunk infrastructure, adopted infrastructure charges and other infrastructure charges, infrastructure agreements, regulated infrastructure charges, alternatives to paying various infrastructure charges, supply of other than planned infrastructure, applying various provisions to distributor-retailers, amending the SEQ infrastructure charges schedule and dealing with appeals about planning and charging; and
- other functions as a distributor-retailer.

The obligations of a withdrawn council to Allconnex under the Sustainable Planning Act also cease.

Section 92DI also provides for the transition to Allconnex's successor of Allconnex's functions in relation to development applications or compliance requests that have not commenced or are not finalised. The provisions of the Sustainable Planning Act in relation to the integrated development assessment system cease to apply to Allconnex. In effect the assessment manager role of each withdrawn council expands to assume Allconnex's functions as a concurrence agency or compliance assessor.

In addition, under the Sustainable Planning Act, Allconnex had powers to impose adopted infrastructure charges. That Act provided for Allconnex and each of its participating local governments to agree on a proportional split of the maximum adopted charges for different categories of development. Allconnex's proportion of the charge related to water and

wastewater infrastructure for Allconnex and the councils' proportion to three other infrastructure networks. Allconnex and a council could each charge up to their respective allowable proportion of the maximum adopted charge. With the dissolution of Allconnex, this situation no longer applies. Therefore each withdrawn council will need to make a new resolution setting their adopted infrastructure charge across their five infrastructure networks, to apply from 1 July 2012.

Section 92DJ Continued effect of non-application of planning schemes under s 78A provides that nothing in Chapter 3A prevents the continued effect of section 78A (which deals with the application of planning schemes for development in the SEQ region).

Division 7 Acquisition of Land Act

Section 92DK Existing acquisitions provides that a successor to Allconnex is taken to be a constructing authority for acquisitions which have already been made by Allconnex under the Acquisition of Land Act.

Section 92DL Acquisitions interrupted by retransfer scheme or notice effectively rolls over any acquisition notices given by Allconnex in relation to land being acquired under the Acquisition of Land Act. In this case, the relevant withdrawn council may continue the taking of land by giving to the person or entity whose land is proposed to be resumed, a notice that the withdrawn council has become the constructing authority and the address for service of documents.

Upon the giving of this notice, the withdrawn council becomes the constructing authority and Allconnex's rights and obligations end in relation to the taking of the land. The purpose of the taking of land does not change.

Section 92DM Provisions for withdrawn council becoming constructing authority requires Allconnex to give the relevant withdrawn council the documents relating to the acquisition under section 92DL. Any land acquired under that notice vests in the withdrawn council as the constructing authority, rather than the Crown. The withdrawn council has the same functions and obligations in relation to the proposed acquisition as did Allconnex and does not represent the Crown (the State). The rights of a person who has been served with a notice has the same rights despite a withdrawn council becoming the construction authority under these

provisions. References to Allconnex are taken to be references to the withdrawn council if the context permits.

Division 8 Land Act

Section 92DN Provision for particular freehold land and Land Act leases provides that all land acquired by Allconnex under section 75 or 76 must be transferred to the geographically connected withdrawn council, that is the council in whose area the land is located. A retransfer document is prohibited from transferring the land to another withdrawn council.

Division 9 Plumbing and Drainage Act 2002

Section 92DO Cessation of functions and other matters provides that, under the Plumbing and Drainage Act, Allconnex's SEQ water functions (i.e. approving connections or disconnections or altering connections to water infrastructure) and other functions as a distributor-retailer cease, as do any obligations for a withdrawn council or anyone else.

Division 10 LGA 2009

Section 92DP LGA 2009 applies for particular debts to Allconnex provides for the situation where, at the end of 30 June 2012, Allconnex is owed an amount for a 'charge-related debt'. In that case, the provision provides that from 1 July 2012, the *Local Government Act 2009* applies as if the debt were overdue rates and charges owing to the relevant council under the Local Government Act. It also rolls over the due date for the charge so that the date the debt was due to Allconnex becomes the date it was due for the council. It also provides that Allconnex's actions to recover a debt can be viewed as council actions to recover the debt. This allows Allconnex's actions to be taken into consideration under the Local Government Act provisions enabling councils to recover certain legal costs for recovering debt.

Charge-related debt is defined to include any or all of the following:

- (a) overdue fees and charges;
- (b) relevant indexation on overdue charges;
- (c) a charge imposed under a 1 July handover arrangement; and
- (d) costs imposed under a court order in relation to section 53AV(1)(b).

The term also includes charges imposed under a 1 July 2010 charge handover arrangement, being arrangements mentioned in the expired sections 26 and 27 of the South East Queensland Water (Distribution and Retail Restructuring) Regulation 2010, which include arrangements which Allconnex had to collect council charges. It also includes any order for costs to be paid under section 53AV(1)(b).

The general intent of these provisions is to allow for the distributor-retailer charging regime to accrue to 30 June, for example the DR Act rate of interest and CPI on charges. Then from 1 July 2012, the withdrawn council would rely on the Local Government Act provisions. Those Local Government Act provisions include the ability to sell land in certain circumstances where charges are overdue. This provision would allow a withdrawn council to sell land (if the normal requirements were met), even though all or part of those charges were accrued by Allconnex (rather than the council). This applies even though Allconnex would not have been able to sell land to recover that debt.

Part 6 Provisions for separately retransferred land and attached assets

Section 92DQ Application of pt 6 provides that part 6 applies if a withdrawn council becomes an owner of an asset attached to land (e.g. a sewerage treatment plant or reservoir) and the withdrawn council does not own or have a right to occupy the land. This situation will only occur where a third party has acquired the land as other provisions in the Bill require assets and land to be transferred together to the council which owns the land.

Section 92DR References to land with asset attached provides that the asset referred to in the division includes the parcel of land on which that asset is located.

Section 92DS Entry to the land by local government workers provides that, if assets are on land owned by third parties, those assets are local government facilities of a withdrawn council under section 144 of the Local Government Act. This section, among other things, creates a right for local government workers to access the land (other than a home), without the landowners' consent for a number of functions including doing maintenance or repair on the asset. Those Local Government Act provisions require compliance with certain procedures including providing the owner with certain information.

Section 92DT Land owner's obligations for asset provides that the third party owner of land cannot, without the withdrawn council's written consent, do the things mentioned in this section (e.g. interfere with the asset, change the use of the land, carry out material works or grant other's inconsistent rights to use the land).

Part 7 Restrictions on particular charges for 2012-13 financial year

Division 1 Preliminary

Section 92DU Definitions for pt 7 provides for definitions for the CPI price capping provisions as they apply to the withdrawn councils.

Section 92DN Application of pt 7 provides the circumstances under which the CPI price capping regime applies for the withdrawn councils for the 2012-2013 year. This is essentially the same circumstances as apply for distributor-retailers, that is, it applies for small business customers and residential customers for water and wastewater services (other than trade waste). It also applies so that the withdrawn council must pass on a capped charge to a customer, who then passes on the charge to their own small customer or residential customer. This would apply to certain residential

and small business tenants and occupiers of lots in a body corporate or retirement villages.

Division 2 Cap for 2012-13 financial year

Section 92DW Cap provides the formula for establishing the capped charge for 2012-2013, which provides that charges may not increase by more than CPI. This is calculated with reference to charges which were charged to the customer when the operations were run by Allconnex (i.e. the 2011-2012 BC or base charge). The provision clarifies that the 2011-2012 BC did not include the bulk water component, as was the case for distributor-retailers.

Section 92DX Cap not affected by rebate or subsidy change clarifies that the same rules apply to a withdrawn council as was the case for Allconnex regarding the CPI cap. A customer must not see any increase in charges beyond a CPI increase, despite any change in rebate or subsidy of the withdrawn council.

Division 3 Provisions for no or partial base year

Section 92DY Application of div 3 provides for the calculation of the CPI cap where there is no data for part or all of the preceding year on which to base their calculation. This is where the appearance of a new customer or a new property means there is no full base year on which to base the calculation of a CPI cap increase for the customer.

Section 92DZ Notional base component required for working out cap applies the same type of requirement as applied to Allconnex to ascertain a notional base component in order to work out a CPI cap.

Section 92EA Criteria if no base year provides for a methodology for working out a CPI cap for a withdrawn council where there is no base year for the CPI formula. That is, the withdrawn council must consider the charges by Allconnex on similar customers during 2011-2012.

Section 92EB Criteria if partial base year provides for a methodology for working out a CPI cap for a withdrawn council where there is only a

partial base year for a customer. The withdrawn council must consider the actual charges imposed by Allconnex during 2011-12.

Part 8 Workforce provisions

Division 1 Support framework for retransfer

Section 92EC Ministerial approval of framework provides for a new retransfer staff support framework to cover employees transferred from Allconnex to withdrawn councils and employees of the withdrawn councils affected by the transition. The provisions in subsection (1) are enabling and do not mandate the coverage of all matters listed in subsection (1)(a).

The framework replaces the application of the 2009 Staff Support Framework for all Allconnex employees and any council employees which the framework itself deals with.

In approving the retransfer staff support framework, the Minister is required to seek the views of the Industrial Relations Minister. As was the case for the 2009 framework, the new retransfer staff support framework notice is deemed to be subordinate legislation.

Section 92ED When framework commences provides for the retrospective commencement of the framework (on the date stated in the framework) prior to the commencement of this section and prior to its actual gazettal.

Section 92EE Effect on staff support framework provides for the ending of the 2009 framework as it applied to Allconnex or any of the withdrawing councils as that framework is to be replaced by the retransfer staff support framework. Things already done under the 2009 framework are not invalidated by its replacement. Nothing changes the application of the 2009 framework as it applies to the other distributor-retailers and their relevant participating council employees

Section 92EF Publication of framework states certain publication requirements for the new framework, including publication on the Queensland Water Commission website. Failure to comply with these procedural requirements does not invalidate or affect the framework.

Section 92EG Obligation to comply with framework requires Allconnex, withdrawn councils and organisations mentioned (e.g. unions) to comply with the new framework as it applies to the entity. Contraventions are not provided for in this section, but if required, the Minister can make directions in relation to the framework where necessary.

Section 92EH Framework prevails over retransfer scheme or notice provides that those notices are subject to the new framework and any provision of those notices, to the extent of any inconsistency, would be invalid.

Division 2 Preservation of employee rights

Subdivision 1 Preliminary

Section 92EI Application of div 2 provides that the division applies to the transfer of an employee of Allconnex to a withdrawn council under a retransfer document (i.e. a transfer scheme, transfer notice or a direction).

Subdivision 2 General provisions

Section 92EJ Transfer has effect despite other laws and instruments provides for the transfer having effect despite other laws, contracts or instruments.

Section 92EK Continuity of employment provides that the transfers from Allconnex do not interrupt continuity of service, constitute termination or retrenchment or redundancy, create an entitlement to payment of other benefits due to no longer working for Allconnex, or of itself, require payments for accrued rights. This section overrides any arrangements between Allconnex and employees.

Subdivision 3 Preservation of employees' rights during retransfer period

Section 92EL What is the *retransfer period* and *existing conditions* provides for the period that the relevant protections have effect.

Section 92EM What is a *designated industrial instrument* provides for the instruments that are “designated industrial instrument” under this subdivision – which now includes the Queensland Local Government Officers’ Award 1998.

Section 92EN **Preservation of rights** provides that during that period, the employees' conditions are those that existed at the transfer from Allconnex (subject to the retransfer support framework) and are not to be determined by reference to other laws or instruments such as awards.

Section 92EO **Provisions for existing conditions** allows an employee to enforce their existing conditions under the stated instruments (which include the designated industrial instruments under section 92EM), as if they were under an industrial instrument under the Industrial Relations Act. It also provides for dispute resolution clauses to apply.

Section 92EP **Declaratory provision for industrial instruments** clarifies that the transfer periods referred to in section 92EL does not prevent a designated industrial instrument from applying to employees after the end of the retransfer period. That is, relevant instruments are still capable of underpinning existing conditions should any certified instrument that is already on foot end, with those instruments still applying after a certified instrument is entered into.

Part 9 Dissolution of Allconnex

Section 92EQ **Fixing dissolution day** allows the Minister to fix the day for dissolution (winding up) of Allconnex in a Gazette notice. This is subject to the Minister being satisfied that the retransfer has or will be completed and Allconnex’s existence is or will be no longer needed.

While Allconnex will cease its operations as a service provider on 1 July 2012, it will still have residual functions such as final financial accounts

and reports and resolution of taxation liabilities that may require it to exist for a period after 1 July 2012.

Section 92ER Dissolution provides that on the dissolution day Allconnex will cease to exist, its board members and Chief Executive Officer will go out of office (with the board members' contracts ending).

Section 92ES Other provisions for dissolution provides for a number of matters regarding Allconnex's dissolution. This includes that the State has no liability in relation to the dissolution. It also provides that this part does not prevent the payment to a former board member or chief executive to a payment that was accrued prior to the dissolution day, but such rights cease to accrue immediately on the dissolution day. Subject to a retransfer document, the withdrawn councils are the successors to Allconnex for such rights to benefits and entitlements.

Clause 24 Amendment of s 93 (Minister's power to make code) replaces the references to distributor-retailers with references to SEQ service providers with respect to the making of the customer water and wastewater code.

Clause 25 Amendment of s 94 (Particular matters code may provide for) replaces the references to distributor-retailers with references to SEQ service providers with respect to the matters to be contained in the customer water and wastewater code – with particular reference to customer charters and meter readings.

Clause 26 Amendment of s 99AAA (Distributor-retailer to give report to commission) replaces the references to distributor-retailers with references to SEQ service providers. This now requires a SEQ service provider to provide a report to the Queensland Water Commission about customer complaints about matters contained in the customer water and wastewater code.

Clause 27 Amendment of s 99AB (Obligation to comply with part) replaces the references to distributor-retailers with references to SEQ service providers, providing that a SEQ service provider must comply with Part 4 regarding other customer service provisions.

Clause 28 Amendment of s 99AC (Application of complaints standard) replaces the references to distributor-retailers with references to SEQ service providers, providing that a complaints standard and the Energy and Water Ombudsman Act apply to a SEQ service provider.

Clause 29 Amendment of s 99AD (Customer service charter) replaces the references to distributor-retailers with references to SEQ service providers, providing that a SEQ service provider must make a customer service charter. Note that under section 92DH, a withdrawn council can rely on the Allconnex charter until 1 July 2013.

Clause 30 Replacement of s 99AE (Updating of and access to customer service charter) replaces this section with two new sections.

Section 99AE Updating charter provides that a SEQ service provider (a distributor-retailer or withdrawn council) must update its customer service charter as soon as practicable to take account of the provisions of the customer water and wastewater code and this part. Allconnex updated its customer charter after the code came into effect in January 2011. The withdrawn councils can rely on the relevant parts of the Allconnex charter (which already complies with this section) until 1 July 2012 under section 92DH.

Section 99AEA Access to charter provides that a SEQ service provider (a distributor-retailer or withdrawn council) give a free copy of its customer service charter to any person who has not previously received a copy who requests this. When a withdrawn council first makes its individual charter, it must tell its customers that the charge has been made and the customer's rights to a copy.

Clause 31 Amendment of s 99AFA (Distributor-retailer may accept meter reading by customer) replaces the references to distributor-retailers with references to SEQ service providers, providing that a SEQ service provider may accept meter readings by customers in particular cases.

Clause 32 Amendment of s 99AG (Meters must be read annually) replaces the references to distributor-retailers with references to SEQ service providers, providing that a SEQ service provider must take reasonable steps to read meters annually.

Clause 33 Replacement of s 99AH (Methods and basis of charging) replaces section 99AH.

Section 99AH (Methods and basis of charging) provides for amended provisions for estimated meter reads to align this with the methodologies undertaken by other local governments.

Clause 34 Amendment of s 99AI (Special meter readings) replaces the references to distributor-retailers with references to SEQ service providers,

providing for special meter readings to be done by a SEQ service provider on the same basis as applies to distributor-retailers.

Clause 35 Replacement of s 99AJ (Meter accuracy test at customer's request) replaces section 99AJ.

Section 99AJ Meter accuracy test at customer's request provides for independent testing of meters on effectively the same terms as applies to distributor-retailers.

Clause 36 Amendment of s 99AM (Notice of test results) replaces the reference to a distributor-retailer test with a reference to a SEQ service provider test – which provides for the SEQ service provider to provide notice of test results to a customer as soon as possible.

Clause 37 Amendment of s 99AN (Refund and adjustment if inaccuracy) replaces the reference to a distributor-retailer test with a reference to a SEQ service provider test – which enables the SEQ service provider to refund or make an account adjustment for a customer.

Clause 38 Amendment of s 99AO (Using testing instruments) replaces the reference to a distributor-retailer test with a reference to a SEQ service provider test – which provides for the SEQ service provider to ensure testing instruments are of an appropriate standard and records of tests are kept.

Clause 39 Replacement of s 99AT (Restricting water supply for not paying charges or giving security) replaces section 99AT.

Section 99AT Restricting water supply provides for the matters stated in the previous section in respect to restricting supply for non payment of an account to apply to the withdrawn councils on the same terms as apply to distributor-retailers.

Distributor-retailers retain their powers elsewhere in this chapter to require payment of security in certain circumstances – and failure to pay security under this section can be a cause for restricting supply. However, the withdrawn councils are able to rely on other powers under the Local Government Act, will not have the power to require payment of security, and therefore are not able to restrict supply for non-payment of security.

Nothing in this section allows a SEQ service provider to completely cut off supply or to reduce water supply to the premises to less than the level necessary for health and sanitation purposes.

Clause 40 Amendment of s 99ATA (Publication etc. of charges) replaces the reference to distributor-retailers with a reference to SEQ service providers – which provides for the SEQ service provider to publish its charges in the same manner as applied to a distributor-retailer.

Clause 41 Amendment of s 99ATB (Exemption from charges) replaces the reference to a distributor-retailer with a reference to a SEQ service provider – which provides for exemptions from charges in the same manner as applied to a distributor-retailer.

Clause 42 Amendment of s 99AU (Application of div 4) replaces the reference to a distributor-retailer with a reference to a SEQ service provider – which provides for division 4 to apply to SEQ service providers.

Clause 43 Amendment of s 99AV (Matters required to be stated in account) replaces the reference to a distributor-retailer with a reference to a SEQ service provider – which provides for the same types of matters to be stated in a withdrawn council's customer account as those required for a distributor-retailer's customer accounts. The exception is that the title for the distribution and retail component of an account for a withdrawn council is to be the 'Local Government distribution and retail price'.

Clause 44 Replacement of s 99AW (Requirements for accounts included in rates notice) replaces section 99AW.

Section 99AW Requirements for accounts for rates notices enables a SEQ service provider to include a water and wastewater account with their rates notice provided it is on a separate page to the rest of the rates notice. It also must clearly identify that it is from a distributor-retailer or that it is an account from a withdrawn council purely for water and wastewater services.

Clause 45 Amendment of s 99AX (New owner's obligation to notify distributor-retailer) replaces the reference to a distributor-retailer with a reference to a SEQ service provider – which provides for a SEQ service provider to be notified after the transfer of premises by the new owner in the same manner as applied to a distributor-retailer.

Clause 46 Amendment of s 99AY (What is the SEQ design and construction code) replaces the requirement that the three distributor-retailers jointly make the Code, with a requirement it be jointly made by the SEQ service providers (i.e. the distributor-retailers and the withdrawn councils).

Clause 47 Amendment of s 99AZ (Requirement to have code) replaces the requirement that the three distributor-retailers must have a Code by 1 July 2013, with a requirement the SEQ service providers have a code.

Clause 48 Amendment of s 99BB (Public notice about availability of draft code) replaces the requirement that the three distributor-retailers must publicly consult on a draft Code, with a requirement that the SEQ service providers do so. It requires that the SEQ Service providers have the draft code available for inspection and purchase.

However, changes to the definition of “inspection and purchase” in the Schedule (dictionary) mean that the draft code is to be available for inspection at a SEQ Service providers’ public office. As the SEQ service providers do not have the legal right to lawfully copy or sell the entire Code (with the Water Services Association of Australia holding the right to do this), a service provider is to provide information about how a person may lawfully obtain a copy.

This replaces the current requirement that a distributor-retailer provide access to the draft Code on its website and have it available for purchase or copying document.

Clause 49 Amendment of s 99BC (Preparing final code) replaces the requirement that the three distributor-retailers must consider all public submissions on the draft Code, with a requirement the SEQ service providers do so.

Clause 50 Amendment of s 99BD (Adopting code) replaces the requirement that the board of each distributor-retailers must adopt the Code, with a requirement the SEQ service providers do so – in the case of a distributor-retailer by their board, in the case of a withdrawn council by a council resolution.

Clause 51 Amendment of s 99BE (When code has effect) replaces a reference to the distributor-retailers adopting the code, to the SEQ service providers doing so.

Clause 52 Amendment of s 99BF (Amendment of code) replaces a reference to the distributor-retailers amending the code, to the SEQ service providers doing so.

Clause 53 Amendment of s 99BG (Power of Minister to direct distributor-retailer to take action about code) replaces references to the Minister’s powers to give directions to the distributor-retailers, with the power to give directions to the SEQ service providers.

Clause 54 Amendment of s 99BH (Power of Minister if distributor-retailer does not comply with direction) replaces references to the Minister taking direct action where a distributor-retailer has not satisfactorily complied with a direction, with references to the Minister taking action where a SEQ service provider has not so complied.

Clause 55 Omission of ch4A, pt 4 (Miscellaneous) omits ch4A, pt 4 (Miscellaneous).

Clause 56 Amendment of s 99BJ (Requirement for distributor-retailer to have plan) replaces the requirement that a distributor-retailer must have a netserv plan by 1 July 2013, with a requirement that a SEQ service provider must have a netserv plan by this date.

Clause 57 Amendment of s 99BK (Plan to be consistent with SEQ regional plan and planning assumptions) adds to the requirement that a distributor-retailer's netserv plan must be consistent with the SEQ Regional Plan and the planning assumptions of its participating local governments. For a withdrawn council or a corporate entity established to deliver water and wastewater services by a withdrawn council, their netserv plans must be consistent with the planning assumptions in the council's priority infrastructure plan.

Clause 58 Amendment of s 99BL (Requirement for distributor-retailer to review plan) replaces the requirement that a distributor-retailer must review its netserv plan to ensure it is consistent with the SEQ Regional Plan and the planning assumptions for the distributor-retailer's geographic area. Instead an SEQ service provider undertake a review to ensure consistency with the SEQ Regional Plan or the relevant planning assumptions (as defined in section 99BK).

Actions to be undertaken in the review process by a distributor-retailer are to be undertaken by a SEQ service provider.

Clause 59 Amendment of s 99BM (Purposes of plan) applies the purposes for a distributor-retailer's netserv plan for its geographic area to a SEQ service provider's netserv plan for its local government area.

Clause 60 Amendment of s 99BO (Content of part A of plan) applies the requirements for the content of Part A of a netserv plan to apply to a distributor-retailer's geographic area, also to a SEQ service provider's area. For a withdrawn council or a corporate entity established to deliver water and wastewater services by a withdrawn council, the netserv plan is for the local government area of the withdrawn council. It also refers to the

“relevant planning assumptions” for a SEQ service provider, which are the assumptions in a priority infrastructure plan that apply to the relevant area of a distributor-retailer or a withdrawn council.

It requires an SEQ service provider to indicate in its netserv plan how it proposes to achieve effective outcomes for the provision of water and wastewater services within its relevant area and within the SEQ region as a whole.

This will be complemented by provisions to be contained in a regulation requiring all SEQ service providers to consult with each other about achieving effective service provision across SEQ when preparing their draft netserv plans.

Clause 61 Amendment of s 99BP (Content of part B of plan) applies the requirements for the content of Part B of a netserv plan for a distributor-retailer’s geographic area to Part B of a SEQ service provider’s plan for its relevant area.

It also clarifies that, in providing information about new infrastructure to meet expected future development and growth in its relevant area, the SEQ service provider is to consider demand for water and wastewater services based on low, medium and high population growth scenarios.

Clause 62 Amendment of s 99BQ (Matters distributor-retailer must have regard to in making plan) amends the section heading and its content by replacing references to a distributor-retailer with references to an SEQ service provider. This section outlines the particular matters the SEQ service provider must have regard to when making a netserv plan. Similarly, it clarifies that it is the council-made total water cycle management plan, that a particular SEQ service provider is to have regard to. It also requires a withdrawn council or its corporate entity (service provider) to have regard to efficient infrastructure provision and planning that takes the broader outcomes for the SEQ region into account.

Clause 63 Amendment of s 99BR (Process for making or amending plan) replaces references to the process for a distributor-retailer making or amending its netserv plan, to the SEQ service providers doing so.

Clause 64 Amendment of s 99BS (Content of regulation for making or amending plan) replaces a reference to a regulation to contain requirements for a distributor-retailer to make its netserv plan, to a SEQ service provider doing so. It also clarifies the council is to endorse its

proposed netserv plan for consistency with the council's planning assumptions.

Clause 65 Replacement of ss 99BT and 99BU replaces these two sections.

Section 99BT Keeping particular documents available for inspection and purchase provides for the documents that a SEQ service provider is to keep available for inspection and purchase, and for which of these are to be also available on the SEQ service provider's website.

The associated definition of "inspection and purchase" in the schedule limits the obligation to have available for purchase or copying, the documents for which the SEQ service provider has the relevant rights or copyright. For example, this would prevent a SEQ service provider selling or providing copies of the SEQ Design and Construction Code. Where a SEQ service provider cannot sell or provide copies of a document, it must have a hard copy of this at its office for inspection by the public.

Section 99BU Requirements for infrastructure charges register contains the requirements for the infrastructure charges register for a distributor-retailer (which were previously part of section 99BT). A withdrawn council or its corporate entity (service provider) will be subject to the infrastructure charges register provisions under the Sustainable Planning Act that apply to other councils.

Clause 66 Amendment of s 99BV (Distributor-retailer may charge for copies of documents) replaces references to a distributor-retailer charging for copies of documents (including postage where relevant) to a SEQ service provider doing so.

Clause 67 Amendment of ch 5, pt 2 heading (Participating local government price mitigation documents) amends the heading to reflect that the withdrawn councils will also have price mitigation plans and final price paths.

Clause 68 Amendment of s 99BW (Price mitigation plans) amends the section to reference that where a withdrawn council has re-established its water business or established a corporate entity to provide water services, the council price mitigation plan will relate to charges by the council's water business or its corporatised entity-service provider (should a council establish one).

Clause 69 Amendment of s 99BX (Final price paths) amends the section to require final price paths by withdrawn councils for their water business

or corporatised entity-service provider (should a council establish one). This amendment does not change the requirements in relation to distributor-retailers.

A council (either a participating local government for a distributor-retailer or a withdrawn council) retains the obligation to implement the price path

This clause also corrects a minor error in the section regarding the minimum time horizon for the price path, being five years rather than the previously stated six years.

Clause 70 Insertion of new s 99BZD inserts a new section 99BZD.

99BZD Compensation by local governments for particular matters requires councils to make a financial adjustment where they take certain actions or make certain decisions (the triggering event) where those things would cause a financial detriment to either the distributor-retailer or to another participating council. These decisions are:

- individual directions made under section 49A;
- changes to rebates or subsidies during the CPI price cap period;
- implementation of final price paths; and
- other things prescribed under a regulation.

The section also requires the council responsible for the triggering event and the affected entities to make reasonable efforts to negotiate in good faith and reach agreement on compensation, if any. Any such agreement may not effectively change participation rights without the Minister's approval or anything else prescribed under a regulation.

A regulation may also prescribe when an adjustment need not be made and for other things about the financial adjustments (compensation).

This section does not apply to the withdrawn councils after they re-establish their water businesses.

Clause 71 Amendment of s 100C (Commission may make guidelines) replaces references to guidelines applying to a distributor-retailer with reference to guidelines applying for a SEQ service provider.

Clause 72 Amendment of s 100D (Application of Water Supply Act internal and external review provisions for particular decisions under Act) amends the definition of chief executive to apply to a SEQ service provider and not a distributor-retailer.

Clause 73 Amendment of s 100DA (Requirement for distributor-retailer to give information) replaces references to requirements applying to a distributor-retailer providing information to the Queensland Water Commission with references to a SEQ service provider doing the same.

Clause 74 Amendment of s 100F (Application of Water Supply Act enforcement provisions for particular offences) applies certain enforcement powers for particular matters to a SEQ service provider in the same terms as for distributor-retailers previously.

Clause 75 Amendment of s 102 (Regulation making power) amends the matters for which a regulation may provide, by adding a regulation may provide for a withdrawn council or its corporate entity-service provider as service providers.

Clause 76 Insertion of new s 107A inserts a new section 107A.

Section 107A Declaratory provision for s 83 declares that the Queensland Local Government Officer's Award applies, and always applied, to employees of distributor-retailers as a prescribed industrial instrument under section 83. The section also clarifies that the transfer period stated in section 83 never prevented an award or a section 83 instrument from applying to a transferred employee or applying after the period in section 83 ended. That is, relevant instruments are still capable of underpinning existing conditions should any certified instrument already on foot end, and those instruments can still apply after a certified instrument is entered into.

Clause 77 Insertion of new ch 6, pt 6

Part 6

Transitional provisions for South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2011

Section 119 What is a *transitional matter* provides that a transitional matters is any of:

- the retransfer;
- the cessation of Allconnex's functions or its dissolution;
- the service provider functions of a withdrawn council or its corporate entity-service provider; and
- anything else necessary or desirable for another distributor-retailer arising from the matters above.

Section 120 Price mitigation plans of withdrawn councils provides that where a council becomes a withdrawn council, its price mitigation plan now applies to the council not to Allconnex.

Section 121 Customer water and wastewater code amendments for transitional matters provides that section 97(2) (which relates to minor inconsequential amendments to the Customer Water and Wastewater Code) does not apply to any code amendment which the Minister considers to be for a transitional matter. That is, the ordinary publication and submissions processes which ordinarily apply to code amendments do not apply.

Section 122 Deferral of application of s 99AV provides that section 99AV(1)(c),(d),(e),(i),(l) and (m) (which prescribe matters to be contained in an account to a customer for water and wastewater services) do not apply for a withdrawn council until 2 years after this section commences, or an earlier time prescribed by a regulation.

Section 123 Transitional regulation-making power enables the making of a transitional regulation to provide for anything that is necessary to allow or facilitate a transitional matter, where the DR Act does not sufficiently provide for this. Such a regulation can have retrospective effect, but is not to apply at an earlier date than the commencement of section 123. A transitional regulation must state it is a transitional regulation. This section and any regulation made pursuant to it, will expire one year after this section commences.

Clause 78 Amendment of schedule (Dictionary) provides new and amended definitions for terms for the DR Act.

Part 3 **Amendment of Energy and Water Ombudsman Act 2006**

Clause 79 Act amended provides for amendments to the Energy and Water Ombudsman Act to provide for the amendments necessary for the dissolution of Allconnex Water (and its replacement by the withdrawn councils as scheme participants) and to make minor amendments regarding certain privacy matters.

Clause 80 Replacement of section 7A (What is a *water entity*) defines a water entity as either a distributor-retailer or a withdrawn council (i.e. Gold Coast, Logan and Redland City Councils) – with all to be subject to the Energy and Water Ombudsman’s jurisdiction.

Clause 81 Insertion of new s 25A Use and disclosure of personal information provides for the disclosure and exchange of a referrer’s personal information between the water entities and the Energy and Water Ombudsman Queensland. This provision not only provides protection to the water entities but also covers the Energy and Water Ombudsman Queensland and any other parties to the dispute.

Clause 82 Replacement of s 64A (Scheme participation—water entities) provides that each of the two categories of a water entity becomes an Energy and Water Ombudsman Queensland scheme participant from the following dates:

- for a distributor retailer from 1 January 2011; and
- for a withdrawn council from 1 July 2012.

From these respective dates, water entities become subject to the Act, including the funding obligations and the dispute resolution provisions. There are other transitional provisions for the Energy and Water Ombudsman to be able to levy proposed user pays fees to withdrawn councils before 1 July 2012.

Clause 83 Amendment of s 67A (Amount of participation fee—water entity) omits section 67A as the provision applied to the amount of participation fees to be paid by the water entities (distributor-retailer) for 2010-11 financial year which is now past.

Clause 84 Insertion of new pt 12 inserts new transitional provisions into the Energy and Water Ombudsman Act where necessary to reflect issues

around the dissolution of Allconnex and the addition of the withdrawn councils as scheme participants.

Part 12

Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2011

Section 103 Definitions for pt 12 provides for definitions of Allconnex and successor for Part 12.

Section 104 Migration of small customers (water) of Allconnex provides that a customer who immediately at the end of 30 June 2012 was a small customer (water) of Allconnex becomes a small customer (water) of the successor on 1 July 2012.

Section 105 Existing dispute referrals provides for the ongoing actioning of disputes referrals about Allconnex before 1 July 2012. Under this section, the dispute referral is taken to have always been a dispute referral about the successor to Allconnex.

Section 106 Disputes not referred before 1 July 2012 provides for disputes about the performance of Allconnex's water entity functions, that could have been but were not made to Energy and Water Ombudsman Queensland before 1 July 2012. From 1 July 2012, either party to the dispute can make a dispute referral for the dispute as if Allconnex's successor has performed the functions.

Section 107 Existing investigations provides for an investigation or preliminary inquiry started before 1 July 2012 about Allconnex, to be taken to be a procedure of the same type about Allconnex's successor. The successor is taken to be, and to have always been the relevant entity for the procedure.

Section 108 Existing information requirements deals with any information request made by Energy and Water Ombudsman Queensland to Allconnex prior to 1 July 2012, that has not been complied with. The successor is required to comply with the request.

Section 109 Existing orders, decisions, declarations and directions deals with any orders, decisions, declarations and directions made on Allconnex prior to 1 July 2012 by Energy and Water Ombudsman Queensland is taken to be made against its successor.

Section 110 Amended budget for 2011-12 financial year provides for the preparation of an amended budget by the Energy and Water Ombudsman for the 2011-12 financial year to include the withdrawing councils becoming scheme participants from 1 July 2012. From 1 July 2012 the withdrawing councils become subject to the Act, including the funding obligations and the dispute resolution provisions.

Section 111 Withdrawn councils' user-pays fees for 2012-13 financial year provides that the withdrawn councils become scheme participants from the commencement of the section, so from that time, they are liable to the payment of user pay fees to the Energy and Water Ombudsman. The Energy and Water Ombudsman must prepare a forecast of the costs of the user pay fees. In forecasting the user pay costs of a withdrawn council (as a scheme participant for the 2012-13 financial year), the Energy and Water Ombudsman may base the costs on Allconnex's performance costs for the previous quarter. The sharing of these relevant performance costs will be under the withdrawn council's share of the participation rights under the DR Act.

Section 112 References in Acts and other documents defines that a reference to a water entity or scheme participant is taken to include a reference to a withdrawn council and that a specific reference to its successor council.

Clause 85 Amendment of schedule (Dictionary) provides new and amended definitions for this Act.

Part 4 Amendment of Plumbing and Drainage Act 2002

The amendments to the Plumbing and Drainage Act deal with the requirements for councils, before issuing certain plumbing approvals in South East Queensland, to ensure the relevant distributor-retailer has approved the connection to, disconnection from or changing the connection to its water infrastructure.

These amendments provide that, from the date when Gold Coast, Logan and Redland City Councils re-establish their water businesses after withdrawing from Allconnex, these approvals are to be made by one of the three withdrawn councils in place of Allconnex which will no longer exist. Similarly, it provides for the provision of information about specified minor works to be provided to these withdrawn councils in place of Allconnex.

Note, Section 53 of the DR Act already allows a distributor-retailer to delegate to a local government, all or part of the distributor-retailer's power to approve the connection to, disconnection from or changing a connection to the distributor-retailer's water infrastructure.

Clause 86 Act amended provides that this Act amends the *Plumbing and Drainage Act 2002*.

Clause 87 Amendment of s 84 (Regulated work or on-site sewerage work by a public sector entity) provides for the issuing of a compliance permit or compliance certificate by the public sector entity undertaking the regulated work or on-site sewerage work. The public sector entity cannot issue its approval without the written consent of the relevant service provider, that is, a distributor-retailer or a withdrawn council depending on the area in which the work lies. A copy of the public sector entity's permit or certificate is to be given to the relevant distributor-retailer or withdrawn council.

Clause 88 Amendment of s 85 (Process for assessing plans) provides that an applicant must furnish the council with a document or information to show the plan has been approved by or for the relevant service provider. A corresponding provision states the council cannot issue its plumbing approval unless it is the relevant service provider or it has obtained the approval from the relevant distributor-retailer.

Clause 89 Amendment of s 86 (General process for assessing regulated work and on-site sewerage work) provides that an applicant must furnish the council with a document or information to show the work has been approved by or for the relevant service provider. A corresponding provision states that council cannot issue a compliance certificate unless it is the relevant service provider or it has obtained the approval from the relevant distributor-retailer.

Clause 90 Amendment of s 87 (Minor work) provides that where a local government is not the service provider for the work, the relevant entity or

person giving a notice of minor work must give the relevant service provider a copy of the notice.

Clause 91 Insertion of new pt 10, div 8

Division 8 Transitional provisions for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2011

Section 188 Reference to relevant service provider until 1 July 2012 provides for the potential impact of amendment to be in the Sustainable Planning and Other Legislation Amendment Act 2011 (SPOLA), which may be passed before this Bill. It provides for the application of particular definitions, depending on which Bill is passed first.

Clause 92 Amendment of schedule (Dictionary) provides new definitions for the terms of “relevant service provider” and “SEQ water work” for this Act.

Part 5 Amendment of Queensland Competition Authority Act 1997

Clause 93 Act amended provides that this part amends the *Queensland Competition Authority Act 1997*.

Clause 94 Insertion of new pt 16 inserts a new part 16.

Part 16 **Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2011**

Section 254 Effect of regulation amendment provides that the Amendment of the *Queensland Competition Authority Regulation 2007* by this Bill does not affect the power of the Governor in council to further amend or repeal the regulation.

Part 6 **Amendment of Queensland Competition Authority Regulation 2007**

Clause 95 Act amended provides that the Act amends the Queensland Competition Authority Regulation.

Clause 96 Amendment of s 2 (Definitions) omits the definition of Allconnex.

Clause 97 Amendment of s 2A (Declaration of monopoly business activity—Act, s 20) replaces a reference to monopoly business activities to refer to Gold Coast, Logan and Redland City Councils.

Part 7 **Amendment of Water Act 2000**

Clause 98 Act amended provides that this part amends the Water Act.

Clause 99 Amendment of s 360ZCY (Content of market rules) provides for a minor amendment to the head of power provisions of the market rules which clarifies that the contracts referred to also include grid service

provider contracts (on the bulk supply side) as well as grid customers (the distributor-retailers and the withdrawn councils).

Part 8 Amendment of Water Supply (Safety and Reliability) Act 2008

Clause 100 Act amended provides that the Act amends the *Water Supply (Safety and Reliability) Act 2008*.

Clause 101 Amendment of s 114 (Application of div 5) replaces the reference to a distributor-retailer with a reference to a SEQ service provider – with the consequence that division 5 (other than this section) does not apply to a SEQ service provider.

Clause 102 Amendment of s 138 (Guidelines for rate notice or amount for supply of water to residential premises) provides that if there is any conflict between guidelines for the SEQ region by the Queensland Water Commission and any requirement under the DR Act, the guidelines and section 138 (1) do not apply to the extent of the conflict.

Clause 103 Amendment of s 169 (Restricting domestic water supply in particular circumstances) provides that section 169 applies if the service provider is not a withdrawn council – which are governed under section 99AT.

Clause 104 Amendment of sch 3 (Dictionary) provides new and amended definitions for this Act.

Part 9 Minor and consequential amendments

Clause 105 Acts amended provides that the schedule amends the Acts it mentions.

Schedule Acts amended

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 1 Section 13—

13 Functions provides that a distributor-retailer may perform its functions inside or outside Queensland.

Clause 2 Section 53(11) *omits* the definition of functions.

Clause 3 Section 53ARC (1) and section 53ARD (1) amends a reference to fixed access charges.

Clause 4 Section 53ARD (3)(a) replaces a definition of CPI.

Clause 5 Section 54(1)(a)(ii) replaces references to the Local Government Act 1993 or the Local Government Act 2009 with “the LGA 2009 or CBA 2010”.

Clause 6 Sections 77E(5), 77K(6) and 100(2)(d) omits references to “and powers”.

Clause 7 Section 99ATB(1)(a) replaces a reference to ‘*Local Government Act 2009*’ with “LGA 2009”.

Clause 8 Section 99AX(4), replaces reference to the ‘Local Government Act 2009 or the City of Brisbane Act 2010’ with ‘LGA 2009 or CBA 2010’.

Clause 9 Section 99AX(5) omits the definition of ‘the Local Government Act’.

Clause 10 Section 100A omits and replaces reference to “Water Policy” with water EPP.

Clause 11 Section 100A(6) omits the definition of “Water Policy”.

Energy and Water Ombudsman Act 2006

Clause 1 Sections 67A, 97, 98 and schedule amends the reference to the year in the definition of “2010-2011 financial year”.