Parliamentary Committees

South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012

Report No. 23
Finance and Administration Committee
November 2012

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Acknowledgements

The Committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Department of Energy and Water Supply, Queensland Health and Queensland Treasury and Trade.

Contents

Abbreviations

CEO	Chief Executive Officer
CSG	coal seam gas
DEWS	Department of Energy and Water Supply
DSDIP	Department of State Development, Infrastructure and Planning
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the *Legislative Standards Act 1992*
LGAQ	Local Government Association of Queensland
LinkWater	Trading entity owned and operated by Queensland Bulk Water Transport Authority
OGIA	Office of Groundwater Impact Assessment
PSC	Public Service Commission
QFCAP	Queensland Fluoridation Capital Assistance Program
QFF	Queensland Farmers Federation
qldwater	Queensland Water Directorate
QTT	Queensland Treasury and Trade
QUU	Queensland Urban Utilities
QWC	Queensland Water Commission
SDIIC	State Development, Infrastructure and Industry Committee
SEQ	South East Queensland
Seqwater	Trading entity owned and operated by Queensland Bulk Water Supply Authority
SLC	former Scrutiny of Legislation Committee
Together	Together Queensland Industrial Union of Employees
WaterSecure	Trading entity owned and operated by the Queensland Manufactured Water Authority
WEMP	water efficiency management plan
WCRWS	Western Corridor Recycled Water Scheme
WGM	South East Queensland Water Grid Manager

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
the bill	*South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012*
the Committee	Finance and Administration Committee
the department	Department of Energy and Water Supply
the Minister	Minister for Energy and Water Supply
Public potable water supply	Means a water supply at the point it supplies potable water to the public by means of a water treatment plant or reticulation equipment[1]
Potable water	Means that it is intended to be, or is likely to be, used for human consumption[2]
Public potable water supplier	Means if there is a water treatment plant for the water supply, the owner of the water treatment plant; or otherwise the owner of the reticulation equipment for the water supply.[3]
Withdrawn council	Any of the three councils – Gold Coast City Council, Redland City Council and Logan City Council – who withdraw from the Southern SEQ Distributor-Retailer Authority, Allconnex

[1] *Water Fluoridation Act 2008*, Schedule – Dictionary
[2] *Water Fluoridation Act 2008*, Schedule – Dictionary
[3] *Water Fluoridation Act 2008*, Schedule – Dictionary

Chair's foreword

This report presents a summary of the Committee's examination of the *South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012*.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The bill amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *South East Queensland Water (Restructuring) Act 2007*, the *Water Act 2000*, the *Water Fluoridation Act 2008* and the *Water Supply (Safety and Reliability) Act 2008.* The bill also makes minor and consequential amendments to a number of other Acts.

The Committee has recommended that the bill be passed and has made three additional recommendations.

On behalf of the Committee, I would like to thank those that took the time to provide submissions and those who met with the Committee and provided additional information during the course of this inquiry.

I also wish to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee for their continuing hard work and contribution.

Michael Crandon MP
Chair

November 2012

Recommendations

Standing Order 132 states that a portfolio committee report on a bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for Explanatory Notes.

The Committee has made the following recommendations:

Recommendation 1 **3**

The committee recommends that the *South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012* be passed.

Recommendation 2 **18**

The Committee recommends that the department ensure that the Rural Water Advisory Group be considered a priority as part of the ongoing consultative processes.

Recommendation 3 **24**

The Committee recommends that the department consider whether an extension to the commencement dates stipulated in the regulation is warranted in view of the short time frames available for implementation of the bill.

Recommendation 4 **26**

The Committee recommends that the department consider whether the bill needs to be amended to alter the title of section 169 to reflect the extension of the application of the section.

1 Introduction

1.1 Role of the committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 18 May 2012.[4] The committee's primary areas of responsibility are:

- Premier and Cabinet; and
- Treasury and Trade.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the bill be passed;

b) may recommend amendments to the bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the bill by any of the following methods:

a) calling for and receiving submissions about a bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Minister for Energy and Water Supply, the Hon Mark McArdle MP, introduced *South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012* (the bill) to the Legislative Assembly on 31 October 2012. The bill was referred to the State Development, Infrastructure and Industry Committee (SDIIC). On 1 November 2012, the Legislative Assembly agreed to a motion to refer the bill to the Finance and Administration Committee (FAC).

The Committee is required to report to the Legislative Assembly by 22 November 2012.

[4] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the bill included calling for public submissions; a public briefing by officers from the Department of Energy and Water Supply (DEWS), Queensland Treasury and Trade (QTT) and Queensland Health; and a public hearing.

The Committee also considered expert advice on the bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the bill on its webpage on 1 November 2012. The Committee also wrote to stakeholder groups inviting written submissions on the bill.

The closing date for submissions was Friday 9 November 2012. The Committee received 99 submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the committee's website and are available from the committee secretariat.

The Committee noted that many of the submissions did not address the issues raised in the bill but rather stated their objections to fluoridation of water supplies. The Committee will not address the concerns outside the terms of reference in this report.

1.5 Public briefing

The Committee held a public departmental briefing on the bill with officers from DEWS, QTT and Queensland Health on Monday 12 November 2012. A list of witnesses who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing will be published on the Committee's website and available from the committee secretariat.

1.6 Public hearing

The Committee held a public hearing on Friday 16 November 2012 at Parliament House, Brisbane. The following groups, invited by the Committee, attended the hearing:

- Queensland Water Directorate representing Local Government Association of Queensland (LGAQ) and local government
- Queensland Urban Utilities (QUU)
- Bundaberg Regional Council
- Queensland Farmers Federation (QFF)

A list of witnesses who gave evidence at the public hearing is contained in Appendix C. A transcript of the hearing will be published on the Committee's website and available from the committee secretariat.

1.7 Policy objectives of the South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012

The primary objectives of the bill are:

- the rationalisation of the SEQ bulk water industry by the merger of the three bulk water entities – the Queensland Bulk Water Supply Authority (currently trading as Seqwater); the Queensland Bulk Water Transport Authority (trading as LinkWater); and the South East Queensland Water Grid Manager (WGM) – into a single bulk water service provider;
- the dissolution of Queensland Water Commission (QWC);
- the reconfiguration of the operating, planning and regulatory frameworks under the *Water Act 2000* and the *Water Supply (Safety and Reliability) Act 2008*; and
- amendment of *Water Fluoridation Act 2008* to extend the criteria under which an exemption may be sought from the requirement that a relevant water supply be fluoridated and to clarify that an exemption may only be sought for an eligible relevant public potable water supply.

Pursuant to Standing Order 132(1)(a), the Committee recommends that the bill be passed.

Recommendation 1

The Committee recommends that the *South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012* be passed.

2 Examination of the *South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012*

2.1 Background

The bulk water industry in South East Queensland (SEQ) has undergone significant change since 2006.

In 2006, the *Water Act 2000* was amended to establish the Queensland Water Commission (QWC) as an independent statutory body charged with responsibility for achieving safe, secure and sustainable water supplies in SEQ. The Act was amended in December 2010 to extend the Commission's role to include managing the impacts on groundwater levels of water extraction by petroleum and gas tenure holders, including coal seam gas producers.[5]

Prior to 2007, the bulk water source, transport and treatment assets were owned and operated by 25 different entities, servicing 17 retail businesses based on local government boundaries.[6]

In November 2007, the *South East Queensland Water (Restructuring) Act 2007* was enacted. That legislation established a bulk water supply entity to own and operate bulk water supply infrastructure in the SEQ region; established a manufactured bulk water supply entity to own and operate the Western Corridor Recycled Water Scheme (WCRWS) and the SEQ (Gold Coast) Desalination Plant; established a bulk water transport entity to own and operate major pipelines in the SEQ region; and established a Water Grid Manager to buy water services from the above entities and sell to the retail businesses and SEQ power stations.[7]

The entities established under that Act were:

- the Queensland Bulk Water Supply Authority which traded as Seqwater – owned and operated bulk water supply infrastructure;
- the Queensland Bulk Water Transport Authority which traded as LinkWater – owned and operated major pipelines;
- the Queensland Manufactured Water Authority which traded as WaterSecure – owned and operated the WCRWS and the Gold Coast Desalination Plant; and
- the SEQ Water Grid Manager (WGM) – managed the strategic operation of the water grid.

The water assets of SEQ Councils where acquired through this process and incorporated into the entities established under the Act.

In July 2010, the government established three new water distribution and retail organisations, under the *South East Queensland (Distribution and Retail Restructuring) Act 2009*, to manage distribution and sales to customers including delivery of water supply and sewerage services. The Act specifies which participating local governments are attached to which entities. These entities, called a distributor-retailer, are as follows:

- the Central SEQ Distributor-Retailer Authority trading as Queensland Urban Utilities (QUU) which is owned jointly by the Brisbane and Ipswich City Councils and the Lockyer Valley, Scenic Rim and Somerset Regional Councils;

[5] Queensland Water Commission, http://www.qwc.qld.gov.au/about/role.html [19 November 2012]
[6] *South East Queensland Water (Restructuring) Bill 2007*, Explanatory Notes: 2
[7] *South East Queensland Water (Restructuring) Bill 2007*, Explanatory Notes: 2-3

- the Northern SEQ Distributor-Retailer Authority trading as Unitywater which jointly owned by Moreton Bay and Sunshine Coast Regional Councils; and
- the Southern SEQ Distributor-Retailer Authority trading as Allconnex which was jointly owned by the Redland, Gold Coast and Logan City Councils.

In December 2010 the government announced that from 1 July 2011 WaterSecure would merge with Seqwater.

In May 2011, the Parliament passed the *Fairer Water Prices for SEQ Amendment Bill 2012*. The primary intent of that bill was to implement a price cap in order to address community concerns about the increases in water and wastewater prices and the level of accountability for setting water and wastewater prices in SEQ. The bill introduced a price cap to constrain water and wastewater distribution and retail price increases to a CPI increase per annum for residential and small business customers from 1 July 2011 to 30 June 2013. It also required SEQ councils as owners of the distributor-retailers to submit a plan for how they intend to mitigate price impacts on customers. Councils are required to publish a quantifiable price path for residential and small business customers by 1 March 2013 with the price path covering at least five years' increases.[8]

In August 2011, the three councils – Gold Coast City Council, Redland City Council and Logan City Council – who jointly owned the Southern SEQ Distributor-Retailer Authority, Allconnex, decided to withdraw and re-establish council owned and operated water businesses. Amendments were made to the Act to enable these businesses to be operational from 1 July 2012.[9]

In 2008, the Parliament passed the *Water Fluoridation Act 2008* the Water Fluoridation Bill 2008 to promote good oral health in Queensland by the safe fluoridation of public potable water supplies.[10] The Act identifies that a relevant public potable water supply means a public potable water supply supplying water to at least 1,000 members of the public. The Act (section 8) allows exemptions to be granted on any of the following grounds:

- the water supply contains naturally occurring fluoride at an average concentration that is within the concentrations prescribed under a regulation;
- because the natural water chemistry of the water supply, fluoride can not be maintained at an average concentration that is within the concentrations prescribed under a regulation;
- the addition of fluoride is unlikely to result in a substantial ongoing oral health benefit to the community and the number of members of the public who consume water from the water supply is less than 1,000.[11]

Exemptions given under section 8 apply for a period of 5 years.[12] The Act allows discretion to public potable water suppliers who are not relevant public potable water suppliers, ie, those suppliers who supply to less than 1,000 members' of the public, to add fluoride to the public potable water supply.[15]

[8] *Fairer Water Prices for SEQ Amendment Bill 2011*, Explanatory Notes: 3
[9] Queensland Legislative Assembly, Hon M McArdle, Minister for Energy and Water Supply, 19 June 2012: 745
[10] *Water Fluoridation Bill 2008*, Explanatory Notes: 1
[11] *Water Fluoridation Act 2008*, section 8(1)
[12] *Water Fluoridation Act 2008*, section 9(3)
[15] *Water Fluoridation Act 2008*, section 11

2.2 Reasons for the bill

The Minister for Energy and Water Supply advised that the bill delivers on the government's commitment to amalgamate the three South-East Queensland bulk water entities and establish a single integrated water authority responsible for delivering water to the region. He stated that the decision to consolidate the businesses into a single supply authority simplifies the complex and costly industry structure. The bill will allow the businesses of LinkWater and the SEQ Water Grid Manager to be integrated into the Queensland Bulk Water Supply Authority, with the amalgamation expected to take effect by regulation from 1 January 2013.[21]

It should be noted that the Queensland Bulk Water Supply Authority is an existing entity and the vehicle into which the other entities will be merged. The Queensland Bulk Water Supply Authority currently trades as Seqwater. The Committee was advised that, subsequent to the 1 January 2013, it will be up to the incoming Board, in consultation with the two responsible Ministers, what operating name will be used into the future.[22]

The Minister stated that the QWC has played an important role in developing long-term supply plans and demand management strategies for south east Queensland. He advised that with the now nearly full water storages and strongly embedded water efficient ethos within the community, the continuing need for a commission, a stand-alone, dedicated source of policy advice, has receded.[23]

The bill will relieve local governments of the obligation to publish a five-year price path. The Minister noted that SEQ councils have strongly argued that such mandated processes fail to recognise their responsibility and accountability to residents and the one-off publication of a five-year price path by councils does nothing to reduce prices.[24]

The bill also amends the *Water Fluoridation Act 2008*. The Minister noted that since April 2012, a number of water suppliers have requested deferral or exemption from the requirement to fluoridated due to the upfront and ongoing cost of fluoridation, the lack of appropriately trained staff to operate the infrastructure and the need to rectify ongoing water quality problems. The Minister also noted that while the Act enables a water supplier to apply for an exemption, the current criteria do not adequately recognise some of the challenges being faced by water suppliers. He advised that in response to this situation, it is proposed that the Act be amended to expand the criteria under which a water supplier may apply for an exemption whilst having regard to the object of the Act, which is to provide the greatest number of Queenslanders access to fluoridated water.[25]

2.3 Stakeholder consultation

The explanatory notes identify that the department consulted with government entities, including the entities to be merged, the distributor-retailer authorities, the Local Government Association of Queensland (LGAQ), the Queensland Water Directorate (qldwater) and the potable water suppliers directly affected by the amendments.

LGAQ highlighted their concerns in relation to the expedited process and limited consultation period associated with the bill. They stated that they were disappointed in the engagement processes (or lack thereof) prior to the introduction of the bill and the one week consultation allowance since the bill's introduction.[27]

[21] Queensland Legislative Assembly, Hon M McArdle, Minister for Energy and Water Supply, Introduction, 31 October 2012,: 2298
[22] Mr Black, Transcript 12 November 2012: 3
[23] Queensland Legislative Assembly, Hon M McArdle, Minister for Energy and Water Supply, Introduction, 31 October 2012,: 2298
[24] Queensland Legislative Assembly, Hon M McArdle, Minister for Energy and Water Supply, Introduction, 31 October 2012,: 2299
[25] Queensland Legislative Assembly, Hon M McArdle, Minister for Energy and Water Supply, Introduction, 31 October 2012,: 2299
[27] Submission 93: 2

The LGAQ noted that a 'Partners in government' agreement has been made between the government and the LGAQ on behalf of local government. This agreement iterates that the government will:

> *…undertake timely, cooperative, proper and meaningful engagement on all policy, legislation, strategy and program initiatives where local government has an interest – including in the early stages of policy formulation, with where practicable minimum consultation periods of four weeks to enable the LGAQ to engage meaningfully with its members.*[28]

Unitywater also wrote to the Committee advising that it would be beneficial if the Committee was able to secure a longer review period from the Parliament so that more than five days could be allocated for contributions to be obtained from interested parties.[29]

The Committee wrote to the Minister in response to these concerns. The Minister responded that the most significant and immediate reforms contained in the bill relate to the government's commitments to merge three SEQ bulk water statutory authorities into a new single authority and to abolish the QWC. He stated that these matters were key planks of the government's election commitments and have been subject to considerable refinement and consultation with key water industry stakeholders over the past several months.[30]

The Minister acknowledged that there may be some views requiring more consultation, however, this needs to be considered in a context of there being a clear view from the community that the merger of these entities into a more rationalised SEQ water industry structure is essential to realise cost savings and efficiencies. He noted that any delay to the bill would jeopardise the merger occurring on 1 January 2013 and the legislative amendments are essential to allow a smooth transition of existing authority staff into the new merged authority in accordance with arrangements negotiated with the businesses, trade unions and other key stakeholders.[31]

The Minister advised that while there will be operational and governance arrangements to apply immediately to both the bulk entity and the council water businesses and the distributor-retailers, there will be further refinement and improvement to these arrangements within the first 12 months. He advised that the department will continue to utilise the working group consultation processes currently in place to undertake future changes. With respect to a future long-term water restriction framework, the department will undertake a detailed public consultation process and report to the government by the end of 2013.[32]

DEWS also advised that the Council of Mayors SEQ (COMSEQ) was briefed on the proposed SEQ reforms and endorsed the 'Four Point Water Plan' which provides for the amalgamation of the SEQ bulk water entities. The Minister also met with COMSEQ in August and October 2012 and whilst minutes of the meeting are not publicly available, the Committee was advised that no issues with the bulk water merger were raised.[33]

DEWS also confirmed that they will continue to utilise a working group process to keep the businesses informed during the implementation of the bulk water authority and ensure the businesses are able to provide early and detailed advice on future regulatory matters.[34]

[28] Submission 93: 2
[29] Submission 94: 1
[30] Correspondence from Minister for Energy and Water Supply, to FAC dated 14 November 2012: 1
[31] Correspondence from Minister for Energy and Water Supply, to FAC dated 14 November 2012: 1
[32] Correspondence from Minister for Energy and Water Supply, to FAC dated 14 November 2012: 2
[33] Correspondence from Director-General, Department of Energy and Water Supply, to FAC dated 16 November 2012: 2
[34] Correspondence from Director-General, Department of Energy and Water Supply, to FAC dated 16 November 2012: 2

The explanatory notes did not indicate that employee unions had been consulted in the development of the bill, however, the department advised that they did consult with unions specifically around the transfer of employees from the existing entities to the new entities.[35]

QTT advised that each of the businesses has consultation obligations under their certified agreements and they were very cognisant of that in initiating consultation with affected trade unions very early on in the process. They advised that an industrial relations consultative committee was convened within a week of the commencement of the process with representatives from the affected bulk water entities, a number of trade unions and the Public Service Commission (PSC). They indicated that the process is continuing.[36]

The QFF noted in their submission that the proposed changes address the priority needs of the urban and industrial water supply to cope with the prolonged drought in SEQ. They advised that whilst QFF and irrigators had input to strategic water planning in the 2006-07 period, little has been done over the last six years to address the issues facing the rural schemes and now the future for commercial irrigation in the region is much more uncertain.[37] They also noted whilst that the proposed legislative changes are supported they are concerned that the Bulk Water Supply Authority has little direction or policy guidance from the government about its role in regard to rural water schemes in the region.[38]

DEWS have advised that they have provided QFF's comments to the interim board of the proposed bulk water authority and will ensure that QFF meet with the new authority in early 2013.[39]

2.4 Committee Comments

The Committee wishes to reiterate its view that, whilst it understands the government's reasons for the prompt passage of the legislation, it considers that it should be a matter of best practice that realistic consultation times are adhered to. It also considers that a thorough consultation process be undertaken to ensure that the views of all stakeholders are contemplated. The Committee notes that stakeholders often identify practical issues that could be rectified prior to the legislations' introduction, if satisfactory consultation had been completed.

The Committee considers that timely, cooperative and meaningful engagement with practical consultation periods is a worthy ideal to which the government should aspire.

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

The amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, relate to the omitting of all references to the bulk supply entities and the QWC and replaces it, where relevant, with a reference to the Queensland Bulk Water Supply Authority or its chief executive. The bill also omits references to directions relating to a council's final price path and price mitigation plans.

[35] Mr Black, Transcript 12 November 2012: 2
[36] Mr Tonks, Transcript 12 November 2012: 2
[37] Submission 48: 1
[38] Submission 48: 3
[39] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 5

The Committee sought clarification from the department regarding the reasons for the discontinuation of the obligation to publish the five-year price path. The department advised that the government made a policy decision to revoke this requirement on the basis that it imposed duplication of function and unnecessary red tape. They also advised that feedback from councils indicated that the ongoing cost to produce this information would provide no benefit to the consumer.[48]

QUU advised the committee that they assume that, with the removal of the accountability of participating local governments for setting their retail charges, they will maintain responsibility for determining retail charges in accordance with the strategic requirements of their corporate plan, participation agreement and the provisions of legislation.[49]

QUU confirmed that they are not concerned with the removal of the price mitigation plan and in fact welcome that move. However, they are concerned about the timing of the announcement of the bulk water price as this is a crucial input into the information they provide to their customers.[50]

DEWS advised that they will be undertaking a detailed bulk water price review with new prices to apply from 1 July 2013. The will report to government in March 2013 on the outcomes of the price review. They advised that they will inform the SEQ water businesses of the government's pricing decision.[51]

Existing section 92CT provides for withdrawn councils to become registered grid participants and all instruments under market rules applying to distributer-retailers are taken to apply to a withdrawn council under section 360ZDD of the Water Act. The explanatory notes omits section 92CT on the basis that as new bulk water supply agreements, due to be made, replace the section 360ZDD contracts, the provision is no longer necessary.

Chapter 4A of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* provides for the development of a SEQ design and construction code to commence on 1 July 2013. Clause 20 inserts new section 130 which deems valid any SEQ design and construction code adopted prior to commencement.

2.6 Amendments to South East Queensland Water (Restructuring) Act 2007

The amendments delete references to the Queensland Manufactured Water Authority which was dissolved on 1 July 2011. References to Seqwater are replaced with the Queensland Bulk Water Supply Authority. The amendments also remove references to WGM and 'new water entities' and update language to reflect the fact that the Queensland Bulk Water Supply Authority will be the only entity governed by Chapter 2 of the Act.

The department advised the Committee that the Queensland Bulk Water Supply Authority will take on all the responsibilities of the three existing entities and also take on some responsibilities that will be bestowed through the amendments to ensure the security of supply of water in perpetuity. The proposed legislation allows the Authority to optimise the infrastructure that is currently owned by the other entities and optimise efficiency.[63]

Existing section 9 confers planning certain functions on the water entities. Clause 24 of the bill adds to those functions by including collaborate planning activities having regard to supply and demand. Some of these activities were previously undertaken by the QWC.

[48] Mr Black, Transcript 12 November 2012: 4
[49] Submission 88: 2
[50] Ms Dudley, Transcript 16 November 2012: 3
[51] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 3
[63] Mr Black, Transcript 12 November 2012: 3

The QFF advised the Committee that they consider that the approach proposed in the bill should also be implemented for the rural water schemes.[64]

Clause 29 includes the QWC as 'relevant water entity' in section 104 of the Act. Section 105 and 106 allow for the transfer of assets, liabilities etc between relevant water entities. Section 105 is also being amended to facilitate the restructure of Seqwater, LinkWater and the WGM. The amendment to section 105 and insertion of a new section 111 deals with the rights of the employees of the relevant bulk entities in transitioning to the (merged) Queensland Bulk Water Supply Authority.

Clause 30 of the Bill amends section 105 of the Restructuring Act to authorise that a regulation made under that section may make provision about the application of industrial instruments to a relevant water entity. For example, a regulation may provide that, despite the *Industrial Relations Act 1999*:

- an industrial instrument applies to all or some employees of the merged entity; or
- an industrial instrument only applies to employees who have been transferred to another entity, and does not apply to other employees of that entity.

The explanatory notes outline that the regulation will not take away any person's existing or accrued rights such as existing leave entitlements or reduce their total remuneration although '*it will override the usual provisions regarding the transmission of industrial instruments to a new employer under the Industrial Relations Act 1999'.*

This approach is justified on the basis that it enables the transition arrangements for employees of the merged entity to be tailored for the particular transaction.

The Committee asked the department to explain the justification for allowing a regulation to override the *Industrial Relations Act 1999*. QTT advised that this relates to applying a single industrial agreement in the transfer of employees.[69] The department advised that a key objective is to harmonise industrial settings across the merging businesses, insofar as this will contribute to the broader policy objectives of reducing the overall cost of bulk water supply in SEQ. They noted that this provision must be read in light of other proposed amendments which provide that the transfers will not reduce employee's total remuneration or prejudice transferred employees' existing or accruing rights to superannuation or leave.[70]

The existing section 111 related specifically to the merger of WaterSecure and Seqwater. The new section 111 relates to a relevant water entity. The section identifies that a transfer of an employee from one relevant water entity to another does not:

- reduce the transferred employee's total remuneration;
- prejudice the transferred employee's existing or accruing rates to superannuation or recreation, sick, long service or other leave;
- interrupt continuity of service, except that the transferred employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;
- constitute a termination, retrenchment or redundancy of the transferred employee's employment by the transferor;

[64] Submission 48: 2
[69] Mr Tonks, Transcript 12 November 2012: 4
[70] Correspondence from Director-General, Department of Energy and Water Supply, to FAC dated 17 November 2012: 6

- entitle the transferred employee to a payment or other benefit merely because he or she is no longer employed by the transferor; or
- require the transferor to make any payment in relation to the transferred employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the transferor and the transferred employee.

The existing section 112 applied to employees transferred between WaterSecure and Seqwater. It required that Seqwater not take any action to end a transferred employee's employment by redundancy, other than voluntary redundancy. The provision was to apply for a period of 3 years from 1 July 2011. This section will be omitted.

New section 118 specifies that former sections 111 and 112 stop applying for the transferred employees. The explanatory notes identify that the practical effect of this new section is that the preservation of the employment arrangements for WaterSecure employees transferred to Seqwater until a new certified agreement or other agreement is in place.

Clauses 43 and 44 amend sections 50A and 51 and require that strategic or operational plans must not be inconsistent with the statement of obligations. New sections 51A-D set out the process for the issue of a statement of obligations. New section 120 sets out the process for strategic and operational plans.

The QFF advised that there will be no process which defines statements of obligations for the rural schemes and hence no requirement for the preparation of strategic and operational plans regarding these schemes.[71] They advised that it is unclear how these plans will work with the bulk water entity and they hope that the rural schemes will be part of the strategic planning process. They consider that the legislation is urban but needs to include rural schemes.[72]

Together Queensland Industrial Union of Employees (Together) advised that they have a number of concerns with the transitional processes that are occurring as a result of the restructuring of the water entities. Whilst acknowledging the need for a review of the numerous entities, they stated that they are concerned staff transitioning through the processes should not be worse off as a result of the restructure.[73]

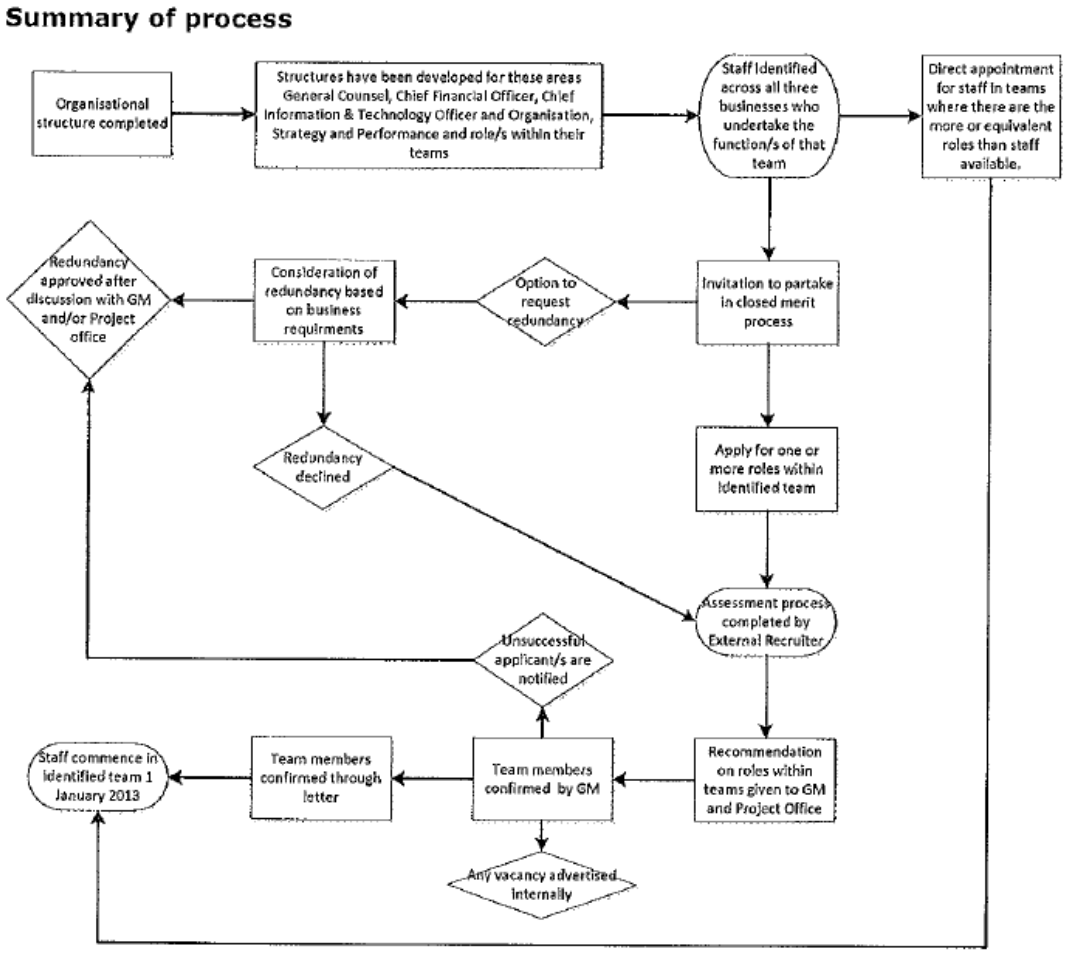
They identified their concerns to be:

- that as the water business is a growing business there should be no need for forced job losses as a result of the restructure; and
- staff transitioning to the new structure should not have to accept lesser conditions of employment.[74]

Together advised that current discussions being held between the PSC, unions and the water authorities have indicated that any staff member who is not successful in their application would be given a redundancy. They consider that this is not the intention of the new legislation.[75]

[71] Submission 48: 2
[72] Mr Johnson, Transcript 16 November 2012: 3
[73] Submission 83: 1
[74] Submission 83: 1
[75] Submission 83: 1

The following diagram indicates the proposed process to be followed by the water entities in the placement of staff within the new structure:



Source: Submission 83: 6

The Committee asked about the potential for job losses as a result of the merger and was advised that this will be a matter for the new entity's board which will be in place pending the passage of the legislation. The Committee was advised that the clear intention is to ensure the objective of meeting all the efficiency targets. The department advised that in moving from three entities to a single entity the following reductions will occur:

- the number of board members will reduce from 17 to six;
- the number of chief executive officers (CEO) will reduce from three to one; and
- the number of senior executives will reduce from 17 to six.[76]

[76] Mr Black, Transcript 12 November 2012: 2

Together also identified that currently there are a number of staff who are working a 36.25 hour week who will be transitioning to the new entity where they will be required to work a 38 hour week for which they will receive no compensation. They have recommended that an addition be made to proposed section 111 as follows:

- that the transfer does not require the transferred employees to change their weekly working hours to 38 hours unless mutually agreed.[77]

QTT advised that this issue was part and parcel of the vesting considered between the SEQ bulk water entity company that is leading the implementation and the existing businesses. They indicated that approximately 30 out of 500 certified agreement staff will be affected by this situation. They advised that there are detailed negotiations between the entities and the PSC. They advised that the government is negotiating in good faith regarding these employees.[78]

DEWS also advised that while the hours of work arrangements for some transferring employees will increase, these employees will also benefit from a wage increase of 2.2 per cent and transferring to the nearest but highest pay rate of the Seqwater certified agreement. Further, eligible employees will receive enhanced allowance rates and personal leave entitles which are available under the agreement. They advised that they have been working to ensure that transferring employees are no worse off overall as a result of the transition.[79]

2.7 Amendments to Water Act 2000

The amendments replace references to the WGM with references to the Queensland Bulk Water Supply Authority. They also dissolve the QWC and remove references to QWC and its function and powers.

Clause 50 amends the how the purpose of Chapter 2A will be achieved. The existing purpose that the chapter is to ensure the delivery of sustainable and secure water supply and demand management for the SEQ region and designated regions is retained. Existing section 340 (2)(b) establishes the QWC. New section 340(2) proposes that the purpose is achieved by:

- providing for the desired level of service objectives for water security in the SEQ region and designated regions; and
- requiring the bulk water supply authority and water service providers for designated regions to have a water security program including plans and strategies to facilitate the achievement of the desired level of service objectives; and
- optimising an efficient and reliable supply of water for the SEQ region by providing for the making of agreements for the supply of bulk services between SEQ bulk suppliers and bulk water customers; and a code to decide costs and prices and to regulate the way in which entities supply bulk services.

[77] Submission 83: 2
[78] Mr Tonks, Transcript 12 November 2012: 3
[79] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 6

Existing Chapter 2A, parts 2 to 7 relate to the QWC and will be omitted. A new Chapter 2A, parts 2 and 3 will be inserted. It should be noted that existing Division 7 (sections 360F – 360FC) relates to the funding of the commission's functions. The QWC receives its income from various sources including an annual levy payable by each water service provider (section 360F of the Water Act) as well as a levy from coal seam gas (CSG), Queensland Government grant and other revenue from bank interest and recovered rent.[80]

The department advised the Committee that QWC had two quite discrete functions around supply and demand management. The levy on the bulk service providers ceases when the QWC is abolished.[81]

The QFF advised the Committee that the QWC conducted a Rural Water Advisory Group for a number of years to address how rural water supply availability and reliability could be improved. They indicated their concern about whether this function will now be addressed.[82]

They explained that the Rural Water Advisory Group has representatives from the Department of Agriculture, Fisheries and Foresty, DEWS and the Department of Natural Resources and Mines as well as Seqwater and representatives from each of the schemes. The irrigators see it as a fairly key body because it has coverage and representatives to provide a means by which they can address the overlapping issues regarding water allocation.[83]

The department advised the Committee that the Rural Water Advisory Group is not impacted by the legislation. They advised that this consultative group will continue under the departmental banner. They also advised that the Queensland Competition Authority (QCA) is currently doing a price review of the SEQ irrigators and that is going through a normal public process.[84]

Clause 51 inserts new sections 342 – 360Z. New sections 344 – 348 relate to the desired level of service objectives. These will be prescribed by regulation and the bill requires public notice and consultation regarding the service objectives. The service objectives for water security will include the duration, frequency and severity of water restrictions that may be expected by end users of the water.

New sections 349 – 360A relate to a water security program. The bulk water authority will be required to have a water security program which includes managing demand and infrastructure, addressing future infrastructure needs and responding to drought conditions. New section 360B provides that if a water service provide is required to provide prescribed desired level of service objectives then they are not required to prepare a drought management plan under the *Water Supply (Safety and Reliability) Act 2008*.

QUU indicated that they would welcome the opportunity to provide stakeholder consultation feedback in relation to the service and planning objectives and the water security program. They consider that the bulk planning objectives and water security programs should take advice and direction from local government growth plans and distributor-retailer's infrastructure plans for when infrastructure upgrades and reliability requirements will be required. They consider that this direction should include measures related to both timing and capacity.[85] QUU also indicated that they are unclear whether they will be required to develop their own water security program.[86]

[80] Queensland Water Commission, Annual Report 2011-12, Financial performance summary: 22 http://www.qwc.qld.gov.au/about/pdf/corpdoc/annual-report-11-12.pdf [2 November 2012]
[81] Ms Leaver, Transcript 12 November 2012: 9
[82] Submission 48: 2
[83] Mr Johnson, Transcript 16 November 2012: 3
[84] Ms Leaver, Transcript 12 November 2012: 3
[85] Submission 88: 3
[86] Submission 88: 4

The LGAQ advised that they have some concerns in relation to the water security planning. They are concerned about the *already bloated regulatory burden facing water service providers in Queensland*.[87] They advised that some local governments are required by regulation to produce in excess of a dozen annual plans to report on their water business activities. They advised that this myriad of reporting required by various state and Australian government departments has long been a significant concern and frustration for water service providers. They consider that the amendments would exacerbate the issue.[88]

New sections 360C – 360L relate to bulk water supply agreements and new sections 360M – 360L relate to the bulk water supply code. The explanatory notes state that an entity can be declared, by regulation, to be a bulk water customer, a code-regulated entity or a SEQ bulk water supplier to give flexibility in choosing whether or not to regulate particular entities in terms of the application of new bulk water supply agreements or the new bulk water code. Bulk water supply agreements will be made between a SEQ bulk water supplier and distributor-retailers, a local government water business or other entity prescribed under a regulation. These agreements will be direct supply contracts. The contracts will be legally binding even though it may be that no consideration passes. Some terms within the agreements will be mandatory. However, some non-mandatory terms may be negotiated between and agreed between the parties subject to the Minister's direction.

QUU indicated their concern that proposed section 306L, which establishes the liability for bulk water parties, does not include protection for consequential loss by a third party. They advised that as the entity with direct third party customer interface, QUU risks not having any protection in the event that they are sued for consequential loss by a third party for such things as water quality or supply issues caused or related to the bulk water supply authority, over which they have not control.[89]

The department advised that the negotiations for the bulk supply agreement, which will be the instrument that will have a contractual relationship between the distributor-retailers and the bulk water supply authority is still being negotiated.[90] They advised that the issue of water quality and liability has been raised and they have asked the water businesses to provide further comments.[91]

The department advised that this clause must be read with section 49 of the Water Supply Act which provides a statutory indemnity for both the bulk and SEQ water businesses, including distributor-retailers, from a third party claim relating to an event which was beyond their control provided they have acted reasonably and without negligence. They advised that section 360L should only be relevant for third party claims against either the bulk supply authority or a distributor-retailer if there was negligence or wilful actions on either parties' behalf. They also advised that the position under section 360L can be contractually altered under section 360L(3).[92]

The bill allows for the Minister to make a bulk water supply code about the supply of bulk services by a code-regulated entity. The code may establish principles for deciding bulk water cost, price or other user price. It may also include rights and obligations, operating requirements, emergency plan requirements, principles with respect to supply of services, provisions regarding the giving of advice to the Minister, investigations and any other thing the Minister considers appropriate to facilitate the supply of bulk services. New section 360Q requires that the code be tabled within 21 days after the code or any amendment to the code takes effect.

[87] Submission 92: 4
[88] Submission 92: 4
[89] Submission 88:5
[90] Mr Black, Transcript 12 November 2012: 6
[91] Ms Leaver, Transcript 12 November 2012: 6
[92] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 5

It should be noted, however, that new section 360T provides that compliance or non-compliance with the code does not create a civil cause of action based on the compliance or non-compliance or affect or limit a civil right or remedy that exists apart from the Act, whether at common law or otherwise.

QUU advised the Committee that they are currently involved in consultation discussions with DEWS concerning the provisions of the proposed code and the terms and conditions of the bulk water supply agreement.[93] They indicated that, in principle, they have no issues with the bulk water supply agreements provisions, depending on the terms and conditions that are mandatory and discretionary. They also supported the development of a bulk water supply code provided that it offers a 'red tape reduction' on existing market arrangements which are overly complex and onerous.[94]

New section 360W gives the Minister the power, but not the obligation, to decide costs or prices for supply of bulk services for a particular period. The time period may be whole or parts of financial years or more than one financial year. The Minister may seek advice but is not required to. The Minister must consider that advice but is not bound by it. If the Minister's decision is inconsistent with the bulk water supply agreement, the cost or price decided by the Minister will prevail. New section 360Y provides that the Minister's decision is not subject to judicial review except where it is affected by jurisdictional error.

The Committee sought clarification of the Queensland Competition Authority's (QCA) ongoing role in relation to water prices. The department advised that QCA's current role of price monitoring for the distribution retailers will be maintained. They advised that the intention is to bring all the entities under a single umbrella framework for economic regulation. It is anticipated that that regulation will be relatively light handed and be similar to the price monitoring by the QCA.[95]

QUU advised the Committee that the provisions which allow for costs or prices to be decided for any time period could impose considerable uncertainty on the distributor-retailers within the industry and also create significant confusion for customers, particularly if prices are regularly changing. They noted that any regulatory framework that incorporates the new bulk water entity should ensure that it is consistent with the treatment of each regulated entity within the overall supply chain.[96]

They also advised that they would like to ensure that the giving of this pricing power, and the discretionary right to seek advice from relevant parties, to the Minister does not lead to reduced consultation between the government and other industry stakeholders.[97]

QUU explained that the bulk water price forms a significant portion of the cost of water to their customers and therefore it is important in providing information on price increases to customers. The sorts of issues they are interested in continuing to be consulted on are around how they forecast demand for consumption and how the risk allocation for the forecasting of demand falls between the entities. They consider that these issues have a significant impact on the cost of the supply of bulk water.[98]

[93] Submission 88: 2
[94] Submission 88: 3
[95] Mr Black, Transcript 12 November 2012: 7
[96] Submission 88: 2
[97] Submission 88: 4
[98] Ms Dudley, Transcript 16 November 2012: 4

The Committee sought advice from the department regarding the safeguards being put in place to ensure that consultation between the Minister and other industry stakeholders regarding bulk water prices will continue. The department advised that the economic regulatory framework is still being examined and will play a key role in the process. They noted that the new entity will have its obligations reduced somewhat in terms of the government still controlling the bulk water price. However, the intention is that in due course that entity would have some responsibilities for price setting.[99] The department also identified that the bulk water price is different to the cost of supply and the bulk water price is essentially a subsidised price.[100]

Existing Chapter 3 relates to underground water management. This function was carried out by the QWC. It is proposed that an 'Office of Groundwater Impact Assessment' (OGIA) will be established within DEWS (new Chapter 3A). Clauses 52 – 69 replace all references to the QWC with references to this office.

Clause 70 inserts a new Chapter 3A. The purpose of Chapter 3A is to establish the OGIA to perform the underground water functions previously carried out by the QWC and to provide for the functions and powers, the staffing and funding of the office.

The QFF indicated their support for the transfer of the QWC's functions to a new OGIA. They noted that the OGIA will play an important role in monitoring the impacts of CSG developments and particularly the cumulative impacts of these projects.[101]

New section 479 of the Water Act stipulates that the performance of the OGIA functions is to be funded by an annual level payable by each petroleum tenure holder to be held in a Groundwater Impact Assessment Fund. The explanatory notes state that the basis for calculating and charging the levy is identical in its terms to the existing annual levy for underground water management contained in existing section 360FA. Funds held by QWC for this purpose will be paid into the Groundwater Impact Assessment Fund. The department confirmed that the levy on the petroleum tenure holders, which funded the CSG water functions in the QWC, will continue with the new CSG functions of the OGIA.[103]

The Committee queried what safeguards have been put in place to ensure there is no undue influence on the independence of the authority by the tenure holders who are making the funding contribution. The department advised that there will be no change to what currently happens. The new office will still be obliged to independently undertake its functions. While it may be funded by the petroleum tenure holders, it has a legal obligation to provide independent evidence based information to government.[104]

New sections 1213 – 1234 contain the arrangements to transition from the existing water entities to the proposed water entities.

[99] Mr Black, Transcript 12 November 2012: 7
[100] Ms Leaver, Transcript 12 November 2012: 7
[101] Submission 48: 3
[103] Ms Leaver, Transcript 12 November 2012: 9
[104] Ms Leaver, Transcript 12 November 2012: 8

2.8 Committee Comments

The Committee was advised that the Rural Water Advisory Group will not be impacted by the legislation, however, the Committee is concerned that only limited consideration of rural issues have been considered by the QWC.

Recommendation 2

The Committee recommends that the department ensure that the Rural Water Advisory Group be considered a priority as part of the ongoing consultative processes.

2.9 Amendments to Water Fluoridation Act 2008

Section 6 of the *Water Fluoridation Act 2008* defines the meaning of a relevant public potable water supply to be a public potable water supply supplying potable water to at least 1,000 members of the public. Section 7 of the *Water Fluoridation Act 2008* provides that a public potable water supplier for a relevant public potable water supply must add fluoride to the water supply within the period prescribed under a regulation.

Schedule 1 of the *Water Fluoridation Regulation 2008* sets out the dates before which fluoride must be added. Appendix D sets out the public potable water suppliers who are required to fluoridate by 31 December 2012.

Section 8 sets out the exemptions from a requirement to add fluoride to a relevant public potable water supply. Exemptions apply for a period of 5 years after the notice of the Minister's decision (s9(3)) and at the end of this period a supplier must either apply for a new exemption or commence fluoridation. The existing exemptions are as follows:

a) the water supply contains naturally occurring fluoride at an average concentration that is within the minimum and maximum concentrations prescribed under a regulation or above that maximum concentration;

b) because the natural water chemistry of the water supply, fluoride can not be maintained at an average concentration that is within the minimum and maximum concentrations prescribed under a regulation;

c) both of the following apply –

   (i) the addition of fluoride to the water supply is unlikely to result in a substantial ongoing oral health benefit to the community, or part of the community, of the area serviced by the water supply;

   (ii) the number of members of the public who consume water from the water supply is less than 1,000.

Section 9 sets out that an applicant is not required to comply with section 7 while a decision is pending with regard whether an exemption is granted. It also stipulates that if the Minister refuses an exemption, the applicant is not required to comply with section 7 until 1 year after notice of the Minister's decision. However, the Minister may refuse an application if it is considered to be vexatious and the time extensions available under section 9 do not apply.

Section 11 allows a public potable water supplier who is not a relevant public potable water supply to add fluoride at their discretion and section 12 sets out the requirements relating to that addition.

Clause 81 replaces existing section 7 and imposes a continuing statutory obligation on a public potable water supplier to add fluoride to the water supply subsequent to the date prescribed in the regulation.

Clause 82 amends section 8 to expand the grounds under which an exemption may be granted by the Minister to an 'eligible relevant public potable water supply'. The amendments retain existing section 82(2)(a) and section 82(2)(b) noted above and omits section 82(2)(c). The amendments propose to insert the following:

c) the addition of fluoride to the water supply is unlikely to result in a substantial ongoing oral health benefit to 1,000 or more members of the public serviced by the water supply;

d) the water supply supplies water to an urban centre of fewer than 10,000 members of the public and the cost to those members or the water supplier of implementing or maintaining the addition of fluoride to the water supply is unreasonable;

e) the water supplier can not ensure the effective and safe addition of fluoride to the water supply;

f) the quality of the water supplied from the water supply may not provide a safe supply of potable water for members of the public who consume water from the water supply.

In addition to the above, notes with examples of types of circumstances where the exemption may apply are included.

Clause 80 inserts a new section 6A to define the meaning of an 'eligible relevant public potable water supply'. Only eligible relevant public potable water suppliers will be able to apply for an exemption under section 8.

An eligible relevant public water supply means:

- a relevant public potable water supply for which the public potable water supplier had not, immediately before the relevant commencement, made a substantial financial investment in constructing fluoride-dosing equipment.

An eligible relevant public potable water supply does not include:

- a relevant public potable water supply to which fluoride was being added immediately before the relevant commencement;
- a relevant public potable water supply –
  - for which fluoride-dosing equipment was, immediately before the relevant commencement, constructed; or
  - for which the public potable water supplier had, immediately before the relevant commencement, made a substantial financial investment in constructing fluoride-dosing equipment;
- a relevant public potable water supply that is –
  - supplying water to an urban centre of more than 10,000 members of the public; or
  - supplying water to more than one urban centre, or locality, with an aggregate of more than 10,000 members of the public; or
  - integrated to supply water to an urban centre of more than 10,000 members of the public.

The explanatory notes state that if a relevant public potable water supply is not an eligible relevant public potable water supply then the water supplier will be obliged to continue to fluoridate the water supply, progress to the implementation of fluoridation by the date prescribed in the regulation or if that date has passed, implement fluoridation as soon as possible.

Clauses 83 – 84 renumber sections 9 and 10 of the proposed changes to section 7 and the inclusion of section 6A.

It should be noted that transitional arrangements to be included allow that any application for exemption not dealt with prior to the commencement of the amendments will be decided as if the new section 8 had been in force.

Clause 86 inserts relevant definitions in the dictionary.

Assistance is available to eligible suppliers under the Queensland Fluoridation Capital Assistance Program (QFCAP). Under this program eligible suppliers can receive up to 100 per cent of the capital costs for fluoridation projects that meet the criteria for funding.

Queensland Health confirmed that currently water suppliers outside SEQ with water supplies requiring the implementation of fluoridation are able to apply for up to 100 per cent of eligible capital direct costs of the lowest cost solution for the installation of water fluoridation dosing infrastructure. This funding is administered by the Department of State Development, Infrastructure and Planning (DSDIP) and water suppliers will now have until 30 June 2014 to have their expenditure reimbursed.[110]

The proposed exemptions basically fall into three categories – exemption on the basis of a lack of ongoing health benefits for small populations; exemption on the basis of unreasonable capital and ongoing costs; and the inability of the supplier to be able to provide safe and effective addition of fluoride to the water.

Qldwater advised the Committee that there are 104 schemes in the current regulation are or are to be fluoridated. Approximately forty-three of these schemes would be eligible for an exemption under the proposed changes. Twenty-nine schemes currently fluoridating would be considered small in terms of capacity.[112]

The Committee received submissions from three councils regarding their experiences with the fluoridation process.

The Tablelands Regional Council advised the Committee that they intend to seek an exemption on the basis of the proposed costs.[113] However, Queensland Health advised the Committee that under the proposed amendments, Kuranda and Malanda will be ineligible for exemption as fluoride dosing infrastructure has already been installed, despite the fact it is yet to be turned on. The council will be able to apply for an exemption for Atherton.[114]

Balonne Shire Council advised the Committee of their support for the proposed amendments which will enable them to seek an exemption from the requirement to fluoridate the St George potable water supply. They provided the Committee with a practical example of the implications of proposed changes.[115]

[110] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 4
[112] Correspondence from qldwater to FAC dated 16 November 2012: 1
[113] Submission 1: 2
[114] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 5
[115] Submission 32: 1

However, they consider the use of the words 'substantial ongoing oral health benefit' in proposed section 8(1)(c)(i) to be a very subjective condition. They advised that there are approximately 2,800 residents are connected to the supply, however, a recent survey conducted by the council showed that only approximately 20% (554) residents consume the water for drinking due to the unpleasant taste of the water.[116]

Queensland Health advised the Committee that it is intended to issue guidelines to assist councils. These guidelines will have the involvement of the Queensland Fluoridation Committee. They also advised that water suppliers will be able to seek assistance from the department in understanding whether they will be eligible to apply for an exemption.[117]

Queensland Health explained that the limits in the legislation relate to the actual number of people who consume the water. They advised that the people might not be connected to the potable water supply but they might be coming to town on a regular basis and drinking the water. For example, children going to a school.[118]

The Committee queried how this figure is arrived at. Queensland Health explained that it is usually fairly clear to the Queensland Fluoridation Committee who is involved in providing advice to the Minister regarding decisions.[119]

Balonne Shire Council also detailed the estimated cost to fluoridate the St George water supply would be $465,371 excluding GST. They advised that whilst this cost would be fully funded under the QFCAP arrangements, they consider the funds could be better utilised for other purposes. They also advised that the ongoing operating costs would be $24,564 excluding GST which would need to be met by Council.[120]

They also advised that the council does not employ any trained water treatment operators and, like many small councils in western Queensland, they would face challenges recruiting and retaining skilled operators.[121] The LGAQ confirmed that the need for adequate training for fluoride operators is an issue. They advised that whilst the introduction of a certified training program is supported, there is no ongoing funding support for training.[122]

Queensland Health confirmed that Balonne Shire Council is a typical example of a small regional water supplier that the amendments are proposed to assist.[123]

Bundaberg Regional Council advised the Committee that they considered the minimum population levels to be to low. They suggested that the 10,000 person limit contained in proposed section 8 be increased to 60,000.[124] They explained that this figure was arrived at on the basis of the current population figure plus an allowance for population growth.[125] This call to increase the limit to 60,000 was supported by many other submissions, including the submission from the Member for Burnett.[126] Seventy-five of the submissions received by the Committee made reference to fluoridation of water supplies within the Bundaberg Regional Council area.

[116] Submission 32: 1-2
[117] Ms Borradale, Transcript 12 November 2012: 7
[118] Dr Young, Transcript 12 November 2012: 8
[119] Dr Young, Transcript 12 November 2012: 8
[120] Submission 32: 2
[121] Submission 32: 3
[122] Submission 92: 5
[123] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 8
[124] Submission 43: 2
[125] Councillor Bush, Transcript 16 November 2012: 5
[126] Submission 97

They advised the Committee that they understood from discussions with departmental officers that the regulation would be amended to remove the end date requirement for implementation of water fluoridation and their application for exemption was still being considered. On the basis of this advice they did not proceed with the awarding of tenders in order to comply with the legislation.[127]

Bundaberg Regional Council confirmed that they have not started construction due to a range of information that they have received from government that would have indicated they had a possibility of gaining an exemption.[128]

They advised that QFCAP funding does not meet the total costs of installation. They indicated even with funds from the QFCAP, they still have a $1.4 million shortfall in relation to the capital costs. They are also concerned about the ongoing annual operational costs.[129]

The following table depicts the costs, allocated funding and annual operating and maintenance costs associated with the project:

Water Treatment Plant	Concept Design Capital Costs	Queensland Fluoridation Capital Assistance Programme Approved Funding	Annual Operations and Maintenance Costs
Branyan	$838,068	$691,088	$60,000
Bundaberg Depot	$749,066	$617,950	$54,000
Dr May's Road	$722,267	$591,363	$51,000
Heaps Street	$1,125,187	$944,991	$66,000
Lovers Walk	$753,681	$605,477	$52,000
Peatey Street	$720,114	$591,071	$50,000
Powers Street	$660,390	$535,940	$48,000
Kalkie	$706,289	$606,518	$55,000
Gregory River	$655,015	$559,188	$48,000
Moore Park	$855,678	$713,984	$54,000
TOTAL	$7,785,755	$6,457,570	$538,000

Source: Submission 43: 3

Bundaberg Regional Council is in a unique situation whereby it has 10 individual public potable water supplies servicing a population of approximately 50,000.[130]

Queensland Health advised that the basis for the discrepancy between the estimated capital costs of the concept designs for fluoride dosing infrastructure and the QFCAP funding allocated has not been independently verified. They advised Bundaberg Regional Council to discuss the funding gap with DSDIP. Such discussions may also assist in determining alterations that could be undertaken such that the concept design could be determined the lowest cost option and therefore eligible for up to 100 per cent grant funding.[131]

Queensland Health advised the Committee that if the limits within the legislation were raised to 60,000, it would result in all water supplies, remaining to be fluoridated, becoming eligible to be considered for an exemption. It would also mean that a number of supplies serving larger urban areas would have the option of applying for an exemption which if successful would detract from the intent of the Act, which is to promote good oral health by the safe fluoridation of drinking water.[132]

[127] Submission 43: 2-3
[128] Mr Byrne, Transcript 16 November 2012: 2
[129] Mr Byrne, Transcript 16 November 2012: 2
[130] Submission 43: 3
[131] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 7
[132] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 8

The Committee questioned whether it is possible for some of the water sources with smaller numbers of residents to be considered for a partial exemption. They advised that the council has made it very clear that they will not consider a partial exemption.[133] Queensland Health advised the Committee that seven of the ten interconnected supplies service the urban area and would not be eligible for exemption because although some of the bores are relatively small, they all contribute to serve a population greater than 10,000 members of the public. Of the three remaining supplies that require fluoridation one services a population in excess of 10,000 members of the public.[134]

The LGAQ confirmed that the Bundaberg drinking water system is relatively complex and Bundaberg ratepayers can expect a four per cent increase to their water bills due to the annual operating costs associated with the installation of fluoridation infrastructure.[135]

The LGAQ welcomed the proposed amendments to the Water Fluoridation Act as providing flexibility for local government particularly where fluoridation is unviable or impractical to implement. They did, however, advise of their concern about the timeliness of advice relating to current exemption applications as well as the long term costs associated with needing to reapply for exemptions.[136]

The LGAQ also highlighted their concerns regarding the excessive time taken to respond to previous requests for extension. They advised that a number of councils (Barcaldine, Blackall-Tambo, Murweh and Paroo) has sought exemption but had still not been advised of the outcome. They highlighted their concern that in the event that these councils are not granted an extension, they will be unable to prepare and install the fluoride systems by the legislated timeline. [137]

Queensland Health advised the Committee that of the four local governments referenced above, the Minister for Health has now notified two of the councils of his decision and has advised the other two that they will be dealt with under the transitional provisions included in the bill.[138]

The LGAQ indicated their concern that the QFCAP scheme will cease in 2013 and any council who does not receive exemptions beyond the initial 5 year term will be left to fund 100 per cent of this infrastructure.[139] The QFCAP program was due to cease at the 30 June 2013, however, Queensland Health advised that the program has been extended to June 2014, but there are no current plans to extend it beyond that date.[140] Qldwater advised the Committee that they are concerned that it is probable that there will be no form of assistance available for councils who currently qualify for an exemption but who, due to issues such as population increases, will not be eligible when their current exemption expires in 5 years.[141] Bundaberg Regional Council also indicated their concern at this prospect and advised that should this occur they would have major financial issues.[142]

[133] Mr Byrne, Transcript 16 November 2012: 7
[134] Correspondence from Queensland Health to FAC, dated 21 November 2012: 1
[135] Submission 92: 5
[136] Submission 92: 4
[137] Submission 92: 4
[138] Correspondence from Director-General, Queensland Health, to FAC dated 15 November 2012: 9
[139] Submission 92: 5
[140] Dr Jackson, Transcript 12 November 2012: 8
[141] Mr Cameron, Transcript 16 November 2012: 8
[142] Mr Byrne, Transcript 16 November 2012: 8

2.10 Committee Comments

As suggested by Queensland Health, the Committee encourages Bundaberg Regional Council to consider all the options available regarding the most cost effective way of fulfilling the requirements under the legislation both now and into the future. These options include continuing discussions with DSDIP regarding QFCAP funding and consideration of seeking partial exemptions. With reference to the cessation of the QFCAP due to occur in June 2014, the Committee considers the financial risk, of deferring the implementation, to Bundaberg Regional Council and its community are substantial and untenable.

With regard to the LGAQ's concerns regarding the exemption time lines, the Committee notes that section 9 allows an applicant is not required to comply with section 7 while an exception decision is pending and if the Minister refuses an exemption, the applicant is not required to comply with section 7 until 1 year after notice of the Minister's decision.

The Committee has heard evidence that there has been variable understanding by local governments about the amendments proposed in the bill prior to its introduction. Some local governments have made financial decisions based on incorrect information. With the looming deadlines for implementation, some local governments will now be in a situation where they will be unable to meet these deadlines.

Recommendation 3

The Committee recommends that the department consider whether an extension to the commencement dates stipulated in the regulation is warranted in view of the short time frames available for implementation of the bill.

2.11 Amendments to Water Supply (Safety and Reliability) Act 2008

The amendments to the *Water Supply (Safety and Reliability) Act 2008* remove references to the entities to be abolished. The existing provisions (sections 41 – 42) allow water service providers and the regulator to put in place water restrictions in places other than SEQ. Clauses 89 – 91 extend the current provisions of the Act to include SEQ by omitting the references to water service providers and supplies in the SEQ region. Clause 92 amends section 52 which currently requires water service providers to seek the approval of the chief executive before issuing a notice to prepare a water efficiency management plan.

QUU advised that the bill empowers them to impose water restrictions across their geographic service area which aligns with other water service provider restriction powers which are currently in place outside the SEQ region. QUU noted that there are no provisions in the bill to increase the 'authorised persons' powers to allow QUU's duly appointed authorised persons to monitor compliance with any water service provider restrictions imposed by QUU or via regulator direction.[150]

QUU's view is that there is an imbalance of powers awarded to distributor-retailers in the SEQ region. They consider that QUU will not possess the same rights to protect its infrastructure and undertake compliance roles relevant to water restrictions as other water service providers in Queensland. QUU provided the example that where a water service provider is a local government, the local government is generally entitled to rely on broader powers under the *Local Government Act 2009* which are not available to QUU's authorised persons.[151]

[150] Submission 88: 3
[151] Submission 88: 4

Qldwater advised the Committee that this discrepancy only applies to a limited number of entities, including the two remaining distributor-retailer entities and the Wide Bay Water Corporation. They advised that the issue relates to being a local government versus being a local government owned entity.[152]

QUU suggested that similar powers as those available in existing Chapter 5 of the Act, such as the power of entry, perform investigations, collect evidence and issue prescribed infringement notices for breaches, should be included in the amendments to enable them to undertake their water restriction compliance roles effectively.[153]

The department confirmed that the bill will provide for individual service providers to have water restriction powers in line with what occurs in the rest of the state. They also advised that the intent of government over the next six to twelve months is to have a public consultation framework on restrictions for the long term.[154] They also confirmed that the bill enables water restrictions to be imposed immediately, however, there is a clear understanding that the consultation process with the community will occur on future restrictions.[155] They also indicated that if there is a concern around authorised officers' powers and compliance, it will be addressed as part of the process.[156]

DEWS also advised that a detailed long-term restriction framework will be developed in consultation with stakeholders and the broader community by the end of 2013 and compliance and enforcement will form part of this review.[157]

QUU confirmed their satisfaction with the department's response and believe that they will be able to place reliance, as a defence, on section 49. They also believe that they will have an opportunity to negotiate through the bulk water supply agreement and are satisfied at the moment as the provisions stands.[158]

QUU also indicated their satisfaction with the department's response with regard to water restrictions. They advised that they expect the department will consult more holistically on the question of water restrictions and access early next year.[159]

QUU is also seeking a transitional provision which would sustain the existing water efficiency management plans (WEMP) currently in existence for continuity of business operations and practical resourcing issues.[160]

The department advised that the amendments take away the mandatory requirement for WEMPs plans for high water business users. They explained that this is in order to give flexibility to service providers should they wish to require that of a business in their area.[161] The department advised that there is nothing to prevent QUU being ready to issue a notice, early in the new year, to the customers currently required to prepare and comply with a WEMP if QUU considers they are needed. These customers would only need to assure themselves that they comply with the guidelines for WEMPs prepared by DEWS. DEWS confirmed that as they currently comply with the guidelines prepared by QWC it is unlikely that they would need to do more to be compliant with the DEWS guidelines.[162]

[152] Mr Cameron, Transcript 16 November 2012: 4
[153] Submission 88: 4
[154] Ms Leaver, Transcript 12 November 2012: 4
[155] Mr Black, Transcript 12 November 2012: 5
[156] Ms Leaver, Transcript 12 November 2012: 5
[157] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 4
[158] Ms Dudley, Transcript 16 November 2012: 4
[159] Ms Dudley, Transcript 16 November 2012: 4
[160] Submission 88: 4
[161] Ms Leaver, Transcript 12 November 2012: 4
[162] Correspondence from Director-General, DEWS to FAC dated 16 November 2012: 5

The explanatory notes state that clause 96 extends the application of section 169 (Restricting domestic water supply in particular circumstances) to non-domestic and omits the reference to the "commission water restriction". The Committee notes that this is achieved by omitting the words 'used for domestic purposes'.

Clause 98 inserts a new section 356A to creates an offense if the owner of a referable dam to which a safety condition or development condition applies is contravened. The explanatory notes state that this provision will enable the compliance and enforcement provisions to be relied upon to ensure compliance with dam safety conditions.

Existing section 497 limits who may bring a proceeding for an offence against the Act. In the existing section this is usually the Attorney-General or regulator or service provider. Clause 99 inserts a new section 497(1(d) which limits who may bring a proceeding for proceeding against a provision of chapter 4 to the Attorney-General or chief executive. The explanatory notes detail that the chief executive is the dam safety regulator under the Act.

2.12 Committee Comments

The Committee is keen to see the issue of the authorised officer powers addressed, however, considers that the department's response that this issue will be considered as part of the restriction consultation process to be satisfactory.

Whilst the Committee understands that there is a difference between a domestic water supply and domestic purposes, the department should consider whether the title of the section 169 remains relevant. The section will apply 'if premises are connected to a water service'. No distinction is made within the section between domestic and non-domestic water supplies.

Recommendation 4

The Committee recommends that the department consider whether the bill needs to be amended to alter the title of section 169 to reflect the extension of the application of the section.

2.13 Minor and consequential amendments

Clause 102 inserts an additional note in section 290(1) and an additional section 300 into the *Local Government Act 2009* to clarify that the membership of employees who were members of the LG super scheme prior to their transfer to the bulk water supply authority continues.

Further consequential amendments are made to the *Energy and Water Ombudsman Act 2006* and the *Public Service Act 2008* to omit references to the QWC.

3 Fundamental legislative principles

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

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

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

3.1 Rights and liberties of individuals – does the bill have sufficient regard to the rights and liberties of individuals?

Clause 32 replaces section 111 of the *South East Queensland Water (Restructuring) Act 2007* which preserved employment arrangements for WaterSecure employees transferred to Seqwater until a new certified agreement or other agreement was put in place. The new section 111 will cover similar ground to the former section 111 in dealing with the rights of employees transferred from a relevant water entity to another relevant water entity under a regulation made under section 105.

Clause 33 omits section 112 from the *South East Queensland Water (Restructuring) Act 2007*. Former section 112 had provided employees transferred from WaterSecure to Seqwater on 1 July 2011, with a three year protection against forced redundancy.

Clause 34 inserts a new section 118 to provide that the former sections 111 and 112 stop applying for employees transferred from WaterSecure to Queensland Bulk Water Supply Authority (QBWSA) under a regulation made under section 105. Any requirement in a document for QBWSA to act in accordance with former section 112 will also no longer apply (ss.34(2)(b)).

The removal of these protections has the potential to impact on the rights and liberties of employees transferred from WaterSecure to Seqwater who had, pursuant to former section 112, enjoyed job security and had anticipated protection from the threat of forced redundancy until mid-2014.

Of this erosion of employee protections, the explanatory notes state:

> *The potential adverse effects for employees are to be balanced against extending normal industrial relations prerogatives to the bulk water business.*

The department advised that their position is that potential adverse effects for employees are to be balanced against extending normal industrial relations prerogatives to the bulk water business, ie in examining the impact on employees' rights there needs to be a balance against the needs of the employing entity to operate its business in an efficient manner. Further, it is noted that to keep the arrangements on foot would result in disparity between employees.[192]

[192] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 2

3.2 Rights and liberties of individuals – are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Clause 51 inserts new section 360Y to oust all forms of judicial review (other than for jurisdictional error) in relation to the Minister's pricing powers under section 360W and section 360X. Section 360Y provides that the Minister's decisions under sections 360W and 360X are, absent jurisdictional error, final and conclusive, and unable to be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity; and are not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

Regarding this ouster of appeal rights, the explanatory notes provide:

> *The QCA processes normally include exhaustive public submission processes and extensive reports documenting the reasons for recommendations, which provide adequate rigour around these decisions. Additionally, pricing decisions which affect residents and businesses will normally have regard to affordability and equity considerations, including the need for financial support to the whole or parts of the community. It is also noted that local governments are exempt from providing reasons for decisions under the* Judicial Review Act 1991 *in relation to their rates and charges for water services.*

The former Scrutiny of Legislation Committee (SLC) noted that fundamental legislative principles require legislation to make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. Section 360Y excludes a right to seek review of a decision of the Minister under sections 360W and 360X.

Section 360Y also operates as a privative clause. A privative clause is a parliamentary attempt to deny the courts a central function of their judicial role – it attempts to prevent courts pronouncing on the lawfulness of administrative action.[194] Where legislation purports to oust the inherent and statutory jurisdiction of the Supreme Court to review the legality of decisions and actions, the Committee also considered carefully whether the legislation had sufficient regard to individual rights and liberties or obligations. In 1971, the Commonwealth Administrative Review Committee (the Kerr committee) stated:[195]

> *Statutory provisions of this kind have been frequently enacted in Australia in connection with the jurisdiction given to inferior courts, industrial courts and tribunals and other tribunals. A statutory provision of this kind confronts the court with the necessity of resolving and reconciling two expressions of intention which appear to be inconsistent, the creation of a tribunal, but with limited jurisdiction and power only, and a declaration that its proceedings and orders are not to be the subject of challenge.*

[194] Robin Creyke, John McMillan & Rocque Reynolds, *Control of Government Action*, LexisNexis Butterworths, Australia, 2005: 15.3.1
[195] *Commonwealth Administrative Review Committee Report*, Commonwealth Government Printing Office, Canberra, 1971: 54

In given circumstances, it is possible that removal of rights to access to courts may be justified by significant legislative objectives. It should be noted however that Australian courts have traditionally resisted parliamentary attempts to limit their powers and have given a restrictive interpretation to privative clauses. Principles to be taken into account by a court will include:

- parliamentary supremacy which 'requires obedience to the clearly expressed wish of the legislature'; and
- preservation of the right to access the courts.

The SLC took the view that privative clauses should rarely be contemplated and even more rarely enacted (see *Alert Digest* 12/2007, p.20, for its consideration of the *South East Queensland Water (Restructuring) Bill 2007*).

The department confirmed the view expressed in the explanatory notes and advised that pricing decisions which affect residents and businesses will normally have regard to affordability and equity considerations, including the need for financial support to the whole or parts of the community.

They also noted that local governments are exempt from providing reasons for decisions under the *Judicial Review Act 1991* in relation to their rates and charges for water services, which would effectively hamper review. They consider that the bulk authority should be placed in a similar position to local governments as they provide the same services in the relevant sector.[196]

3.3 Immunity from proceedings – does the bill confer immunity from proceeding or prosecution without adequate justification?

Clause 51 inserts new section 360L into the *Water Act 2000* to provide that a bulk water party is not civilly liable to another bulk water party (*the relevant entity)* for any consequential loss suffered by the relevant entity arising out of, or in relation to, an act or omission, including a negligent act or omission, of the bulk water party in the performance of, or in a failure to perform, its functions under the *Water Act 2000* or its obligations, other than to the extent that the consequential loss was caused, or contributed to, by the willful default of the bulk water party; or, if the bulk water party recovers compensation from an entity in relation to the consequential loss suffered by the relevant entity –other than to the extent of the net compensation amount. 'Wilful default' is defined in section 360L(5) as any fraudulent or criminal conduct and any intentional or reckless breach of, or failure to remedy a breach of, the bulk water party's obligations.

The liability of the bulk water party to an entity for a claim for personal injury suffered by the entity is however preserved and not limited by the operation of section 360L (see section 360L(2)(a)(ii)).

Section 360L(2)(b) also provides that section 360L(1) limits the bulk water party's liability to the relevant entity, where there is a pre-existing contract between the bulk water party and the relevant entity, and the act or omission of the bulk water party is inconsistent with that contract's terms.

Section 360T states that compliance or noncompliance with the bulk water supply code does not create a civil cause of action based on the compliance or noncompliance; or *affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise* (section 360T(1)(b)). Section 360T(2) provides that, without limiting subsection (1)(b), compliance with the bulk water supply code does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

[196] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 2-3

The department advised that the clause operates so as to limit claims for certain types of consequential loss as between the bulk water authority and bulk water customers, who at the present time are all either councils, council-owned entities or government owned corporations. The rationale for the clause is to ensure that costs of operating a water supply chain, which is ultimately passed on to consumers, are not increased by adversarial claims for consequential loss. The clause attempts to re-state the existing section 360ZDI, re-drafted to reflect that supply now occurs directly between the merged bulk authority and its bulk water customers instead of via contracts where the WGM was the contractual intermediary.

The department also noted that section 49 of the *Water Supply (Safety and Reliability) Act 2008* would limit third party claims against either the bulk authority or bulk water customers, such as councils and council owned businesses, where they have acted without wilful default or without negligence. Accordingly, where issues of contribution arise out of third party claims, section 360L would only be relevant to the extent that either had wilfully defaulted or were negligent in performance of their functions. Where there is wilful default, nothing in the section prevents recourse for consequential loss (refer section 360L(1)(a)). Where there is negligence, third parties would still ordinarily be required to show causation by either the bulk authority or a bulk water customer.[199]

With regard to how sections 360T and 360L sit together, the department advised that section 360L is about limiting consequential loss and has the effect that in most instances any internal claims under their bulk water supply agreements are limited to direct and real losses rather than consequential ones. Section 360T is designed to clarify that a breach of a code provision of the same subject matter as the bulk water supply agreements, does not necessarily deprive either the bulk water customer or authority of claims against each other for direct or real losses when read with section 360L.[200]

The department provided the following fictitious example:

> *If the code imposed a regulatory standard for pressure of water at a delivery point and the bulk water supply agreements required this in a contractual sense, the bulk water customer's right to contractual damage (for direct loss) has not necessarily been lost if the bulk authority has been fined for failing to maintain pressure in accordance with the code*.[201]

3.4 Delegation of legislative power – does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

Clause 77 inserts new sections 1225 and 1234 into the *Water Act 2000* which confer power to make transitional regulations, as necessary to facilitate specified transitions outlined in the sections, and as necessary to provide for a matter *for which this Act does not make provision or sufficient provision*.

The SLC reported that it was an 'inappropriate delegation' to provide that a regulation may be made about any matter of a savings, transitional or validating nature '*for which this part does not make provision or enough provision*' because it anticipates that the bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation (see SLC *Alert Digest* 1996/3, p.10, p.19). The SLC also considered that matters about which transitional regulations may be made should be stated in the bill.

[199] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 3
[200] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 3-4
[201] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 4

It appears that proposed sections 1225 and 1234 would not come within the category of transitional regulation-making powers found to be objectionable by the SLC because the use of 'and' between paragraphs (1)(a)(iii) and (1)(b) (in each) arguably operates as a limiter on the broad scope of *for which this Act does not make provision or sufficient provision* by requiring it to be in relation to the matters specified in subsections 1225(1)(a) and 1234(1)(a).

Any transitional regulations made under sections 1225 and 1234 may operate retrospectively to the commencement date for the relevant section but both sections 1225 and 1234 and any transitional regulation made under them are deemed to expire one year after the commencement of those sections, thus limiting their operational period to a maximum of 12 months. In the context of urgent legislation, the SLC determined that a transitional regulation-making power may be considered to have sufficient regard to the institution of Parliament if it is subject to a 12 month sunset clause[202] and if there is a further sunset clause on all transitional regulations made under the transitional regulation-making power (see *Alert Digest* 2003/7, p. 25; *Alert Digest* 2001/7, p. 54; and *Alert Digest* 1996/10, p. 14).

Both of those criteria are met in the case of sections 1225 and 1234 under clause 77.

3.5 Scrutiny of the Legislative Assembly – does the bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?

Clause 51 inserts a new Part 4 Division 3 into the *Water Act 2000* to provide for the Minister to make a bulk water supply code (the code) for the South East Queensland region applicable to each code-regulated entity whether or not the entity supplies bulk services under a bulk water supply agreement.

The code may establish principles for deciding the bulk water cost, bulk water price and the other user price (section 360N). The general content of the code, including the rights and obligations of a code related entity and its operating requirements are prescribed under section 360O.

Section 360M(3) declares that the bulk water supply code is a statutory instrument under the *Statutory Instruments Act 1992* but is not subordinate legislation. The Minister must notify the making of the code by notice in the gazette and the code takes effect from the day of notification or on a later day stated in the notice (section 360P).

The gazette notice notifying the making of the code is deemed to be subordinate legislation under section 360P(2). The Minister is also required to table in the Legislative Assembly a copy of the code (or any amendment to it) within 21 days after the code or the amendment takes effect, although the copy is tabled for information only and a failure to table a copy does not affect the code's ongoing effect (section 360Q).

[202] A 'sunset' clause provides that the law shall cease to have effect after a specific date

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation. The SLC commented adversely on provisions permitting matters which might reasonably be expected to be dealt with by regulation, to be processed through an alternative means that was not subordinate legislation. In considering whether it was appropriate that matters were dealt with through alternative processes, the SLC took into account the importance of the subject matters dealt with, the practicality or otherwise of including those matters in subordinate legislation, the commercial or technical nature of the subject matter and whether the provision was a mandatory requirement or merely to have regard to.

If, despite an instrument not being subordinate legislation, there was a provision requiring its tabling and providing for its disallowance there was less concern on the part of the SLC. When a non-legislative document was required to be approved by an instrument of subordinate legislation, the SLC encouraged the inclusion of an express provision to require the tabling of the document at the same time as the subordinate legislation.

In this case it might be reasonable to assume that the bulk water supply code might be of a degree of significance regarding the provision of a reliable water supply to the South East of the State that it should be contained in subordinate legislation and thus required to be tabled and subject to disallowance by the Parliament. Here the code is declared not to be subordinate legislation however there is a requirement for the Minister to table a copy of the code to inform the Parliament and, by extension the public, of its contents.

Whilst the code itself is not subordinate legislation and thus is not subject to disallowance by the Parliament, it takes effect upon being notified in the gazette. The gazette notice notifying its making is declared to be subordinate legislation and thus is subject to disallowance. If subordinate legislation is disallowed the subordinate legislation is taken never to have been made or approved (*Statutory Instruments Act 1992* section 51). It appears therefore that if the gazette notification is disallowed, the code will be ineffective.

The Committee sought further information from the Department regarding why the code itself was not made subordinate legislation rather than the gazette notice. The department advised that the code is a replacement for the previous market rules. The code is of a commercial or technical nature and therefore correctly a statutory instrument. While the code is still being developed in consultation with stakeholders, topics for the code include:

- operating protocols, including subject matters such as pressure, flows, reservoir set levels;
- emergency protocols;
- water metering standards;
- provisions to foster integrated water network planning; and
- pricing provisions.[203]

While the code is streamlined compared to the previous market rules, which were 100 pages, the department submitted that the technicality and length of the code would make it unsuitable as subordinate legislation. The current approach is a status quo approach. They consider that, given the ability for disallowance of the notice making the code, there is an appropriate level of oversight and protection.[204]

[203] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 4
[204] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 4-5

Clause 77 inserts a new section 1216 into the *Water Act 2000.* New section 1216 will allow the Minister to, by gazette notice (a *transfer notice)*, transfer or replace authorities to take and/or interfere with water, impose requirements on such authorities, and to provide for a number of specified related purposes. Where a relevant authority or a limited authority is, under a transfer notice, replaced with one or more other authorities to take or interfere with water, the Minister must be satisfied that the conditions under which water may be taken or interfered with under the new authorities are at least as restrictive as the cumulative effect of the relevant authority or limited authority (section 1216(2)-(3)). Pursuant to section 1216(4), the conditions under which water may be taken or interfered with under the new authorities must not increase the rate at which water may be taken, change the flow conditions, increase the interference with the flow of water, or increase the total amount of water that may be taken. The transfer notice has effect despite any other law or instrument (section 1216(5)) which also makes section 1216(5) a Henry VIII clause (see below).

The gazette notice is not declared to be, and hence is unlikely to be, subordinate legislation, which means it is not subject to tabling requirements nor will it be subject to disallowance by the Parliament. The SLC commented adversely on provisions permitting matters which might reasonably be expected to be dealt with by regulation, to be processed through an alternative means. In considering whether it was appropriate that matters were dealt with through alternative processes, that SLC took into account the importance of the subject matters dealt with, and the practicality or otherwise of including those matters in subordinate legislation (see discussion above in respect of clause 51).

The department advised that, to achieve the stated objective of the bill, it is necessary for all the authorities currently held by the WGM to be transferred to the bulk water supply authority by 1 January 2013. These authorities were originally transferred to the WGM in 2008 using a similar transfer provision. The transfer notice process is the simplest and most effective method of transferring water entitlements from the WGM to the bulk water supply authority in the short time available.[205]

The department also advised that the section also provides a head of power to transfer water allocations to a party other than the bulk water supply authority. These provisions are necessary to deal with certain legacy customers of the WGM, inherited from SunWater and the former SEQ Water Corporation, who currently take limited bulk water supplies under adhoc supply contracts. The transfer notice will have a very limited scope of operation and will apply to specific authorities, the majority of which will be held by a statutory authority.[206]

3.6 Amendment of an Act only by another Act – Does the bill allow or authorise the amendment of an Act only by another Act?

Clause 30 amends section 105 of the *South East Queensland Water (Restructuring) Act 2007.* It inserts into section 105 new subsection (3) that declares that a regulation made under section 105(1)(m)(which may make provision about the application of industrial instruments to a relevant water entity and some or all of its employees) applies despite the *Industrial Relations Act 1999* and any industrial instrument. 'Industrial instrument' is defined by reference to schedule 4 of the *Public Service Act 2008* as including an award or industrial agreement; and a determination or rule of a commission, court, board, tribunal or other entity having authority under a law of the Commonwealth or Queensland to exercise powers of conciliation or arbitration for industrial matters or industrial disputes.

[205] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 5
[206] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 5

Proposed new section 105(3) is a Henry VIII clause. A 'Henry VIII' clause was defined by the SLC as a clause in an Act of Parliament which enables an Act to be expressly or impliedly amended by subordinate or delegated legislation. Henry VIII clauses are considered to offend against the institution of Parliament by offending against the principle that amendment of an Act of Parliament should be by Parliament itself, by way of amendment of the Act, and not via executive action.

Section 105(3) operates as a Henry VIII clause because it will allow a regulation made under section 105(1)(m) to prevail over any inconsistent provision/intention expressed in the *Industrial Relations Act 1999.*

The SLC's approach was that if an Act was purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the Committee would request Parliament disallow the part of the instrument that breached the fundamental legislative principle requiring legislation to have sufficient regard for the institution of Parliament (see SLC 1997, *The use of "Henry VIII clauses" in Queensland Legislation*, paragraph 5.17). The SLC considered the possibly justifiable uses of Henry VIII clauses to be limited to circumstances where the clause was necessary to facilitate – immediate executive action, the effective application of innovative legislation, transitional arrangements, or national scheme legislation. If a Henry VIII clause did not fall within any of the above situations, the Scrutiny Committee classified it as 'generally objectionable'.

On the change to section 105 the explanatory notes state:

> *While the regulation will override the usual provisions regarding the transmission of industrial instruments to a new employer under the* Industrial Relations Act 1999*, it will not take away any person's existing or accrued rights such as existing leave entitlements or reduce their total remuneration. This approach is justified on the basis that it enables the transition arrangements for employees of the merged entity to be tailored for the particular transaction.*
>
> *It is also salient to note that the application of a nominated industrial instrument is arguably within the existing powers available under section 105(1)(l) and (2); the proposed amendment simply operates to clarify this power. Furthermore, the provision should be read in light of the express protection of leave entitlements and continuity of service under new section 111. Insofar as the transfer of benefits and entitlements will be managed through a transfer regulation under section 105, it remains subject to Parliamentary oversight.*

Clause 32 replaces section 111 of the *South East Queensland Water (Restructuring) Act 2007* to preserve the rights and entitlements of employees transferring from one water entity to another under a regulation made under s.105. Section 111(3) provides that the transfer has effect despite any other contract, law or instrument. Section 111(3) appears to be a Henry VIII clause as it provides that a transfer made under a regulation has effect despite any other contract, law or instrument. If the other 'law' was a provision under an Act then the transfer made under the regulation is preserved despite any contrary intention expressed in the Act, which would make ss.111(3) a Henry VIII clause.

It appears possible that the Henry VIII clause identified above may be able to be justified as being 'necessary to facilitate transitional arrangements'.

The department advised that section 105 operates within the broader frame of chapter 5 of the Act. Relevantly, section 113 provides that a 'thing may be done under this chapter despite any other law or instrument'. Proposed new section 105(1)(m) should be read within the scope of the restructuring powers conferred under chapter 5. The narrower provision dealing with the application of industrial instruments is justified on the basis that it enables the transition arrangements for employees of the merged entity to be tailored to the particular transaction.

DEWS confirmed that a key objective is to harmonise industrial settings across the merging businesses, insofar as this will contribute to the broader policy objective of reducing the overall cost of bulk water supply in SEQ. They noted that the provision must also be read in light of other proposed amendments which provide other protections.[207]

Clause 77 inserts new section 1221 into the *Water Act 2000*. Section 1221(1) provides that an existing grid contract (a) continues to have effect after the commencement of the Amending Act section 51 and (b) ends on the day a bulk water supply agreement is made by the Minister under section 360G for each party to the existing contract that is a bulk water party for the bulk water supply agreement.

Section 1221(2) states that despite section 1221(1)(b), a term of an existing grid contract continues to have effect if the term (a) states it survives the end of the contract or (b) is prescribed to survive the ending of the contract under a transitional regulation.

Section 1221(2) is a Henry VIII clause as it allows a transitional regulation to prescribe that a term of an existing grid contract survives the ending of that contract, despite section 1221(1) of the Act evincing a different intention (ie. that an existing grid contract [and by extension its terms] ends on the day a bulk water supply agreement is made by the Minister under s.360G for each (bulk water) party to the existing contract).

It appears likely that the Henry VIII clause identified above may also be justified as being 'necessary to facilitate transitional arrangements'.

3.7 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the Bill. Whilst the Committee found that the notes are fairly detailed and contain the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins, some aspects of the wording in the explanatory notes were not satisfactory.

The Committee considers that more care should be taken when drafting explanatory notes to ensure that the language used is clear, unambiguous and written in plain English. Agencies also need to be mindful that stakeholders who use the explanatory notes may not have the detailed background knowledge needed to interpret the bill. The role of explanatory notes is to assist with the understanding of the bill. When compiling explanatory notes, agencies need to put themselves in the place of a stakeholder with limited or no knowledge of what is trying to be achieved by the bill. Explanatory notes need to include sufficient detail and be presented in such a way that they can be easily understood.

[207] Correspondence from Director-General, DEWS, to FAC dated 17 November 2012: 6

3.8 Proposed New Offence Provisions

The following table details the proposed new offence provisions created by the bill:

Clause	Proposed offence	Proposed maximum penalty
51, ins. s.350 into the *Water Act 2000*	Failure of the bulk water supply authority to have a water security program complying with s.353 to facilitate achievement of the desired level of service objectives for water security for the SEQ region or part of it.	1665 penalty units ($183,150)
51, ins. s.351 into the *Water Act 2000*	Failure of a nominated water service provider for a designated region or part of a designated region to have a water security program complying with s.353 to facilitate achievement of the desired level of service objectives for water security for the designated region or part of it.	1665 penalty units ($183,150)
51, ins. s.352 into the *Water Act 2000*	Failure of a water service provider for a designated region or part of a designated region to have a water security program complying with s.353 to facilitate achievement of the desired level of service objectives for water security for the designated region or part of it.	1665 penalty units ($183,150)
51, ins. ss.360F(3)*Water Act 2000*	Failure of a bulk water supply authority to comply (absent reasonable excuse) with a notice from the Chief Executive requiring specified information.	200 penalty units ($22,000)
51, ins. s.360J into the *Water Act 2000*	Failure of a bulk water party to comply with a direction from the Minister under s.360I.	1665 penalty units ($183,150)
51, ins. ss.360S(a) into the *Water Act 2000*	Contravention by a code-regulated entity of a provision of the bulk water supply code about making or complying with an emergency plan.	1665 penalty units ($183,150)
51, ins. ss.360S(b) into the *Water Act 2000*	Contravention by a code – regulated entity of a provision of the bulk water supply code.	200 penalty units ($22,000)
51, ins. ss.360Z(3) into the *Water Act 2000*	Failure of the SEQ service provider or the bulk water supply authority to comply with a direction from the Minister under ss.360Z(2) about the supply of bulk services by the SEQ service provider to the bulk water supply authority or the charge payable in relation to that supply.	1665 penalty units ($183,150)
70, ins. ss.460(3) into the *Water Act 2000*	Failure (absent reasonable excuse) of a petroleum tenure holder to comply with a notice requesting specified information about the exercise of underground water rights under the holder's petroleum tenure.	1665 penalty units ($183,150)

Clause	Proposed offence	Proposed maximum penalty
98, ins. ss.356A *Water Supply (Safety and Reliability) Act 2008*	Contravention of a safety condition or other development condition by the owner of a referable dam to which the condition applies.	1665 penalty units ($183,150)

DEWS provided responses to why the proposed penalties are suitably commensurate with the relevant offence and this is contained in Appendix E.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Tablelands Regional Council
2	Grant Davies
3	Barry Davies
4	Terry Farrell
5	John Taylor
6	John Rodgers
7	Gillian Rodgers
8	Robin Antrobus
9	Brian James
10	Julie Orme
11	Nancy Smith
12	Ken Loughran
13	Allan Mischlewski
14	Sam Pojar
15	Diane Drayton Buckland
16	Donna Westfall
17	Pauline Wraith
18	Althea Deeley
19	Karen Thompson
20	Alan Parry
21	Jeremy Kiraly
22	Frog Safe Inc
23	Queenslanders for Safe Water, Air and Food Inc
24	Queenslanders for Safe Water, Air and Food Inc (supplementary submission)
25	W Loeskow
26	Lorraine Aplin

Sub #	Submitter
27	Christine Palmer
28	Capt David Hayward
29	Patricia Hayward
30	Carla Cleary
31	Maureen Dzendolet
32	Balonne Shire Council
33	Sandy Curtis
34	Wayne Fagg
35	Pam Soper
36	Judith Cook
37	Sonja Hardy
38	Leah Jones
39	Del Tandy
40	John and Jocelyn Glover
41	J Kehl
42	Fran Kehl
43	Bundaberg Regional Council
44	Liz Bradden
45	Edwin and Eunice Helmore
46	Bundaberg Health Promotions Inc
47	Jana Mackie
48	Queensland Farmers' Federation
49	Cathy Hopton
50	Lyn Hurley
51	Irma Piesse
52	Debbie Johnson
53	Jain Henricksen
54	Marian Pulvirenti

Sub #	Submitter
55	Christine Tyson
56	Denise Gasparich
57	Yvonne Mendoza
58	Sydney Liddle
59	Bill Van Breda
60	John Murdoch
61	Frank and Dell McClintock
62	Ruth Kaehler
63	Leo De Mattia
64	Simone Anderson
65	Jazele Qeopggdpont
66	Delma Hartfiel
67	Shay Morrison
68	Helen Robinson
69	Diane Drayton Buckland (supplementary submission)
70	P Montgomery
71	Judy Plath
72	M Skilton
73	Jeffrey Plath
74	RG Campbell
75	Petronella Campbell
76	Dr John Ryan
77	Margaret Bath
78	Judy Colasimone
79	Sean McConathy
80	John Rodgers
81	Patricia Ruddick
82	Pat Morrissy

Sub #	Submitter
83	Together Queensland Industrial Union of Employees
84	John Broadfoot
85	Rodney and Noela Terry
86	Charlene Savage
87	M Annette Lawson
88	Queensland Urban Utilities
89	Jody Cull
90	Margaret Cull
91	Community Awareness Network
92	Local Government Association of Queensland
93	Colin Bishop
94	Unitywater
95	Ailsa Boyden
96	Neville and Betty Maultby
97	Steve Bennett MP, Member for Burnett
98	T Ford
99	June Worrad

Appendix B – Officers appearing on behalf of the department at public departmental briefing – Monday 12 November 2012

Witnesses
Mr Jon Black, Director-General, Department of Energy and Water Supply
Ms Gayle Leaver, General Manager, Water and Sewerage Reform, Department of Energy and Water Supply
Mr Ken Sedgwick, Deputy Director-General, Water Supply and Sewerage Services, Department of Energy and Water Supply
Mr Greg Tonks, Principal Treasury Analyst, Queensland Treasury and Trade
Dr Jeannette Young, Chief Health Officer, Queensland Health
Dr Greg Jackson, Director, Water Quality Unit, Queensland Health
Ms Helen Borradale, Manager, Regulatory Instruments Unit, Queensland Health

Appendix C – Witnesses at public hearing – Friday 16 November 2012

Witnesses
Mr Ian Johnson, Senior Water Policy Officer, Queensland Farmers' Federation
Mr David Cameron, Chief Executive Officer, Queensland Water Directorate, representing Local Government Association of Queensland
Councillor Alan Bush, Bundaberg Regional Council
Mr Peter Byrne, Chief Executive Officer, Bundaberg Regional Council
Ms Louise Dudley, Chief Executive Officer, Queensland Urban Utilities
Mr Saul Squires, Chief Legal Counsel, Queensland Urban Utilities
Mr Paul Belz, General Manager, Planning, Queensland Urban Utilities

Appendix D – Public potable water supplier: with 31 December 2012 date before which fluoride must be added

Public potable water supplier	Relevant public potable water supply
Aurukun Shire Council	Aurukun Water Treatment Plant
Balonne Shire Council	St George Surface Water Treatment Plant
Banana Shire Council	Biloela Water Treatment Plant Moura Water Treatment Plant
Barcaldine Regional Council	Acacia Street Bore Pomona Street Bore
Blackall-Tambo Regional Council	Blackall Water Treatment Plant
Bundaberg Regional Council	Branyan Water Treatment Plant Bundaberg Depot Bore Dr Mays Road Bore Gregory River Water Treatment Plant Heaps Street Bore Kalkie Water Treatment Plant Lovers Walk Bore Treatment Plant Moore Park Water Treatment Plant Peaty Street Bore Powers Street Bore
Burdekin Shire Council	Council Chambers Water Treatment Plant Home Hill Bore 9 Home Hill Bore 10 Home Hill Water Tower Nelsons Lagoon Water Treatment Plant South Ayr Water Treatment Plant
Cairns Regional Council	Behana Creek Water Treatment Plant
Carpentaria Shire Council	Normanton Water Treatment Plant
Cassowary Coast Regional Council	Cardwell Water Treatment Plant Innisfail Water Treatment Plant Jurs Creek Water Treatment Plant Nyleta Creek Water Treatment Plant South Mission Water Treatment Plant Tully Water Treatment Plant
Charters Towers Regional Council	FEJ Butcher Water Treatment Plant
Cloncurry Shire Council	Clonclurry Water Treatment Plant
Cook Shire Council	Annan River Water Treatment Plant
Flinders Shire Council	Hughenden Bore 4 Hughenden Bore 5 Hughenden Bore 7 Hughenden Bore 9

Public potable water supplier	Relevant public potable water supply
Isaac Regional Council	Clermont Water Treatment Plant Dysart Water Treatment Plant Glenden Water Treatment Plant Middlemount Water Treatment Plant
Mackay Regional Council	Marian Water Treatment Plant
Maranoa Regional Council	Roma Bores
Mount Isa Water Board	Mount Isa Water Treatment Plant
Paroo Shire Council	Cunnamulla Water Treatment Plant
Tablelands Regional Council	Atherton Water Treatment Plant Mareeba Water Treatment Plant
Toowoomba Regional Council	Clifton Water Treatment Plant Crows Nest Water Treatment Plant Highfields Water Treatment Plant Hodgsonvale Water Treatment Plant Millmerran Water Treatment Plant Pittsworth-Brookstead Water Treatment Plant Wyreema Water Treatment Plant
Townsville City Council	Northern Water Treatment Plant
Whitsunday Regional Council	Airlie/Cannonvale Beaches Water Treatment Plant Bowen Bores Collinsville Water Treatment Plant Proserpine River to Bowen Water Treatment Plant Proserpine Water Treatment Plant

Appendix E – Departmental response to penalty provisions

Penalties

The Committee pointed out to the Committee the new offence provisions outlined below. The Department provides the following response as to why those penalties are suitably commensurate with the relevant offence.

Clause	Departmental Comments
Clause 51 – sections 350, 351 and 352	The new sections 350, 351 and 352 inserted by clause 51 each impose a penalty of 1665 penalty units for a failure by each the bulk water supply authority (for the SEQ region), a nominated water service provider (for a designated region where a water service provider has been nominated) and a particular water service provider (for a designated region where no nomination has been made) respectively, to have in place a water security program complying with section 353. Because a water security program is about water security and ensuring efficient water use, it is considered that a failure to have a program is analogous to the offences regarding the illegal taking of water and the offence (to be repealed by the Bill) of a failure to comply with a system operating plan. For this reason the quantum of the penalty is commensurate with the penalties for those offences.
Clause 51 – section 360F	The clause provides the Chief Executive of the relevant department with the power to require information about the listed matters relating to water supply. As the bulk water price for the current time is set by Government (i.e. the Minister) rather than by the Bulk Water Authority itself, it is necessary for the department to have access to the data and cost inputs which must be modelled to create a bulk water price to be on-charged to bulk water customers (and ultimately residents and businesses). Many of the information systems which currently allow this to occur will be owned by the Bulk Authority. While it is anticipated that there would be protocols for access, ultimately the failure to be able to obtain this data would result in significant difficulties in investigating, educating and determining bulk prices. For this reason, the penalty level is appropriate.

Clause 51 – section 360J	The provision ensures that bulk water parties can be directed to amend their agreements if they purport to make agreements which conflict with the Minister's mandatory terms, such as price. The offence is necessary to ensure that the overarching policy goal is kept where the State retains control over core provisions (such as price).
Clause 51 – section 360S (a) and (b)	The provision makes a breach of an emergency plan under the Code subject to a 1665 penalty unit and 200 penalty units for other Code breaches. Given the nature of matters dealt with in an emergency plan (e.g. drinking water issues/flood etc) the higher penalty is appropriate. The breaches for the other provisions of the Code is 200 penalty units and is in fact lower than the predecessor offence section for the Market Rules (s360ZDJ of the *Water Act 2000*) which was at an unnecessarily high penalty rate of 1665 penalty units.
Clause 51 – s360Z(3)	Section 360 J provides penalties for failing to comply with a direction notice about access. Provisions have been built into bulk water supply agreements which are designed to ensure that that water costs to businesses and consumer are minimised despite the division of responsibility of the water supply network (State-backed in the bulk sector and council-owned in the distribution-retail sector). The provisions are designed to encourage the parties to use each other's network capacity instead of building expensive new infrastructure if the same outcomes could be achieved. The provisions require the parties to negotiate their own agreements, but where they cannot, the Bill the parties can refer a dispute to the Minister who can make a determination (and direction) about terms of access or prices for access having regard to principles in the Code (which includes protection to ensure that one party cannot seek to defer its own expenditure by passing the cost of its. The penalties apply as an ultimate sanction to ensure lower water prices for residents and businesses in South East Queensland.
Clause 70 – s460(3)	Under the new section 460(3) inserted by clause 70, a petroleum tenure holder must comply with a notice issued by the manager of the Office of Groundwater Impact Assessment requesting specified information about the exercise of underground water rights under the holder's tenure. It is an offence for a petroleum tenure holder to not comply with the notice, unless the holder has a reasonable excuse. A reasonable excuse may include, for a tenure holder who is an individual, not complying with the notice

	because complying with the notice might tend to incriminate the individual. The notice must state how, and the day by which, the information must be given. A maximum penalty of 1665 penalty units is prescribed for failing to comply with a notice under this section without a reasonable excuse.
Clause 98 – 356A	Dam conditions are deemed to be development conditions attaching to a development permit. Non-compliance with a development permit and the conditions of attaching to the permit is an offence under the *Sustainable Planning Act 2009* for which a maximum financial penalty of 1665 penalty units applies. This provision will enable the compliance and enforcement provisions of the *Water Supply (Safety and Reliability) Act 2008* to be relied upon instead to ensure compliance with dam safety conditions, which is considered necessary due to questions about the status of deemed development permits under the *Water Supply (Safety and Reliability) Act 2008*.