Report for Environment, Agriculture, Resources and Energy Committee

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

Queensland Water Commission
November 2011

Contents

1. Summary

1.1. Purpose of Report

This Report has been prepared by the Queensland Water Commission (Commission) for the Environment, Agriculture, Resources and Energy Committee (EARAC) to provide information on the development of the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011* ('the Bill'). It is a summary of the activities (including consultation) undertaken by the Commission in developing the Bill.

1.2. Briefing Format

The Bill broadly deals with two separate key pieces of policy work, which are broken up into parts A and B in this report.

Part A. Part A of the Report relates to the dissolution of Allconnex Water (Allconnex) and the transfer of the water and wastewater operations from Allconnex back to its participating Councils, Gold Coast City Council (Gold Coast), Logan City Council (Logan) and Redland City Council (Redland).

Part B. Part B of the Report relates to the remaining parts of the Bill which generally have application to all Distributor-retailers and their Councils, including the withdrawn Councils (Gold Coast, Logan and Redland).

2. Background

2.1. SEQ water sector reforms - 2011

The South East Queensland (SEQ) water sector reforms which were approved by the Queensland Government in August 2007, outlined reforms that would occur over two stages.

Stage One was given effect through the *South East Queensland Water (Restructuring) Act 2007* which established three statutory authorities to own the bulk supply, bulk transport and manufactured water infrastructure and services in SEQ. It also established the SEQ Water Grid Manager, to be the single purchaser of bulk water services, the single seller of bulk water in SEQ, and to operate the SEQ Water Grid.

Stage Two of the SEQ water reform program was to be operational by July 2010, and to be effected by:

(a) establishing four local government owned entities being a single Distribution Entity and three Retail Entities to take over the functions of water distribution, wastewater treatment and the sale of water retail services from the existing ten SEQ local governments; and

(b) creating an overarching regulatory framework for the provision of distribution and retail services in the SEQ urban water sector.

The Council of Mayors, South East Queensland (CoMSEQ) raised a number of concerns about the Stage 2 reform model and consequently, were invited by the Queensland Government, to propose an alternative reform model that still fulfilled the reform objectives of:

- efficiency gains through economies of scale;
- improved service delivery to customers;
- asset regulation ensuring long-term infrastructure planning at least cost service; and
- commercially focussed entities accountable to Council owners and customers.

CoMSEQ proposed the establishment of three Council-owned, but separate and vertically integrated distribution-retail businesses (Distributor-retailers). CoMSEQ also proposed retaining the operational date of 1 July 2010. The Queensland Government endorsed the CoMSEQ Distributor-retailer model.

Stage Two was thus given effect by the *SEQ Water (Distribution and Retail Restructuring) Act 2009* (the DR Act), which established the Distributor-retailers from 1 July 2010. The DR Act provided for the Council owners of each Distributor-retailer to have participation rights (which is akin to shareholder rights) within their Distributor-retailer.

The three Distributor-retailers and their Council owners (called participating Councils) are:

- Northern SEQ Distributor-Retailer Authority (trading as Unitywater) – Moreton Bay and Sunshine Coast Councils.
- Central SEQ Distributor-Retailer Authority (trading as Queensland Urban Utilities) – Brisbane, Ipswich, Lockyer, Scenic Rim and Somerset Councils: and
- Southern SEQ Distributor-Retailer Authority (trading as Allconnex Water) – Gold Coast, Redland and Logan Councils;

The DR Act 2009 and further amendments in 2010 established the governance arrangements for the Distributor-retailers and the process to transfer the water and wastewater functions, assets, employees, instruments and liabilities from Councils to Distributor-retailers by way of transfer schemes.

Each participating Council entered into a participation agreement with its Distributor-retailer. These agreements set out the participation rights of a Council, or its 'share of the equity' in the Distributor-retailer.

Each Distributor-retailer has a board with the members appointed by the participating Councils under the participation agreement.

Each Distributor-retailer is also subject to price monitoring and public reporting by the Queensland Competition Authority.

The DR Act also provided for the making of a Workforce Framework (Staff Support Framework) to provide equitably for the transfer of staff and their entitlements to the Distributor-retailers (including Allconnex).

The transfer schemes were approved by the Minister and given effect upon notification in the Gazette. To ensure the efficacy and integrity of these transfer schemes, the SEQ local governments were required to certify that they had met the requirements for transfer schemes under the DR Act.

In late 2010, further amendments to the DR Act and the *Energy Ombudsman Act 2006* extended the existing investigation and dispute resolution role of the Energy Ombudsman to include water and wastewater disputes with SEQ Distributor-retailers from residential and small business customers. These customers would have access to dispute resolution processes provided by the Energy and Water Ombudsman Queensland in accordance with the *Customer Water and Wastewater Code* (Customer Code) made by the Minister under the DR Act. The dispute resolution scheme of the Energy and Water Ombudsman became operational from 1 January 2011, the same commencement date as the Customer Code.

2.2. SEQ water sector reforms - 2011

On 7 April 2011, the Queensland Government announced proposed amendments to the DR Act to *"[make] SEQ Councils…responsible for how water is distributed and retailed and how much they charge [so that] these decisions will rest solely with Councils*" . A full copy of the announcement is available here. Two key changes were proposed.

1. Firstly, the DR Act would be amended to cap price increases by the three SEQ Council-owned Distributor-retailers for their water and wastewater services (excluding trade waste and recycled water). These charges were to be capped to increase only by the Consumer Price Index (CPI) increase per annum. The CPI price cap was to apply to residential households and small business customers from 1 July 2011 to 30 June 2013.

2. Secondly, the SEQ Councils were provided a once-only opportunity to decide to opt out of their Distributor-retailer and re-establish Council owned and operated water and wastewater businesses. Councils that decided to withdraw from their Distributor-retailer, were to complete this transaction by 1 July 2012. Councils were to inform the Government of their decision by 1 July 2011, which was subsequently extended to providing a final decision by 1 August 2011. (Redland and Logan sought additional time to make their decisions, once the Gold Coast decision was to hand, in late July 2011.)

The Commission was requested by the Queensland Government to implement these two Government decisions.

CPI price cap, price mitigation plans and price paths

The *Fairer Water Prices for SEQ Amendment Act 2011* (Fairer Water Prices Act) amended the DR Act to implement the CPI cap. The Fairer Water Prices Act also required the Council owners of the Distributor-retailers to adopt a price mitigation plan and a quantifiable price path covering at least a five year period.

The price mitigation plans, including price paths, were not to be assessed by the State Government as a pre-condition of the future structure of any Distributor-retailer. Councils were to publish these plans to be open to community scrutiny.

From 1 July 2013, SEQ Councils will be responsible and accountable for setting water and wastewater distribution and retail prices, via their price paths.

Council decisions to opt out of their Distributor-retailer

Councils were requested to advise the Queensland Government by August 2011 of their final decision to either stay with their Distributor-retailer or take back their water and wastewater businesses to direct Council operations. Subsequent advice from the Minister for Energy and Water Utilities was that re-establishing Council water and wastewater businesses would be by 1 July 2012, and be on the basis that the Councils could offer more affordable water services. Opting-out Councils were to bear the consequent costs of withdrawal from their Distributor-retailer.

Part A of this paper outlines the decisions of SEQ Councils and the consequent development of legislation to give effect to those decisions.

Councillors on Distributor-retailer boards

The Minister for Energy and Water Utilities made a statement on 20 July 2011 (available here) that foreshadowed further changes to Councils and Distributor-retailers, by allowing Councillors to be members of a Distributor-retailer's boards. This would give Councils both more access to a Distributor-retailer's strategic decision-making processes and a better understanding of the specific day to day operational issues and how they impact on customers and the broader communities serviced by a Distributor-retailer.

Part B of this paper outlines the consequent development of legislation to deliver on this and related matters.

PART A – WIND UP PROVISIONS

3. Policy drivers

The Statement on 7 April 2011, by the Premier and Minister for Reconstruction offering Councils a once-only opportunity to opt out of their Distributor-retailer and re-establish Council-owned and operated water and wastewater businesses outlines the policy drivers for this component of the Bill. Subsequent communications from the Minister for Energy and Water Utilities further indicated that in choosing to opt out, the State Government's expectation that withdrawing Councils could deliver cheaper water prices, that the Councils would be ready to commence operating by 1 July 2012 and that opting-out Councils would bear the cost of doing so.

The participating Councils for Queensland Urban Utilities and Unitywater decided to remain with their Distributor-retailers.

However, the ultimate outcome for Allconnex was that the participating Councils decided to withdraw from Allconnex. The preliminary decisions made by Logan and Redland were to stay with Allconnex. These preliminary decisions were ultimately reversed when the Gold Coast (which holds the majority of 62% of the participation rights in Allconnex) chose to withdraw. Without Gold Coast, Logan and Redland believed that continuing in Allconnex was not a viable commercial alternative.

Thus all three participating Councils have decided to opt out of Allconnex and re-establish their water and wastewater businesses. The Bill provides for these Councils (referred to as 'withdrawn Councils') to withdraw, and for the framework for the dissolution of Allconnex, including the withdrawal cost arrangements on which those decisions were predicated.

The Bill's provisions include amendments to the DR Act and to other relevant legislation necessary to enable:

(a) Councils to cease being participant Councils for Allconnex and the dissolution (wind up) of Allconnex;

(b) re-establishment of Council water businesses as commercialised business units under the *Local Government Act 2009*;

(c) additional regulatory requirements to be applied to the water businesses of the withdrawn Councils, to align with requirements on other participants in the SEQ water market;

(d) the Gold Coast to be responsible for meeting its own and the other parties' costs, of withdrawing from Allconnex (known as 'withdrawal costs'); and

(e) the making of a new Workforce Framework to provide for the transfer of staff and their entitlements from Allconnex to the withdrawn Councils' water businesses.

3.1. Dissolution of Allconnex

A key driver behind the rapid development of the Bill is to enable the withdrawn Councils to move quickly to cease to be participating Councils for Allconnex and to re-establish their water businesses by 1 July 2012.

There will be a residual period in which Allconnex will still exist after 1 July 2012, but this will be as a shell to primarily conduct wind up activities such as finalising the Annual Report and financial statements. Allconnex's wind up is anticipated to be complete some time after 30 September 2011, which is the usual date for tabling the last annual report. However some flexibility for the end date is provided by an ability to gazette a later date if needed because any unanticipated matters arise or certain aspects of the wind up take longer than expected.

3.2. Council commercialised business units

The decisions of Gold Coast, Logan and Redland were to take back control of their water and wastewater businesses. The Bill provides that these businesses will be deemed to be commercialised business units from 1 July 2012, under the Local Government Act and the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* .

Ordinarily, if a Council-run water and wastewater business has revenues over a nominated threshold; the Local Government Act provides for the business to be undertaken as either a commercialised *or* corporatised business. Under this regime, a commercialised business unit must be conducted in a commercial manner but is not a separate legal entity to the Council. In contrast, a corporatised business unit is a separate legal entity from the Council. Corporatised businesses are much like the existing Distributor-retailer structure in having 'shareholding' Councils, a CEO and a board.

The water businesses of the withdrawn Councils would have revenue thresholds that would qualify these businesses to operate as either a commercialised or corporatised business unit under this regime. The stated drivers of the withdrawn Councils were to have *direct* control rather than an external board, so the most suitable structure would be a commercialised business unit (with Councils having the option in future to move to a corporatised entity should they wish to).

The withdrawn Councils will also be deemed to be water and sewerage service providers under the *Water Supply (Safety and Reliability) Act 2008* and certain provisions of the *Water Act 2000.* These are the same requirements applied to Allconnex and to all Queensland Councils with commercialised business units providing water and wastewater services.

3.3. Councils and SEQ Water Market

The Bill provides that the withdrawn Councils will primarily operate under the regulatory environment that applied prior to 1 July 2010, and be regulated like

other Council water businesses.

However the Bill also applies some additional requirements under the DR Act to reflect the fact that the Councils will be operating within the SEQ water market, and should comply with SEQ water market-specific requirements such as improved network planning or to preserve anticipated community expectations such as customer protection arrangements. These additional requirements are applied where there is a policy driver for maintaining a higher or varied SEQ standard to that applying to other non-SEQ water service provider Councils.

For most corporate, financing and reporting arrangements, the relevant Local Government Act provisions will apply to the withdrawn Councils. However, some DR Act provisions will continue to apply where this will be expected by SEQ customers, such as the application of CPI caps to distribution and retail price increases until the end of June 2013. It would not be fair to remove these caps which households and small business customers expect to be applied. Also, the withdrawn Councils will still be required to adopt price mitigation plans. The withdrawn Councils will still need to publish a price path with a five year horizon. These measures will ensure customers will have greater certainty in water and wastewater pricing.

Outside of corporate and financial matters, the normal Local Government Act regime will usually apply to water and wastewater operations. However the following DR Act regulatory requirements will also apply:

(a) the SEQ consumer protection measures recently applied under the Customer Code which set service standards and provided for a complaints regime to the Energy and Water Ombudsman;

(b) SEQ infrastructure network planning under Water NetServ Plans and associated requirements to ensure adequate provision of infrastructure networks to support growth in SEQ; and

(c) price monitoring by the Queensland Competition Authority (to monitor the implementation of CPI caps and price paths and report on the prudency and efficiency of water business operations)[1].

3.4. Imposing withdrawal costs

There are inevitable costs to splitting up Allconnex and re-establishing Council water businesses. However, Councils' decisions to withdraw from a Distributor-retailer were to be on the basis of community benefit and that affordable water and wastewater prices be maintained. Consequently, a Council deciding to withdraw from its Distributor-retailer was to bear any withdrawal costs.

While Logan and Redland have chosen to opt out, the State Government has recognised that the Logan and Redland decisions were a direct result of Gold

[1] The withdrawn Councils have asked that the State Government consider an 'exemption' for their 2012-2013 re-establishment year. See section 5.2.4 for further details.

Coast's decision, as the majority shareholder, which would make Allconnex commercially unviable.

Accordingly, under the Bill, Gold Coast is liable for the withdrawal costs of Logan and Redland. Initially withdrawal costs were considered to be the costs of a Council having to re-establish its commercialised business unit for water and wastewater services. However, stakeholder consultation indicated that Logan and Redland would also be exposed indirectly to costs because Allconnex would also have its own costs associated with its wind up, that would be transferred to Councils.

The Bill therefore provides for Logan, Redland and Allconnex to claim and be paid withdrawal costs. The Bill also requires Allconnex and the withdrawn Councils to take all reasonable steps to mitigate the amount of the Gold Coast's liability. The Bill prohibits certain matters from consideration as a withdrawal cost – such as loss of anticipated profits or failure to realise anticipated savings (which were agreed to by all parties). Further work is being undertaken with the withdrawn Councils and Allconnex to identify and categorise allowable withdrawal costs. The Bill provides a regulation making power to further specify and prohibit classes of withdrawal costs.

The Bill provides for a process of independent arbitration where Councils cannot reach agreement about the payment of withdrawal costs. The provisions also encourage resolution of these disputes by limiting the time period within which claims can be made against Gold Coast.

3.5. Employee protections (workforce framework)

A key policy driver of the Bill is to ensure that employees of Allconnex are given suitable employment protections during this new period of reform. This protection will be achieved through the development of a separate workforce framework. The policy objective is to supersede the existing workforce framework with a new workforce framework to be made under the architecture provided for under the Bill.

4. Explanation of Chapter 3A

The bulk of the provisions relating to the wind up of Allconnex, re-establishment of the Councils' businesses and imposition of withdrawal costs are found in Chapter 3A of the Bill.

Attachment 2 contains a summary of the relevant provisions in the order presented in the Bill. The information below is a plain English outline of the major concepts at play in Chapter 3A.

There are also a large number of minor amendments to sections that follow Chapter 3A, which merely replace references in those sections to 'Distributor-retailer' with 'SEQ service provider', being a new term that includes Distributor-retailers and withdrawn Councils.

4.1. How are matters transferred to Councils?

There are two critical documents that must be prepared, agreed to and submitted by Allconnex and the withdrawn Councils to allow for the transfer of necessary matters from Allconnex to the Councils. Note that the particular withdrawn Council that is transferred a particular matter is referred to as the '***successor Council'*** for the matter.

(i) The primary mechanism to transfer the assets, employees, instruments and liabilities from Allconnex to successor Councils is a '***retransfer scheme***'.

A retransfer scheme is essentially a statutorily recognised agreement between Allconnex and the three Councils as to what will be transferred. The retransfer scheme can deal with transferring matters to a successor Council or Councils, but can also deal with related or subsidiary issues associated with winding up Allconnex. The Bill stipulates certain mandatory content for a retransfer scheme to ensure that everything is dealt with prior to the winding up of Allconnex. This is a similar statutory mechanism to that which was adopted when the assets were originally transferred from Councils to the Distributor retailers.

The key responsibility lies with the Councils and Allconnex to identify the matters to be dealt with and to come to an agreement on them so the matters are able to be reflected in the retransfer scheme.

[Refer to sections 92AR to 92AX – pp 32 to 38]

(ii) To ensure that the parties have met their responsibilities and all necessary matters have been dealt with in a retransfer scheme, the Bill provides for a joint ***'certification statement'***. The certification statement is signed by all the parties and effectively states that everything belonging to Allconnex has been dealt with and transferred in some way, and certifies that the requirements of the Bill have been dealt with (essentially that the retransfer scheme will do what it is required under the Bill). Again, this is a similar requirement to that imposed on the Councils when they transferred their assets to the Distributor-retailers.

The certification statement must be provided to the Minister with a draft copy of the retransfer scheme by 30 April 2012. The purpose of providing this to the Minister is to allow the Minister to rely on the statement in giving the notice about the making of the proposed retransfer scheme.

It is noted that the timing of the Committee's deliberations will make the ability to meet this April 2012 date difficult for the Councils and Allconnex.

[Refer to sections 92AY to 92BA, pp 38-40]

4.2. When do transfers take effect?

The Government's policy intent was the Councils' water businesses be ready to operate on **1 July 2012,** which is provided for in the Bill. All matters nominated in the retransfer scheme will transfer to the nominated successor Councils at midnight 30 June 2011. This arrangement ensures the retransfers align with the relevant financial years and accounting periods.

[Refer to sections 92AR(1)(a)(i) and 92AS – pp 32 and 33]

4.3. How are successor Councils identified?

As noted earlier in this report, matters are transferred under a retransfer scheme to a successor Council. This is the Council which will own the asset or liability, have responsibility for the matter, or be the employer of an Allconnex staff member after the retransfer.

In most cases, the parties have the power to agree on the successor Council or Councils for a matter, and nominate the successor Council/s in the retransfer scheme including the extent to which a Council is a successor.

However, there are a few matters where the Bill determines who the successor for a matter will be, leaving the parties no capacity to deal with this by agreement. There are a small number of provisions which provide an assumption of successor Council that can only be altered by agreement between all parties.

These matters are:

1. Allconnex customers become the customers of the Council according to the Council area in which a customer's premises are located (section 92AD(1)(a)).
2. Any land, including assets attached to land, go to the Council according to the Council area where the land is located (92AV and 92AW).
3. All assets and liabilities transferred to Allconnex in 2010 from a Council under a transfer document will be returned to that Council (unless otherwise agreed to between all parties) (section 92AR(3)).
4. For claims and proceedings:
   (a) for matters in the Land Court or the Planning and Environment Court the Council that is the replacement party to the matter also depends on where the land is that relates to the matter (92AT(3)); and
   (b) for any claim or proceeding which originated with a Council and was transferred to Allconnex in 2010 under a transfer scheme, these must be retransferred back to that Council (section 92AT(2)).

If the parties do not nominate a successor Council for a matter in a retransfer scheme then the Bill allocates a successor Council for different purposes.

This includes allocating a successor under the provisions called 'default provisions' outlined in section 4.5.

[Refer to section 92AD, pp 26 to 27 and 92BH to 92BH, pp 44 to 46]

4.4. Why does Allconnex continue past 1 July 2012?

While all water and wastewater infrastructure and operations will return to the successor Councils from 1 July 2012, it is not practical to wind up Allconnex immediately. There will be a number of matters to attend to in preparing to wind up Allconnex. These are predominantly corporate responsibilities such as providing the final financial reports, the final annual reports in September 2012 and dealing with some tax matters around this time.

Allconnex will lose all water and wastewater functions from 1 July 2012 but will have residual functions to deliver on these outstanding corporate responsibilities between 1 July 2012 and wind up (referred to in the Bill as the '***residual function period***'). It is anticipated that Allconnex would be wound up between the end of September 2012 and December 2012.

[Refer to sections ss 92AO to 92AQ, pp 31 to 32]

4.5. What governs matters not covered in a retransfer scheme?

The requirement for a certification statement is that the parties certify they took steps to ensure that everything required in the Bill has been transferred in the retransfer scheme. Despite this requirement, it is inevitable there will be 'unknowable-unknowns' where parties are not aware of particular assets or liabilities or where, despite due diligence, a matter has been overlooked and therefore not dealt with in the retransfer scheme.

For these reasons, the Bill provides for a safety mechanism (a '***default provision***') to ensure that all property will find a home with a particular successor Council at the end of 30 June 2012.

For example, if a matter was originally transferred to Allconnex from a particular Council under a retransfer document in 2010, then the default position is that the matter returns to that Council.

With respect to after-acquired assets, liabilities or matters (i.e. new assets made, bought or incurred since 1 July 2010), these are subject to a default split based on participation rights shares. Where the default provisions transfer matters to the Councils *jointly*, according to the proportion of their participation rights, these are:

- Gold Coast 62%
- Logan 24%
- Redland 14%.

Refer to specific provisions of the Bill for default arrangements for different matters.

[Refer to sections 92BH to 92BH, pp 44 to 46]

4.6. What if errors occur with the transfers?

The Minister for Energy and Water Utilities has the power to override either a retransfer scheme or a default provision on a number of grounds. These include a failure to have met certain requirements, or if the Minister is of the opinion that something under a retransfer scheme should have been done differently or should not have been done (section 92BC). The Minister also has the power to change certain default arrangements (section 92BI). This power is limited in time, and can only be exercised up to 30 June 2013. This provides enough time to address problems if necessary, without continuing the power and consequent uncertainty to an unreasonable extent.

[Refer to sections 92BC to 92BI, pp 41 to 45]

4.7. Will there be uncertainty for customers?

As previously indicated, the Bill provides that customers go to the Council in whose area the premises are located (section 92AD(1)(a)). Allconnex and the Councils will be required to publish notices in the newspaper advising of their proposal to retransfer matters under a retransfer scheme. The public will be able to obtain details about the proposal (section 92AZ(1)(d)).

Customers with outstanding bills will not need to ascertain the right Council or entity, as the Bill makes their overdue water and wastewater charges payable to the Council in which their premises is located (although the funds may eventually be allocated by that Council to another Council according to their agreements on adjusting revenues between them).

4.8. What is happening to Allconnex staff?

Staff will be provided with some protections during this period of reform under a new *'**retransfer staff support framework**'* or *'**workforce framework**'* (as it is otherwise known). This framework will be similar conceptually to the 2009 framework that applied to staff moving from Councils to Allconnex in 2010.

Employees of Allconnex covered under the workforce framework will have their positions 'transferred' to particular successor Councils under the retransfer scheme.

The Bill establishes a general legislative framework for the relevant protections, but it is the workforce framework that will specify the particular timeframes, terms and coverage. The Councils and relevant unions have been consulting on this matter and the eventual framework will be subject to approval by the Minister.

Unions and Councils are currently working together to endeavour to have an 'in principle' agreement in place by December 2011. This date is not a legislative timeline but is being pursued to provide greater certainty for employees. While the agreements could be made retrospective to this date under section 92ED(3), in order for the new workforce framework to commence in a backdated manner, it requires the Bill to be passed and assented (see section 92ED(2) re effective dates).

4.9. Who pays for the associated withdrawal costs?

The Bill requires that costs associated with the withdrawal from Allconnex (***'withdrawal costs'***) be borne by Gold Coast. The provisions allow for either Logan or Redland to claim against Gold Coast by 30 June 2013, or for Allconnex to claim directly by 30 June 2012 (see section 92BY(3)(a)). The reason for this, as outlined in previous sections, is that the dissolution of Allconnex was attributable to decisions made by Gold Coast.

The Bill provides for a range of costs that can be classified as 'withdrawal costs' (see section 92BW). These costs do not include costs for loss of anticipated or actual revenue or profits as a result of having to withdraw from Allconnex, nor do they include a cost that any of the withdrawn Councils would ordinarily incur as a service provider.

The Bill provides for withdrawal costs definitions to be given greater specificity or narrowed by exclusion, under a regulation (92BW). This is necessary as consultation is continuing with stakeholders to identify the different types of withdrawal costs that might be involved.

The Bill allows for claims to be made as either a periodic payment or in one lump sum (92CA).

Where parties are unable to agree, the Bill provides for binding arbitration via an agreed arbiter (or a default arbiter where parties cannot agree). The provisions outline how arbitrations are to be dealt with.

The provisions place a limitation on claims so that a right to a claim is ultimately lost by Redland or Logan against Gold Coast if they have not, as outlined in the relevant provision, by 30 June 2013 either:
(a) arrived at a written agreement that the debt is due; or
(b) given a notice of intention to refer a dispute to an arbitrator.

All parties are under a duty to mitigate the amount of Gold Coast's liability to them. This is a normal principle and has been adopted as part of the legislation.

Where there are agreements for costs or an arbitration order made – these are enforceable in the ways outlined in the Bill.

5. Consultation on Part A matters

5.1. Effects of timing of the Bill on consultation

The compressed timeline to develop this Bill has required efforts to ensure key stakeholders have been adequately consulted and their input taken into account in designing the Bill.

Attachment 1 summarises the history of decision making and communications between the stakeholders and the State Government. It was not until 23 August 2011 that all Councils decided that Allconnex would be disestablished. The Government policy was that Councils be ready to be operational by 1 July 2012.

However, as noted above, all stakeholders recognised the urgency and made time available to consider the concepts and draft provisions for the eventual Bill. Also, most of the content of the Bill is of a technical or mechanical nature addressing the processes and requirements to allow Gold Coast, Logan and Redland to opt out of Allconnex. The provisions:

(a) reverse the provisions of the DR Act which created Allconnex in 2010;

(b) retransfer the assets, liabilities and employees of Allconnex to a particular successor Council; and

(c) place the operation of water and wastewater operations back in the hands of Councils and provide for the operation of their new commercialised business units.

The approaches were based on the similar documents and methods used to transfer assets, liabilities and employees from the Councils to Allconnex in 2010, and were therefore familiar to stakeholders. This minimised the impact of the truncated timeframes on the ability to introduce provisions acceptable to key stakeholders. This conclusion is supported by general stakeholder support for the retransfer mechanism provisions.

While further time to develop provisions regarding withdrawal costs would have been welcomed by stakeholders, further articulation of what is an allowable withdrawal cost will be provided in regulations provided for under the Bill (see 4.9).

5.2. Consultation with Distributor-retailers and Councils

5.2.1. Methods of consultation

The correspondence period. Much of the policy intent regarding the decision to offer the opportunity to Councils to opt-out remains within the purview of the State Government.

The Commission did provide advice to the State Government regarding its communications with the relevant Councils about the opt-out offers. During this period, the Minister for Energy and Water Utilities engaged in a series of correspondence with Councils. This correspondence is largely characterised as involving requests from Councils for further information regarding possible withdrawal costs, and the State Government requiring Councils to undertake due diligence to inform their own choices.

Also during this period, Councils sought assurances from the State Government that stamp duty on any asset transfer (being the largest of the components of the possible withdrawal costs), would be waived. The Councils engaged external consultants to prepare reports to assist Councils to evaluate the costs and benefits of opting-out and to quantify their exposure to withdrawal costs in doing so. As has previously been described, this eventually led to the Gold Coast's decision, and then a decision by all three Councils, to withdraw. This position was not clear until late August 2011.

Discussion paper workshops. Shortly after Council decisions were finalised, the Commission held workshops with representatives of Allconnex and the withdrawn Councils around the development of the provisions. All SEQ Councils were invited as these workshops also dealt with non-Allconnex issues.

This process was based on a schedule of matters that would need to be addressed in the Bill. This closely reflected the range of technical/mechanical amendments which would be necessary to effect the stated policy objectives. SEQ Councils, the executive management team of Allconnex and key State Government agencies (such as Department of Environment and Resource Management, Queensland Treasury and Department of Justice and Attorney-General) were invited to two workshops of a half-day duration on 29 August and 31 August 2011. Stakeholders were provided with advice and material about the:

(a) likely legislative amendments necessary to unwind the water reform arrangements in the Allconnex area and to re-establish Council businesses;

(b) mechanisms proposed for achieving this ('the retransfer scheme discussion paper'); and

(c) possible operation of a withdrawal cost scheme.

In addition to oral feedback received during the workshop, participants were provided with approximately one week to provide feedback on any aspect of the workshop or discussion papers by 7 September 2011. Written feedback was provided by Allconnex, Redland and Logan. Section 5.2.2 provides details on the workshop feedback and how it was considered.

Consultation on working draft of Bill. Following the above workshops, the Commission developed a series of working drafts of the Bill. A workshop was held with Allconnex and the various participating Councils with a draft Bill on

21 September 2011. A revised working draft was provided to stakeholders on 26 September 2011 as a result of feedback received.

Further amendments were made to the Bill after this to resolve last minute policy issues and further submissions.

Retransfer scheme workshops. Workshops were held with Allconnex and withdrawn Councils on 31 October 2011 and 9 November 2011. A range of material was provided to participants to assist with understanding the implementation of the proposed provisions. This material included providing stakeholders with a template for a retransfer scheme, a template for a certification statement, an implementation project schedule and further information regarding debt restructuring options for moving Allconnex's debt with Queensland Treasury Corporation. It was clearly communicated that these documents were advisory only, and provided one possible approach to developing such documents and the tasks to be undertaken by Councils before and after 1 July 2012. Stakeholders were advised they were free to develop alternative approaches if they desired, based on their own legal, accounting and administrative advice.

5.2.2. Results of consultation

Both Allconnex and the participating Councils provided generally positive feedback on the consultation approach taken by the Commission and the extent to which they were provided with information and their input sought. However while the feedback on the specific proposals and the Bill was generally positive, there remain a few areas of disagreement, as described below and in sections 5.2.3 and 5.2.4.

Allconnex response:

Generally, Allconnex was in agreement with the proposed amendments, acknowledging that its continued existence was the purview of its participating Councils. Some minor errors and omissions in the Bill were identified and suggestions made which have subsequently been incorporated into the Bill.

Apart from this, Allconnex's main areas of concern were as follows:

(a) Ensuring the workforce framework provisions and agreements were introduced as quickly as possible, and provide clear advice on job security;

(b) Suggesting that additional protections be given to the board for board decisions made in the period before the wind up, given that Councils appeared to expect the Board to be operating in caretaker mode, ahead of the passage of the Bill;

(c) Seeking further clarification around withdrawal costs; and

(d) Questioning the practical ability to implement the new requirements if the passing of the Bill was delayed.

Council responses:

Councils were generally supportive of the proposed amendments, although there were periods of uncertainty where Gold Coast at times appeared to be considering a differing corporate structure for its water and wastewater business to that which was adopted in the Bill (this matter is now resolved).

Council feedback was provided individually by Gold Coast, Redland and Logan. In a number of cases, this feedback led to revisions of the draft Bill. Key examples of matters amended following Council feedback include:

(a) Allowing Councils to have a lien on the land in relation to outstanding debts owed by customers to Allconnex when that debt was transferred to Council.

(b) Providing extensive transitional frameworks for billing requirements to allow for the possibility of Councils needing to develop new billing systems; and

(c) Ensuring that Logan and Redland could make claims for withdrawal costs against Gold Coast in incremental payments (rather than having to wait for large lump sums at 1 July 2012).

Key areas of dispute or issue included:

(a) A lack of clarity around the definition of withdrawal costs;

(b) The scope and terms of the staff retransfer scheme;

(c) Application of the Energy and Water Ombudsman complaints regime to withdrawn Councils. Initially Councils wished to rely on the Queensland Ombudsman's jurisdiction for all complaints, although this matter is now largely resolved; and

(d) Application of price monitoring by the Queensland Competition Authority to withdrawn Councils.

5.2.3. Allconnex's remaining areas of contention

Workforce framework:

Allconnex has repeatedly expressed concerns about instability and insecurity for their employees during this period and that this is having an adverse impact on its capacity to retain staff and deliver on essential work. The Bill does allow for the beneficial retrospective commencement of the Workforce Framework provisions. The framework is an agreement between Councils and Unions, and therefore disputes could still be considered by the Industrial Relations Commission.

The existing Workforce Framework still applies to Allconnex staff.

The new Workforce Framework is being developed through a stakeholder representative group chaired by the Department of Justice and Attorney-

General. All parties have agreed that each Allconnex employee covered by the Framework will have a job within a Council.

Board indemnities:

Allconnex has provided submissions that the disestablishment of Allconnex creates an environment of uncertainty for the on-going governance of the business in the period leading up to 1 July 2012 (the transition period). It has stated this uncertainty is created by the perceived tensions between:

- the current board member requirements in the DR Act and Regulations which require it to act in the best interests of Allconnex; and
- the situation where, in a pre-wind up mode, it would need to consider the interests of its shareholders (the withdrawn Councils) in light of them taking over the business.

More simply, it may need to balance Allconnex's own interests against that of Councils, particularly where the interests of the three Councils may diverge.

Allconnex sought an indemnity from the State in relation to this matter. The State Government has indicated that it would not be the usual approach to provide State indemnities in matters such as these, ie where the issues arise between a Council-owned business and the Council shareholders. Additionally, as a matter of general legal interpretation, the existing regulatory requirements for the board members under the DR Act regime do not preclude board members from taking into account considerations such as the likely legislative restructure of Allconnex, in forming relevant business judgements.

Outstanding accounts / debt facilities

There were some stakeholder concerns about recovery of for unpaid or unbilled water and wastewater accounts. This issue appears to have arisen because of a misconception by some stakeholders that when Allconnex's bank accounts where closed on 30 June 2012, that the Council in the area which the Bill related to, would be able to keep the future money paid by customers in the area.

Stakeholders indicated that this would be unfair because there is a disproportionate amount of customer debt (i.e. a future asset) in the Gold Coast area compared to the other two Council areas. This is largely because Gold Coast bills on a six monthly basis rather than quarterly. Should the Gold Coast be able to hold and own all of this money (which is really the income of Allconnex as a whole), it would be more than it would be entitled to under its participation rights ('shareholdings'). They also complained that for any unrecovered bills, they would be having to wear a larger portion of debt facilities to fund the shortfall in working capital.

Accordingly, there were suggestions that Allconnex should be allowed to keep Allconnex accounts open to allow this future money to come in.

These issues have been considered by the Commission and addressed during implementation workshops. Stakeholders' misconceptions that Gold Coast would be entitled to keep the future money have been addressed. The Bill simply provides that the Gold Coast is responsible for the collection of the accounts. How parties decide to allocate that money is still for them to deal with in the retransfer scheme. One approach open to the Councils is to provide in the retransfer schemes for a 'true up' mechanism, that sets the rules for a post 1 July 2012 adjustment between the Councils (so that they can share the monies or any share of the working capital debt based on participation shares or other agreed method). This approach matches what would ordinarily apply in winding up a business to ensure that the division of the assets and liabilities matches a shareholder's interests in the business. If the parties fail to agree, the default provisions of the Bill allocate this based on a participation rights share.

It was not appropriate to allow Allconnex's accounts to remain open for a period after 1 July 2012, as this was at odds with the policy driver to have Allconnex wound up as quickly and it would not be possible to set a particular timeframe by which all income would be recovered.

Withdrawal costs

Submissions suggested that further clarification should be provided around withdrawal costs. As has been previously outlined, there has been a tight legislative timeframe to have the Bill introduced To ensure that this matter can be adequately addressed, the Bill allows for withdrawal costs to be further specified or limited via a regulation. The Commission has planned for workshops on the development of this regulation and other withdrawal costs matters in late November 2011.

Implementation

Allconnex has repeatedly made submissions about its practical ability to implement the new requirements if the introduction of the Bill was delayed. The timing of the Committee's deliberations is critical in meeting the dates under the Bill for certification statements and retransfer schemes. There is a large implementation workload to accomplish between assent and 1 July 2012. Allconnex also noted the uncertainty which might be created if the announcement of a State election and subsequent caretaker conventions saw the Bill lapse. The Commission has indicated that this is not a matter under its control but notes there may be a need to make amendments about due dates during consideration in detail. (See section 6 for further details).

5.2.4. Council's remaining areas of contention

In many cases Council submissions reflected concerns raised by Allconnex. As these matters are canvassed above, they will only be detailed here to the extent that Council or a particular Council held a slightly differing view. Councils also raised some additional issues of their own.

Workforce framework

Like Allconnex, Councils are concerned that their staff be given certainty during this process and that matters are expedited as soon as possible.

Energy and Water Ombudsman Queensland

Councils initially indicated misgivings with being subject to the Energy and Water Ombudsman (EWOQ) jurisdiction which applies currently to all small residential and small business customers in SEQ – and provides a dispute resolution and investigation service for those customers for certain matters under the Customer Code. Councils were concerned about being externally monitored and that customers could 'forum shop' with the Queensland Ombudsman (which is not the case). It is the Commission's understanding that Councils now support the application of the EWOQ scheme to their water and wastewater operations.

Queensland Competition Authority price monitoring

The Bill makes the withdrawn Councils subject to potential price monitoring by prescribing them as monopoly businesses under the relevant Queensland Competition Authority regulation.

The three withdrawn Councils have requested exemptions from the price monitoring program of the Queensland Competition Authority which applies to Allconnex and other Distributor-retailers. This request is on the basis that the Councils will be reviewing their business costs and mechanisms to improve service delivery with the overall outcome to be a published price path that will apply from 1 July 2013 and that providing detailed information to the Queensland Competition Authority would simply add to their work program with little benefit. The Councils have agreed they would apply the CPI cap to price increases applying to all customers for 2012-13 if their request for exemption was granted.

This is a policy matter currently receiving consideration by the Government. If agreed to by the Government, this would not require any amendment of the Bill. The prescription in the relevant regulation simply provides the power for delivery of a directions notice to the Queensland Competition Authority to commence monitoring. If the Government's decision is not to implement price monitoring for the 2012-2013 year, this will simply mean that no directions notice will be provided for that period.

5.3. Public consultation

The State Government's offer to allow Councils to opt for withdrawal gave Councils, as the democratically elected representatives of their communities, the right to make decisions on their behalf. Responsibility for making that choice and engaging with the community were matters for the relevant Councils.

It is understood that at least one of the Councils, the Gold Coast, ran a community consultation forum on the choice to withdraw. The results of that consultation showed that slightly more than half of the focus group preferred to withdraw, but not if the Council had to fund the withdrawal costs (which it will be required to do under the Bill).

6. Implementation issues

The Commission recently held implementation workshops with Allconnex and the withdrawing Councils. At the workshops, Commission staff outlined the implementation program which needs to be addressed to meet the 1 July 2012 deadline. This includes, but is not limited to:

- conducting due diligence;
- dealing with workforce framework matters;
- consulting with the State Archivist regarding the management and transition of public records;
- entering into agreements with Councils for jointly used assets;
- coming to agreement on how to split co-mingled assets and debt;
- creating the retransfer scheme to do so;
- making certification statements;
- publishing public notices;
- documenting withdrawal costs and making claims;
- setting up the financial, IT, HR and regulatory systems for their new businesses; and
- meeting new regulatory requirements.

These matters will continue to be worked through in consultation with Allconnex and the withdrawn Councils.

PART B – PROVISIONS APPLYING TO ALL SEQ ENTITIES

7. Policy drivers

Part B of this report outlines provisions in the Bill that are to apply to all SEQ water entities (both Distributor-retailers and withdrawn Councils) and can be described as the 'non-Allconnex' parts of the Bill. Essentially these provisions are intended to provide greater clarity for Councils' pricing and decision-making in respect of their Distributor-retailers, to clarify some matters and deal with a range of minor changes to the DR Act and Water Act.

Following the Government announcement of changes proposed to the responsibilities of SEQ Councils with respect to their Distributor-retailers, a statement was made by the Minister for Energy and Water Utilities on 20 July 2011 foreshadowing further changes. This statement was to allow Councillors to be members of the boards of Distributor-retailers. This is intended to give Councils more access to both a Distributor-retailer's strategic decision-making processes and a better understanding of the specific day to day operational issues and how they impact on customers and the broader communities serviced by a Distributor-retailer. The Minister's statement outlined the key policy direction for some of the amendments discussed in Part B.

Part B refers to amendments to:

(a) Prevent privatisation of Distributor-retailers;

(b) Allow Councillors to be members of the relevant Distributor-retailer's board;

(c) Expand and clarify the powers of Councils to give directions to their relevant Distributor-retailer;

(d) Provide regulation making powers re extending a sunset clause; and

(e) Deal with a range of minor correcting or clarifying amendments including:
- Amending an oversight to apply the Queensland Local Government Officers Award 1998 to a Distributor-retailer's employees;
- Clarifying that references to contracts in the Market Rules cover contracts with the bulk water entities, Distributor-retailers and the withdrawn Councils;
- Amending an error in a date for price mitigation plans.

7.1. No privatisation

The DR Act currently prevents any changes in the participants in a Distributor-retailer without the Minister's approval. However, stakeholder meetings and correspondence indicate many members of the public believe the Distributor-retailers are currently, or are intended to become, privatised entities. The amendments in the Bill are to clarify that there is no current intention to privatise the Distributor-retailers. These amendments were to ensure that

only the current participating Councils for a Distributor-retailer can be participants under the participation agreement

7.2. Councillors on Distributor-retailer boards

As noted above, the Minister stated in July 2011 that the Government would legislate to provide for sitting Councillors (including Mayors) to be able to be members of the relevant Distributor-retailer's board. This is intended to improve Councils' access to and knowledge of a Distributor-retailer's strategic decision-making, their day to day issues and the broader communities they represent. It is also one of the steps towards making SEQ Councils more accountable to their ratepayers.

The provision for Councillor members would replace the current provision for limited numbers of Council officers (known as 'associated officers') on boards. That is, instead of allowing limited numbers of Council employees, the Bill allows for limited numbers of Councillors on the boards, and no associated employees.

The proposal was that the minimum number of board members would be five with no more than three being Councillors. The total number of Councillor members would depend on the number of participant Councils, i.e. each participant Council could only provide one of the Councillor members.

The term of a Councillor board member would be that of an elected Councillor, usually a term of four years. Where a Councillor-member vacated their position for any reason, it would to be filled with a Councillor from the same Council as the original Councillor member (or another area if there is agreement under the participation agreement).

The Chair of the board cannot be a Councillor member.

The Bill makes provision for the Councils to agree on rules for replacement members in the event of resignation or removal as Councillor. Where suspended as Councillor, the member is suspended as a member of the Distributor-retailer board.

As Councils already receive remuneration from the Council, the Bill does not allow the Distributor-retailer to pay any remuneration to a Council board member of the Distributor-retailer. However, there is nothing in the Bill which prohibits a Councillor board member from seeking to be paid additional remuneration from their participant Council in recognition that they may be undertaking additional duties.

When acting as a board member, the Councillor is subject to the same duties as other 'independent' board members and must act in the best interest of the Distributor-retailer. This includes rules around conflicts of interest.

It should be noted that there were significant policy changes which occurred during the development of the Bill. These changes are outlined under the section 8.2.

7.3. Council directions and financial adjustments

Participating Councils, under section 49 of the DR Act, can issue written directions to the Distributor-retailer about the way it performs its functions, provided this was agreed by all of the Councils (or agreed by a majority of the Councils if this was provided for in their participation agreement). This direction was to be 'in the public interest' of the Distributor-retailer's geographic area and the SEQ region. The board's advice was to be sought as to whether the direction was consistent with the performance of the DR's function.

The proposed amendments are to enable an individual participating Council to give a direction (in the public interest of the relevant Council) to the Distributor-retailer, provided the Council issuing the direction is liable for compensating the Distributor-retailer or other participating Councils for any financial detriments arising from the direction.

Allowing for individual directions will give Councils a greater capacity to influence Distributor-retailer actions or decisions within their Council areas – but is balanced by making Councils responsible for their actions and compensating affected parties for the financial detriments of those actions.

7.4. Potential extension of development application arrangements

Currently, Councils are delegated powers by the Distributor-retailer, and undertake assessment of the water and wastewater components of development applications on behalf of the Distributor-retailers. This is an interim regime that was to allow Distributor-retailers to get ready for the eventual 'utility model' of approvals. This interim regime of assessing development applications is due to expire on 30 June 2013. This provision provides a regulation making power to extend the timeline if it is necessary.

7.5. Minor amendments

7.5.1. Applying the Queensland Local Government Officers Award 1998

The need to apply this award to a Distributor-retailer's employees arose from changes that were made in the Commonwealth sphere between the introduction and passage of the DR Act. In essence this award was intended to be a 'prescribed industrial instrument' for a Distributor-retailer's employees from 1 July 2010. This amendment restores the original policy intent.

The practical implication is on the current activity by Distributor-retailers in making new Certified Agreements for employees transferred from Councils. Until these new agreements are in place, the existing industrial instruments are applied to transferring employees. The Queensland Industrial Relations

Tribunal must consider relevant awards to apply a 'no disadvantage test' before approving new Certified Agreements made by Distributor-retailers. In addition, the prescribed industrial instruments have and will continue to apply, even after agreements are in place, in order to provide a safety net underpinning the agreements. This amendment therefore, while only delivering on the originally intended outcome, has some industrial consequences and as explained in the next section – has attracted Distributor-retailer concerns.

7.5.2. Clarifying amendment regarding contracts and the Market Rules:

This merely confirms the current understanding that contracts apply to Grid Service Providers (i.e. the bulk sector) as well as Grid Customers (usually the Distributor-retailers).

7.5.3. Amending a reference to a date for price mitigation plans:

This amendment merely corrects an error in a date from 2019 to 2018.

8. Explanation of the relevant provisions

8.1. No privatisation

As stated under section 7.1 this amendment simply reflects that there is no policy intention to privatise the Distributor-retailers. It provides that the Minister may not approve an amendment to participation rights under a participating agreement to allow the transfer of assets to an entity other than an existing participating Council for the Distributor-retailer. This allows for trading or changing participation rights between the participating Councils for a Distributor-retailer.

Note that this is consistent with provisions for commercialised water and wastewater business under the Local Government Act and regulations which also prohibit Councils from privatising their water businesses.

[Refer to clause 11 amending section 28 DR Act]

8.2. Councillors on Distributor-retailer boards

The Bill provides for Councillors to be able to be members of the relevant Distributor-retailer's board and associated provisions, and provides for the functions of a Councillor board member. These provisions together provide that Councils may appoint Councillors (including Mayors) to be members of a Distributor-retailer board. This change will replace current provisions allowing Council staff (as "associated employees") to be members on a board.

There are restrictions on numbers such that there can be no more than three Councillor board members, with only one Councillor board member per

Council. Therefore for Unitywater (which has only two participating Councils) it can have no more than two Councillor board members. Where there are more than two participating Councils (as for Queensland Urban Utilities), the Councils have to come to an agreement on who to appoint. There is a minimum of five board members in total (independent and Councillor members), but there is no maximum number set.

A Councillor member cannot be the Chair of the board (section 36B).

The Bill provides a default term for Councillor members of four years (which can include consecutive terms totally up to four years), which can be altered by the Councils under the terms of their participation agreements. Appointments automatically end if the person stops being a Councillor or the participation agreement or Council resolution ends it. The provisions allow for vacancies to be filled as per the participation agreement, or by another Councillor of the Council as a default if not provided for in the participation agreement. Where a Councillor's appointment is suspended as a Councillor, they are suspended as a board member.

The obligations and duties of Council members are in the same nature as those of independent members. However, Councillor members are not entitled to be remunerated by the Distributor-retailer (36A).

[Refer to clauses 12 – 14 inserting sections 33 to 36B, and clause 19 inserting a new section 52A DR Act]

8.3. Council direction powers and financial adjustments

The Bill amendments essentially expand on current powers of Councils to give directions to their relevant Distributor-retailer, and clarify their operation. Currently all Councils must agree to give a direction in the public interest (or a majority agree if this is provided for in the participation agreement). The direction is to relate to the Distributor-retailer performing its functions. There are requirements about obtaining advice from the Distributor-retailer's board, giving a copy of the direction to the Minister, publicly notifying, and that the Distributor-retailer must comply with the direction.

The amendments provide that an individual Council may give a direction in the public interest of the Council's area to the Distributor-retailer about performing its functions within the Council's area.

However, before giving the direction, the Council must assess whether, if the Distributor-retailer complies, there will be adverse financial consequences or detriment for the Distributor-retailer or other participating Councils. The Council wishing to give the direction must seek the advice of the Distributor-retailer. If there is an adverse impact or detriment the Council issuing the direction must first come to an agreement with the Distributor-retailer and affected Councils about recompensing the affected parties. Similar provisions to the current directions regime apply about making directions public and providing a copy to the Minister.

The power for an individual Council to give directions is limited to the way the Distributor-retailer performs its functions in relation to:

(a) Infrastructure charges imposed under a charges schedule in a Water NetServ Plan, which will not be in effect until 1 July 2013 (s. 99BO);

(b) Matters in a Council price path, which will take effect from 1 July 2013 (s.99BX); and

(c) the Distributor-retailer's annual capital works program, which will be required from 1 July 2013 (s 100B).

[Refer to clauses 15 to 18 amending sections 49, 50, 51 and inserting new sections 49A and 52A and clause 70 inserting a new section 99BZD DR Act]

8.4. Potential extension of development application arrangements

A regulation making power is provided to extend the timeframe for the interim model of development assessment, which will be relied on if it appears the Distributor-retailers and newly withdrawn Councils will have difficulties being ready for the replacement utility model that would otherwise be in place on 1 July 2013.

[Refer to clause 20 inserting amendments to section 53]

8.5. Minor amendments

8.5.1. Applying Queensland Local Government Officers Award 1998:

The Bill declares this award to be, and to always have been, a 'prescribed industrial instrument' for a Distributor-retailer's employees. This ensures that it will be an existing industrial agreement applied until, and continuing to be applied after, new Certified Agreements are in place. It will be considered by the Queensland Industrial Relations Tribunal to apply a 'no disadvantage test' before approving new Certified Agreements

[Refer to clause 76 inserting a declaratory provision for section 83]

8.5.2. Grid Contracts and the Market Rules:

The Bill provides that the Market Rules refers to contracts with bulk water entities, Distributor-retailers and the withdrawn Councils.

[Refer to clause 99 amending 360ZCY of the *Water Act 2000]*

8.5.3. Correct error in time period for Price Mitigation Plan:

Amends a drafting error by replacing a reference to 30 June 2019 to the correct date of 30 June 2018 for Council's price mitigation plans.

[Refer to clause 69 amending section 99BX DR Act]

9. Consultation on Part B matters

9.1. Consultation with Distributor-retailers and Councils

Initial consultation on the legislative proposals and subsequently on the draft Bill were as described under section 4 Consultation. The Commission held a series of workshops, with the first two workshops held on 29 August and 31 August 2011 that were attended by all Distributor-retailers and SEQ Councils. The 'non Allconnex' proposals were discussed in detail.

All Distributor-retailers continued to be invited to workshops and be provided with papers and drafts of the Bill, for their comments. Their comments on the practical aspects of the proposals were taken into account in finalising the Bill.

9.1.1. Councillors on boards

The original proposal put forward to stakeholders:

a) was based on Councillors acting in their capacity as Councillor when acting on the board;
b) specified period within which Councillor members had to be appointed (i.e. within a specified period of becoming elected or appointed as a Councillor); and
c) had rules for replacing vacancies and the term of office.

A number of the key policy elements of the Councillor on boards provisions were significantly altered during consultation due to stakeholder feedback.

The main area of dispute was (a) above, around the capacity in which a Councillor was acting when sitting as a Councillor member on the Distributor-retailer's board. This was initially presented to stakeholders on the basis that the Councillor's primary duty would be to their Council and to represent their Council's concerns over that of the Distributor-retailer. This was the original policy intent as the stated policy drivers were to provide Councils with 'control' over decision making.

There was strong feedback that this approach deviated too far from the standard commercial approach (and the approach currently provided for in the DR Act) - that a board member's duty was to the Distributor-retailer. Accordingly, the policy has changed and this is now reflected in the Bill. See section 9.2.1 for details.

Other issues of a technical and practical nature were raised relating to the period of appointment, removal of Councillor members, and replacement Councillor members. The general view was that more leeway should be given to Councils to determine such matters under their participation agreements and by agreement between themselves. Accordingly this feedback has been incorporated, for matters (b) and (c) above. See section 9.2.1 for details.

9.1.2. Council direction powers and financial adjustments

Distributor-retailers and Councils raised concerns about how to define and limit the power of a Council to give individual directions, particularly given potential financial impacts on other participating Councils or the Distributor-retailer.

9.1.3. Applying the Queensland Local Government Officers Award 1998

Some Distributor-retailers were not in favour of this amendment, seeing it as a matter that would complicate their negotiation of new Certified Agreements and a proposed new Water Industry Award. This is a highly technical area of industrial law and the advice of the Department of Justice and Attorney-General (which has jurisdiction over such matters) was to progress the amendment, as it confirms the original policy intent.

9.2. Results of consultation

Both Allconnex and the participating Councils provided generally positive feedback on the proposals and the Bill, and where practical issues were raised, for example dealing with conflicts of interest for Councillors on boards, these were largely addressed in the Bill.

9.2.1. Councillors on boards

As a result of the feedback outlined in section 9.1.1, the Bill now provides that a Councillor appointed to the Distributor-retailer's board must act as a board member first when making decisions for the DR (but is entitled and expected to bring their Council experience and perspective with them). Should there be any conflict between what would be desirable from a Council perspective and what is best for the Distributor-retailer, when acting on the board, the Councillor member must place the Distributor-retailer's interest first.

The new section 52A provides that a Councillor, when acting as a Councillor member on the board, is not bound to their responsibility as a Councillor under the Local Government Act or City of Brisbane Act. This is to avoid the inherent conflict of duty that would otherwise potentially arise in a Councillor sitting on the board of a distributor retailer in whom that Councillor's Council is a participant. The separation of the roles as Councillor and as Councillor member of a board is also necessary to avoid complaints about the behaviour of a Councillor arising from their acts or omissions as a board member being dealt with under the complaints procedures under the Local Government Act.

Despite these changes, Distributor-retailers and Councils have continued to express concerns about potential governance problems and that conflicts of interest would be difficult to manage for such a board. The provisions have

been retained as it is expected that there will be benefit in Councillors having a working understanding of their Distributor-retailers.

There were differing views from Councils about the best way to proceed with appointments, tenure, replacement Councillor members etc, with the Bill being originally prescriptive on these matters. As a result of this feedback, the Bill was amended to provide leeway to address such issues in a Participation Agreement and then by agreement between Councils. The Bill provides some fallback provisions in the event that participating agreements do not provide for such matters or Councils cannot reach agreements.

9.2.2. Council direction powers and financial adjustments

Issues raised by Distributor-retailers and Councils about the scope and impact of individual directions were addressed in the Bill by providing:

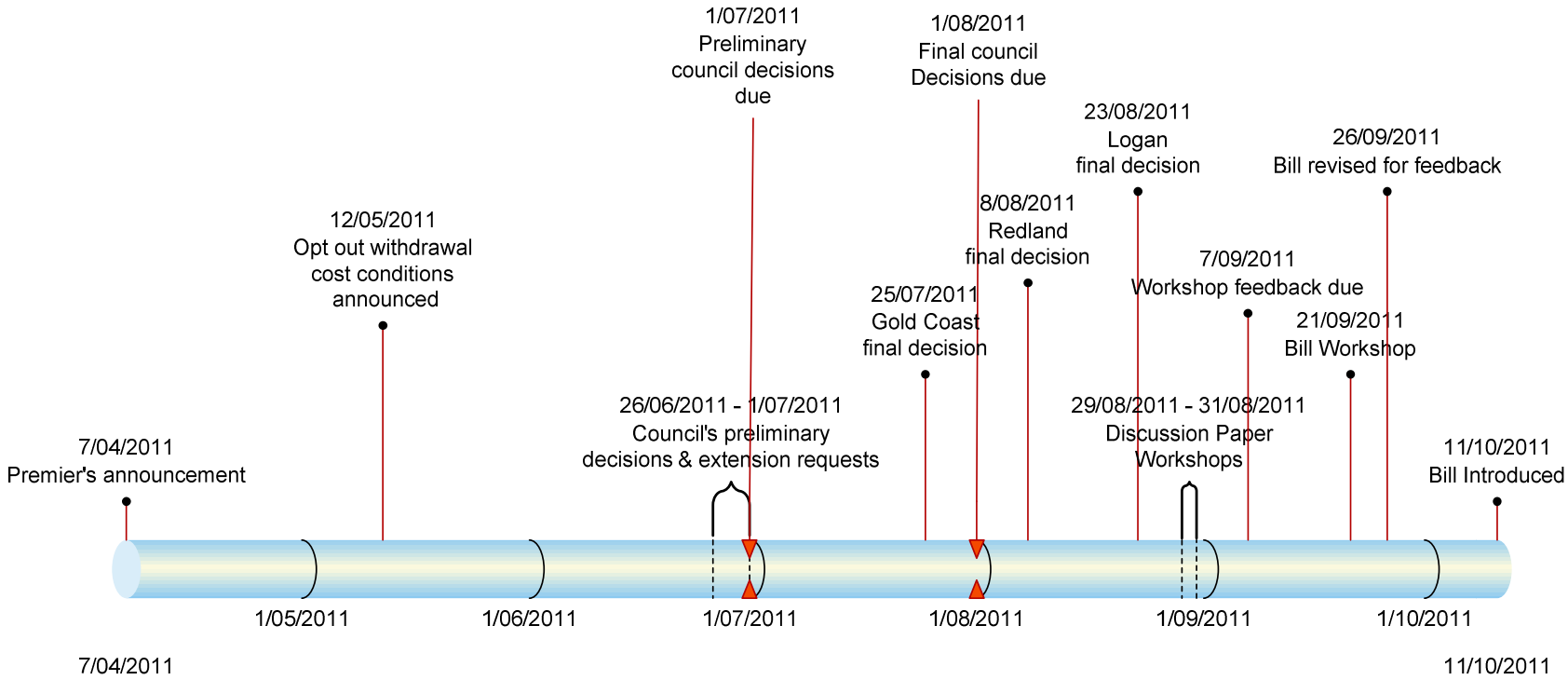
- a limited number of circumstances to which such a direction may apply; and
- providing for a process of seeking advice, ascertaining financial detriments and agreeing on a compensation arrangement before such a direction can be issued.

This approach was generally supported.

9.2.3. Applying Queensland Local Government Officers Award 1998

As noted above, on the advice of the Department of Justice and Attorney General, this amendment was progressed.

Attachment 1: Timeline of development and consultation of SEQWOLA



Attachment 2: Summary of Bill Provisions

Page	Description
	Chapter 3A (Part 2) – Main opt out provisions
17 - 18	No privatisation of Distributor-retailers (clause 11)
18 – 22	Councillors on boards (clauses 12 to 14)
23 – 24	Individual and group Council directions (clauses 15 to 18)
26	Definitions of Allconnex (section 92AB) and withdrawn Councils (section 92AC)
26-27	What are successor Councils (section 92AD) – i.e. which Council takes over from Allconnex. Different definitions for different matters. - *For customers,* the successor Council is the Council where the customer themselves are (section 92AD(1)(a)). See also section 92AK on p30 which migrates customers to that Council on 1 July 2012. For default provisions if debtors/ outstanding accounts not dealt with in retransfer scheme - section 92BH (3) to (5) on pp 44; - *For things done under re transfer schemes or Part 4 Div 1* (i.e. default mechanisms) – the successor Council is whichever Council nominated in retransfer scheme – section 92AD(1)(b). See also definitions of successor Councils in sections 92BH to 92BK (pp 44 to 46) which also mention who are successor Councils if no transfer scheme provisions deal with the matter (e.g. outstanding debtors, proceedings, assets and liabilities not transferred). - *For infrastructure matters* - the Council in the area of the infrastructure (section 92AD(1)(c)). See also sections 92BL to 92BR (pp 47 - 50) - *For other things not dealt with* (e.g. other obligations under the DR Act which continue to apply to the withdrawn Councils) – the Council where the thing happens or where it relates to (section 92AD(1)(d)).
28-29	- Withdrawn Councils become service providers for their local government area (section 92AG, p28) - No application for transfer of service provider registration (section 92AH), Definition of Council's initial service areas (section 92AI) - Businesses deemed to be commercial business units (section 92AJ).
30 -31	- Migration of customers from Allconnex to a successor Council on 1 July 2012 (section 92AK). - Migration of any appointment or delegation from Allconnex to the person when they join successor Council (section 92AL). - Transfer of Allconnex trade waste and seepage functions to apply certain DR Act provisions (section 92AM). - No other function affected (can still use Local Government Act authorised officer and other powers under Local Government Act)

Page	Description
	(section 92AN).
31- 32	- Allconnex is not wound up on 1 July 2012 (section 92AO), it has 'residual' functions after 1 July 2012 till windup (section 92AP) although these do not include providing water and wastewater services. - Allconnex board functions during this residual function period is the same as existing functions(section 92AQ), although there are modifications to allow Council employees to be on the board. - See sections 92EQ to 92ES (pp 86 to 87) for what happens when Allconnex is wound up.
32 - 38	- The retransfer of assets and liabilities to withdrawn Councils via a 'retransfer scheme'. - All things must go to a successor Council (section 92AR(1)) – enables windup of Allconnex. - Exception: CEO and board stay until windup (board members are not assets or employees – so they do not go). This would require Councils to provide Allconnex with assets and employees to operate during residual function period. - Transfer schemes effective 1 July 2012 (section 92AR(1)(a), 32). Section 92AX provides for things that can be included in a retransfer scheme. However, there are also hardwired rules for retransfer schemes: 1. Land and attached assets must go back to the same Council where the land is (sections 92AV and 92AW); 2. Councils to take back what they gave where possible (unless agreed) (section 92AR(3), p33). 3. The retransfer scheme must include arrangements for residual period, including remuneration of CEO (section 92AR(1)(a)(ii)(B)). 4. The retransfer scheme must make provision for all causes of action, claims and proceedings, subject to the following requirements: a. For matters in the Land Court or Planning and Environment Court, that the replacement Council must be the Council where the matter relates (section 92AT(3)). b. For claims or proceedings which were transferred pre-2010 from a Council must revert back to that Council (section 92AT(2)). c. For all other matters, the retransfer scheme is to specify which Council etc (section 92AT(1)). 5. The retransfer scheme must include a process to account for certain liabilities (section 92AU(1)). 6. Transfer scheme is subject to Workforce Framework and the framework overrides if any inconsistency (section 92EH, p82). Discharge of liabilities on retransfer scheme on 1 July 2012 (section 92BB, p41).
38 - 40	Certification statement, contents and Ministerial gazettal – due 30 April 2012 (sections 92AY – 92BA).

Page	Description
41 - 43	Ministerial retransfer notices and directions – power starts from 1 May 2012. Note Minister can also change a default under section 92BI.
43	Miscellaneous provisions for 'retransfer documents'. A retransfer document is either a retransfer scheme made by the parties themselves or a retransfer notice or direction made by the Minister. These effectively provide for the discharge of a liability after the transfer under retransfer document and that retransfer documents are subject to the staff retransfer scheme.
44-46	Default provisions: these only apply if parties have failed to include in retransfer schemes. The policy is to ensure that the property moves to somewhere in the absence of Allconnex. - *Allconnex service charges (debts)* – money belongs to all three Councils in shares (section 92BH(1) and (2)). However, the individual Council where the debtor is, has the ability to chase the joint money and Bill anything which Allconnex failed to Bill (section 92BB(3) and (4)). - *Assets and liabilities* – in participation rights shares (unless transferred from Council in which case it goes back to that Council) (section 92BI). Minister can override with a retransfer document (section 92BI(4)). - *Proceedings on foot* – all become parties (unless transferred from a Council in 2010 in which case goes back that Council or if it's a Planning and Environment Court or Land Court matter it goes back to the Council where the land is) (section 92BJ) - *Proceedings not started* – as above (section 92BK).
47- 50	Infrastructure agreements and matter about planning, including who is Allconnex's successors.
46-47	Exchange of information to enable Councils, and Allconnex if it is still in existence, to exchange information where necessary for providing water and wastewater services (section 92BS). Authorisation to disclose and use information for retransfer purposes or to perform service provider functions (section 92BT). Provides for continued access to the Allconnex infrastructure register (section 92BU). Provision provides that the division applies despite Right to Information and Intellectual Property (section 92BV).
52-57	Withdrawal costs and arbitration - Definition (section 93BW) and a regulation making power to add extra in (section 92BW1)(h)) or take certain ones out (section 92BW(2)(d)). Does not include loss of profit, failure to realise anticipated savings; or (essentially) ordinary business costs that otherwise would have been incurred. - Gold Coast to bear own costs (section 92BX). - Allconnex withdrawal costs (section 92BY). - Gold Coast liability to other Councils for allowable costs (section 92BZ). - Ability to make periodic claims or lump sums (section 92CA). - Duty to mitigate (section 92CB). - Limitation period (section 92BV) – if no written notice of a claim is made, Gold Coast's liability ends on 30 June 2013. - Exclusion of City of Brisbane Act and certain types of justiciability (section 92CD).

Page	Description
	- Arbitration rules – IAMA member as default (sections 92CE – 92CK).
57 -58	- Ousting certain parts of the Judicial Review Act 1991 for Minister's decisions re retransfer document or approval of the retransfer staff support framework (section 92CL). - Provides protections for certain things done under or in compliance with a retransfer document (section 92CM). - In an Act or document, references to Allconnex taken to be referring to a successor Council as stipulated in section 92AD (92CN).
54-60	- Registering authority, e.g. land titles registry, vehicle registration (section 92CO); No liability for state taxes and charges (e.g. stamp duty) for things transferred under a retransfer document (section 92CP). Tax Equivalent Regime (TERs) – local government goes back to Local Government Act TERs regime for tax equivalents, except for things relating to pre 1 July 2012 (section 92CQ). Trade waste compliance notices already given by Allconnex rolls over to success Council (section 92CR).
60-62	- Water Act provisions – applying certain requirements to withdrawn Councils from 1 July 2012. E.g.- Market Rules (section 92CL), Grid Contracts (with necessary changes for context) (92CM), WEMPs (section 92CUA), and other actions taken under the Water Act 2000.
57-67	Water Supply Act provisions – applying certain regulatory requirements to withdrawn Councils from 1 July 2012. - E.g. rolling over existing trade waste and seepage approvals (and make consistency amendments where necessary) - Migration of applications made under that Act - Migration of actions taken under that Act - Rolling over compliance and other stated notices under that Act - Rolling over certain plans made under that Act.
68	Allowing successor Councils to rely on certain Allconnex documents as their own for a period of one year. The policy is to enable time for Councils to develop their own.
69	Planning Act matters – includes ending current delegations so that withdrawn Councils asses in their own right.
70-72	Land and plumbing matters. - Acquisition of land (section s 92DK-92DM) - Prohibition on transferring Deed of Grant in Trust land or leased land granted to Allconnex (under section 75 or 76 of the DR Act) to a Council where the land isn't located (92DN) - Plumbing and Drainage (section 92DO).
73	Allconnex debts which are owing – provides that from 1 July 2012, the Local Government Act applies in certain ways (section 92DP). See Explanatory Notes for further detail.
74-75	- Provides for situations where third parties own land on which a Council asset is located (which has been retransferred from Allconnex).

Page	Description
	- Provides for local government worker access under the Local Government Act regime (section 92DS) - Places certain requirements and restrictions on land owners which are similar to those imposed under the Local Government Act (section 92DT).
75 - 79	CPI capping – withdrawn Councils must CPI cap small customer and small business accounts until 30 June 2013.
80 - 86	2012 Workforce Framework (WFF) etc - Minister to approve based on IR Minister's recommendation (section 92EC) - WFF can be commenced retrospectively (section 92ED) - 2009 WFF ends when 2010 WFF takes effect (section 92EE); - requirement to publish framework (section 92EF) - obligation to comply with framework (section 92EG) - WFF prevails (section 92DH) - preservation of rights and entitlements (sections 92EI-92EP).
86 - 87	- Dissolution of Allconnex: ability to fix a date (section 92EQ) - Board and CEO go out of office (section 92ER) - Miscellaneous provisions re liabilities and rights (section 92ES).
87-109	Various operational sections which essentially treat the withdrawn Councils on same basis as Distributor-retailers (minor exceptions and modifications). - Customer charters/ customer code/ consumer protection (p87-90). - Metering (p90-93). - Restrictions – no ability to restrict on basis of no security as securities won't be allowed for withdrawn Councils (section 93). - Water restrictions – DR Act rules apply as modified (sections 93- 94). - Charges and Billing (sections 94-97). Note requirement to publish prices, account content requirements are similar to those for DRs. See also section 122, p114 which provides a two year or earlier transitional period around certain billing content). - SEQ Design and Construction Code (p97 - 99). - Netserv plan (p100-106). See also clause 71 on p110 re Commission's power to make guidelines for Netserv. - Purchase and inspection requirements for certain documents (p106- 108) - Price Mitigation Plans (p108) and Final Price Paths (p109). See section 119 on p113 for the rollover of the Council Price Mitigation Plans so that they become Price Mitigation Plans for the withdrawn Council prices rather than Allconnex's.
109	Financial adjustment head of power (section 99ZBD). Note link to triggering events, including individual Council directions (on p23).
110-112	Generic, includes: - Requirement to give information to Commission re administration of DR Act (section 100DA).

Page	Description
	- General regulation making power over withdrawn Councils where relates to a DR Act matter section 102).
112	LGOA and preservation of awards (section 107A) – applies to all DRs.
113-114	Transitionals for the current DR Act. Also a transitional regulation making power (section 123).
114 - 121	Amended dictionary for the DR Act.
121-127	Energy and Water Ombudsman of Queensland (EWOQ) - provisions making withdrawn Councils subject to EWOQ jurisdiction. - Also makes provisions for certain privacy matters to allow use and disclosure in stated circumstances (which generally relate to the EWOQ undertaking its functions and the DRs or withdrawn Councils responding to requests etc) (section 25A, p121). - Transitionals for EWOQ matters are pp 123 – 127.
127-129	Amendments to - Plumbing and Drainage Act (p127-131); - QCA Act and regulation (p131-133); - Water Act 2000 (p133); - Water Supply Act (134-135); - Minor and consequential amendments Acts (135- 138)