

Agriculture and Other Legislation Amendment Bill 2019

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Mr Mark Furner (MP)

Title of the Bill

The short title of the Bill is the Agriculture and Other Legislation Amendment Bill 2019.

Objectives of the Amendments

The objective of the amendments during consideration in detail are to:

- Enable Sunwater (the dam owner) to commence and complete urgent works to lower a spillway of Paradise Dam in the Burnett River, before the commencement of the 2020-2021 wet season;
- Reduce the risks posed to the downstream Bundaberg and surrounding communities, from a catastrophic failure of Paradise Dam;
- Ensure that if the chief executive for the *Water Supply (Safety and Reliability) Act 2008* sets a safety condition for reducing the dam safety risks for Paradise Dam, there are no impediments to delivering these urgent works; and

Achievement of the Objectives

The objectives of the amendments are also achieved by amending the *Water Supply (Safety and Reliability) Act 2008* to not require certain Acts to apply when the chief executive amends a dam safety condition in relation to urgent works to lower a Paradise Dam spillway.

The amendment is specific to the proposed urgent works for the existing Paradise Dam only, and is time bound until 31 December 2023. The proposed amendments are broad to be purposefully flexible and adaptable to ensure that the lowering of a spillway and associated works can commence prior to the 2020-2021 wet season, to ensure the safety of the downstream Bundaberg and surrounding communities.

The amendment will not be applicable to any other referable dam in Queensland and are time bound; the provisions expire on 31 December 2023.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives. The policy objectives can only be achieved by legislative amendment.

Estimated Cost for Government Implementation

There are no anticipated costs to government for implementation of the amendments.

Consistency with Fundamental Legislative Principles

The amendments may breach some fundamental legislative principles (FLP) which require sufficient regard to the rights and liberties of individuals and the institution of Parliament. Justification for the breaches of the FLP to achieve the policy objectives are set out below.

Legislation that is unambiguous and drafted in a sufficiently clear and precise way (section 4(3)(k) of the *Legislative Standards Act 1992*)

To allow sufficient flexibility to investigate and determine the exact nature of the works required to lower a spillway for the Paradise Dam to reduce the risk of the dam failing, the terms: *spillway works* and *associated works* used in the amendments are not precisely defined. This is justified in the circumstances where urgent amendments are required to exempt activities involved in carrying out the spillway works and associated works from approvals required in relevant State Acts to avoid a delay in commencing the urgent works by the end of the 2019-2020 wet season, in March 2020. The urgent works are required to address immediate dam safety risks and protect individuals downstream in Bundaberg and surrounding communities from a potential catastrophic failure of the Paradise Dam in the event of a significant rainfall event in or around Paradise Dam. The amendments are legally effective to achieve the urgent public safety issue to be addressed in a time critical period.

Legislation that does not adversely affect rights and liberties (section 4(3)(g) of the *Legislative Standards Act 1992*)

By exempting the requirement under a number of State Acts to obtain approvals for the activities involved in carrying out the urgent spillway works and associated works, the rights of interested persons to participate in any consultation process in relation to the approvals will be restricted. The removal of these rights is proportionate and justified to meet the critical timeframe in which to commence urgent work to address the unacceptable dam safety risks and to protect public safety in the event of another significant rainfall event in or around Paradise Dam.

Legislation authorises the amendment of an Act only by another Act (section 4(4)(c) of the *Legislative Standards Act 1992*)

The amendments breach the FLP to have sufficient regard to the institution of Parliament as the amendments enable a regulation to be made which exempts the application of a provision of an Act to the carrying out of spillway works or associated works that would significantly delay the carrying out of the works. This provision authorises the amendment of an Act by an instrument other than another Act. This breach is justified on the basis that further legislative constraints contained in other Acts, other than those Acts listed in the amendments, may be identified during the investigation and determination of the exact nature of the works required to lower a spillway for the Paradise Dam to reduce the risk of the dam failing.

Breaches of these FLPs are necessary to achieve the policy objective.

Consultation

Consultation on the amendments to the *Water Supply (Safety and Reliability) Act 2008* has been undertaken with Sunwater as the owner of the Paradise Dam.

Consultation occurred with Department of Premier and Cabinet, Queensland Treasury, Department of State Development, Manufacturing, Infrastructure and Planning, Office of the Coordinator-General and all agencies affected by this bill.

NOTES ON PROVISIONS

Amendment 1 amends the *Water Supply (Safety and Reliability) Act 2008*. Specifically, the insertion of the new Part 5, Particular works for Paradise Dam, and new sections 399D to 399I, which are explained in further detail below.

The insertion of section 399D identifies the amendments as being specific to spillway works for Paradise Dam and their application as they directly relate to the chief executives ability to change safety conditions for Paradise Dam. This is to ensure that the provisions are not applicable for any other referable dams in Queensland.

New section 399E creates new required definitions for 'associated works' and 'spillway works' to support delivering the amendments objectives and ensuring that the scope of the amendment is limited to those needed to reduce the immediate risks posed by Paradise Dam to the Bundaberg and surrounding communities. These definitions only apply to Chapter 4, part 5.

To allow Sunwater to begin the lowering of a spillway and associated works to Paradise Dam at the end of the 2019-2020 wet season and make the dam safe for the Bundaberg community and surrounding region prior to the 2020-2021 wet season, the insertion of section 399F identifies the State Acts that do not apply, as well as the exemption from local law provisions and any future acts identified in Regulation. The State Acts included are the:

- *Biosecurity Act 2014*
- *Building Act 1975*
- *Environmental Protection Act 1994*
- *Fisheries Act 1994*
- *Forestry Act 1959*
- *Land Act 1994*
- *Nature Conservation Act 1992*
- *Pest Management Act 2001*
- *Planning Act 2016*
- *Plumbing and Drainage Act 2018*
- *Recreation Areas Management Act 2006*
- *State Development and Public Works Organisation Act 1971*
- *Transport Infrastructure Act 1994*
- *Transport Operations (Marine Safety) Act 1994*
- *Transport Planning and Coordination Act 1994*
- *Vegetation Management Act 1999, and*
- *Water Act 2000.*

This new section also provides the Minister with the power to recommend to the Governor in Council that a regulation may be made. This enables exclusion of State Acts if a provision is

identified, during the implementation of spillway and associated works, by Sunwater that will significantly delay carrying out of the urgent works. Importantly the regulation will only be made if it does not adversely impact public health and safety.

Exemption from these acts and provisions, and the ability to create a regulation, are identified as necessary to meeting the policy objectives and importantly providing the dam owner with the ability to begin the works at the end of the 2019-2020 wet season.

This new section is strengthened to ensure that any potential future regulation is applicable only to the urgent lowering of a spillway and associated works for Paradise Dam. These provisions expire on 31 December 2023.

The insertion of section 399G identifies that the dam owner, must give the chief executive notice of the works before starting any spillway works or associated works.

New section 399H relates to the resource operations licence (ROL) for Paradise Dam, specifically with regards to the chief executive's ability to amend the ROL without an application. This will ensure the ROL reflects all infrastructure and operation changes to Paradise Dam due to the safety condition to make the dam safe. The section specifies that the chief executive must advise the dam owner within 30 days of amending the ROL that the change has been made and provide them with a copy of the new ROL. These amendments provide for timely amendment of the ROL in relation to the urgent works to make the dam safe.

The inclusion of new section 399I identifies that this new part 5 (sections 399D – 399I) will expire on 31 December 2023. This concluding provision to part 5 delivers on the policy objective that the amendments are urgent and time bound and apply to spillway works and associated works to respond to and address the immediate Paradise Dam safety risk to Bundaberg and the surrounding communities.

Amendments to the definition of 'works' under Schedule 3, apply only to part 5.

Amendment 2 amends the long title of the Act to include the *Water Supply (Safety and Reliability) Act 2008*.