Parliamentary Committees

Water and Other Legislation Amendment Bill 2011

Report No. 4
Environment, Agriculture, Resources and Energy Committee
November 2011

Environment, Agriculture, Resources and Energy Committee

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Abbreviations and Glossary

Artesian water	Water that occurs naturally in, or is introduced artificially into, an aquifer, which if tapped by a bore, would flow naturally to the surface.
CSG	Coal seam gas.
DERM	Department of Environment and Resource Management
DOL	Distribution Operations Licence - A licence authorising the licence holder to take water or interfere with the flow of water to distribute water under water allocations.
Ecological outcome	A consequence for an ecosystem in its component parts specified for aquifers, drainage basins, catchments, sub-catchments and watercourses.
Ecosystem	A dynamic combination of plant, animal and microorganism species and communities and their non-living environment and the ecological processes between them interacting as a functional unit.
EDO	Environmental Defenders Office (Qld) Inc.
Environmental flow objective	For a water resource plan, means a flow objective for the protection of the health of the natural ecosystems for the achievement of ecological outcomes.
FLPs	Fundamental legislative principles - The principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act 1992*, section 4(1)). The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.
GRC	Gympie Regional Council
MRCCC	Mary River Catchment Coordinating Committee
Overland flow water	Water, including floodwater, flowing over land, otherwise than in a watercourse or lake – (a) after having fallen as rain or in any other way; or (b) after rising to the surface naturally from underground. "Overland flow water" does not include (a) rainfall or runoff that naturally infiltrates the soil in normal farming operations, including infiltration occurring in farming activity such as clearing, replanting and broadacre ploughing; or (b) tailwater from irrigation if the tailwater recycling meets best practice requirements; or (c) water collected from roofs for rainwater tanks.
Plan area	For any plan under the *Water Act 2000* (Qld), means the part of Queensland to which the plan applies.
QCC	Queensland Conservation Council
QFF	Queensland Farmers Federation Limited
QMDC	Queensland Murray Darling Committee Inc.
QRC	Queensland Resources Council
QRNRMGC	Queensland Regional Natural Resource Management Groups Collective

ROL	Resource Operations Licence - A licence that authorises the licence holder to interfere with the flow of water to the extent necessary to operate the water infrastructure to which the licence applies.
ROP	Resource Operations Plan - A plan implementing the water resources plan (WRP) for a particular area, setting out the day-to-day arrangements to put the WRP into effect. Among other things, it defines water allocations and the rules for trading water and other relevant matters.
SMRCG	Save the Mary River Coordinating Group
Spring	Water naturally rising to, and flowing over, the surface of land.
Subartesian water	Water that occurs naturally in, or is introduced artificially into, an aquifer, which if tapped by a bore, would not flow naturally to the surface.
Transfer	For a resource operations licence, an interim resource operations licence, or a water allocation, means the passing of the legal or beneficial interest in the licence or allocation.
Underground water	Artesian water and subartesian water.
WA	Water allocation - An authority to take water given under ss 121 or 122 of the *Water Act 2000*. It sets out matters such as the volume of water allowed to be taken, the location where water may be taken, the purpose of the taking (e.g. agriculture, urban, industrial).
Water	Means: (a) water in watercourse, lake or spring, or (b) underground water, or (c) overland flow water, or (d) water that has been collected in a dam.
Water entitlement	A water licence, interim water allocation or water allocation.
Water infrastructure	Works operated by the State or the holder of an interim resource operations licence, resource operations licence or other authorization that is relevant to the management of water entitlements.
WBBCC	Wide Bay Burnett Conservation Council Inc.
WRP	Water Resource Plan - For each catchment provides a framework to share water between human uses (e.g. grazing, industry, mining) and environmental values. It is subordinate legislation specifying outcomes and strategies to be implemented by the various ROPs for the WRP area.

Executive summary

This Report presents the findings of the Environment, Agriculture, Resources and Energy Committee's examination of the Water and Other Legislation Amendment Bill 2011, referred by the Legislative Assembly to the committee on 17 June 2011.

The Bill has wide ranging aims, including the:

- integration of the current two-stage water resource planning process
- ability for Category 2 water authorities to transfer to local government or to alternative structures
- the entrenchment of the wild rangers' program in legislation, and
- improvement of indigenous consultation on wild river declarations.

Various acts are amended by the Bill, including the *Water Act 2000* (Qld), *Wild Rivers Act 2005* (Qld) and *River Improvement Trust Act 1940* (Qld).

The aims and amendments which have generated the most concern relate to the *Water Act 2000*, such as the proposed shorter process for community consultation in relation to water planning and a longer process where planning is more complex or of high community interest.

Fourteen written submissions were received by the committee in response to its call for submissions and evidence from seven witnesses was heard by the committee at the subsequent public hearing.

The Department of Environment and Resource Management (DERM) has assisted the committee by providing a public briefing, responding to issues raised in submissions and providing further clarification and advice when required.

After consideration of all of the submissions, advice and evidence given during the course of the committee's examination, the committee ultimately focussed on four clauses of the Bill (clauses 13, 15, 63 and 89) which generated the most concern amongst submitters.

Briefly, clauses 13 and 15 relate to ministerial discretion to use a shorter consultation process when amending a draft water resource plan or where a new plan replaces an existing plan and the removal of the compulsory establishment of community reference panels during the drafting of such plans. Clause 63 relates to the contents of the Commonwealth Environmental Water Holder's water licence and clause 89 provides for certain self assessable activities to be undertaken without a permit in watercourses, lakes or springs.

After seeking further clarification and assurances from DERM in relation to these clauses, the committee is satisfied with responses received in relation to three of the clauses (13, 15 and 89). However, the committee notes concerns of ambiguity with the wording of clause 63 and recommends that this clause be redrafted.

The committee is satisfied with the advice provided by DERM on the remainder of the concerns raised by submitters.

Recommendations

Recommendation One **p.10**

The committee recommends that clause 63 be redrafted to clarify its meaning and remove ambiguities in line with changes suggested by Agforce in their submission.

Recommendation Two **p.13**

The committee recommends that the Bill be passed subject to the amendment to clause 63 recommended in this report.

1 Introduction

1.1 Role of the committee

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 17 June 2011, the Legislative Assembly referred the Water and Other Legislation and Amendment Bill 2011, introduced by former Minister for Environment and Natural Resources, Kate Jones MP, to the committee for consideration and report by 19 December 2011. On 7 September, the Committee of the Legislative Assembly amended the reporting date to 8 November 2011, in accordance with Standing Order 136(1).

The committee's consideration of the Bill included a public submission process and briefing by policy officers from the Department of Environment and Resource Management (DERM) and a public hearing. The committee also considered expert advice on the application of the fundamental legislative principles to the Bill.[1]

Public submissions

The committee advertised its inquiry into the Bill in *The Courier Mail*, *Queensland Country Life* and *The Cairns Post.* The committee also wrote to stakeholder groups inviting written submissions on the policy that the Bill would give effect to as well as the Bill's conformance with fundamental legislative principles. The committee accepted 14 written submissions (listed at Appendix 1). Appendix 2 provides a summary of the points raised in submissions on the chapters and clauses of the Bill.

Public briefing

Officers from the Department of Environment and Resource Management (DERM) briefed the committee on the Bill on 3 August 2011. The committee opened this briefing to the general public. A synopsis is available from the committee's web pages.

Public hearing

The committee questioned submitters about their views on the Bill at a public hearing on 12 October 2011 at Parliament House, Brisbane. The transcript of this hearing is available from the committee's web pages. A list of witnesses who gave evidence at these hearings is at Appendix 3.

1.2 Policy objectives of the Water and Other Legislation Amendment Bill 2011

The WOLA Bill[2] aims to:

- Integrate the current two-stage water resource planning process
- Simplify economic development approvals for Indigenous communities in Cape York
- Make it easier for category 2 water authorities to transfer to alternative structures

[1] Section 4 of the *Legislative Standards Act 1992* (Qld) provides that the fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

[2] Queensland, *Record of Proceedings*, Legislative Assembly, 16 June 2011, p.1969 (Kate Jones MP, former Minister for Environment and Resource Management) - available http://www.parliament.qld.gov.au/documents/hansard/2011/2011_06_16_WEEKLY.PDF

- Entrench the wild river rangers program in legislation, and
- Implement the government's commitment to improve Indigenous consultation on future wild river declarations.

Proposed amendments to the *Water Act 2000*

A significant proportion of the WOLA Bill seeks to amend the *Water Act 2000*. These amendments would provide for:

- Concurrent development of water resource planning
- A shorter process for community consultation in relation to water planning and a longer process where planning is more complex or of high community interest
- Simplifying certain notification of works procedures
- Reforming the process for transferring Category 2 water authorities to alternative institutional structures or local governments
- Making better provision for recovery by the Queensland Water Commission (QWC) of government seed funding through a levy on petroleum tenure holders
- Implementing some wild river initiatives, including increasing Indigenous economic development and recognising Indigenous access to water in the Gulf of Carpentaria wild rivers[3]

Proposed amendments to the *Wild Rivers Act 2005 (Qld)*

Part 5 of the WOLA Bill seeks to amend the *Wild Rivers Act 2005 (Qld)* to:

- Enable the Minister to establish Indigenous reference groups under the Act to ensure greater engagement with Indigenous communities in the wild river declaration process, and
- Legislatively recognise the Wild River Rangers program.[4]

Other proposed amendments to Acts

Amendments to the *Cape York Peninsula Heritage Act 2007 (Qld)* and the *River Improvement Trust Act 1940 (Qld)* are also proposed[5].

[3] Dixon, Nicolee, 'Water and Other Legislation Amendment Bill 2011 (QLD)' (2011) Queensland Parliamentary Library Research Briefs p.1.
[4] Dixon, Nicolee, (2011) p.ii-iii.
[5] Dixon, Nicolee, (2011) p.iii.

2 Examination of the Water and Other Legislation Amendment Bill 2011

The table at Appendix 2 provides a summary of comments on the chapters and clauses of the Bill raised by submitters, together with responses to these comments provided to the committee by DERM.

The following section discusses the key clauses that attracted the greatest volume of comment from submitters, as well as other clauses where the committee believes the Legislative Assembly would benefit from further clarification by the Minister of advice provided by DERM.

For the remaining clauses, the committee is satisfied with the advice provided by DERM on the points raised by submitters.

Clause 13 – Replacement of s 39 and 40 (Ministerial discretion)

Clause 13 would insert a new subdivision to replace existing sections 39 and 40, about consultation requirements for particular plans before their preparation. This subdivision will allow the Minister to decide to use a shorter process when amending a draft plan or a new plan replaces an existing plan. This would also provide that, before publishing a notice of proposal to prepare a draft water resource plan, the Minister must first prepare a statement of proposals.

The QMDC does not believe discretionary powers should be made available to the Minister without clearly articulating the boundaries within which those powers can be exercised. The QMDC recommends that the Minister be required to issue a public statement outlining the reasons, processes and information relied on to make his or her decision to undertake either the shortened or long process, and that this statement should be released following the first instance of the ministerial decision.

The QCC also recommended that 'contingency legislative steps' be mandatory eg moratorium notice, statement of proposals, notice of intent, submission and information sessions and establishment of a CRP. They suggested that the Minister be required to issue a public statement that details the reasons, processes and information utilised in making his/her decision to undertake either the standard or long process, and that this statement should be released following the first Ministerial decision point. They also recommended that the Minister's public statement include electronic links to all relevant reports and studies utilised in pre-planning processes in order to provide easy public access to this information. During the committee's public hearing, the QCC clarified that their concern was:

> *…more so the erosion of community consultation opportunities within the proposed framework and also the lack of detail that has been provided to us on how some of the criteria in regard to the ministerial discretion aspects of the proposed process are going to be delivered.*

The QCC suggested that:

> *…when it is evident that there are a lot of contentious issues or emergent issues, there has to be almost like a duty of care or obligation to go down the long-form process.*

The Environmental Defenders Office (Qld) (EDO) Inc raised concerns that the proposed changes would give the Minister unfettered discretion over the level of public consultation in relation to water resource planning in catchments where there are existing plans. The EDO suggested the standard (short) process should only be used where the changes to the plan are 'minor'. They recommended that the proposed s.38A(2) be amended so the 'long process' applies in all cases where there is likely to be significant changes to the allocation and sustainable management of water in a plan area. To address their concerns, EDO proposed that clause 13 of the Bill be either amended so the new s.38A(2) reads as follows:

(2) This subdivision applies if –

(a) The proposed draft water resource plan is likely to significantly change arrangement for the allocation, and sustainable management, or water in the proposed plan area; or

(b)… ;or

(c)…

Alternatively, the EDO proposed that the Act must include clear criteria setting out factors the Minister must take into account in exercising her/his discretion.

During the public hearing, the Mary River Catchment Coordination Committee (MRCCC) and the Save the Mary River Coordinating Group (SMRCG) representatives highlighted concerns about this clause. The MRCCC argued that:

> *The major point we make is that whenever a long-form process is invoked there should be no discretion as to whether a community reference panel is conducted; there must be a community reference panel conducted. (emphasis added).*

The SMRCG stated:

> *…we would recommend that any new legislation must include a very specific compulsory trigger for full public consultation at any time a water resource plan creates a new reserve or changes the size of an existing reserve or at any time that specific allocations are granted from the reserve via a resource operations plan.*

Finally, Stanwell Corporation voiced their concerns over this clause. They stated:

> *…we would submit that it would be worthwhile to canvass the community at the notice-of-intent phase. So when you are kicking off the water resource planning process, be it a combined water resource plan and resource operations plan, or solely the water resource plan, the community is canvassed at that point in time to see whether or not they think there would be benefit in having a community reference panel rather than having the decision made or recommended by people who are not within that community who are not water users, who may not know what the community out there is thinking.*

And that:

> *… instead of making a decision that a community reference panel will not be established for a certain water resource plan area, the time it is announced that the process is going to commence is the point at which people are asked if they would like to see a community reference panel established for the area. They would get to have the input into it at the start, rather than having the decision made for them.*

Advice from DERM

DERM advise that the Minister will have the discretion (in accordance with the criteria specified in the legislation) to include the additional process steps described by the submitter where required. Additional legislative prescription is not necessary, and that the clause as drafted is consistent with the government's position in this area.

The committee's further request for advice

The committee sought further clarification from the department on the processes by which ministerial decisions about the need for public consultation would be made and the criteria used for determining the need for public consultation.

Further advice from DERM

In further advice, DERM advised that the process used by the Minister to determine the appropriate level of public consultation would be a matter for the Minister to decide, though the Minister's discretion regarding the appropriate level of consultation would be bounded by the criteria outlined in the Bill as explained in the department's previous advice.

DERM also explained that the new section 38A would require that if a proposed draft water resource plan is to apply to a part of Queensland where no current plan is in place, the Minister must carry out additional consultation through the preparation of a statement of proposals (SOP) and must release a public notice of the proposal to prepare a draft plan. The statement of proposals would be a public document and submissions from interested parties would be sought by the Minister.

For a proposal to prepare a draft replacement plan or amend an existing plan, the new section 38A would require the Minister to consider:

- if the draft plan will significantly change the arrangements for the allocation and management of water in the proposed plan area
- if the terms of the proposed plan will be significantly different to other water resource plans in other parts of Queensland, and
- whether the Minister needs further information about community views and expectations about water allocation and management issues in the proposed plan area.

The Minister may consider, for example, the nature and complexity of the proposed plans, departmental advice, preliminary consultation with affected stakeholders (including State agencies), technical assessment outcomes, as well as feedback from peak body groups. On the basis of this information, the Minister may decide it is in the public interest to conduct more formal consultation and therefore require the preparation of a SoP and publication of a notice of availability of the SoP, which will call for submissions.

Committee comment
The committee notes the comments from submitters on this clause and the clarifications provided by DERM. The committee is satisfied that the amendments proposed by clause 13 are acceptable and reasonable.

Clause 15 – Omission of s 41 (Community reference panels)

The issue that received the most submissions was in relation to Clause 15, and the removal of the compulsory requirement to establish community reference panels during the drafting of water resource plans.

Clause 15 would omit section 41 of the Act, which mandates the establishment of a community reference panel if a notice of intention to prepare a draft water resource plan was published under section 40[6]. Eight submitters raised concerns about this clause of the Bill.

According to the explanatory notes, the new legislative framework for water planning does not prevent the establishment of a reference panel. Flexibility is provided for the Minister to establish a new reference panel or to use an existing body for more targeted and effective consultation[7].

The Mary River Catchment Coordinating Committee (MRCCC) suggested that whenever the "long form process" is invoked, a community reference panel (CRP) is formed as a compulsory step and kept fully informed of all technical issues and specific water allocation and operation scenarios being considered throughout the process, specifically including the "Stage 2 Technical Assessments".

The Queensland Murray-Darling Committee Inc. (QMDC) recommended that regional advisory committees are appointed to advise the Minister. According to QMDC, these committees would need to be appointed by the region's communities to represent key regional stakeholders, and peak bodies and include local landholders.

The Queensland Conservation Council (QCC) argued that reducing the opportunities for public engagement in the single process framework could lead to a perceived lack of transparency that

[6] Water and Other Legislation Amendment Bill 2011 (Qld) - Explanatory Notes p.44.
[7] Water and Other Legislation Amendment Bill 2011 (Qld) - Explanatory Notes p.44.

could undermine community and stakeholder ownership of plans developed under the new framework.

Gympie Regional Council (GRC) submitted that a community reference panel (CRP) should be compulsory to guide DERM's formulation of the Mary River Water Resource Plan, and that the panel should be empowered to take its disagreements with DERM to the Minister.

Stanwell Corporation Limited warned that if the requirement for community reference panels is removed, the complexity of the information in draft WRPs and ROPs will be harder for the community to digest through public meetings. They suggest that the Water Act needs to provide greater flexibility regarding the requirement to appoint a CRP, as proposed in clause 15, by including a requirement to canvas the community for input at the time of the notice of intent as to whether the community within the plan area believed a CRP would give value to the process, or if there are other 'peak body' groups that could serve a similar purpose.

The Save the Mary River Coordinating Group recommended that the new legislation must include a very specific compulsory trigger for full public consultation at any time a water resource plan creates a reserve or changes the size of an existing reserve, or at any time that significant new allocations are granted from a reserve via a resource operations plan.

The Wide Bay Burnett Conservation Council Inc. suggested there should be no removal of the CRP requirement because the decadal interation of all WRPs fosters new science and data required to maintain a flexible management approach, and that all replacement plans are materially different from the predecessor plans. The Council suggested that the Minister would need to appoint a basin consultative body, not a state or industry body.

The Queensland Regional NRM Groups Collective Limited is opposed to any action which may result in fewer opportunities for water users and the community to have input into how the integrity of a genuine consultation process pertaining to WRPs will be maintained or preferably enhanced should the Minister exercise their discretionary powers and not appoint a CRP.

During the public hearing, submitters reiterated their concerns about the effects of the provisions in the Bill on public consultation processes.

Advice from DERM

DERM's response to the points raised by submitters on this issue is as follows:

Background

- This clause simply removes the mandatory requirement to form a community reference panel (CRP) allowing the Minister discretion to decide appropriate consultation for a particular plan.
- A key advantage of the single process framework is that more meaningful consultation is available through the new water planning framework. This will be achieved through:
  - flexibility for the Minister to decide the appropriate level of consultation for developing a particular plan. The new framework does not prevent the establishment of a reference panel. Rather, it provides flexibility for the Minister to establish a new reference panel or to use an existing body for more targeted and effective consultation. Also, in certain catchments where the community is well educated on the water resource planning processes and the new water resource plan is not proposing significant changes, it may be an unnecessary use of resources to establish any reference panel;
  - concurrent release of both draft water resource plan and resource operations plan. This means that stakeholders will see both the strategic and operational aspects of plans concurrently and the on-ground implications of water resource plan strategies for entitlement holders will be apparent and presented at information sessions held on the

release of the draft plans. Therefore stakeholders will be empowered to make more meaningful submissions;

- retention of the current practice of holding public meetings – the department will continue to hold these meetings at various stages of the planning process (e.g. before and after the release of draft plans as necessary; and
- the option of a non-statutory peak body consultative group to advise the Minister – a new body will be established to assist the Minister in deciding which path (standard or long) to take when preparing a plan and to advise the Minister on any additional consultation steps for the plan including whether a reference panel should be established.

Comments

- Significant consultation was undertaken on this matter as part of the preparation of the Bill's provisions. While some parties indicated a preference to maintain the existing CRP arrangements, other parties favoured the greater flexibility in tailoring appropriate consultative arrangements that is afforded under the Bill provisions.
- This amendment only removes the mandatory requirement for a CRP. The Minister may still form a CRP if the Minister believes that this is the most appropriate means of community engagement. Equally, the Minister may decide that existing groups, including regional NRM bodies, would form a more effective mechanism for community engagement.
- The clause, as drafted, is consistent with the Government's position in relation to this matter.

Committee comment
The committee notes the comments from submitters on this clause and advice from DERM based on its extensive consultation with stakeholders. The committee is satisfied that the amendments proposed by clause 15 are acceptable and reasonable.

Clause 63 – Amendment of s 213 (Contents of water licence)

Clause 63 would provide that the Commonwealth Environmental Water Holder is a licensee whose water licence does not attach to land. It would also provide that a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to artesian water for stock or domestic purposes, attaches only to the land on which the water is being taken.

The subsequent use of water taken under these licences on other land is covered in a separate provision s 215 of the *Water Act 2000*.

Agforce (submission No. 14) and the Queensland Farmers' Federation Inc (submission No. 7) raised issues with this clause, in particular the poorly drafted and ambiguous wording. Agforce suggested changes to the wording:

> *AgForce submits that a wording change is required in relation to the use of "Despite" and "Only" within the amended clause and greater clarity surrounding the intention of this amendment to be afforded through the appropriate mechanism.*

Advice from DERM
In its advice on the points made by submitter, DERM commented:

- This amendment aligns the provisions of section 213 with the existing statutory position under subsection 215(2)(b) and (c), which provides that water taken under licences to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to an artesian aquifer for stock or domestic purposes, may be used on land other than the land to which the licenses attach.

- Water Authorities currently are able to hold water licences that do not attach to land. As such, where they hold a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to artesian water for stock or domestic purposes, it currently does not apply to any particular piece of land. This is intended to be unchanged by the provision.
- Comments relating to ambiguity of wording are noted.

Committee comment
The committee notes the intent of the changes proposed in clause 63 and concerns raised by submitters about the ambiguity of the wording.

Recommendation One

The committee recommends that clause 63 be redrafted to clarify its meaning and remove ambiguities in line with changes suggested by Agforce in their submission.

Clause 89 – Amendment of s 814 (Destroying vegetation, excavating or placing fill without permit)

This clause would provide that it is not an offence under the *Water Act 2000* to destroy vegetation, excavate or place fill in a watercourse, lake or spring without a permit if the activity is a necessary and unavoidable part of constructing self-assessable works under the Sustainable Planning Act for taking or interfering with water in a watercourse, lake or spring.

Five submitters argued for the removal of this clause on the grounds that any relaxation of permit requirements would have adverse environmental implications.

The Mary River Catchment Coordinating Committee (MRCCC) is opposed to any further relaxation of the requirement to obtain a Riverine Protection Permit for excavating or placing fill in a watercourse. During the public hearing, the MRCCC stated:

> *We see the riverine protection permit as being a way of at least putting those people in contact with someone who does understand the whole river context up and downstream and who knows about problems that might be around and then can perhaps advise them on another way of doing it. It is a way of trying to get a better outcome and avoiding costly mistakes. There has already been a considerable relaxation of the requirements to get riverine protection permits in the last amendments to the bill. We strongly feel that was a backward step."*

and suggested:

> *If someone wanted to do an activity—placing fill or excavating in a waterway—the ideal situation would be that they could immediately get in contact with someone and float the idea with someone who knows that waterway and that stretch of the river who can then say, 'We don't think that's a good idea, but if you did it this way it would be better,' or, 'Sorry, that wouldn't be a good idea,' or, 'No worries with that.' If they could get a quick turnaround and that good-quality advice, that would be a better outcome, whether there was a permit required or not.*

The Qld Murray Darling Committee (QMDC) is also opposed to this clause, and asserted that the self-assessable codes under the Sustainable Planning Act are constricted and lead to either perverse outcomes or unforeseen environmental outcomes which are then not adequately considered under the Sustainable Planning Regulation 2009 self-assessable development codes. QMDC recommended that the proposed amendment (Clause 89) not be accepted and that a permit should be required under the Water Act to destroy vegetation, excavate or place fill in a watercourse, lake or spring if the activity is part of constructing self-assessable works under the *Sustainable Planning Act*. At the public hearing, the Qld Murray Darling Committee reiterated their concerns:

> *…under the self-assessable codes, it relies on a person's integrity and understanding of the vegetation and the role it plays in waterways.... that quite often landholders do not have an understanding of, if you do something, the effects downstream or upstream.*
>
> *We want to see that stop because the only way that you can monitor the self-assessing is kind of like a year later with satellite mapping that DERM does and that is too late to say, 'Oops, you should not have done that.*

The Environmental Defenders Office Qld Inc (EDO) argued that riverine protection permits should be required for all activities that destroy vegetation, excavate or place fill in a watercourse, lake or stream, and that the amendment would allow extensive categories of works to be exempt from this requirement. EDO recommended that this clause be deleted on the basis that there should be no exemptions from the requirement to get a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring.

Similarly the Queensland Conservation Council (QCC) recommended in their written submission that clause 89 should be removed. They argued that removing requirements for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring if part of constructing self-assessable works under the Sustainable Planning Act may lead to unforeseen environmental impacts such as impeding the passage of aquatic species and disturbing natural features such as riffle sequences in low flow periods which are not adequately considered under the Sustainable Planning Regulation 2009 self-assessable planning codes. During the public hearing, the QCC explained:

> *Our concern is that those self-assessable codes under the planning act take a very narrow view of that sort of activity. So we are concerned that by removing the need for a permit we are likely to see literally a death by a thousand cuts to waterways because of all of this activity and work that is then permitted under the act without the need for a permit. What we are concerned about there is who is maintaining the overview on the incremental changes to the ecological character of those waterways through this work that is allowed under those self-assessable codes of the Sustainable Planning Act.*

Advice from DERM

In its advice on the points made by submitter, DERM commented:

- It should be noted that s 814 already provides that it is not an offence to destroy vegetation, excavate or place fill in a watercourse, lake or spring without a permit if the activity is a necessary and unavoidable part of constructing assessable works under the Sustainable Planning Act for taking or interfering with water in a watercourse, lake or spring. However, the Act does not provide a similar permission for activities associated with the construction under a self-assessable code of works that take or interfere with water in a watercourse, lake or spring. A requirement for a riverine protection permit to construct self-assessable works duplicates the purpose of a self-assessable code and therefore is not considered necessary. This amendment merely allows works that can be constructed under rules in a self-assessment code to be constructed without need for an additional authorisation.
- There are currently two self-assessable codes which relate to works for taking or interfering with water in a watercourse, lake or spring:
    - *Self-assessable code for riparian access works on a watercourse, lake or spring*—this code allows for the construction of works to take water for stock or domestic purposes from a watercourse, lake or spring by the owner/s of the adjoining land and
    - *Code for self-assessable development of operational works that interfere with water in a watercourse, lake or spring*—this code allows specifically for the construction of temporary earth dams to interfere with the flow of water in the Lower Burdekin River.
- Allowing works to take stock water in accordance with the self-assessable code has the effect of reducing the environmental impact on a watercourse by keeping stock out of the watercourse. Also, the temporary construction of earth dams in the Lower Burdekin merely provides for the re-establishment of the temporary dams in the low flow channel of the

Burdekin River which get washed away every wet season. For these works authorised under these self-assessable codes it seems inappropriate to require an additional authorisation when the code can address the department's concerns. As such this amendment provides that it is not an offence to do the necessary clearing, filling and/or excavation in a watercourse, lake or spring to undertake the works.

- The clause, as drafted, is consistent with the Government's position in relation to this matter.

The committee's further request for advice

The committee seeks your assurance that, should the amendments to the *Water Act 2000* proposed in clause 89 proceed the existing permit systems provide adequate protection of waterways, and that the proposed changes would not have adverse environmental implications.

Further advice from DERM

As explained in the department's previous advice, the existing requirement for a riverine protection permit to construct self-assessable works negates the purpose of a self-assessable code. The proposed amendment merely allows works that can be constructed under rules in a self-assessment code to be constructed without need for an additional authorisation. This exemption will only apply where the destruction, excavation or placing of fill happens as a necessary and unavoidable part of the construction of works under the self assessable code.

There are currently only two self-assessable codes which the proposed exemption will apply. One code allows for the construction of works to take water for stock or domestic purposes by the owner/s of land adjoining a watercourse, lake or spring. This self-assessable code aids in the protection of watercourses by keeping stock out of the watercourse. The other code allows specifically for the construction of temporary earth dams to interfere with the flow of water in the Lower Burdekin River. This provides for the re-establishment of small temporary earth dams that are constructed by the Burdekin Water Boards in the low flow channel of the Burdekin River.

Further, it should be noted that section 814 already provides an exemption from requiring a permit if the activity is a necessary and unavoidable part of constructing assessable works under the *Sustainable Planning Act 2009* for taking or interfering with water in a watercourse, lake or spring. Numerous other exemptions are also provided, including for example, works carried out by a land owner in accordance with the prescribed guideline.

Committee comment

The committee notes the concerns raised by submitters and the advice and further clarification provided by DERM. The committee concludes that clause 89 should stand without amendment.

3 Fundamental legislative principles

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

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

Rights and liberties of individuals

Clauses 13 and 15 raise possible fundamental legislative principle issues. In particular, the absence of a requirement for further consultation in respect of changes required to be made to align draft resource operations plans with final draft water resource plans under the *Water Act 2000* may derogate from the rights of affected individuals to be heard on any potential changes in the absence of further consultation.

The committee sought assurance from DERM that the reduced opportunities for public consultation proposed in clauses 13 and 15 would not erode the rights of those affected by particular plans.

Advice from DERM

In its advice, DERM stated that the consistency of clause 15 with fundamental legislative principles is addressed in the Explanatory Notes to the Bill, which state:

> *The Bill does not provide for the chief executive to further consult on the changes that need to be made to the draft resource operations plan (to accord with the final draft water resource plan). However, this lack of a requirement to consult is not caused by the amendments being made by the Bill but has always been in the Water Act.*
> *The process as currently set out in the Act, and preserved through amendments made by this Bill, are justified because the process to date has been that if the water resource plan is significantly amended after the chief executive's consultation process on the resource operations plan, the chief executive will issue a notice of intention not to proceed with the making of the draft plan under section 104 of the Act. The chief executive then commences the process of making the plan again.*

Recommendation Two

The committee recommends that the Bill be passed subject to the amendment to clause 63 recommended in this report.

Appendices

Appendix A – List of Submissions

Sub #	Name
1	Mary River Catchment Coordinating Committee
2	SeqWater
3	Queensland Murray-Darling Committee Inc.
4	SunWater Limited
5	Environmental Defenders Office (Qld) Inc.
6	Queensland Conservation Council
7	Queensland Farmers Federation Limited
8	Gympie Regional Council
9	Stanwell Corporation Limited
10	Queensland Resources Council
11	Save the Mary River Coordinating Group
12	Wide Bay Burnett Conservation Council Inc.
13	Queensland Regional Natural Resource Management Groups Collective
14	AgForce Queensland Industrial Union of Employers

Appendix B – Summary of Submissions

Clause/Topic	Summary of Issues in Submissions	Departmental Advice
Clause 3 Amendment of s19 (Development in indigenous community use area)	**6 Queensland Conservation Council** The QCC strongly recommend that the required Property Development Plan incorporate a land and Water Management plan as is required under the *Water Act 2000* to ensure water used for Indigenous economic development does not cause environmental degradation in Wild River areas.	***Background*** • This amendment aligns the requirements for property development plans under the *Cape York Peninsula Heritage Act 2007* with the requirements for property development plans under the *Wild Rivers Act 2005*. • Currently, an application to create an "Indigenous Community Use Area" under the Cape York Peninsula Heritage Act requires a property development plan under that Act. • If the development activity proposed in the Indigenous Community Use Area is prohibited because of its location in a wild river high preservation area, a second property development plan would be required under the Wild Rivers Act. • This clause includes new criteria under the Cape York Peninsula Heritage Act to align the requirements for property development plans under both Acts, i.e. a single property development plan can be developed which satisfies the requirements of both Acts. ***Comments*** • Natural values of a wild river area are sufficiently protected by the Bill as currently drafted, in that the amendment to section 19 includes the following: "*if the area or a part of the area to which the property development plan relates is in a wild river high preservation area* [the Minister must be satisfied that] *the carrying out of the development will not have an overall adverse impact on the natural values of the wild river area*". • Furthermore, the circumstances under which a Land and Water Management Plan is required is already prescribed under the *Water Act 2000* (refer section 73) • The clause as drafted is consistent with the government's position in this area.

Clause 9 Amendment of s20 (Authorised taking of water without water entitlement)	**3 Qld Murray Darling Committee Inc** QMDC submits that Clause 9 of the Bill which will allow a person to interfere with overland flow without a water entitlement has not taken into consideration the potential adverse impacts the interference of overland flow may have. (sub 3, p.4) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that the proposed amendment, Clause 9, is not accepted, because it presents as an unfettered right to interfere with overland flow contrary to the intent and purpose of the *Water Act 2000*. (sub 3, p.4) **6 Queensland Conservation Council** QCC recommend that clause 9 of the Bill be removed. QCC do not support this clause in its current format. They believe that allowing what amounts to be an unfettered right to interfere with overland flow is contrary to the intent and purpose of the *Water Act 2000* — particularly as the potential ecological and hydrological consequences that could result from the interference of overland flow do not appear to have been adequately considered. (sub 6, p.4)	***Background*** • Works that interfere with overland flow, but do not have the effect of 'taking' water, are not, and have not been intended to be, regulated under the Water Act. For example – fences and roads. • There is currently and deliberately no offence in the Water Act for interfering with overland flow water. • The amendment provides that a person may interfere with overland flow water without a water entitlement and corrects an omission in the Act by providing a clear authorisation for a person to interfere with overland flow water. • Works that interfere with overland flow, which have the effect of 'taking' water, are and will remain regulated under the Water Act. Examples include – Works that take overland flow actively include: – pumps, storages, sumps, drains and pipes used to take or store it – any storage connected to another one used to take overland flow, and the connecting infrastructure Works that take overland flow passively include*:* – embankments or diversion banks used to direct it into dams, or to slow it down to increase the amount taken. This does not include works used in soil conservation. ***Comments*** • The *Sustainable Planning Act 2009* provides the appropriate mechanism for the regulation of the construction of works and other activities that may interfere with overland flow water. This allows such developments to be assessed and managed in the context of related land development activities, such as a material change of use, land levelling, road, drainage and embankment construction, etc. • The clause as drafted is consistent with the government's position in this area.
Clause 10 Replacement of s37 (Notice of works and water use)	**1 Mary River Catchment Coordinating Committee** MRCCC [opposes] any further relaxation of the requirement to obtain a Riverine Protection Permit for	• Changes to Section 37 were supported in submissions received by the Committee. • Comment actually relates to, and is addressed against, clause 89.

	excavating or placing fill in a watercourse. (sub 1, p.5)	• The clause as drafted is consistent with the government's position in this area.
Clause 11 Replacement of ch 2, pt 3, div 2, sdiv 1, hdg (Preparing and approving water resource plans)	**3 Qld Murray Darling Committee Inc** QMDC appreciates the need for planning processes that are well aligned but submits that there is an integral need to foster community and stakeholder confidence in, and willingness to abide by, water resource legislation. (sub 3, p.1)	***Background*** • This clause simply amends the heading of chapter 2, part 3, division 2 of the Water Act to make it clear that it relates to the power to prepare water resource plans. ***Comments*** • The submitter's comments are noted. • The Bill as drafted is consistent with the government's position in this area.
Clause 13 Replacement of s39 and 40 *ISSUE*: Ministerial decision to use standard or long process	**3 Qld Murray Darling Committee Inc** QMDC does not believe discretionary powers should be made available to the Minister without clearly articulating the boundaries within which those powers can be exercised. (sub 3, p.3) **6 Queensland Conservation Council** QCC recommends: (e) Recommended amendments to proposed long process Process currently considered 'contingency legislative steps' be mandatory eg moratorium notice, statement of proposals, notice of intent, submission and information sessions and establishment of community reference panel. (sub 6,p.4)	***Background*** • This clause inserts a new subdivision to replace existing sections 39 and 40, for Consultation requirements for particular plans before their preparation. This subdivision will allow the Minister to decide to use a shorter process when amending a draft plan or a new plan replaces an existing plan. • The Single Process framework proposes a standard pathway that is significantly shorter than the current sequential two-stage process. The intent is that a less complex plan(s) will be developed to the draft stage and released for public consultation. This pathway will also be used where a resource operations plan is to be developed separately from a water resource plan (e.g. amendment to change water sharing rules in a resource operations plan). It is anticipated that this pathway will be the most frequently used. • The key statutory steps in the process will be: 1. Public release of a draft plan(s) for consultation and notice of availability of the draft plan(s); 2. Public release of an overview report with the draft plan(s); 3. Submissions on the draft plan(s); 4. resource operations plan referral panel if required; 5. Approval of the plan(s); 6. Release of consultation report on gazettal of plan(s). • If the Minister considers that it is in the public interest to undertake further consultation in development of the draft water resource plan, there will be the option for a longer pathway involving the following additional steps prior to the release of a notice of availability of draft plans:

		– Public release of a statement of proposals and a notice of availability of a statement of proposals; and – Submissions on the statement of proposals. • These additional steps are to be used only if a draft water resource plan is being developed, whether concurrently with a resource operations plan or without a resource operations plan. ***Comments*** • The Minister will have the discretion (in accordance with the criteria specified in the legislation) to include the additional process steps described by the submitter where required. Additional legislative prescription is not necessary. • The clause as drafted is consistent with the government's position in this area.
Clause 13 cont. Replacement of s39 and 40 *ISSUE*: Ministerial statement of proposals	**3 Qld Murray Darling Committee Inc** QMDC [recommends] that the Minister be required to issue a public statement outlining the reasons, processes and information relied on to make his or her decision to undertake either the shortened or long process and that this statement should be released following the first instance of the Ministerial decision. (sub 3, p.3) **5 Environmental Defenders Office (Qld) Inc** The EDO also proposes that the Minister be required to publish her/his decision justifying the choice of long over the standard process, or viceversa. (sub 5, p.3) **6 Queensland Conservation Council** QCC recommends: (c) Public statement of reasons • The Minister be required to issue a public statement that details the reasons, processes and information utilized in making his/her decision to undertake either the standard or long process, which should be released following the first Ministerial decision point The Minister's public statement should also include electronic links to all relevant reports and studies that	***Background*** • This clause provides that before publishing a notice of proposal to prepare a draft water resource plan, the Minister must first prepare a statement of proposals. • If the Minister considers that it is in the public interest to undertake further consultation in development of the draft water resource plan, there will be the option for a longer pathway involving the following additional steps prior to the release of a notice of availability of draft plans: – Public release of a statement of proposals and a notice of availability of a statement of proposals; and – Submissions on the statement of proposals. • These additional steps are to be used only if a draft water resource plan is being developed, whether concurrently with a resource operations plan or without a resource operations plan. • The new section 39 provides that the Minister must prepare a statement of proposals before publishing a notice under section 40 of the Act. The statement of proposals must: – include a map of the proposed draft plan area; and – state the water to which the proposed draft plan is intended to apply; and – state the water allocation and sustainable management issues to which the proposed draft plan will apply and proposed strategies for dealing

	have been utilized in pre-planning processes in order to provide easy public access to this information. (sub 6, p.3) **5 Environmental Defenders Office (Qld) Inc** EDO is concerned that the proposed changes would give the Minister unfettered discretion to determine the level of public consultation in relation to water resource planning in catchments where there are existing plans. (sub 5, p.2) EDO [suggests] the standard (short) process should only be used where the changes to the plan are 'minor' (as in the case under the Sustainable Planning Act 2009 in relation to changes to development applications and planning schemes). (sub 5, p.1) EDO recommends that the proposed s.38A(2) be amended so the 'long process' applies in all cases where there is likely to be significant changes to the allocation and sustainable management of water in a plan area. (sub 5, p.1) To address their concerns, EDO proposes (sub 5, p.3) that clause 13 of the Bill be either amended so the new s.38A(2) reads as follows: *"(2) This subdivision applies if-* *(a) The proposed draft water resource plan is likely to significantly change arrangement for the allocation, and sustainable management, of water in the proposed plan area; or* *(b) …; or* *(c) …* Or that the Act must include clear criteria setting out what factors the Minister must take into account in exercising her/his discretion. 9sub 5, p.3) **6 Queensland Conservation Council** QCC recommends: (e) Recommended amendments to proposed long process	with the issues; and – state the proposed arrangements for assessments, including technical assessment; and – state the proposed arrangements for implementing the proposed draft plan; and – state the proposed arrangements for consultation. ***Comments*** • The matters raised by submitters can be dealt with administratively and does not require additional prescription in legislation. • The clauses, as drafted, are consistent with the Government's position in relation to this matter.

	Process currently considered 'contingency legislative steps' be mandatory eg moratorium notice, statement of proposals, notice of intent, submission and information sessions and establishment of community reference panel. (sub 6,p.4)	
Clause 14 Amendment of s40A (Further public notice of proposal to prepare draft water resource plan)	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] the "Pre-planning Implementation Review Report" produced prior to the ministerial decision on the "need for further consultation" and all material informing that report must be published and made freely accessible in the public domain at the time of the Minister's decision. (sub 1, p.3)	***Background*** • Clause 14 amends section 40A to replace 'information report' with 'statement of proposals' to reflect the changes to section 39 of the Act. • The clause also removes subsections (2) and (3). • Amendment of section 40A is needed to ensure it is clear that there is no information report in the single process framework and also, recognition of the omission of section 41 (Community reference panels) under clause 15. ***Comments*** • There does not appear to be any comment for clause 14 from submitters. The submitter's comments appear to be related to Clause 13 (particularly, the Ministerial decision to use standard or long process). Comments on this issue are provided above. • The Bill as drafted is consistent with the government's position in this area.
Clause 15 Replacement of s41 (Community reference panels) 'Subd 3 Preparing and approving water resource plans'	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] whenever the "long form process" is invoked, a Community Reference Panel is formed as a compulsory step and kept fully informed of all technical issues and specific water allocation and operation scenarios being considered throughout the process, specifically including the "Stage 2 Technical Assessments". (sub 1, p.3) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that Regional Advisory Committees are appointed and resources to advise the Minister. These committees would need to be appointed by the region's communities to represent key regional stakeholders, and peak bodies and include local landholders. (sub 3, p.3)	***Background*** • This clause simply removes the mandatory requirement to form a community reference panel allowing the Minister discretion to decide appropriate consultation for a particular plan. • A key advantage of the Single Process framework is that more meaningful consultation is available through the new water planning framework. This will be achieved through: – flexibility for the Minister to decide the appropriate level of consultation for developing a particular plan. The new framework does not prevent the establishment of a reference panel. Rather, it provides flexibility for the Minister to establish a new reference panel or to use an existing body for more targeted and effective consultation. Also, in certain catchments where the community is well educated on the water resource planning processes and the new water resource plan is not proposing significant changes, it may be an unnecessary use of resources to establish any

	6 Queensland Conservation Council QCC are concerned the reduced opportunities for public engagement in the Single Process framework as compared to existing processes may lead to a perceived lack of transparency that could undermine community and stakeholder ownership in plans that are developed under the new framework. (sub 6, p.2) **8 Gympie Regional Council** Council [submits] that a Community Reference Panel [should] be compulsory to guide the Department [DERM] in the Mary Basin Water Resource Plan formulation process and that the panel be empowered to take issues of disagreement with DERM to the Minister. (sub 8, p.1) **9 Stanwell Corporation Limited** Stanwell is concerned that if the requirement for Community Reference Panels [is removed] the complexity of the information provided in draft WRPs and ROPs will be harder for the community to digest through public meetings. (sub 9, p.1) Stanwell [suggests] accommodating flexibility in the *Water Act* regarding the requirement to appoint a CRP, as proposed in clause 15, to include a requirement to canvas the community for input at the time of the Notice of Intent to prepare the plan as to whether the community within the plan area believes a CRP would give value to the process or if there are other 'peak body' groups that could serve a similar purpose. This would allow the community to have input into the process using consultation processes they are comfortable with. (sub 9,p.1) **11 Save the Mary River Coordinating Group** The SMRCG recommend that the new legislation MUST include a very specific **compulsory** trigger for full public consultation at any time a Water resource	reference panel; – concurrent release of both draft water resource plan and resource operations plan. This means that stakeholders will see both the strategic and operational aspects of plans concurrently and the on-ground implications of water resource plan strategies for entitlement holders will be apparent and presented at information sessions held on the release of the draft plans. Therefore stakeholders will be empowered to make more meaningful submissions; – retention of the current practice of holding public meetings – the department will continue to hold these meetings at various stages of the planning process (e.g. before and after the release of draft plans as necessary; and – the option of a non-statutory Peak Body Consultative Group to advise the Minister – a new body will be established to assist the Minister in deciding which path (standard or long) to take when preparing a plan and to advise the Minister on any additional consultation steps for the plan including whether a reference panel should be established. ***Comments*** • Significant consultation was undertaken on this matter as part of the preparation of the Bill's provisions. While some parties indicated a preference to maintain the existing Community Reference Panel arrangements, other parties favoured the greater flexibility in tailoring appropriate consultative arrangements that is afforded under the Bill provisions. • This amendment only removes the mandatory requirement for a Community Reference Panel. The Minister may still form a Community Reference Panel if the Minister believes that this is the most appropriate means of community engagement. Equally, the Minister may decide that existing groups, including regional NRM bodies, would form a more effective mechanism for community engagement. • The clause, as drafted, is consistent with the Government's position in relation to this matter.

	Plan creates a reserve or changes the size of an existing reserve, or at any time that significant new allocations are granted from a reserve via a Resource Operation Plan. (sub 11, pp.1-2) **12 Wide Bay Burnett Conservation Council Inc.** WBBCC [suggests] there should be no removal of the CRP requirement simply because the decadal interation of all WRP's fosters new science and data required to maintain a flexible management approach. All replacement plans are materially different based on our decadal understanding of riverine ecosystem and climate change adaptations. WBBCC [suggests] the Minister would need to appoint a basin consultative body, not a state or industry body. WBBC [suggests] the act must define the makeup of the regional CRP, ie all irrigators, councils and distribution entities are water users in that they have entitlements, and hence bias the CRP representation. WBBCC expressed sustainable water resource management views to DNRW, the Qld Premier and Cabinet during the Mary Basin WRP /CRP 2006 process, [and maintain that] all of this information was ignored - Why then should WBBCC believe that 'more meaningful consultation is available '? **13 Queensland Regional NRM Groups Collective Ltd** The RGC does not support any action which may result in fewer opportunities for water users and the community to have input into how the natural resource of their region should be managed. The RGC [suggests] the Bill does not clearly describe how the integrity of a genuine consultation process pertaining to the development or review of the Water Resource Plan will be maintained or preferably	

	enhanced should the Minister exercise their discretionary powers and not appoint a community reference panel.	
Clause 16 Amendment of s46 (Content of draft water resource plans)	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] no provisions are written into the Water Act or subordinate legislation and regulation to allow the SEQ Water Grid manager to apply for new water licences until the Mary Basin WRP and ROP are reviewed via the "long form process", and the full impacts of the proposed level of extraction (tied to specific geographical locations of the points of extraction) has been assessed for impacts on Matters of National Environmental Significance, and on the resource security of other water users in the Mary River system, particularly those out of the SEQ region. (sub 1, p.4) **4 SunWater Limited** SunWater notes the proposed change to section 46(2): *(2) The draft plan may include, but is not limited to, the following—* *(ha) for a draft plan that replaces an existing water resource plan—* *any rule for taking or sharing water, including, for example, water* *sharing rules for water entitlements;* SunWater notes that the amendment does not seem to provide an avenue for water sharing rules included in a water resource plan (WRP) to be overridden at a later stage when the chief executive includes water sharing rules in the subsequent resource operational plan (ROP). (sub 4, p.2)	***Background*** • This clause includes the following as content of a draft water resource plan: – the water and natural ecosystem reporting requirements in addition to stating the monitoring requirements – the strategies proposed for the establishment of water allocations in the proposed plan area – directions to the chief executive to refuse to grant or to accept certain water licence applications – operational rules for taking or sharing water such as water sharing rules. • It also makes it clear that it is not intended for a draft water resource plan to make works that interfere with overland flow water assessable or self-assessable development under the Sustainable Planning Act 2009. Interference with overland flow water is not an offence under section 808(2) of the Act. ***Comments*** • The issues raised, if appropriate, would be addressed through the provisions of a Water Resource Plan itself and are not matters that need to be addressed in primary legislation. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 17 Amendment of s47 (Matters the Minister must consider when preparing draft water resource plan)	**1 Mary River Catchment Coordinating Committee** 4. MRCCC [suggests that] the "Pre-planning Implementation Review Report" produced prior to the ministerial decision on the "need for further consultation" and all material informing that report must be published and made freely accessible in the	***Background*** • Removes requirement for Minister to consider community reference panel advice in preparation of draft water resource plan. ***Comments*** • The matter raised in the MRCCC's submission relates to clause 13.

	public domain at the time of the Minister's decision. (sub 1, p.3)	• There does not appear to be any comment for clause 17 from submitters (noting comments re clause 15). • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 19 Amendment of s 49 (Public notice about the availability of draft WRP)	**2 SEQwater** SEQwater [submits] that the minimum period for submissions [s.49(3)] be extended from 30 business days to 45 business days. (sub 2, p.1) **9 Stanwell Corporation Limited** Timeframes associated with the submission process also make it difficult for the general community to formulate meaningful responses, particularly if the educating role of the CRP is not included in the process	***Background*** • Provides for a public notice about the availability of a draft water resource plan to be published at the same time as the public notice about the availability of a draft resource operations plan which will effectively implement the single process framework. • Section 49 of the Water Act currently specifies that the period for submission must not be less than 30 days. ***Comments*** • This matter can be dealt with administratively, as the public notice may specify the date by which submission must be received. Prescribing a longer minimum timeframe in legislation would result in unnecessary delays in circumstances where 30 business days (6 weeks) is otherwise ample time for submissions to be made. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 22 Amendment of s51 (Minister must prepare report on consultation process)	**3 Qld Murray Darling Committee Inc** QMDC [recommends] that the Minister be required to issue a public statement outlining the reasons, processes and information relied on to make his or her decision to undertake either the shortened or long process and that this statement should be released following the first instance of the Ministerial decision. (sub 3, p.3)	***Background*** • Consultation report required to be prepared on or before the day the approved water resource plan is gazetted. ***Comments*** • There does not appear to be any comment for clause 22 from submitters. • The submitter's comments appear to be related to Clause 13 (particularly, the Ministerial decision to use standard or long process). Comments on this issue are provided previously. • The clause, as drafted, is consistent with the Government's position in relation to this matter.

Clause 30 New section 96 (When chief executive must prepare a draft resource operations plan)	**3 Qld Murray Darling Committee Inc** QMDC appreciates the need for planning processes that are well aligned but submits that there is an integral need to foster community and stakeholder confidence in, and willingness to abide by, water resource legislation. (sub 3, p.1)	***Background*** • This clause provides when the chief executive must prepare a draft resource operations plan concurrently with the Minister preparing a draft water resource plan. ***Comments*** • The water resource planning process will retain a comprehensive community and stakeholder consultation process for the development of water resource plans and resource operations plans. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 31 Amendment of s97 (Notice of proposal to water infrastructure operators)	**4 SunWater Limited** SunWater opposes Clause 31. SunWater believes that the proposed change to s.97 of the *Water Act 2000* would remove the mandatory requirement for SunWater to provide the department with proposed arrangements for the management of water in water supply schemes operated by SunWater. SunWater believe this mandatory requirement is vital in ensuring that pragmatic and workable arrangements are agreed upon for the relevant schemes. (sub 4, p.1) SunWater highlighted the provisions in section 99 (c): *The chief executive must consider the following for the proposed plan area when preparing the draft resource operations plan—* *(c) any proposed operating arrangements mentioned in section 97;* Under the requirements of 99(c) and the proposed change to section 97(1), the chief executive would only be required to consider the proposed arrangements if a notice has been given under section 97(1). Again, this reinforces SunWater's view that a mandatory requirement for a ROL holder to make a section 97 submission be retained. (sub 4, p.2)	***Background*** • This clause addresses changes to the planning process arising from amendments to other sections that will give effect to the single process for preparation of the water resource plan and resource operations plan policy. • Section 97 of the Water Act currently states that the chief executive **must** formally notify the infrastructure operators to provide their proposed arrangements for the operation of their infrastructure within the requirements of a water resource plan. The section applies to all new or amending resource operations plans and has provided valuable detail about the proposed operation of water supply infrastructure essential to Generation (G) 1 resource operations plan development. • The proposed change to "the chief executive **may** notify infrastructure operators" does not preclude the issue of a S97 notice, it provides flexibility through allowing the issue of a notice where warranted. For example for a G2 water resource plan or where only the resource operations plan needs to be amended, the Minister may find that there has been no significant change since the development of G1 plans. Here the Minister would not require the same extensive consultation process as for the G1 water resource plan and would rely on the existing resource operations plan (which would have incorporated s97 submissions on G1 water resource plan) rather than require another round of new s97 submissions. Conversely for a G1 water resource plan or if the catchment has undergone considerable change, then the Minister would follow the long process including the issue of s97 notices to identify all possible stakeholder issues.

		Comments • SunWater's proposal would mean that a water service provider must be asked to provide a submission to the chief executive even if the proposed plan provisions will have no change to the operation of a water service provider's infrastructure. The provision, as drafted, allows the chief executive to seek input from the service provider where it is appropriate to do so. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 33 Amendment to s.99 (Matters the chief executive must consider when preparing draft resource operations plan)	**4 SunWater Limited** SunWater highlighted the provisions in section 99 (c): *The chief executive must consider the following for the proposed plan area* *when preparing the draft resource operations plan—* *(c) any proposed operating arrangements mentioned in section 97;* Under the requirements of 99(c) and the proposed change to section 97(1), the chief executive would only be required to consider the proposed arrangements if a notice has been given under section 97(1). Again, this reinforces SunWater's view that a mandatory requirement for a ROL holder to make a section 97 submission be retained. (sub 4, p.2)	***Background*** • This clause amends the matters the chief executive must consider when preparing a draft resource operations plan to align with the new single process framework. ***Comments*** • See comment for clause 32. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 34 New section 99A (Overview report)	**3 Qld Murray Darling Committee Inc** QMDC [recommends] that pre-technical assessments, be conducted to ensure that stage 1 technical assessments are well informed. These need to include: • A peer review of the scientific methodology and technical processes adopted for hydrological, social, environmental, economic and cultural assessments; and • An initial scope of associated existing and emerging local and regional issues as advised by the Regional Advisory Committees. (sub 3, p.3) **6 Queensland Conservation Council** QCC recommends: (a) Pre-technical assessment - a preliminary stage	***Background*** • Provides that before publishing a notice about a proposed draft resource operations plan the chief executive must prepare an overview report about the proposed draft plan. The report must summarise assessments and findings about the matters mentioned in section 99. ***Comments*** • There does not appear to be any comment for clause 34 from submitters. • The QMDC's & QCC's comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the conduct of the science (Stage 1 Technical Assessments) that underpins the water resource planning process and not to the provisions of the Bill. • The clause, as drafted, is consistent with the Government's position in

	needs to be introduced into the process that incorporates: • Peer review of the technical processes utilized to undertake hydrological, social, environmental, economic and cultural assessments • Engagement with Peak Body Consultative Group to determine initial scope of associated existing and emerging issues Public notification of the commencement of the WRP/ROP review and replacement. (sub 6, p.2)	relation to this matter.
Clause 35 Amendment of s100 (Public notice about availability of draft ROP)	**2 SEQwater** SEQwater [submits] that the minimum period for submissions [s.100(5)] be extended from 30 business days to 45 business days. (sub 2, p.1) **9 Stanwell Corporation Limited** Timeframes associated with the submission process also make it difficult for the general community to formulate meaningful responses, particularly if the educating role of the CRP is not included in the process	***Background*** • Provides that Minister and chief executive must liaise to ensure that a notice published under this section is published together with a notice under section 49. • Section 100 the Water Act currently specifies that the period for submission must not be less than 30 days. ***Comments*** • This matter can be dealt with administratively, as the public notice may specify the date by which submission must be received. Prescribing a longer minimum timeframe in legislation would result in unnecessary delays in circumstances where 30 business days (6 weeks) is otherwise ample time for submissions to be made. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 36 Amendment to s. 102 (Reviewing submissions about draft resource operations plan	**4 SunWater Limited** SunWater notes the proposed change to section 102 (4)(a): *(4) However, subsection (2) does not apply for a submission if the chief executive is satisfied that—* *(a) the submission made about a matter mentioned in subsection (1) is inconsistent with the water resource plan, or, if the draft resource operations plan was prepared under section 96, the draft water resource plan.* SunWater [notes that] when both plans are developed concurrently under the single process framework it is	***Background*** • The current provision provides that a submission need not be referred to the ROP referral panel where that submission is about an inconsistency between a draft ROP and a WRP. The amendment extends this provision to apply to a matter that is inconsistent with a draft WRP. ***Comments*** • A ROP must be consistent with the WRP that it implements. It would be inappropriate for the legislation to require the ROP referral panel to consider a matter that is inconsistent with the WRP. • The above not withstanding, while the existing and proposed legislative provisions state those matter that must be considered by a ROP referral

	likely the chief executive will be receiving submissions for both draft plans at the same time. Section 102 establishes the process for reviewing submissions about a draft ROP, whilst section 102(4) above, indicates that the chief executive is not required to give the properly made submissions to the ROP referral panel if they are inconsistent with a finalised or draft WRP. (sub 4, p.2) It is SunWater's view that s.102 does not deal fully with concurrent submissions. SunWater notes that if it makes a submission proposing a change to a draft ROP that also requires a change to the draft WRP, the chief executive may not consider the proposed change to the ROP on the grounds that it also requires a change to the draft WRP. (sub 4, p.2) SunWater believes this amendment may require further consideration. (sub 4, p.2)	panel, they otherwise do not limit the matters that the chief executive can refer to the panel. • As such, the matter that the submitter raises can be dealt with administratively where it is appropriate to do so. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Section 37 Amendment of s103 (Preparing and approving final draft resource operations plan)	**2 SEQwater** SEQwater is concerned that having concurrent public submission periods about draft WRPs and ROPs (new s.100(3) of the Water Act) will not allow sufficient time for SEQwater to test and confirm various assumptions involved in the modeling that underpins the plans. (sub 2, p.1) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that pre-technical assessments, be conducted to ensure that stage 1 technical assessments are well informed. These need to include: • A peer review of the scientific methodology and technical processes adopted for hydrological, social, environmental, economic and cultural assessments; and An initial scope of associated existing and emerging local and regional issues as advised by the Regional Advisory Committees. (sub 3, p.3) **6 Queensland Conservation Council** QCC recommends:	***Background*** • Provides for development of a water resource plan and resource operations plan at the same time. • Also that the resource operations plan must not commence earlier than the day the final water resource plan commences. ***Comments*** • Seqwater's submission relates to clauses 19 & 35. See response to clause 19 and 35. • The QMDC's & QCC's comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the conduct of the science (Stage 1 Technical Assessments) that underpins the water resource planning process and not to the provisions of the Bill. • The clause, as drafted, is consistent with the Government's position in relation to this matter.

	(a) Pre-technical assessment - a preliminary stage needs to be introduced into the process that incorporates: • Per review of the technical processes utilized to undertake hydrological, social, environmental, economic and cultural assessments • Engagement with Peak Body Consultative Group to determine initial scope of associated existing and emerging issues Public notification of the commencement of the WRP/ROP review and	
Clause 40 Amendment of s105 (General provision for amending resource operations plan)	**7 Qld Farmers' Federation Ltd** QFF supports the proposals to make other amendments to allow for minor amendments to resource operational plans provided those amendments do not adversely affect entitlements or environmental conditions defined in the plans. (sub 7, p.5)	***Background*** • Provides that if a proposed amendment to the water resource plan would result in the resource operations plan being inconsistent with the water resource plan, then the chief executive must amend the resource operations plan. ***Comments*** • Comments are noted. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 41 Amendment of s106 (Minor or stated amendments of resource operations plan)	**7 Qld Farmers' Federation Ltd** QFF supports the proposals to make other amendments to allow for minor amendments to resource operational plans provided those amendments do not adversely affect entitlements or environmental conditions defined in the plans. (sub 7, p.5)	***Background*** • Provides that an amendment to a resource operations plan may be approved by the Governor-in-Council without s 95-103 applying if the amendment is of a type allowed for under the plan and the chief executive reasonably believes the amendment will not adversely affect the rights of entitlement holders or natural ecosystems. ***Comments*** • Comments are noted. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 48 Replacement of s132 (Public notice of application to	**4 SunWater Limited** SunWater notes the proposal to change section 132 (2) to: *The chief executive must give the applicant a notice*	***Background*** • This clause aligns the publication requirements for an application to change a water allocation under section 132 with the existing requirements for water licences under section 208.

change water allocation)	*the applicant must publish within the time and in the newspaper or newspapers stated by the chief executive.* SunWater highlighted the importance and utility of the department continuing to also display s.132 notices on its website in accordance with the definition of 'publish' listed in Schedule 4 of the *Water Act 2000*. [The Bill does not propose to change this requirement - SunWater comments are for noting only]	***Comments*** • Comments are noted.
Clause 60 Amendment of s 206 (Applying for a water licence)	**6 Queensland Conservation Council** QCC recommends that clause 60 should not be applied to the SEQ Water Grid Manager. QCC support enabling the Commonwealth Environmental Water Holder being able to apply to hold a water licence [with the objective of returning more water for the environment], but not the SEQ Water Grid Manager [to buy water from other statutory water bodies and hold SEQ's urban water entitlements] due to potential adverse environmental impacts that could occur from carrying out its explicit purpose of extracting water from bulk water assets eg Mary Valley. (sub 6, pp.4-5) **11 Save the Mary River Coordinating Group** The SMRCG recommend that **no** provisions are written into the *Water Act* or subordinate legislation and regulation to allow the SEQ Water Grid Manager to apply for new water licences without the existing Mary Basin Water Resource Plan is reviewed, and the full impacts of the proposed level of extraction (tied to specific geographic allocations of the point of extraction) has been assessed for impacts on Matters of National Environmental Significance, and on the security of other water users in the Mary River system. (sub 11, pp.2-3) Inter-basin transfer of water resources is an option of last resort, only to be considered after all less risk-prone options have been fully implemented. (sub 11, p.3)	***Background*** • This clause will include the Commonwealth Environmental Water Holder, and the Water Grid Manager as entities that may hold a water licence not attached to land. ***Comments*** • The issues raised relate specifically to the Mary Valley Water Resource Plan itself. It is not appropriate for such matters to be addressed in primary legislation. • The proposed amendment simply recognises that the two entities listed do not take water for use on a particular parcel of land. • The clause, as drafted, is consistent with the Government's position in relation to this matter.

	12 Wide Bay Burnett Conservation Council Inc. In respect of the SEQ grid manager, WBBCC would like to know which particular entitlements the manager would like to be able to access. WBBCC strongly opposes any amendment which may enable the SEQ grid manager to purchase a water license either belonging to the Commonwealth Environmental Water Holder and or not attached to any land in the Mary Basin.	
Clause 63 Amendment of s 213 (Contents of water licence)	**7 Qld Farmers' Federation Ltd** QFF concur with Agforce views that the poor drafting of this amendment could affect the bores owned by water authorities on properties for the purposes of managing the extraction of water from the Great Artesian Basin. (sub 7, p.8) **14 AgForce** AgForce [writes] there are two issues with the proposed changes [to Section 213], the first is the ambiguous wording of the clause and the subsequent implications this has for other entities…Currently, the lack of clearly outlined justification for the amendment in the explanatory material and the wording of the clause has potential to remove the capacity of these entities [who use artesian water for stock and domestic use] to hold water licences not attached to land. AgForce [writes] the second issue is that the intention and justification for the amendment is unclear. Both the clause and the corresponding Explanatory Notes fail to clarify what the fundamental issue behind the need for the amendment is. AgForce submits that a wording change is required, specifically in relation to the use of *"Despite"* and *"Only"* within the amended clause and greater clarity surrounding the intention of this amendment. Agforce [also writes] in its current format, it is difficult for any reader to understand the implications unless	***Background*** • This clause provides that a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to artesian water for stock or domestic purposes attaches to the land only on which the water is being taken. • This clause also provides for the Commonwealth Environmental Water Holder as a licensee whose water licence does not attach to land. ***Comments*** • This amendment aligns the provisions of section 213 with the existing statutory position under subsection 215(2)(b) and (c), which provides that water taken under licences to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to an artesian aquifer for stock or domestic purposes, may be used on land other than the land to which the licences attach. • Water Authorities currently are able to hold water licences that do not attach to land. As such, where they hold a water licence to take artesian water for stock purposes, or to take subartesian water from an aquifer connected to artesian water for stock or domestic purposes, it currently does not apply to any particular piece of land. This is intended to be unchanged by the provision. • Comments relating to ambiguity of wording are noted.

	read in conjunction with the current Act. AgForce queries whether it is appropriate for the Parliamentary Committee to address the process by which the drafters of the Parliamentary Counsel present amendments	
Clause 77 Insertion of new ss360FB and 360FC (Annual levy….)	**3 Qld Murray Darling Committee Inc** QMDC recommends that Clause 77 be adopted. cl.77 (sub 3, p.6) **10 Queensland Resources Council** The QRC will defer comment to the lead peak national body, the Australian Petroleum Exploration and production Association (APPEA) [who have not made a submission]. QRC is keen to see further details about the new levy outlined in the regulatory Assessment Statement. (sub 10, p.1)	***Background*** • These new sections provide that a regulation may provide for the annual levy for Queensland Water Commission underground water management functions for the 2010-2011 financial year even if that financial year has ended and for the annual levy for the 2010-2011 financial year to be paid over one or more subsequent financial years. ***Comments*** • Comments are noted. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 89 Amendment of s814 (Destroying vegetation, excavating or placing fill without permit)	**1 Mary River Catchment Coordinating Committee** MRCCC [opposes] any further relaxation of the requirement to obtain a Riverine Protection Permit for excavating or placing fill in a watercourse. (sub 1, p.5) **3 Qld Murray Darling Committee Inc** QMDC does not support Clause 89 and asserts that the self-assessable codes under the Sustainable Planning Act are constricted and lead to either perverse outcomes or unforeseen environmental outcomes which are then not adequately considered under the Sustainable Planning Regulation 2009 self-assessable development codes. (sub 3, p.6) QMDC recommends that the proposed amendment (Clause 89) not be accepted and that a permit is required under the Water Act to destroy vegetation, excavate or place fill in a watercourse, lake or spring if the activity is part of constructing self-assessable works under the *Sustainable Planning Act*. (sub 3, p.6) **5 Environmental Defenders Office QLD**	***Background*** • This clause provides that it is not an offence under the Act to destroy vegetation, excavate or place fill in a watercourse, lake or spring without a permit if the activity is a necessary and unavoidable part of constructing self-assessable works under the Sustainable Planning Act for taking or interfering with water in a watercourse, lake or spring. • Riverine protection permits are about maintenance of watercourse integrity, bed and bank stability, and downstream water quality. Section 268 of the Water Act outlines the criteria for deciding applications for riverine protection permits. ***Comments*** • It should be noted that section 814 already provides that it is not an offence to destroy vegetation, excavate or place fill in a watercourse, lake or spring without a permit if the activity is a necessary and unavoidable part of constructing assessable works under the Sustainable Planning Act for taking or interfering with water in a watercourse, lake or spring. However, the Act does not provide a similar permission for activities associated with the construction under a self-assessable code of works that take or interfere with water in a watercourse, lake or spring. A requirement for a riverine protection permit to construct self-assessable works duplicates the purpose of a self-assessable code and therefore is not considered necessary. This

	Inc The EDO believe Riverine Protection Permits should be required for all activities that destroy vegetation, excavate or place fill in a watercourse, lake or stream, and that the amendment would allow extensive categories of works to be exempt from this requirement. (sub 5, p.3) EDO recommends that this clause be deleted as there should be no more exemptions from the requirement to get a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring.(sub 5, p.1). **6 Queensland Conservation Council** The QCC recommends that clause 89 should be removed. Removing requirements for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring if part of constructing selfassessable works under the Sustainable Planning Act may lead to unforeseen environmental impacts eg impeding aquatic species' passage and disturbing natural features such as riffle sequences in low flow periods which are not adequately considered under the Sustainable Planning Regulation 2009 self-assessable planning codes. (sub 6, p.5) **11 Save the Murray River Coordinating Group** The SMRCG recommend no relaxation of the requirement to obtain a Riverine Protection Permit for excavating or placing fill in a watercourse. (Sub 11, p.3)	amendment merely allows works that can be constructed under rules in a self-assessment code to be constructed without need for an additional authorisation. • There are currently two self-assessable codes which relate to works for taking or interfering with water in a watercourse, lake or spring: – *Self-assessable code for riparian access works on a watercourse, lake or spring*—this code allows for the construction of works to take water for stock or domestic purposes from a watercourse, lake or spring by the owner/s of the adjoining land; and – *Code for self-assessable development of operational works that interfere with water in a watercourse, lake or spring*—this code allows specifically for the construction of temporary earth dams to interfere with the flow of water in the Lower Burdekin River. • Allowing works to take stock water in accordance with the self-assessable code has the effect of reducing the environmental impact on a watercourse by keeping stock out of the watercourse. Also, the temporary construction of earth dams in the Lower Burdekin merely provides for the re-establishment of the temporary dams in the low flow channel of the Burdekin River which get washed away every wet season. For these works authorised under these self-assessable codes it seems inappropriate to require an additional authorisation when the code can address the department's concerns. As such this amendment provides that it is not an offence to do the necessary clearing, filling and/or excavation in a watercourse, lake or spring to undertake the works. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
Clause 91 Amendment of s1009 (Public inspection and purchase of documents)	**3 Qld Murray Darling Committee Inc** QMDC [recommends] that the Minister's public statement should be made available in a format that provides electronic links to all relevant reports and studies that have been relied upon to inform the Minister's decision in order to provide easy public access to this information. (sub 3, p.3)	***Background*** • Provides amendments to address changes of terminology and other matters arising from the amendment of the water planning provisions. ***Comments*** • This matter can be dealt with administratively and does not require prescription in legislation. • The clause, as drafted, is consistent with the Government's position in

		relation to this matter.
Clause 104 Amendment of s33 (Volumetric limits for indigenous unallocated water)	**6 Queensland Conservation Council** The QCC strongly recommend that Indigenous water users be required to prepare and implement an accredited Land and Water Management Plan to ensure the use of water for economic development does not cause environmental degradation in Wild River areas. (sub 6, p.6)	***Background*** • This clause amends the Water Resource (Gulf) Plan 2007 to establish reserves of unallocated water, available for allocation in wild rivers areas within the area of the plan. ***Comments*** • Section 32 of the existing Gulf ROP requires an approved Land and Water Management Plan (LWMP) prior to a person using water under an entitlements granted from unallocated water reserves for irrigation. • Indigenous water users for purposes other than irrigation do not require a LWMP. • The clause, as drafted, is consistent with the Government's position in relation to this matter.
GENERAL Petroleum tenure holders rights to underground water	**3 Qld Murray Darling Committee Inc** QMDC [recommends] that the Implementation Review report be endorsed by the Regional Advisory Committees and be available for public scrutiny on DERM's website and upon request. (sub 3, p.3) QMDC submits that a petroleum holder's right to take underground water as part of their authorised petroleum activities in accordance with the Petroleum Act 1923 and Petroleum & Gas (Production and safety) Act 2004 is inherently flawed because the right has no limit placed on it. The tenet that water is consequential to the extraction of petroleum or gas allows for unsustainable practices that should, not be perpetuated in light of this region's current state of the environment. (sub 3, p.4) QMDC recommends that a petroleum tenure holder's right to take underground water as part of their authorised petroleum activities be subject to a water license being granted under the Water Act provisions and a new clause be drafted superseding the right to take underground water as part of the authorised	***Background*** N/A ***Comments*** • Petroleum tenure holder rights to underground water are not considered within the scope of this Bill.

	petroleum activities in accordance with the petroleum Act 1923 and Petroleum & Gas (Production and Safety) Act 2004. (sub 3, p.5)	
GENERAL	**6 Queensland Conservation Council** QCC recommends: (b) Pre-planning report • The Implementation Review report to be endorsed by the Peak Body Consultative Group and advice and feedback provided by its members included in the report, and • The Implementation Review report to be readily available for public scrutiny from DERM's website and upon request. (sub 6, p.2) QCC recommends: (e) Recommended amendments to proposed long process Process currently considered 'contingency legislative steps' be mandatory eg moratorium notice, statement of proposals, notice of intent, submission and information sessions and establishment of community reference panel. (sub 6,p.4)	***Background*** N/A ***Comments*** • The submitters comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the conduct of the science (Stage 1 Technical Assessments) that underpins the water resource planning process and not to the provisions of the Bill.
GENERAL	**11 Save the Murray River Coordinating Group** The SMRCG recommend that all Water Resource Plans must have specific objectives which relate to protecting estuaries. (sub 11, p.2)	***Background*** • N/A ***Comments*** • It is not appropriate for such matters to be addressed in primary legislation – particularly given that not all water systems have estuaries (eg Lake Eyre Basin catchments and the Great Artesian Basin). The specific requirement for such objectives is a matter for the Minister in preparing the specific water resource plan.
GENERAL	**12 Wide Bay Burnett Conservation Council Inc** WBBC [questions why] Indigenous, NRM and Conservation groups not considered to be the equivalent of the Commonwealth Water Entitlement Holder.	***Background*** • Amendments relating to the Commonwealth Environmental Water Holder simply intend to remove impediments for the Australian Government *Water for the Future* initiative for the buy back program in the Murray Darling Basin. ***Comments*** • The Commonwealth Environmental Water Holder is an entity constituted under Commonwealth legislation with the specific purpose of acquiring existing water entitlements needed to restore environmental water needs. As such, it is essential that Queensland's Water Act recognise the statutory role of the Commonwealth entity.

GENERAL **Stage 1 Technical assessments**	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] the preliminary consultation conducted during the "Stage 1 technical assessments" must not exclude or restrict opportunity for any members of the public within the WRP area to be fully informed of matters being considered in the proposed WRP/ROP process, nor exclude or restrict opportunity to contribute to the preliminary consultation process. (sub 1, p.3) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that pre-technical assessments, be conducted to ensure that stage 1 technical assessments are well informed. These need to include: • A peer review of the scientific methodology and technical processes adopted for hydrological, social, environmental, economic and cultural assessments; and • An initial scope of associated existing and emerging local and regional issues as advised by the Regional Advisory Committees. (sub 3, p.3) **6 Queensland Conservation Council** QCC recommends: (a) Pre-technical assessment - a preliminary stage needs to be introduced into the process that incorporates: • Peer review of the technical processes utilized to undertake hydrological, social, environmental, economic and cultural assessments • Engagement with Peak Body Consultative Group to determine initial scope of associated existing and emerging issues • Public notification of the commencement of the WRP/ROP review and replacement. (sub 6, p.2)	***Background*** • N/A ***Comments*** • The submitters' comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the conduct of the science (Stage 1 Technical Assessments) that underpins the water resource planning process and not to the provisions of the Bill.
GENERAL **Pre-planning Implementation Review Report**	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] the "Pre-planning Implementation Review Report" produced prior to the ministerial decision on the "need for further	***Background*** • N/A ***Comments***

	consultation" and all material informing that report must be published and made freely accessible in the public domain at the time of the Minister's decision. (sub 1, p.3) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that the Implementation Review report be endorsed by the Regional Advisory Committees and be available for public scrutiny on DERM's website and upon request. (sub 3, p.3) **6 Queensland Conservation Council** QCC recommends: (b) Pre-planning report • The Implementation Review report to be endorsed by the Peak Body Consultative Group and advice and feedback provided by its members included in the report, and • The Implementation Review report to be readily available for public scrutiny from DERM's website and upon request. (sub 6, p.2)	• The submitters' comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the availability of the Pre-planning Implementation Review report that is prepared before the Minister formally commences the planning process. • The proposals raised relate to administrative matters and not to the provisions of the Bill.
GENERAL **Peak Body Consultative Group**	**1 Mary River Catchment Coordinating Committee** MRCCC [suggests that] the "Peak Body Advisory Group" must include representatives with an understanding of national issues relating to water and environmental management (eg. representation from the NWC or similar body), and must engage members with specific knowledge of relevant local issues in the particular WRP area being considered (distinct from the mandatory consultation with local government as a stakeholder). (sub 1, p.3) **3 Qld Murray Darling Committee Inc** QMDC [recommends] that Regional Advisory Committees are appointed and resources to advise the Minister. These committees would need to be appointed by the region's communities to represent key regional stakeholders, and peak bodies and include local landholders. (sub 3, p.3)	***Background*** N/A ***Comments*** • The submitters' comments would appear to be related to an aspect of the Single Process Framework flow chart on page 17 of the Explanatory Notes. The comments specifically relate to the Peak Body Consultative Group that would be engaged in consultation before the Minister formally commences the planning process. • The proposals raised relate to administrative matters and not to the provisions of the Bill.

	6 Queensland Conservation Council QCC recommends: (d) Peak Body Consultative Group (PBCR) • to provide balanced feedback and to consult with their regional constituents Membership of the PBCR must consist of equal representation from all sectors that have an interest in the management of the state's water resources. Sectors that must be represented on the PBCG include the conservation sector, farmers, graziers, Indigenous, tourism, water providers and local government. (sub 6, p.3) **12 Wide Bay Burnett Conservation Council Inc.** WBBCC [suggests] this body [non-statutory Peak Body Consultative Group] must be a WRP catchment body made up of a balance of consumptive and non consumptive users.	
GENERAL **Rationale for single process**	**12 Wide Bay Burnett Conservation Council Inc.** WBBCC [suggests] no rational is provided as to why a single process is required WBBCC does not and never has viewed the [the two stage process] as ineffective and inefficient.	***Background*** • N/A ***Comments*** • The Explanatory Notes to the Bill explain the rational for the single process. Refer to Explanatory Notes (pages 3-5). • Comments are noted.

Appendix C – Witnesses at public hearing – 12 October 2011

Witness	
Mr Nigel Parratt, Rivers Project Officer	Queensland Conservation Council
Mr Steven John Burgess, Catchment Officer	Mary River Catchment Coordinating Committee
Ms Glenda Pickersgill, President	Save the Mary River Coordinating Group
Ms Nerida Airs, Water Management Specialist	Stanwell Corporation Limited
Ms Kathie Fletcher, Project Support Officer	Queensland Murray-Darling Committee Inc.
Mr Dan Galligan, Chief Executive Officer	Queensland Farmers Federation Limited
Mr Ian Johnson, Water Adviser	Queensland Farmers Federation Limited

Appendix D – Department of Environment and Resource Management officers at public briefing – 3 August 2011

Officer	
Mr Rex Meadowcroft, Director, Water Legislation and Policy	Strategic Water Initiatives
Mr Greg Claydon, Executive Director	Strategic Water Initiatives
Mr Lyall Hinrichsen, General Manager	Water Allocation and Planning
Ms Judith Jensen, General Manager	Urban Water Policy and Management
Ms Leslie Shirreffs, General Manager	Ecosystems Outcomes
Mr Randall Cox, Senior Director	Queensland Water Commission

Statement of Reservation

We, the undersigned, support Recommendation 1 in this report of the Environment, Agriculture, Resources and Energy Committee (the Committee). While we do not necessarily oppose Recommendation 2, we consider it necessary to submit a statement of reservation to accompany the report on the following grounds.

The bill proposes to amend the *Water Act 2000* to establish a single process framework for the concurrent development of a water resource plan (WRP) and a resource operations plan (ROP). We have no reservations at all about this aspect of the proposed amendment. Indeed, we welcome it and consider it overdue.

The complexity of managing water resources varies between catchments. However, we agree that this two stage process contains many duplicated steps that have resulted in unnecessarily long timeframes for the development and implementation of some WRP's and their corresponding ROP's, disadvantaging entitlement holders.

The consultation process with community reference panels and stakeholder groups is currently also carried out during the development of both WRP's and ROP's, often revisiting issues that were previously considered. This process has rightly been identified as both an ineffective and inefficient provision of the existing Act.

However, the bill also proposes to remove the requirement for the establishment of community reference panels (CRP's) and provides for a shortened process for the development of a WRP and ROP in certain circumstances. The bill proposes to vest in the responsible Minister, the discretion to determine if this will occur.

Clause 13 of the bill proposes that the Minister be required to consider the following in determining if CRP's will be established or if a shortened process will be used:

> *(a) the proposed draft water resource plan is likely to significantly change arrangements for the allocation, and sustainable management, of water in the proposed plan area; or*
>
> *(b) the terms of the proposed draft water resource plan are likely to be significantly different from the terms of water resource plans applying to other parts of Queensland; or*
>
> *(c) the Minister needs further information about community views and expectations about water allocation and sustainable management issues in the proposed plan area.*

During the public hearing on this bill on Wednesday 12 October 2011, a number of witnesses expressed concern about this aspect of the proposed amendment. Most notably, Mr Steven Burgess (Mary River Catchment Coordination Committee) and Ms Nerida Airs (Stanwell Corporation) provided the following evidence:

> ***Mr Burgess**:…..The major point we make is that whenever a long-form process is invoked there should be no discretion as to whether a community reference panel is conducted; there must be a community reference panel conducted…..*
>
> *…..That community reference panel must be kept fully informed of what is going on, even down as far as the second stage—technical assessments…..*

.....During 2005 in the Traveston process, in the formulation of the water resource plan, while there was a community reference panel, a whole pile of scenarios for dams on the Mary were being modelled as part of those technical assessments. None of those scenarios was discussed with the community reference panel and there is no information available on any of those at all…..

…..There would be strong community backlash against it and strong scientific backlash against it, but it would have been had at an earlier stage and before there was a political and financial commitment to hundreds and hundreds of millions of dollars and years of disruption which finally resulted in no net benefit—in fact, a huge cost to the state and to the community—nothing. We could have avoided all of that unnecessary waste and expenditure if we had been prepared to face up to the difficult conversations that would have had to happen at that stage when they were specifically looking at infrastructure there.

I believe that the Traveston Crossing proposal would not have even got up if it had been looked at under those circumstances, in the light of knowledge about the federal legislation and local feelings. It would have saved so much heartache and hundreds of millions of dollars. There would have been only the $65,000 cost of keeping a community reference panel engaged. That is nothing compared to the $600 million thrown out the window on that project…..[8]

***Ms Nerida Airs**:…..Overall, water allocation is very complicated. Balancing interests is difficult. However, we are concerned about some of the proposed changes to the community reference panel and the community consultation associated with the water resource planning process…..*

…..We feel it is a very worthwhile process and we would be extremely happy to see that continue particularly throughout the state as more and more issues come to the fore and get discussed……

…..As somebody who has participated as a member of a community reference panel and also on the other side of the coin in coordinating community reference panels in my previous positions, you really cannot place a value on the benefits that you get from them and the discussions that occur that may not necessarily be seen or heard by departmental representatives. Some communities are going to be different; it may not work for some communities. My suggestion is that the community gets given the opportunity to make that decision for themselves as to whether or not it is the right way to go…..[9]

In view of this evidence and the fact both the bill's explanatory notes and the committee's briefing on the bills' fundamental legislative principles (FLP's) raised the potential for rights and liberties to be made dependent on administrative power not subject to appropriate review, the Committee sought further advice from DERM.

The Director General, Mr Jim Reeves, in his response to the Committee, stated:

[8] Environment, Agriculture, Resources & Energy Committee, Transcript of Proceedings, Public Hearing on the Water & Other Legislation Amendment Bill, Wednesday, 12 October 2011, Brisbane, page 7.

[9] Environment, Agriculture, Resources & Energy Committee, Transcript of Proceedings, Public Hearing on the Water & Other Legislation Amendment Bill, Wednesday, 12 October 2011, Brisbane, pages 10, 11.

Alternative models/arrangements for public consultation are a matter of policy and as such, I cannot expand on this matter.

Therefore, we cannot overlook the fact that, despite the evidence of a number of witnesses and despite DERM confirming the potential breach of FPL's is a policy matter, the committee report merely notes the public submissions and DERM's so-called clarification and describes the amendments as acceptable and reasonable.

As this issue is a policy matter, the proper administration of the discretionary power to be vested in the responsible Minister will be dependent on the capacity of that Minister to make a value judgment about whether a CRP ought to be established, or if a shortened process is appropriate, notwithstanding the requirements of Clause 13.

In this regard, we note the many unfortunate and in some cases, ongoing examples of where the development of WRP's and ROP's in Queensland have been prolonged due to disagreements between DERM (and its predecessors) and various stakeholders engaged in that process, including CRP's and entitlement holders.

The bill proposes to vest in the responsible Minister, the discretion to determine if a CRP ought to be established, or if a shortened process for the development of a WRP and ROP should be used. It is our view that no information in the bill's explanatory notes or that provided by DERM, establish that this amendment is desirable.

We state our reservation as to whether it has been clearly demonstrated by the Minister or by DERM, as claimed by the committee report, that the provisions in Clause 13 are justified. As such, the committee ought not to state, as it does, that it is satisfied the amendments proposed in Clause 13 are acceptable and reasonable.

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