

Water Legislation (Miscellaneous Provisions) Amendment Bill 2014

Report No. 49

State Development, Infrastructure and Industry Committee

August 2014

State Development, Infrastructure and Industry Committee

Chair	Mr David Gibson MP, Member for Gympie
Deputy Chair	Hon Tim Mulherin MP, Member for Mackay
Members	Mr Michael Crandon MP, Member for Coomera Mr Michael Hart MP, Member for Burleigh Mr Rob Katter MP, Member for Mount Isa Ms Kerry Millard MP, Member for Sandgate Mr Bruce Young MP, Member for Keppel

Staff	Ms Erin Pasley, Research Director Ms Bernice Watson, Research Director Ms Melissa Salisbury, Principal Research Officer Ms Margaret Telford, Principal Research Officer Ms Mary Westcott, Principal Research Officer Ms Dianne Christian, Executive Assistant
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Technical Scrutiny of Legislation Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
--	---

Contact details State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone +61 7 3406 7230

Fax +61 7 3406 7500

Email sdiic@parliament.qld.gov.au

Web www.parliament.qld.gov.au/sdiic

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Water Legislation (Miscellaneous Provisions) Amendment Bill 2014.

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

I would like to thank the officials from the Department of Energy and Water Supply who briefed the committee, Unity Water for making a submission, the committee's secretariat and other secretariats, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'D. Gibson', with a horizontal line underneath.

David Gibson MP
Chair

August 2014

Abbreviations

Bill	Water Legislation (Miscellaneous Provisions) Amendment Bill 2014
committee	State Development, Infrastructure and Industry Committee
department	Department of Energy and Water Supply
explanatory notes	Water Legislation (Miscellaneous Provisions) Amendment Bill 2014 Explanatory Notes
FLP	fundamental legislative principle, as prescribed in the <i>Legislative Standards Act 1992</i>
Governor in Council	The Governor acting with the advice of the Executive Council. The combination of the Governor and the Executive Councillors gives legal authority to actions to be taken or actions or decisions made under Acts of Parliament or the Constitution itself.
Qld WELS Act	<i>Water Efficiency Labelling and Standards Act 2005</i>
SEQ	South East Queensland
SLC	former Scrutiny of Legislation Committee
Water Act	<i>Water Act 2000</i>
Water Supply Act	<i>Water Supply (Safety and Reliability) Act 2008</i>

Recommendation

Recommendation 1

2

The committee recommends the Water Legislation (Miscellaneous Provisions) Amendment Bill 2014 be passed.

Point for clarification

Point for clarification 1

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The committees seeks further clarification from the Department of Energy and Water Supply as to the specific steps that may be taken by a service provider to provide adequate notice of water restrictions in order to mitigate the risk of a person inadvertently committing an offence resulting from water restrictions taking immediate effect.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:¹

- State Development, Infrastructure and Planning
- Energy and Water Supply , and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The referral

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 fundamental legislative principles to the Bill.

On 3 June 2014, the Water Legislation (Miscellaneous Provisions) Amendment Bill 2014 (the Bill) was referred to the committee for examination and report. In accordance with Standing Order 136(1), the Committee of the Legislative Assembly fixed the committee's reporting date of 30 August 2014.

1.3 The committee's inquiry process

On 6 June 2014, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of relevant stakeholders. The closing date for submissions was 2 July 2014. The committee received one submission from Unity Water in support of the Bill.

On 12 June 2014, the committee held a public briefing with the Department of Energy and Water Supply (the department). A list of departmental representatives who attended the briefing can be found in the Appendix.

The transcript of the public departmental briefing and a copy of the submission are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:

- amend the *Water Act 2000* to:
 - streamline the process for declaring a water supply emergency,
 - improve the governance framework for category 1 water authorities,
 - omit redundant provisions referencing the Queensland Water Commission, and
 - include Noosa Shire Council in the definition of the 'SEQ region'.
- amend the *Water Supply (Safety and Reliability) Act 2008* to:

¹ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

- enable service provider water restrictions in emergency situations to commence on the day they are announced,
 - enable declaration of temporary full supply level for flood mitigation dams to have effect on notice being given to the dam owner, and
 - clarify procedures for authorisation of alternative operating procedures during flood events.
- amend the *Water Efficiency Labelling and Standards Act 2005* to bring it into alignment with the Commonwealth *Water Efficiency Labelling and Standards Act 2005*.

1.5 The Government's consultation on the Bill

The department consulted with various stakeholders during its preparation of the Bill. Specifically:

- Water supply emergency declarations and emergency water restrictions – the department consulted with South East Queensland (SEQ) water service providers, Seqwater and Queensland Urban Utilities, and the Local Government Association of Queensland.
- Temporary full supply level declarations and procedures for authorisation of alternative operating procedures – the department consulted with Seqwater.
- WELS scheme – the department did not undertake consultation on the changes to the WELS scheme, but with regards to the amendments to the Queensland WELS Act, the department consulted with the Commonwealth Department of Environment (as the regulator) and the Tasmanian Department of Primary Industries, Parks, Water and Environment.
- Governance framework for category 1 water authorities – the department consulted with Gladstone Area Water Board and Mount Isa Water Board.

The committee notes that there was no broad community consultation on the proposed legislation.

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. After examining the Bill, and noting the one submission received in support of the Bill, the committee has determined the Bill should be passed.

Recommendation 1

The committee recommends the Water Legislation (Miscellaneous Provisions) Amendment Bill 2014 be passed.

2 Examination of the Bill

2.1 Water supply emergency declarations

Recent emergencies during Queensland's wet seasons have revealed shortcomings in the state's ability to quickly respond to and manage water supply emergencies and flooding events.

The *Water Act 2000* (the Water Act) allows the Minister for Energy and Water Supply to prepare a water supply emergency declaration if the Minister is satisfied there is a water supply emergency or a water supply emergency is developing.² Under the declaration, the Minister may require water service providers 'to carry out specified measures, for example, imposing water restrictions'.³

Currently, section 25B(3) of the Water Act provides that a water supply declaration has effect when it is approved by the Governor in Council and published in the gazette, and remains in force until the earlier of either the commencement of a regulation dealing with the matters mentioned in the declaration or the end of 15 business days after it is published.⁴

The Minister for Energy and Water Supply advised:⁵

... the Bill amends the Water Act to streamline the emergency water supply declaration process to enable a more effective and timely response to short-term or immediate water supply emergencies.

The Bill proposes to remove the Governor in Council and gazette requirements in order for a water supply emergency declaration to take effect, and instead provides for an emergency declaration to have effect once it is made by the Minister or a later date stated in the declaration. The Bill provides for a copy of the declaration to be given directly to the affected service provider and for a copy to be published in the gazette as soon as practicable after it is made. The Bill also extends the timeframe for declarations to remain in force from 15 to 20 business days.⁶

2.1.1 Rationale for proposed amendment

Water service providers can place restrictions on water supply under the *Water Supply (Safety and Reliability) Act 2008* (the Water Supply Act). Under Section 41(1), if a water service provider considers it necessary, the water service provider may restrict—⁷

- (a) the volume of water taken by or supplied to a customer or type of customer; or
- (b) the hours when water may be used on premises for stated purposes; or
- (c) the way water may be used on premises.

However, the Minister has broader powers via the water supply emergency declaration, as advised by the department:⁸

... the minister's declaration powers actually enable him to make decisions on infrastructure being turned on, infrastructure being turned off, restrictions going here. It is very, very broad and encompassing ... a power to actually stop something or start something is actually very broad and very strong.

² *Water Act 2000*, Section 25B(1).

³ Public briefing transcript, 12 June 2014, p 2.

⁴ *Water Act 2000*, Section 25B(3), p 61.

⁵ Queensland Parliament, Record of Proceedings, 3 June 2014, p 1943.

⁶ Explanatory notes, p 3.

⁷ *Water Supply (Safety and Reliability) Act 2008*, Section 43(2).

⁸ Public briefing transcript, 12 June 2014, p 6.

The department further advised:⁹

Under section 25D of the Water Act, an emergency declaration may direct a service provider to redirect water, including non-potable water to other service providers, electricity generators or the coordinator-general; operate infrastructure in a particular way to facilitate these actions; and impose restrictions on the use of water by customers.

The department explained that the Governor in Council process is not suitable if short-term restrictions need to be made to respond effectively to an emerging event on the same or next day. In the face of critical emergency situations that require a water supply emergency declaration, the department advised:¹⁰

... the current provisions [which] require Governor in Council approval and gazettal before giving effect to a declaration ... can be time consuming and potentially impractical.

In introducing the Bill to Parliament, the Minister for Energy and Water Supply referred to an incident in January 2013 when heavy rainfall from Tropical Cyclone Oswald saw high levels of turbidity in the Brisbane River shut down the Mount Crosby water treatment plant, leaving some parts of Brisbane reliant on the water supplies in reservoirs at risk at the time the plant stopped operating.¹¹

The department advised that while there was emergency preparedness for the flood event, no-one had anticipated the problems that occurred with the Mount Crosby water treatment plant, which related to a potential water supply shortfall rather than flooding.¹²

The department also advised:¹³

When it became a realisation that there was a potential problem, there were two ways it could have gone and it could have been a more extreme event. If [the treatment plant] had not [got back on track], most probably the supply declaration would have been the better way. What was decided more appropriately was that [Queensland Urban Utilities] instigated an emergency restriction, but by default because of the processes under their act it actually did not have effect until the day after. If there had been a greater fallout of that incident, the minister may have needed to impose a declaration. There may have been time to go through a proper process, or there may not have because if Mount Crosby had not got back on track and there had been other infrastructure falling out of that flood, it could have gone to other regions so not just in the Brisbane-Ipswich regions.

The department further advised:¹⁴

In normal circumstances, the timeframe for obtaining [Governor in Council] approval requires a minimum of nine business days, counting from the day on which an Executive Council Minute is lodged, up to and including the day of the Executive Council meeting at which the matter is considered. Executive Council meetings are summoned on the authority of the Governor and normally held on Thursday each week after Cabinet meets on the Monday. Minutes must be lodged with the Executive Council secretariat by 1.00pm on the Monday of the week preceding the Executive Council meeting at which the matter will be considered.

⁹ Department of Energy and Water Supply, Correspondence dated 19 June 2014.

¹⁰ Public briefing transcript, 12 June 2014, p 2.

¹¹ Queensland Parliament, Record of Proceedings, 3 June 2014, p 1943.

¹² Public briefing transcript, 12 June 2014, p 5.

¹³ Ibid, p 6.

¹⁴ Department of Energy and Water Supply, Correspondence dated 19 June 2014.

Late Minutes can be submitted for Governor in Council consideration, but the approval of the Premier is required and there must be genuine, unforeseen, urgent matters of State in such circumstances.¹⁵

If a matter is urgent, it may be considered before the next scheduled meeting of the Executive Council. However, in such cases, the relevant Minister must consult with the Premier to obtain agreement to seek the approval of the Governor for a special meeting to be held.¹⁶

In summary, the department suggested:¹⁷

While it is possible to 'speed up' the [Governor in Council] approval, the process itself is arguably not suitable for emergency decision-making in a timely manner. The existing declaration process is more suited to drought related responses where the situation being addressed is not so extreme, dire or immediate, noting that a water supply emergency, as provided under section 25A of the Water Act is 'a situation in which there is a demonstrably serious risk the State's, or part of the State's, essential water supply needs will not be met...'

The department also noted that disaster declarations, which address comparable situations to potential water supply emergencies, are made by relevant statutory officers without Governor in Council approval under the *Disaster Management Act 2003*. There is an approved form for the declarations; however they can be made orally if time does not permit the completion of a written declaration. Gazettal of declarations is required as soon as practicable after they have been made, with the declaration expiring after 14 days, unless it is extended or further extended by regulation for further periods of 14 days, or by the Minister or the Premier for a period of 7 days.¹⁸

The department advised that the option of retrospective approval by the Governor in Council was not considered as generally this approach should only be used to approve beneficial provisions, and there are potential negative impacts of water restrictions imposed under the Minister's direction.¹⁹

The Bill also proposes extending the term of the emergency declaration from 15 to 20 business days to allow more time to prepare an emergency water supply regulation, if necessary.²⁰

The department advised that it had undertaken consultation with service providers:²¹

When there was discussion with the service providers there was a concern that a few extra days would make the regulation a bit tighter and a bit more thoughtful, conscious that we already have the declaration in process. A regulation could be things like potentially asking industry to shut down. It is a big thing. It would involve a lot broader consultation. It was about making certain the regulation is as sound as possible. It gives the government more time to talk to affected people, to test it and to make certain that everyone understands what is going to be in the regulation.

The department further advised:²²

The extension of time to 20 business days is considered essential to ensure that consultation can occur with affected service providers on measures proposed to be included in an emergency regulation. If short-term action is required to address a water supply emergency,

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Public briefing transcript, 12 June 2014, p 5; Department of Energy and Water Supply, Correspondence dated 19 June 2014.

¹⁹ Department of Energy and Water Supply, Correspondence dated 19 June 2014.

²⁰ Explanatory Notes, p 3.

²¹ Public briefing transcript, 12 June 2014, p 7-8.

²² Department of Energy and Water Supply, Correspondence, 19 June 2014.

a declaration is the appropriate response; if longer term action is required to address a water supply emergency, a regulation must be made. The check and balance provided by the Governor in Council approval is maintained in relation to the longer term and arguably more interventionist response given the directions that may potentially be contained in an emergency regulation.

Committee comment

While the committee questioned the removal of the check and balance provided by the Governor in Council for emergency preparations rather than in the event of a disaster, the committee agrees with the department that the Governor in Council process is too time-consuming if short-term restrictions need to be implemented quickly to respond to an emergency event. This is particularly relevant if the issue is not addressed by normal emergency preparedness, such as an issue of a failure of critical infrastructure akin to the shut down at the Mount Crosby water treatment plant.

The committee is satisfied with the department's advice that an immediate emergency declaration would generally be focussed on conserving water, and that Governor in Council approval would still be needed if an emergency regulation, which can have a greater impact in terms of time and effect, is made. The committee also recognises that water supply emergencies are similar to disaster declarations in terms of the need to act quickly and that these declarations do not require Governor in Council approval.

The committee is satisfied with the proposal to extend the term of the emergency declaration from 15 to 20 business days to allow more time to prepare a well-formulated regulation if needed. Given that a regulation is the only mechanism available to extend the effect of an emergency declaration and is designed for the longer term, the committee agrees that the extension of time to 20 business days will allow for greater consultation on its development. While there was some discussion about the use of business days versus calendar days to simplify the process, the committee recognises that business days are the standard practice in accordance with the *Acts Interpretation Act 1954*.

2.2 Emergency water restrictions

As stated in section 2.1.1, water service providers can place restrictions on water supply under the Water Supply Act.

However, the Water Supply Act provides that:

the service provider water restriction does not have effect until the beginning of the day after the notice is given ... A water service provider must give notice of a service provider water restriction imposed by the service provider to anyone affected by it in the way the service provider considers appropriate having regard to the circumstances in which the restriction is imposed.²³

The Bill amends the Water Supply Act to provide for service provider emergency water restrictions imposed in urgent and emergency situations 'to commence on the day they are announced, removing any delay in putting in place measures to manage the situation'.²⁴ The Bill also provides that 'service providers must give notice about their emergency water restrictions in an appropriate way in the circumstances, such as by radio or television broadcast or another form of electronic media',²⁵ so that customers are aware of the restrictions from the time they are announced and take effect.

²³ *Water Supply (Safety and Reliability) Act 2008*, Section 43(2), p 54.

²⁴ Queensland Parliament, Record of Proceedings, 3 June 2014, p 1943.

²⁵ Explanatory notes, p 3.

2.2.1 Rationale for proposed amendment

The department advised that at present:²⁶

... water service providers can impose water restrictions in a range of circumstances ... but in all of these circumstances the restrictions do not commence until the day after the notice is given to affected customers.

The explanatory notes state:²⁷

Even in an emergency, the service provider water restrictions do not apply until the day after notice of the restrictions is given to affected customers.

The current requirement coincides with the Minister gaining Governor in Council approval for emergency water supply declarations:²⁸

... limits their effectiveness and practical use in response to short-term or immediate emergencies, like the Mount Crosby incident of January 2013 when high levels of turbidity in the Brisbane River shut down the water treatment plants.

Committee comment

The committee supports the proposal and recognises the restrictions on water supply imposed by service providers may need to be implemented quickly in urgent or emergency situations, particularly as they may precede actions contained in an emergency declaration.

Providing notice of the restrictions to customers in an appropriate way at the time the announcement is made is an important component of the amendment, both to support implementation of the restrictions being put in place, and to ensure customers do not inadvertently commit an offence and face penalties. The committee has also raised this issue in the context of the Bill's application of fundamental legislative principles.

2.3 Temporary full supply levels

In order to mitigate the impacts of a potential flood or drought, the Minister may, by gazette notice, declare a temporary full supply level for dams operating under an approved flood mitigation manual after obtaining relevant expert advice.²⁹ This refers to the Wivenhoe, Somerset and North Pine dams which are prescribed by regulation as flood mitigation dams.³⁰ The powers to declare a temporary full supply level were first enacted in 2011 as a result of recommendations of the Queensland Flood Commission of Inquiry, and were exercised multiple times during the 2012-13 wet season for both Wivenhoe and North Pine dams to increase the flood storage capacity in anticipation of the impacts of Tropical Cyclone Oswald.³¹

In keeping with the focus on streamlining the State's powers to respond to and manage water supply emergencies and flood events, the Bill provides for a future temporary full supply level declaration to take effect upon the dam owner receiving a declaration notice, or such later time as stated in the notice, rather than taking effect once gazetted.³² However, the Bill still provides that a copy of the

²⁶ Public briefing transcript, 12 June 2014, p 2.

²⁷ Explanatory notes, p 2.

²⁸ Explanatory notes, p 2.

²⁹ Explanatory notes, p 2.

³⁰ Public briefing transcript, 12 June 2014, p 3.

³¹ Explanatory notes, p 2.

³² Ibid, p 3.

declaration is to be published in the gazette as soon as practicable after it has been made for the purpose of maintaining a public record of the decision.³³

Rationale for proposed amendment

In his introductory speech, the Minister referred to the temporary full supply declarations he made in January 2013 due to Tropical Cyclone Oswald and the flooding it caused in Central Queensland and parts of South East Queensland. The Minister stated:³⁴

During that wet season, I made temporary full supply level declarations for Wivenhoe Dam and North Pine Dam on a number of occasions, including on non-business days. History shows the limitations of the gazettal process, which could have delayed action at the dams to reduce the threat.

The Minister stated the proposed amendment would enable:³⁵

... quicker decisions to temporarily draw down the water levels of Wivenhoe, Somerset and North Pine dams in response to existing or emerging flood events.

The department advised:³⁶

... we did have a situation in one of the instances on a weekend in January or February last year where the minister had to make a decision to direct Seqwater to the full supply level of North Pine Dam and it did take a couple of hours to get that gazettal notice done. In that situation, time was of the essence.

Committee comment

The committee supports the amendment to the Bill for the purposes of ensuring the gazettal process, which is about recording the decision, does not delay temporary full supply declarations that can manage the imminent threat of flooding. However, the committee is pleased to see that a public record of the decision will be maintained via the gazettal process to maintain transparency and accountability of the process.

2.4 Alternate operational procedures

The Bill also addresses the steps for authorising alternative operating procedures at Wivenhoe, Somerset and North Pine dams.

Approved flood mitigation manuals are in place for the three dams, which include procedures for operating the dams during flood events. The dam owner (Seqwater) must operate these dams in accordance with the approved manuals during flood events, but may seek authorisation from the chief executive to adopt a different operational procedure (an authorised alternative procedure) if it is necessary to manage a situation at the dam.³⁷

The Water Supply Act provides that this applies:³⁸

... if a flood event for a dam happens and the owner of the dam reasonably considers that—
(a) an operational strategy under the flood mitigation manual for the dam does not provide or does not adequately provide for the flood event or an aspect of the flood event; and

³³ Ibid, p 4.

³⁴ Queensland Parliament, Record of Proceedings, 3 June 2014, p 1943.

³⁵ Ibid.

³⁶ Public briefing transcript, 12 June 2014, p 4.

³⁷ Explanatory notes, p 2.

³⁸ *Water Supply (Safety and Reliability) Act 2008*, Section 395(1).

(b) to achieve an objective under the flood mitigation manual and respond effectively to the flood event it is necessary to—

*(i) disregard an operational procedure under the manual (the **existing procedure**) that would, other than for this division, apply under the manual; and*

*(ii) observe a different operational procedure (the **alternative procedure**).*

The chief executive must consider the request and make a decision. Communications can be verbal, including by phone.³⁹ However, if the chief executive cannot be contacted within a reasonable time, the owner can adopt the different procedure to manage the situation but must provide written advice of the facts and circumstances and actions taken to the chief executive as soon as practicable after the event.⁴⁰

Currently, there is possible uncertainty about when Seqwater would be authorised to adopt the alternative procedure where contact with the chief executive officer cannot be made or contact is made but communication is lost before a response is provided.⁴¹

The Bill provides that if Seqwater has attempted to contact the chief executive officer and has not received a response within a reasonable period, it can adopt the appropriate alternative operating procedure to manage the situation at the dam during a flood event.⁴²

Rationale for proposed amendment

The explanatory notes state:⁴³

The Bill clarifies the procedures for gaining authorisation to adopt a different operating procedure during flood events when reasonable efforts are made to contact the chief executive but the chief executive does not respond, or contact is made but then lost before the chief executive can respond to the request. This will ensure that Seqwater is authorised to adopt the appropriate procedure for operating the dam during flood events and can act accordingly to ensure the safety of the dam and manage the impacts of flooding on downstream communities.

The department noted communications both ways can in the first instance be verbal and to date the process has worked and advised:⁴⁴

While the issue of not being able to contact the chief executive has not been a real issue to date, the department believes it is desirable that the relevant provisions are clarified before the start of the next wet season.

Further, the proposed amendment 'takes account of the fact that by definition in an emergency situation communications cannot be guaranteed to occur both ways and in a timely manner.'⁴⁵ The department also noted that 'when we have lost contact is probably when there is some sort of catastrophic flooding happening, not the ordinary sort of flood event.'⁴⁶

³⁹ Public briefing transcript, 12 June 2014, p 9.

⁴⁰ Explanatory notes, p 2.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Explanatory notes, p 4.

⁴⁴ Public briefing transcript, 12 June 2014, p 3.

⁴⁵ Ibid, p 3.

⁴⁶ Ibid, p 9.

Committee comment

The committee supports the proposal and recognises the importance of providing clarification to ensure Seqwater can adopt an authorised alternative procedure within a timeframe that enables the management of both the safety of the dam and the impacts of flooding in the event there is a breakdown in communication.

2.5 Water Efficiency Labelling and Standards scheme

The Water Efficiency Labelling and Standards (WELS) scheme is a co-operative national scheme that was established in 2005 by the *Water Efficiency Labelling and Standards Act 2005* (Cwlth) (the WELS Act (Cwlth)) and complementary State and Territory legislation. The scheme is supported by an Intergovernmental Agreement between the Commonwealth and the States and Territories.⁴⁷

In response to an independent review of the scheme in 2010, the Joint Governments (the Commonwealth and all States and Territories) agreed to changes to the governance, compliance and administration of the scheme. The Commonwealth Act was amended in 2012 and 2013 in line with the Joint Governments' response to the recommendations of the independent review of 2010. The amendments in the Bill are designed so that the *Water Efficiency Labelling and Standards Act 2005* (Qld) (Queensland WELS Act) mirrors the Commonwealth Act to ensure the scheme remains nationally consistent.⁴⁸

The Bill was described by the Minister as upholding:⁴⁹

... the Queensland government's commitment to maintain legislation that forms part of a national scheme for water efficiency labelling and standards.

Parliamentary Counsel has recommended that an 'applied provision' model of uniform legislation be adopted by Queensland, as it has by some other states, including New South Wales, Tasmania and South Australia.⁵⁰ Under this model, the Commonwealth water efficiency laws are applied as laws of the State of Queensland. In doing so, the State may still modify the effect of the Commonwealth water efficiency laws by regulation.⁵¹ The department also advised that an 'applied provisions' approach is commonly used in Queensland statutes to establish national uniform legislation.⁵²

Rationale for proposed amendment

The Queensland WELS Act needs to 'mirror' recent changes to cover any unincorporated businesses or sole traders who may be importing or manufacturing WELS products in Queensland.⁵³

The department advised:⁵⁴

The current Queensland WELS Act mirrors the Commonwealth act very closely, so it has the same number of provisions. Where there is a provision in the Queensland act that does not also copy the Commonwealth's provision, it has a reference to it. It maintains the same numbering. Whenever the Commonwealth act is amended, that then requires an amendment to the Queensland WELS Act. The approach in adopting the applied provisions approach [instead] is to apply the Commonwealth law as a law of the state of Queensland and it

⁴⁷ Explanatory notes, p 2.

⁴⁸ Public briefing transcript, 12 June 2014, pp 3-4.

⁴⁹ Queensland Parliament, Record of Proceedings, 3 June 2014, p 1944.

⁵⁰ Public briefing transcript, 12 June 2014, p 4.

⁵¹ Explanatory notes, p 4.

⁵² Department of Energy and Water Supply, Correspondence dated 19 June 2014.

⁵³ Explanatory notes, p 3.

⁵⁴ Public briefing transcript, 12 June 2014, p 13.

prevents the necessity for the Queensland act to mirror each provision of the Commonwealth act.

The explanatory notes claim the advantages of adopting this approach are that it:⁵⁵

- significantly reduces red tape and regulation,
- negates the need for future amendments to the Queensland WELS Act if the scheme arrangements are amended under the Commonwealth Act or regulations or other instruments under that Act, and
- achieves a higher level of consistency across jurisdictions.

Committee comment

The committee supports the amendment in the Bill to apply the Commonwealth law as a law of the state of Queensland, and notes this approach is consistent with other national uniform legislation applying in Queensland.⁵⁶

2.6 Governance arrangements for category 1 water authorities

Amendments to the Water Act are also proposed to improve the governance framework for category 1 water authorities (Gladstone Area Water Board and Mount Isa Water Board). These authorities are statutory bodies which operate on a commercial basis similar to government owned corporations.⁵⁷

The Bill proposes to:⁵⁸

- remove the requirement for authorities to give notice when buying or selling property of more than \$1 million,
- remove the separate process for resignation of the chairperson of the Gladstone Area Water Board and separate provisions specifying the term of appointment for its directors,
- align the timeframes for when the Minister and the authorities must reach agreement on corporate plans and performance plans,
- require authorities to disclose any payments received to fund community service obligations during the financial year in the annual report,
- remove the reference to category 1 authorities to identify and disclose cross subsidies,
- omit provisions for establishment of category 1 water authorities and obligations applicable to new authorities within the first year of establishment, and
- streamline the dividend recommendation and payment process to align with provisions applicable to government owned corporations.

Rationale for proposed amendment

The department advised that both of the water boards:⁵⁹

... were reformed into what was called commercialised water businesses in about 2000 and the legislation was amended around that time. The provisions that related to governance

⁵⁵ Explanatory notes, p 4.

⁵⁶ For example, the *Credit (Commonwealth Powers) Act 2010* (Qld) and the *Fair Trading Act 1989* (Qld).

⁵⁷ Explanatory notes, p 3.

⁵⁸ Ibid, p 4.

⁵⁹ Public briefing transcript, 12 June 2014, p 10.

arrangements ... were largely copied from the then Government Owned Corporations Act, which itself has been amended a number of times. To some extent we are just catching up on a number of those changes.

The explanatory notes advise that the governance framework under which the Boards operate has never been comprehensively reviewed and is in need of reform. In so doing, the changes outlined in the Bill have been designed to reduce red tape and regulatory burden, remove redundant provisions and better align planning and reporting requirements with commercial business practices.⁶⁰

Committee comment

The committee is satisfied with the department's advice that the proposed changes will improve the governance frameworks of the Gladstone Area Water Board and Mount Isa Area Water Board and not have a negative impact on how they operate. The committee is also satisfied with the advice that the changes will bring the two entities into line with other government owned corporations.

2.7 SEQ region and Queensland Water Commission

The Bill makes a minor amendment to section 341 of the Water Act which defines the 'SEQ region' to include the local government area of Noosa Shire following its de-amalgamation from the Sunshine Coast Regional Council on 1 January 2014. It also omits redundant provisions from the Water Act referencing the former Queensland Water Commission, as it has been abolished.⁶¹

Committee comment

The committee supports the proposed amendments.

⁶⁰ Explanatory notes, pp 3-4.

⁶¹ Ibid, p 3.

3 Fundamental legislative principles

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

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

The committee has examined the application of FLPs to the Bill and identified the following issues.

3.1 Rights and liberties of individuals

Section 43(2) of the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) currently provides that a service provider water restriction does not have effect until the beginning of the day after the notice is given. Clause 38 amends section 43 of the Water Supply Act to provide that if a water restriction is imposed because of an urgent need or water supply emergency declaration, the restriction takes effect when the restriction is imposed.

Section 43(1) of the Water Supply Act currently provides that a water service provider must give notice of a service provider water restriction to anyone affected by the restriction in a way the service provider considers appropriate. Clause 38 inserts new section 43(3) into the Water Supply Act to provide that where a restriction is imposed immediately due to an urgent need or water supply emergency declaration, an appropriate way to give notice is broadcasting the restriction on the radio or television or another form of electronic communication.

Section 43(3) (section 43(5) should the Bill pass) provides that a person who contravenes a service provider water restriction commits an offence attracting a maximum penalty of 1,665 penalty units (\$189,560) for non-residential customers and 200 penalty units (\$22,770) for other persons.⁶²

The committee notes that under the current provisions there is a risk that a person who has not heard about a water restriction may inadvertently commit an offence by failing to comply with the restriction. This potential risk is currently mitigated, somewhat, by section 43(2) of the Water Supply Act which provides that a service provider water restriction does not have effect until the beginning of the day after the notice is given. This provides a short period of time for affected persons to be notified of the restriction before it is imposed.

The potential effect of clause 38, which provides for the immediate imposition of the restriction, is that there is a greater risk of a person, who is not aware that a water restriction has been imposed, either due to the fact that a water service provider is yet to give notice of the restriction (under section 43(1)) or the person has not yet heard about the restriction, inadvertently committing an offence which attracts a significant penalty.

The explanatory notes acknowledge that the proposed amendment may raise potential FLP issues. The explanatory notes state:⁶³

... because of the immediate effect of water restrictions in an emergency situation, the service provider must notify affected customers of the restrictions in an appropriate way, such as by radio or television broadcast or by another form of electronic media. In this way, affected customers should be informed of the restrictions as soon as they apply.

⁶² SL No. 44 of 2014 was tabled 6 May 2014 with a disallowance date of 27 August 2014 and sets an increase in value of a penalty unit from \$110.00 to \$113.85 as at 1 July 2014.

⁶³ Explanatory notes, p 5.

The explanatory notes also state that '[i]n these circumstances, it is considered the potential breach is justified in the public interest.'⁶⁴

The committee acknowledges that in the event of water restrictions being imposed due to an urgent need or water supply emergency declaration, it is in the public interest that individuals and companies comply with the restrictions. The imposition of a penalty for non-compliance is therefore considered justifiable.

However, the Queensland Legislation Handbook, provides that there should be a balance within legislation between individual and community interests, and that the treatment of all persons affected by legislation should be reasonable and fair.⁶⁵

The department advised:⁶⁶

In urgent and emergency situations (e.g. where the water supply is contaminated, or infrastructure has failed) it is envisaged that in practice, notice and commencement of water restrictions would be simultaneous thereby reducing the risk that an individual may technically be in breach of restrictions that have been imposed, because they are unaware of them.

Committee comment

The committee notes section 25A of the *Water Act 2000* which provides a water supply emergency is 'a situation in which there is a demonstrably serious risk the State's, or part of the State's, essential water supply needs will not be met ...'.

The committee considers an immediate imposition of water restrictions during a water supply emergency is justified to ensure the State's water supply needs are met and notes that water service providers must give notice of the restrictions in a way considered appropriate – such as radio or television broadcasts.

However, the committee seeks further clarification as to the specific steps that may be taken by a service provider to provide adequate notice of water restrictions in order to mitigate the risk of a person inadvertently committing an offence resulting from water restrictions taking immediate effect.

Point for clarification

The committees seeks further clarification from the Department of Energy and Water Supply as to the specific steps that may be taken by a service provider to provide adequate notice of water restrictions in order to mitigate the risk of a person inadvertently committing an offence resulting from water restrictions taking immediate effect.

3.2 Institution of Parliament – National scheme legislation

Part 3 of the Bill (clauses 28 to 36) amends the Queensland WELS Act to apply the WELS Act (Cwlth) as a law in Queensland.

A concern in respect of national scheme legislation is that when legislation is introduced or tabled in Parliament following national agreement, there is little capacity for the Parliament to amend, refuse to pass, or disallow the law.⁶⁷

⁶⁴ Explanatory Notes p 5.

⁶⁵ The Queensland Legislation Handbook, at para 7.2.12.

⁶⁶ Department of Energy and Water Supply, Correspondence, 14 August 2014.

⁶⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 162.

Amongst other things, clause 35 provides:

- power to make regulations under the Queensland WELS Act which may modify the Commonwealth water efficiency laws, and
- the Minister must table an amendment to the WELS Act (Cwlth) or any regulation under that Act in the Legislative Assembly within 10 sitting days of the amendments commencing.

Committee comment

The committee notes clause 35 provides the power to modify the application of the WELS Act (Cwlth) in Queensland by regulation and requires that the Queensland Parliament be informed of any changes to the WELS Act (Cwlth) and any regulations in force under that Act as it applies in Queensland. On this basis, the committee considers the limitations on the sovereignty of Parliament are justifiable in the circumstances.

3.3 Institution of Parliament – Amendment of an Act only by another Act

Section 4(4)(c) of the *Legislative Standards Act 1992* provides that a Bill should only authorise the amendment of an Act by another Act. A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is known as a Henry VIII clause, allowing the executive to amend an Act made by the Parliament.

Clause 35 inserts new section 7 into the Queensland WELS Act to provide a power to modify the application of the WELS Act (Cwlth) in Queensland by regulation.

The explanatory notes state that the ‘Modification of an applied law is common and is done to maintain Queensland’s oversight of the law as applied in Queensland.’ The explanatory notes also state that ‘a similar approach is taken in the corresponding Acts of New South Wales, Tasmania and South Australia.’⁶⁸

The former Scrutiny of Legislation Committee considered the possible use of Henry VIII clauses in the following limited circumstances:⁶⁹

- to facilitate immediate executive action,
- to facilitate the effective application of innovative legislation,
- to facilitate transitional arrangements, and
- to facilitate the application of national scheme legislation.

It is noted that clause 35 (new section 7) falls within the category of facilitating the application of a national scheme. As stated in the OQPC Notebook, however, the existence of these circumstances does not automatically justify the use of Henry VIII clauses.⁷⁰

Committee comment

The committee considers the power introduced in clause 35 (new section 7) has sufficient regard to fundamental legislative principles as it includes a mechanism for the Government and Parliament to modify the application of the WELS Act (Cwlth) as it applies in Queensland.

⁶⁸ Explanatory Notes, p 5.

⁶⁹ Ibid.

⁷⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 159; Alert Digest 2006/10, p 6, paras 21-24; Alert Digest 2001/8, p 28, para 31.

3.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix**Appendix A – Representatives from the Department of Energy and Water Supply attending the public briefing held on 12 June 2014**

Witnesses	
1	Ken Sedgwick – Deputy Director-General, Water Supply
2	Danielle Butcher – Water Supply Policy
3	Don Clunes – Analyst, State Water Entities
4	Gayle Leaver – General Manager, Water Supply Policy and Economics
5	Michelle Marrinon – Team Leader, Water Supply Policy
6	Paul Walsh – Program Director and Adviser, Flood Inquiry Response and Delivery

Statement of Reservation

HON. TIM MULHERIN MP

DEPUTY LEADER OF THE OPPOSITION

SHADOW MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING

SHADOW MINISTER FOR LOCAL GOVERNMENT AND RACING

SHADOW MINISTER FOR TOURISM, MAJOR EVENTS AND THE COMMONWEALTH GAMES

MEMBER FOR MACKAY

PO Box 15057, City East QLD 4002

reception@opposition.qld.gov.au (07) 3838 6767



25 August 2014

Mr David Gibson MP
Chair
State Development Infrastructure and Industry Committee
Parliament House
George St
Brisbane QLD 4000

Dear Chair

Statement of Reservation – *Water Legislation (Miscellaneous Provisions) Amendment Bill 2014*

I wish to notify the State Development Infrastructure and Industry Committee that the Queensland Opposition has reservations about aspects of Report No. 49 of the State Development Infrastructure and Industry Committee **into the *Water Legislation (Miscellaneous Provisions) Amendment Bill 2014***.

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in blue ink that reads "Tim Mulherin".

Tim Mulherin MP
Deputy Leader of the Opposition