

Queensland

Water (Local Management Arrangements) Amendment Bill 2016

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2016

A Bill

for

An Act to amend the *Water Act 2000* for particular purposes

The Parliament of Queensland enacts—

Clause 1 Short title

This Act may be cited as the *Water (Local Management Arrangements) Amendment Act 2016*.

Clause 2 Commencement

This Act commences on a day to be fixed by proclamation.

Clause 3 Act amended

This Act amends the *Water Act 2000*.

Clause 4 Insertion of new ch 4A

After section 717—

insert—

Chapter 4A Declared channel schemes

Part 1 Preliminary

718 Definitions for chapter

In this chapter—

acquisition Act means the *Acquisition of Land Act 1967* or another Act providing for the compulsory acquisition of land.

declared channel scheme see section 720.

declared project see section 719.

employee register, for a declared channel scheme,

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see section 737.

irrigation entity see section 721.

project direction see section 724(1).

transferable employee see section 738.

transfer day, for a declared channel scheme, means the day declared as the transfer day for the scheme under section 722.

transfer notice see section 723(1).

719 What is a *declared project*

(1) Each of the following is a ***declared project***—

(a) the transfer of the businesses, assets and liabilities of SunWater in relation to a declared channel scheme to an irrigation entity;

(b) the divestment from the State of an irrigation entity.

(2) The Minister may, by gazette notice, declare a thing to be part of a declared project for this chapter if the Minister is satisfied it is appropriate to include the thing as part of a transfer or divestment or otherwise necessary to do so for the proper completion of the declared project.

720 What is a *declared channel scheme*

(1) Each of the following is a ***declared channel scheme***—

(a) Emerald channel scheme;

(b) Eton channel scheme;

(c) St George channel scheme;

(d) Theodore channel scheme;

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(e) another channel scheme declared by regulation to be a declared channel scheme for this chapter.

(2) In this section—

channel scheme means the distribution system or water infrastructure for which SunWater holds a resource operations licence immediately before the transfer of its businesses, assets and liabilities to an irrigation entity.

Emerald channel scheme—

1 *Emerald channel scheme* is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Nogoa Mackenzie water supply scheme.

2 For paragraph 1, the Nogoa Mackenzie water supply scheme is the irrigation infrastructure by which water is supplied from Fairbairn Dam to the customers.

Eton channel scheme—

1 *Eton channel scheme* is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Eton water supply scheme.

2 For paragraph 1, the Eton water supply scheme is the irrigation infrastructure by which water is supplied from Kinchant Dam to the customers.

St George channel scheme—

1 *St George channel scheme* is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the St George water supply scheme.

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2 For paragraph 1, the St George water supply scheme is the irrigation infrastructure by which water is supplied from Beardmore Dam to the customers.

Theodore channel scheme—

1 *Theodore channel scheme* is the distribution system used to supply water under water allocations to customers who purchase irrigation services in the Dawson Valley water supply scheme.

2 For paragraph 1, the Dawson Valley water supply scheme is the irrigation infrastructure by which water is supplied from Theodore Weir to the customers.

721 What is an *irrigation entity*

An ***irrigation entity*** is a corporation, other than a GOC—

(a) that is established for the purposes of a declared project; and

(b) to which the State provides financial support, under a funding arrangement, for the corporation to undertake the project.

722 Minister may declare transfer day for declared channel scheme

The Minister may, by gazette notice, declare a day to be the transfer day for a declared channel scheme.

Part 2 Particular Ministerial powers relating to declared projects

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723 Transfer notice

(1) For the purpose of a declared project, the Minister may, by gazette notice (a ***transfer notice***), do any of the following—

(a) transfer a business, asset or liability of SunWater to an irrigation entity;

(b) make provision about the consideration for a business, asset or liability transferred under paragraph (a);

(c) grant a lease, easement or other interest in land to SunWater or an irrigation entity;

(d) vary or extinguish a lease, easement or other interest in land held by SunWater, the State, or an irrigation entity;

(e) transfer an easement held by SunWater or the State to an irrigation entity;

(f) in relation to a lease held under the *Land Act 1994* or another Act—

(i) transfer the lease; or

(ii) change a purpose for which the lease is issued; or

(iii) change a condition imposed on the lease; or

(iv) grant a sublease;

(g) in relation to a reserve under the *Land Act 1994*—

(i) change a purpose for which the reserve is dedicated; or

(ii) remove a trustee of the reserve; or

(iii) appoint a trustee of the reserve, subject to conditions or without conditions;

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(h) provide whether and, if so, the extent to which an irrigation entity is the successor in law of SunWater;

(i) provide for a legal proceeding that is being, or may be, taken by or against SunWater to be continued or taken by or against an irrigation entity;

(j) provide for or about the issue, transfer, amendment or application of an instrument to SunWater or an irrigation entity, including—

(i) whether SunWater or an irrigation entity holds, or is a party to, an instrument; and

(ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of SunWater or an irrigation entity; and

(iii) whether a reference to an entity in an instrument is a reference to SunWater or an irrigation entity; and

(iv) whether, under an instrument, an amount is or may become payable to or by SunWater or an irrigation entity or other property is, or may be, transferred to or by SunWater or an irrigation entity; and

(v) whether a right or entitlement under an instrument is held by SunWater or an irrigation entity;

(k) provide for the transfer, other than a transfer under part 4, or secondment of an employee of SunWater to an irrigation entity;

(l) make provision about the employees of SunWater or an irrigation entity and their

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terms and conditions of employment, rights and entitlements;

(m) make provision about the records of SunWater or an irrigation entity, including records and agreements relating to the employment of employees transferred or seconded under a transfer notice;

(n) make provision about an incidental, consequential or supplemental matter the Minister considers necessary or convenient for effectively carrying out the declared project.

(2) A transfer notice may include conditions applying to something done or to be done under the notice.

(3) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—

(a) signed by the Minister; and

(b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.

(4) The transfer of a liability of SunWater or an irrigation entity under a transfer notice discharges SunWater or the irrigation entity from the liability, except to the extent stated in the notice.

(5) A transfer notice has effect despite any other law or instrument.

(6) A transfer notice has effect on the day it is published in the gazette or a later day stated in it.

(7) If a transfer notice provides for a matter under subsection (1)(j) in relation to an instrument, the responsible entity for the instrument must take the action necessary to register or record the effect of

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the transfer notice, including—

(a) updating a register or other record; and

(b) amending, cancelling or issuing an instrument.

(8) A reference in this section to an irrigation entity includes a reference to an entity that is no longer an irrigation entity but was an irrigation entity before its divestment from the State if the Minister declares under section 719(2) that the application of this section to the entity is part of a declared project for this chapter.

(9) In this section—

authority includes an accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit and plan.

employee, of SunWater or an irrigation entity, does not include a director of SunWater or of the irrigation entity.

instrument includes—

(a) an oral agreement; and

(b) an application or authority under an Act.

responsible entity, for an instrument, means the entity required or authorised by law to register or record matters in relation to the instrument.

724 Project direction

(1) The Minister may give a direction (a ***project direction***) to SunWater or an irrigation entity (each a ***relevant entity***), a relevant entity's board or a government agency requiring the relevant entity, board or agency to do something the Minister considers necessary or convenient for effectively carrying out a declared project.

(2) Without limiting subsection (1), a project

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direction may be about—

(a) forming a company for the purpose of transferring a business, asset or liability to a company; or

(b) winding up or deregistering a company; or

(c) making or executing an instrument; or

(d) making a particular decision about transferring or disposing of an interest held in a relevant entity or a business, asset or liability; or

(e) disclosing information.

(3) A project direction must be in writing and signed by the Minister.

(4) A relevant entity or government agency must comply with a project direction given to it.

(5) A relevant entity's board must—

(a) if a project direction is given to the board—comply with the direction; or

(b) if a project direction is given to the entity—take the action necessary to ensure the entity complies with the direction.

(6) A relevant entity's employees must help the entity or the entity's board to comply with a project direction given to the entity or board.

(7) In this section—

government agency means a government entity under the *Public Service Act 2008*, section 24, or a government owned corporation, that the Minister declares by gazette notice to be a government agency for this section.

Part 3 Interests in land

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725 Resource authorities unaffected

(1) This section applies if a transfer notice provides for—

(a) a perpetual lease under the *Land Act 1994* that is held by SunWater or an irrigation entity to be varied or extinguished; or

(b) a perpetual lease under the *Land Act 1994* to be issued by the State to SunWater or an irrigation entity.

(2) The variation, extinguishment or issue of the perpetual lease does not affect a resource authority held in relation to land the subject of the perpetual lease.

(3) In this section—

resource authority see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10.

726 Particular easements

(1) This section applies if—

(a) a transfer notice provides for the transfer of an easement held by SunWater to an irrigation entity; and

(b) the easement was acquired by SunWater, or SunWater's predecessor in title of the easement, under an acquisition Act for water supply or irrigation purposes or for a purpose of this Act, the repealed Act or the repealed *Irrigation Act 1922*, including—

(i) an easement taken by a gazette resumption notice under the *Acquisition of Land Act 1967* (a ***resumption easement***); and

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(ii) a public utility easement under the *Land Act 1994* or the *Land Title Act 1994*.

(2) The irrigation entity has the benefit of the easement from the day the easement is transferred (the ***easement transfer day***) as if the irrigation entity were SunWater immediately before the easement transfer day.

(3) However, subsection (2) does not apply to the extent the benefit of a right, power or privilege over, or in relation to, the easement—

(a) involves or permits the exercise of a SunWater statutory power in relation to the land over which SunWater held the benefit of the easement; or

(b) is inconsistent with the irrigation entity's functions or powers.

(4) Despite subsection (2), the irrigation entity incurs a liability, or exercises a right, power or privilege over, or in relation to, the easement in its own name.

(5) A liability of SunWater relating to the easement becomes a liability of the irrigation entity on the easement transfer day.

(6) The *Acquisition of Land Act 1967*, section 41, does not apply to the transfer of a resumption easement.

(7) No compensation is payable to any person because of the transfer.

(8) This section applies despite any other Act or anything to the contrary in the terms of the easement.

(9) In this section—

SunWater statutory power means a power exercisable by SunWater under an Act immediately before the easement transfer day.

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727 Unregistered easements

(1) This section applies if—

(a) a transfer notice provides for the transfer to an irrigation entity of an easement mentioned in section 726(1)(b) that is held by SunWater and is in a declared channel scheme; and

(b) there is no outstanding issue of substance relating to the payment of compensation under the acquisition Act for the acquisition; and

Examples—

1 All compensation payable under the acquisition Act for the acquisition was paid to the person entitled to it.

2 The issue of compensation payable under the acquisition act for the acquisition was never pursued because any amount payable would have been negligible.

(c) the particulars of the acquisition of the easement have never been recorded in the appropriate register for the land the subject of the easement; and

(d) the rights conferred, and the obligations imposed, by the easement have never been extinguished; and

(e) immediately before the transfer day for the declared channel scheme, infrastructure associated with the purposes for which the easement was taken is situated on the land; and

(f) the Minister is satisfied, to the greatest practicable extent on the basis of documentary evidence, that the matters mentioned in paragraphs (a) to (e) are true.

(2) Subsection (1)(d) applies despite the *Land Act 1994* or the *Land Title Act 1994*.

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(3) The Governor in Council may, by gazette notice published within 2 years after the transfer day for the declared channel scheme, declare that the easement is vested in the irrigation entity.

(4) For an application under section 738X, the chief executive or registrar of titles may rely on the gazette notice for amending the appropriate register for the land the subject of the easement to include the current particulars of the easement in the register.

(5) Without limiting subsections (3) and (4), the chief executive or registrar of titles must, in recording the particulars of the easement, record in the register copies of the following—

(a) the plan of survey used for identifying the easement when the easement was acquired, and any subsequent plan of survey relevant to identifying the easement;

(b) any gazette notice forming part of the acquisition process under the acquisition Act.

(6) For this section, it does not matter whether the relevant land was freehold land or leasehold land when the easement was created, or whether the relevant land is freehold land or leasehold land when the gazette notice mentioned in subsection (3) is published.

(7) To remove any doubt, it is declared that the transfer of an easement to the irrigation entity does not require or permit the irrigation entity to perform a function, or exercise a power, of a water authority.

(8) In this section—

appropriate register, for land the subject of an easement, means the register in which the easement is required to be registered under the *Land Act 1994* or the *Land Title Act 1994*.

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extinguished includes surrendered.

728 Compensation not payable to any person for action under s 727

A person is not entitled to compensation from the State under this Act, the *Land Act 1994*, the *Land Title Act 1994* or the *Acquisition of Land Act 1967*, or otherwise, for deprivation of an interest in land, or for loss or damage of any kind, arising out of the recording of the particulars of an easement under section 727.

729 Third party licences preserved

(1) This section applies if—

(a) an unregistered right or permission was granted or purportedly granted (whether in writing or orally) by SunWater before the transfer day for a declared channel scheme for a person to enter or use land in a perpetual lease under the *Land Act 1994* that is held by SunWater and is in the area of the scheme (a ***third party licence***); and

(b) apart from this section, the third party licence was not lawfully granted by SunWater but would have been lawfully granted if, before the transfer day for the scheme, the land over which SunWater granted the third party licence was freehold land owned by SunWater rather than land in a perpetual lease; and

(c) a transfer notice provides for the transfer of the third party licence to the irrigation entity for the declared channel scheme.

(2) The third party licence is, immediately before the transfer day, taken to have effect in law and to continue from the transfer day according to its terms.

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730 Subleases and licences under Land Act 1994

(1) This section applies to any of the following dealings affecting land—

(a) a transfer under the *Land Act 1994*, section 322 of a sublease;

(b) a sublease under the *Land Act 1994*, section 332;

(c) an amendment under the *Land Act 1994*, section 336 of a sublease.

(2) If land affected by the dealing is held under a transferred lease or a sublease of a transferred lease, despite a provision of the *Land Act 1994* mentioned in subsection (1), the Minister's approval is not required for the dealing or the registration of a document for the dealing.

(3) If an irrigation entity holds a lease under the *Land Act 1994* of transferred land, the irrigation entity may grant a licence to enter and use the land (a ***relevant licence***).

(4) Subsection (3) is subject to any condition of the lease that prohibits or restricts the grant of a licence.

(5) The indemnity and insurance conditions are conditions of each sublease of a transferred lease or relevant licence.

(6) For applying the indemnity and insurance conditions under subsection (5)—

(a) a reference to a lease may be taken to include a reference to a sublease or relevant licence; and

(b) a reference to a lessee may be taken to include a reference to a sublessee or licensee of a relevant licence.

(7) To remove any doubt, it is declared that the Minister's approval under the *Land Act 1994* is

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not required for the grant of a licence under this section.

(8) In this section—

indemnity and insurance conditions means the conditions stated in the *Land Regulation 2009*, schedule 10A, part 1, sections 1 and 2.

transferred land means land that has, by a transfer notice, been transferred from SunWater to an irrigation entity.

transferred lease means a perpetual lease under the *Land Act 1994* that has, by a transfer notice, been transferred from SunWater to an irrigation entity.

731 Disapplied mediation provisions

(1) The *Land Act 1994*, chapter 6, part 4, division 3A, does not apply to a sublease of a transferred lease.

Note—

The *Land Act 1994*, chapter 6, part 4, division 3A provides for the chief executive to mediate disputes about terms of particular subleases.

(2) In this section—

transferred lease means a perpetual lease under the *Land Act 1994* that has, by a transfer notice, been transferred from SunWater to an irrigation entity.

732 Application of Land Act 1994 and registration

(1) Subject to this part, the *Land Act 1994* applies to a sublease granted under section 730 as if it were granted under the *Land Act 1994*.

(2) The chief executive of the department in which the *Land Act 1994* is administered may record a dealing effected for a sublease under section 730 in the leasehold land register.

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733 Permits to occupy under Land Act 1994

(1) Subsections (2) and (3) apply to a permit to occupy unallocated State land, a reserve or a road under the *Land Act 1994*, chapter 4, part 4 (the ***Land Act provisions***), issued to SunWater and in the area of a declared channel scheme.

(2) On the transfer day for the declared channel scheme, the permit to occupy is taken to be a permit to occupy issued to the irrigation entity for the scheme.

(3) To remove any doubt, it is declared that this section does not limit or otherwise affect the power of the chief executive (land) to deal further with the permit to occupy under the Land Act provisions.

(4) Subsections (5) to (7) apply if SunWater—

(a) has infrastructure for an irrigation service located on a road under the *Land Act 1994* in the area of a declared channel scheme; but

(b) has not been issued with a permit to occupy the road under the Land Act provisions.

(5) On the transfer day for the declared channel scheme, the irrigation entity for the scheme is taken to have been issued with a permit to occupy the road.

(6) Subject to the *Land Act 1994*, section 180, the permit to occupy is for a term of 1 year.

(7) Despite the *Land Act 1994*, section 177(8), the permit to occupy need not be registered.

(8) In this section—

chief executive (land) means the chief executive of the department in which the *Land Act 1994* is administered.

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734 Ancillary works and encroachments under Transport Infrastructure Act 1994

(1) This section applies to an approval under the *Transport Infrastructure Act 1994*, section 50(2), held by SunWater, to construct, maintain, operate or conduct specified ancillary works and encroachments on a State-controlled road in the area of a declared channel scheme.

(2) On the transfer day for the declared channel scheme, the approval is taken to be an approval given to the irrigation entity for the scheme.

735 Approvals for Transport Infrastructure Act 1994, s 255

(1) This section applies to an approval under the *Transport Infrastructure Act 1994*, section 255(1)(a), held by SunWater, to interfere with a railway in the area of a declared channel scheme.

(2) On the transfer day for the declared channel scheme, the approval is taken to be an approval given to the irrigation entity for the scheme.

736 Access across irrigation channels

(1) This section applies if SunWater is required to construct or maintain a means of access across an irrigation channel from a parcel of land to a road in the area of a declared channel scheme.

Note—

See the repealed Act, section 127.

(2) On the transfer day for the declared channel scheme—

(a) SunWater's rights and obligations in relation to constructing or maintaining a means of access across the irrigation channel end; and

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(b) SunWater's rights and obligations in relation to constructing or maintaining a means of access across the irrigation channel become the rights and obligations of the irrigation entity for the scheme.

Part 4 Employees

737 What is the *employee register* for a declared channel scheme

(1) The ***employee register***, for a declared channel scheme, is a register of employees of SunWater whom SunWater proposes to transfer to the irrigation entity for the scheme, that is prepared and approved by the chief executive officer, however called, of SunWater.

(2) The chief executive officer of SunWater may approve the employee register for the purpose of subsection (1).

(3) At any time within 1 year after the transfer day for a declared channel scheme, the chief executive officer of SunWater may change the employee register to correct an omission or error in relation to the scheme.

738 Who is a *transferable employee*

A ***transferable employee*** is a person—

(a) who, immediately before the transfer day for a declared channel scheme, was an employee of SunWater; and

(b) whose name is stated in the employee register for the declared channel scheme as an employee to be transferred to the irrigation entity for the scheme.

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738A Transfer of transferable employees

(1) On the transfer day for a declared channel scheme—

(a) a transferable employee for the declared channel scheme becomes an employee of the irrigation entity for the scheme; and

(b) a transferable employee for the declared channel scheme ceases to be an employee of SunWater; and

(c) the records of SunWater, to the extent they relate to the employment of transferable employees for the declared channel scheme, become records of the irrigation entity for the scheme.

(2) However, if an employee of SunWater becomes a transferable employee because of a register correction for a declared channel scheme, subsection (1) applies to the employee as if the reference in the subsection to the transfer day for the scheme were a reference to the day after the register correction happens.

(3) Also, if a person ceases to be a transferable employee because of a register correction for a declared channel scheme, the person is taken never to have been—

(a) a transferable employee for the declared channel scheme; or

(b) transferred to the irrigation entity for the declared channel scheme.

(4) In this section—

register correction means a change to the employee register for a declared channel scheme under section 737(3) to correct an omission or error.

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738B Preservation of rights of transferable employees

The transfer of a transferable employee to an irrigation entity does not—

(a) affect the employee's total remuneration; or

(b) prejudice the employee's existing or accruing rights to superannuation or annual, sick or long service leave; or

(c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or

(d) constitute a retrenchment, redundancy or termination of the employee's employment by SunWater; or

(e) entitle the employee to a payment or other benefit because the employee is no longer employed by SunWater; or

(f) require SunWater to make any payment in relation to the employee's accrued rights to annual, sick or long service leave irrespective of any arrangement between SunWater and the employee.

738C Individual contracts of employment

(1) This section applies if a transferable employee of a declared channel scheme immediately before the transfer day for the scheme is not employed under a federal enterprise agreement but instead has an individual contract of employment with SunWater.

(2) The transferable employee's individual contract of employment with SunWater is, on the transfer day, taken to be an individual contract of employment between the employee and the

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irrigation entity for the declared channel scheme and applies with any necessary changes to give effect to the contract.

(3) In this section—

federal enterprise agreement—

(a) means an agreement, however called, certified under the *Fair Work Act 2009* (Cwlth) between SunWater and its employees; and

(b) includes the SunWater Enterprise Agreement 2015–2018.

Part 5 Water service provider provisions

738D Application of part

This part applies to a declared channel scheme from the transfer day for the scheme.

738E Irrigation entity becomes water service provider

(1) SunWater ceases to be the water service provider for the supply of an irrigation service in the area of the declared channel scheme.

(2) The irrigation entity for the declared channel scheme becomes the water service provider for the supply of the irrigation service.

(3) The Water Supply Act, section 20 does not apply to the irrigation entity.

(4) The irrigation entity must, as soon as practicable, give the regulator the information mentioned in the Water Supply Act, section 12 about the irrigation entity as a water service provider.

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(5) To remove any doubt, it is declared that SunWater does not cease to be a water service provider primarily providing bulk water services in the area of the scheme only because of subsection (1).

738F No notice to regulator required

The Water Supply Act, chapter 2, part 3, division 1, subdivision 3, does not apply for SunWater's cessation as, or the irrigation entity for the declared channel scheme becoming, a water service provider for the supply of an irrigation service in the area of the scheme.

738G Migration of customers

(1) This section applies to a person who, immediately before the transfer day for the declared channel scheme, is a customer of SunWater as a water service provider providing an irrigation service in the area of the scheme.

(2) On the transfer day, the person becomes a customer of the irrigation entity for the scheme as a water service provider providing the irrigation service.

Part 6 Distribution operations licences and water allocations

738H Issuing of distribution operations licence to irrigation entity

(1) This section applies if a transfer notice provides for the issuing to the irrigation entity for a declared channel scheme of a distribution operations licence to take water or interfere with the flow of water to distribute water under water

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allocations in the area of the scheme.

(2) Chapter 2, part 4, division 3, subdivisions 1 and 1A do not apply for the issuing of the distribution operations licence to the irrigation entity.

738I Supply contracts applying for particular water allocations

(1) Before the transfer day for a declared channel scheme, the irrigation entity for the scheme must prepare a document (the ***irrigation entity document***) that sets out—

(a) the arrangements for water supplied under the resource operations licence (the ***ROL***) by SunWater in the area of the declared channel scheme; and

(b) the financial obligations, arising from the arrangements, of the holder of any water allocation to whom water is supplied under the ROL.

(2) The irrigation entity document must—

(a) be based on the standard supply contract applying to SunWater and the holders of the water allocations; and

(b) fairly represent the supply arrangements and financial obligations as in place before the transfer day.

(3) The irrigation entity document may include additional provisions to facilitate implementing the arrangements and meeting the obligations, but the additional provisions must not be capable of operating to the detriment, in substance, of the holder of a water allocation after the transfer day.

(4) The irrigation entity must, before the transfer day, publish the irrigation entity document on the irrigation entity's website.

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(5) On the transfer day, the irrigation entity document has effect as a contract (the ***supply contract***), relating to the supply of water under the distribution operations licence (the ***DOL***) held by the irrigation entity, between—

(a) the irrigation entity for the scheme; and

(b) the holder of each water allocation to whom water—

(i) was supplied under the ROL immediately before the transfer day; and

(ii) continues to be supplied under the DOL.

(6) Subsection (7) applies if—

(a) a new water allocation comes into existence after the transfer day; and

(b) water is or is to be supplied to the holder of the new water allocation under the DOL; and

(c) a document, in the form of a contract, is held by the irrigation entity as a document available for public access on the irrigation entity's website; and

(d) the document relates to the supply of water under the DOL to the holders of water allocations that are similar in type to the new water allocation.

(7) The document has effect as a contract (also a ***supply contract***) between—

(a) the irrigation entity; and

(b) the holder of the new water allocation.

(8) The supply contract applying to a water allocation has effect subject to any change agreed to by the irrigation entity and the holder of the water allocation.

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(9) If the holder of a water allocation the subject of a supply contract transfers or leases the water allocation to another person, the other person is bound by the supply contract as in force between the irrigation entity and the holder immediately before the transfer or lease.

738J Power to charge fees for drainage services under supply contract

A supply contract under section 738I may provide that the irrigation entity may charge a person bound by the contract a fee for providing drainage services under the contract.

Part 7 Other authorities

738K Environmental authorities

(1) This section applies if a transfer notice provides for the transfer to an irrigation entity of an environmental authority for a prescribed ERA under the *Environmental Protection Act 1994*.

(2) The irrigation entity is taken to be a suitable operator under that Act for the carrying out of the prescribed ERA under the environmental authority.

(3) The *Environmental Protection Act 1994*, chapter 5A, part 4, division 1 does not apply for the registration of the irrigation entity as a suitable operator for the carrying out of the prescribed ERA.

738L Licensing as a ground distribution contractor under Agricultural Chemicals Distribution Control Act 1966

(1) This section applies if a transfer notice provides

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for the issuing to the irrigation entity for a declared channel scheme of a ground distribution contractor licence under the *Agricultural Chemicals Distribution Control Act 1966*.

(2) The ground distribution contractor licence is taken to have been granted under section 16B of that Act.

(3) The ground distribution contractor licence is subject to the same conditions as that part of the SunWater licence that applies to the declared channel scheme.

(4) To remove any doubt, it is declared that this section does not limit or otherwise affect the power of the chief executive (agricultural) to deal further with the ground distribution contractor licence.

(5) In this section—

chief executive (agricultural) means the chief executive of the department in which the *Agricultural Chemicals Distribution Control Act 1966* is administered.

SunWater licence means the ground distribution contractor licence held by SunWater immediately before the transfer day for the declared channel scheme.

Part 8 Divestment

738M Application of part

This part applies to an irrigation entity from the day the State is divested of the entity.

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738N Providing irrigation services not a monopoly business activity

(1) The carrying on by the irrigation entity for the declared channel scheme of the business activity of providing irrigation services in the area of the scheme is taken not to be a monopoly business activity for the purposes of the *Queensland Competition Authority Act 1997*, part 3.

(2) However, subsection (1) does not affect the power of the Minister, or of the Governor in Council to make a regulation, to declare under the *Queensland Competition Authority Act 1997*, part 3 that the carrying on by the irrigation entity of the business activity of providing irrigation services in the area of the scheme is a monopoly business activity.

738O Application of Cooperatives Act 1997

(1) This section applies if the irrigation entity converts to a cooperative.

(2) In this section, a reference to a numbered provision is a reference to the provision of the *Cooperatives Act 1997* with that number.

(3) For applying section 17 or 18 to the application or the registration of the proposed cooperative, a reference to 28 days in subsection (1) of each of the sections is taken to be a reference to 7 days.

(4) Section 23 does not apply to the application or the registration of the proposed cooperative.

(5) Section 268 does not apply to the transfer of the irrigation entity's assets to the cooperative.

(6) In this section—

cooperative means a body registered under the *Cooperatives Act 1997* as a cooperative.

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738P Notifiable event for Auditor-General Act 2009

(1) This section applies if there is a notifiable event under the *Auditor-General Act 2009*, section 33 because an irrigation entity stops being a public sector entity.

(2) The Minister is taken to have complied with the requirements of section 33(3) of that Act despite not giving the Treasurer and the auditor-general a written notice about the notifiable event.

Part 9 Other matters for declared projects

738Q Duty to facilitate declared projects

SunWater and an irrigation entity must do all acts and things necessary or desirable for the purpose of a declared project.

738R Confidentiality agreement with irrigation entity

(1) An irrigation entity may enter into a confidentiality agreement with the State for the purpose of obtaining access to information in the possession or control of the State or SunWater.

(2) The agreement must state—

(a) the information to which access may be given; and

(b) the employees or agents of the irrigation entity to whom the access may be given; and

(c) any conditions of the agreement.

(3) Information mentioned in subsection (2)(a) may be identified by description including by a stated category.

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(4) The persons mentioned in subsection (2)(b) may be identified by name, by a stated class, or by being a person approved by the State.

(5) In this section—

(a) a reference to an agreement includes a deed; and

(b) a reference to entering into an agreement with the State includes executing a deed in favour of the State.

738S Disclosure and use of information for declared project

(1) A person may disclose information in the possession or control of the State or SunWater, for the purpose of a declared project, to—

(a) a person involved in the declared project; or

(b) a person to whom the information may be given under a confidentiality agreement; or

(c) an irrigation entity, or an employee or agent of an irrigation entity.

(2) SunWater or its board must comply with a request by the Minister for the disclosure of information under subsection (1) to a person.

(3) A person may use information in the possession or control of the State or SunWater for the purpose of the declared project.

(4) Also, to remove any doubt, it is declared that a person may disclose or use information in compliance with a transfer notice or project direction.

(5) A person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use.

(6) In this section—

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confidentiality agreement means an agreement mentioned in section 738R, whether entered into or executed before or after the commencement.

738T Non-liability for State taxes, charges or fees

(1) SunWater or an irrigation entity is not liable to pay any of the following relating to anything done under a transfer notice or any other instrument for the purpose of a declared project—

(a) a tax under the *Duties Act 2001* or another Act;

(b) a charge or fee under this Act, the *Land Act 1994*, *Land Title Act 1994*, *Transport Operations (Road Use Management) Act 1995* or another Act.

(2) In this section—

tax includes a duty, impost and levy.

738U Disposal of public records

(1) This section applies if—

(a) a thing is done under a transfer notice or project direction; and

(b) the thing is, or involves, a disposal of a public record under the *Public Records Act 2002*.

(2) To remove any doubt, it is declared that, for the purpose of section 13 of that Act, the public record is disposed of under legal authority, justification or excuse.

738V Application of instruments

(1) This section applies if a transfer notice provides for an instrument that applied to SunWater to apply to an irrigation entity in place of SunWater.

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(2) Without limiting the application of the transfer notice to the instrument—

(a) any right, title, interest or liability of SunWater arising under or relating to the instrument is taken to be transferred from SunWater to the irrigation entity; and

(b) if the instrument, including a benefit or right provided by the instrument, is given to, by or in favour of SunWater, the instrument is taken to have been given to, by or in favour of the irrigation entity; and

(c) the irrigation entity is taken to be a party to the instrument in place of SunWater; and

(d) a reference in the instrument to SunWater is, to the extent possible and if the context permits, taken to be a reference to the irrigation entity; and

(e) if an application was made for the instrument in the name of SunWater, the application is taken to have been made in the name of the irrigation entity; and

(f) if the instrument is an instrument under which an amount is or may become payable to or by SunWater, the instrument is taken to be an instrument under which the amount is or may become payable to or by the irrigation entity, in the way the amount was or might have been payable to or by SunWater; and

(g) if the instrument is an instrument under which property, other than money, is or may become liable to be transferred, conveyed or assigned to or by SunWater, the instrument is taken to be an instrument under which the property is or may become liable to be transferred, conveyed or assigned to or by the irrigation entity, in the way it was or

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might have been liable to be transferred, conveyed or assigned to or by SunWater.

738W Documents applying to SunWater and an irrigation entity

(1) This section applies if a transfer notice provides for a document that applied to SunWater to apply to the irrigation entity for a declared channel scheme to the extent that the document is relevant to the scheme.

Example of a document—

an asbestos management plan under the *Work Health and Safety Regulation 2011*

(2) Without limiting the application of the transfer notice to the document—

(a) a reference in the document to SunWater is, to the extent possible and if the context permits, taken to be a reference to the irrigation entity; and

(b) the approval of the document is for the balance of the period of approval for which the document was approved.

(3) In this section—

approval includes an authorisation.

738X Registering authority to note transfer or other dealing

(1) A registering authority must, on written application by an irrigation entity, register or record in the appropriate way a transfer of, or other dealing affecting, an asset or liability that is provided for under a transfer notice.

(2) The relevant irrigation entity must comply with any relevant procedures required by the registering authority for the purpose of registering

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or recording the transfer or other dealing.

Example—

The registering authority may require the relevant irrigation entity to complete and submit a particular form.

(3) In this section—

registering authority means the registrar of titles or another person required or authorised by law to register or record transactions affecting assets or liabilities.

738Y Act applies despite other laws and instruments

A thing may be done under this chapter despite any other law or instrument.

Example—

A transfer notice may transfer a trustee lease under the *Land Act 1994* without the written approvals that would otherwise be required for a transfer under section 58 of that Act.

738Z Excluded matter for Corporations Act

Anything done by the Minister under this chapter is an excluded matter for the Corporations Act, section 5F, in relation to the Corporations Act, chapter 2D.

Editor's notes—

- Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)
- Corporations Act, chapter 2D (Officers and employees)

738ZA Effect on legal relationships

(1) Nothing done under this chapter—

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(a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or

(b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or

(c) except as expressly provided under a transfer notice, is taken to fulfil a condition that—

(i) terminates, or allows a person to terminate, an instrument or obligation; or

(ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or

(iii) allows a person to avoid or enforce a liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or

(iv) requires any money to be paid before its stated maturity; or

(d) releases a surety or other obligee, wholly or partly, from an obligation.

(2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this chapter, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

(3) If, apart from this subsection, giving notice to a person would be necessary to do something under this chapter, the notice is taken to have been given.

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(4) A transfer to an irrigation entity has effect despite any other contract, law or instrument.

(5) In this section—

relevant entity means—

(a) the State or an employee or agent of the State; or

(b) SunWater or an employee or agent of SunWater; or

(c) an irrigation entity or an employee or agent of an irrigation entity.

738ZB Approval under Government Owned Corporations Act 1993, s 139

An approval under the *Government Owned Corporations Act 1993*, section 139 is taken to have been given before the disposal, for the purpose of a declared project, of any of SunWater's main undertakings under that section.

738ZC Things done under chapter

To remove any doubt, it is declared that a thing is taken to be done under this chapter if it is done by, or in compliance with, a transfer notice or project direction, even if the thing includes taking steps under another Act.

738ZD Limitation of review

(1) This section applies to a decision under this chapter.

(2) The *Judicial Review Act 1991*, part 4 does not apply to the decision.

(3) Subject to subsection (4), the decision—

(a) is final and conclusive; and

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(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

(4) The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

(5) In this section—

decision includes a decision, or conduct, leading up to or forming part of the process of making a decision.

738ZE Severability

(1) Subsection (2) applies if a provision of—

(a) this chapter; or

(b) a transfer notice;

is held by a court or judge to be beyond power, invalid or unenforceable.

(2) The provision is to be disregarded or severed and the court's or judge's decision does not affect the remaining provisions of this chapter or the transfer notice that continue to have effect.

(3) This section does not affect the operation of the *Acts Interpretation Act 1954*, section 9 in any way.

Part 10 Miscellaneous

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738ZF Evidentiary aids

(1) This section applies to a proceeding under this chapter.

(2) A certificate signed by the Minister stating any of the following matters is conclusive evidence of the matter—

(a) that a stated thing was, or is being, done for the purpose of a declared project;

(b) that a stated person is, or was at a stated time, involved in a declared project;

(c) that a stated company was established for a declared project;

(d) that a stated direction given by the Minister related to a declared project.

(3) A document certified by the Minister to be a copy of a project direction is conclusive evidence of the direction.

738ZG Delegations

The Minister may delegate the Minister's functions or powers under this chapter, other than section 719(2), 722, 723 or 724, to the chief executive.

738ZH References to SunWater

A reference in an Act or document to SunWater in relation to a declared channel scheme is, from the transfer day for the scheme and if the context permits, taken to be a reference to the irrigation entity for the scheme.

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Part 11 Transitional regulation-making power

738ZI Transitional regulation-making power for declared projects

(1) A regulation (a ***transitional regulation***) may provide for anything—

(a) necessary to provide for, allow or facilitate any or all of the following—

(i) any matter relating to a declared project for which this chapter applies;

(ii) any matter relating to the transfer of employees of SunWater to an irrigation entity;

(iii) anything necessary or desirable for SunWater or an irrigation entity because of a matter mentioned in subparagraph (i) or (ii); and

(b) for which this chapter does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day that is not earlier than the commencement.

(3) A transitional regulation must declare it is a transitional regulation.

(4) This part and any transitional regulation expire 1 year after the commencement.

Part 12 Expiry and savings provisions

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738ZJ Expiry of chapter

This chapter expires 10 years after the commencement.

738ZK Saving of operation of chapter

This chapter is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.

Clause 5 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

acquisition Act, for chapter 4A, see section 718.

declared channel scheme, for chapter 4A, see section 720.

declared project, for chapter 4A, see section 719.

employee register, for a declared channel scheme, for chapter 4A, see section 737.

irrigation entity, for chapter 4A, see section 721.

project direction, for chapter 4A, see section 724(1).

SunWater means SunWater Limited ACN 131 034 985.

transferable employee, for chapter 4A, see section 738.

transfer day, for a declared channel scheme, for chapter 4A, see section 718.

transfer notice, for chapter 4A, see section 723(1).

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