

Water (Local Management Arrangements) Amendment Bill 2016

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark Bailey MP

Title of the Bill

Water (Local Management Arrangements) Amendment Bill 2016

Objectives of the Amendments

The amendments are in response to the submissions made during the examination of the Water (Local Management Arrangements) Bill Amendment 2016 ("the Bill") by the Infrastructure, Planning and Natural Resources Committee (the Committee).

The object of the amendments is to:

- Address a number of technical issues identified during the Committee process
- To provide further commercial certainty for both SunWater and the new entities to be established to operate the schemes under local management (irrigation entities)
- To ensure that the schemes remain financially sustainable under local management by minimising their ongoing operation costs over the long term.

Achievement of the Objectives

The amendments achieve the objectives by making a number of minor technical amendments to the Bill to provide additional certainty to both SunWater and the local management entities. This is achieved by:

- Clarifying the effect of a number of provisions
- Amending a number of cross references to provisions in the *Water Act 2000* which have arisen due to the commencement of the *Water Reform and Other Legislation Amendment Act 2014* and the *Water Legislation Amendment Bill 2016* which made substantial changes to the *Water Act 2000*.

- Specifying that the local management entities will only be charged a nominal level of rent for perpetual leases granted under the Bill, thus further ensuring that the schemes remain financially viable under local management.
- Introducing statutory mechanisms for the development of drainage contracts by the local management entities, and bulk water supply contracts for SunWater.

Alternative Ways of Achieving Policy Objectives

There is no alternative mechanism for achieving the policy objectives for the majority of amendments to the Bill. There are alternative mechanisms for the development of bulk water supply contracts by SunWater. Those alternatives are (a) amendment of the existing bulk water supply contracts by transfer notices under s.723 of the Bill, or (b) amendment of the bulk water supply contracts through the ordinary contractual means used by SunWater. However, those alternatives would be more administratively burdensome for both SunWater and its customers, increasing the overall costs of implementing local management. In addition, those mechanisms provide less certainty to both SunWater and its customers and accordingly a statutory mechanism is the preferred option.

Estimated Cost for Government Implementation

The amendments will not increase the overall cost to the taxpayer of implementing local management arrangements.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with regard to the fundamental legislative principles under section 4 of the *Legislative Standards Act 1992*.

Legislation may be inconsistent with the fundamental legislative principles where it does not have sufficient regard to the rights and liberties of individuals or to the institution of Parliament.

The following provisions of the Bill may not be consistent with or may breach the fundamental legislative principles. The potential breaches are necessary and unavoidable to achieve the policy objective to implement local management arrangements in an efficient and timely manner and to provide commercial and operational certainty to the local management entities, SunWater, and irrigation customers in the scheme:

Amendment 8 Allows for SunWater to develop a new standard form bulk water supply contract which will take effect as a legally binding contract between all irrigation customer on the transfer date. This will provide a simplified method of ensuring that there is an enforceable bulk water supply contract in place between SunWater and irrigation customers from the transfer date and will avoid the need for existing supply contracts to be amended via transfer notice or through SunWater's usual operating procedures. This will avoid a complex administrative process, minimising transaction costs for SunWater and its customers.

Amendment 8 also allows for the irrigation entity to develop a drainage contract which will apply between the irrigation entity and any person that received drainage services from the irrigation entity. Currently those customers are obliged to pay those costs to SunWater under a charge set by regulation under the *Water Act 2000*. This amendment allows for those costs to be recovered by the irrigation entity under a contract, provided that the contract leaves the customers in substantially the same position as they are under the current arrangements. That contract can be amended in the future via usual contractual principles.

Both of those clauses are similar in effect to section 738I of the Bill, which allows for the development of supply contracts by the irrigation entity and will ensure contractual certainty for the irrigation entities, SunWater and irrigation and drainage customers.

Consultation

The majority of the amendments have arisen as a result of the submissions made during the Committee's examination of the Bill.

NOTES ON PROVISIONS

Amendment 1 (Insertion of new ch 4A)

This amendment inserts a new section 725A that specifies that the rent payable to the State by the irrigation entities for their perpetual lease will be \$1 per year.

Amendment 2 (Insertion of new ch 4A)

This amendment provides that section 726 applies to an easement whether it was acquired, by SunWater or its predecessors, compulsorily under acquisition act, such as the *Acquisition of Land Act 1967* or under some other legislation allowing for compulsory acquisition or otherwise acquired under some form of agreement such as a contract.

Amendment 3 (Insertion of new ch 4A)

This amendment amends section 727(3) and replaces the words "vested in" with words "valid and held by" to avoid any doubt that the easements were not in place prior to the gazette notice by the Governor-in-Council

Amendment 4 (Insertion of new ch 4A)

This amendment replaces the words "granted under" in section 732 with the words "mentioned in" as the sublease will not be granted under the *Land Act 1994*, but is to be treated as if it were granted under the *Land Act 1994*.

Amendment 5 (Insertion of new ch 4A)

This amendment to section 736 clarifies that the obligation to construct or maintain an access across an irrigation channel only applies to the irrigation entity if it arises from a statutory obligation and not where the obligation arises under a contract or other form of agreement. If the obligation arises under a contract or other agreement, then that

contract or agreement can be varied by the irrigation entity and the person who received the benefit of the access in accordance with usual contractual principles.

Amendment 6 (Insertion of new ch 4A)

This amendment amends the title of Part 6 of the new ch 4A to better reflect the provisions of Part 6.

Amendment 7 (Insertion of new ch 4A)

This amendment amends a cross reference in the *Water Act 2000* to reflect the amendments made by the *Water Reform and Other Legislation Amendment Act 2014* and the *Water Legislation Amendment Bill 2016* which have now commenced.

Amendment 8 (Insertion of new ch 4A)

This amendment inserts a new section 738JA (“bulk water contracts”) into the Bill which provides for a standard bulk water supply contract to apply between SunWater and irrigation customers on and from the transfer day.

Currently SunWater provides both bulk and distribution services to customers under a single supply contract. From the transfer date SunWater will continue to provide bulk water services while the irrigation entity will provide distribution services. This will require two separate contracts, one between the irrigation entity and the customer for distribution services and one between SunWater and the irrigation entity for bulk water supply. The irrigation entity contract is addressed in s.728I of the Bill.

Under this provision SunWater is obliged to prepare a document (the SunWater document) which is based on SunWater’s existing supply contracts between SunWater and the irrigation customers under the resource operations licence (ROL) held by SunWater for the area of the declared channel scheme.

SunWater must publish the SunWater document on its website before the transfer day for the declared channel scheme.

On the transfer day the SunWater document has effect as a contract (the bulk water contract) for the supply of bulk water under the ROL between SunWater and the holder of each water allocation that will continue to receive bulk water services from SunWater under the ROL.

Subsection (7) provides that the document also has effect as a supply contract between SunWater and the holder of a new water allocation.

The amendment also inserts a new section 738JB that allows for the development of a “drainage contract” which will apply between the irrigation entity and those persons that receive drainage services from the irrigation entity, regardless of whether those persons are irrigation customers of the irrigation entity.

The new section allows for the irrigation entity to develop a document (the drainage services document) that sets out the current arrangements for drainage services provided by SunWater in the declared channel scheme and the current financial arrangements that apply to anyone who received drainage services from SunWater.

The irrigation entity must publish the drainage services document on its website, and the document must reflect the current financial arrangements in place for drainage services, so that no person that receives drainage services is any worse off than they are under the current arrangements.

On the transfer date, the drainage services document takes effect as a contract between the irrigation entity and each drainage services customer.

The section allows for the drainage services contract to be amended in the future in accordance with usual contractual principles.

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