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Version No. 099B

Water Act 1989

No. 80 of 1989

Version incorporating amendments as at 28 October 2010

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

This Act has the following purposes—

- (a) to re-state, with amendments, the law relating to water in Victoria;
- (b) to provide for the integrated management of all elements of the terrestrial phase of the water cycle;
- (c) to promote the orderly, equitable and efficient use of water resources;
- (d) to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians;
- (e) to maximise community involvement in the making and implementation of arrangements relating to the use, conservation or management of water resources;
- (f) to eliminate inconsistencies in the treatment of surface and groundwater resources and waterways;

S. 1(l)
amended by
No. 110/1997
s. 22(1).

- (g) to provide better definition of private water entitlements and the entitlements of Authorities;
- (h) to foster the provision of responsible and efficient water services suited to various needs and various consumers;
- (i) to provide recourse for persons affected by administrative decisions;
- (j) to provide formal means for the protection and enhancement of the environmental qualities of waterways and their in-stream uses;
- (k) to provide for the protection of catchment conditions;
- (l) to replace many forms of detailed administrative supervision of Authorities with general supervision by the Minister, through approved corporate plans and express directions;
- (m) to continue in existence and to protect all public and private rights to water existing before the commencement of the relevant provisions of this Act.

2 Commencement

- (1) This Act (except sections 328 and 329) comes into operation on 1 September 1991 or an earlier day or days to be proclaimed.
- (2) Section 328 comes into operation on the day on which this Act receives the Royal Assent.
- (3) Section 329 must be taken to have come into operation on 6 July 1988.

2A Construction of references

Until the commencement of section 154 of the **Local Government Act 1989**—

S. 2A
inserted by
No. 13/1990
s. 45.

- (a) a reference to section 154 of the **Local Government Act 1989** in sections 258(1), 265, 286(2) and 287(2) and clause 6 of Schedule 5 and clause 11(2) of Schedule 8 is to be construed as a reference to section 251 of the **Local Government Act 1958**;
- (b) a reference to section 154(2)(a) of the **Local Government Act 1989** in section 258(2) is to be construed as a reference to section 251(1)(a)(ii) of the **Local Government Act 1958**;
- (c) a reference to "the provisions of the **Local Government Act 1989** about rates" in section 286(6) and clause 11(6) of Schedule 8 is to be construed as a reference to "the provisions of the **Local Government Act 1958** about rates";
- (d) a reference to "within the meaning of the **Local Government Act 1989**" in clause 2 of Schedule 6 is to be construed as a reference to "within the meaning of the **Local Government Act 1958**".

3 Definitions

(1) In this Act—

* * * * *

S. 3(1) def. of
*Adminis-
trative
Appeals
Tribunal*
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.1(a)).

S. 3(1) def. of
analyst
amended by
No. 110/1997
s. 13.

analyst means an analyst approved by an
Authority to carry out analyses on behalf of
the Authority for the purposes of this Act;

S. 3(1) def. of
*annual use
limit*
inserted by
No. 99/2005
s. 38(1)(a).

annual use limit, in relation to—

- (a) a water-use licence, means the
maximum volume of water that in any
12 month period may be applied to the
land specified in the licence under a
condition on the licence imposed under
section 64AD, or as determined in
accordance with the conversion rules
applicable to the licence (as the case
requires); and
- (b) a water-use registration, means the
maximum volume of water that may be
used on the land specified in the
registration in any 12 month period
under a condition on the registration
imposed under section 64AT or as
determined in accordance with the
conversion rules applicable to the
registration (as the case requires);

S. 3(1) def. of
*approved
form*
inserted by
No. 99/2005
s. 38(1)(a).

approved form, in Part 5A, means a form
approved by a recording body;

aquifer means a geological structure or formation
or an artificial land fill permeated or capable
of being permeated permanently or
intermittently with water;

S. 3(1) def. of
*area of
interest*
inserted by
No. 85/2006
s. 3(a).

area of interest, in relation to a water corporation,
means an area of land that is declared to be
an area of interest under section 122U;

area of land liable to flooding means an area that is declared by the Minister under section 205 to be an area of land liable to flooding;

associated water share means a water share that has been determined to be an associated water share under Division 10 of Part 3A;

S. 3(1) def. of *associated water share* inserted by No. 99/2005 s. 38(1)(a).

associated water system, in relation to a water share, means the declared water system determined by the Minister under section 33G to be the water system for which the share is issued;

S. 3(1) def. of *associated water system* inserted by No. 99/2005 s. 38(1)(a).

authorised, in relation to any act, means authorised (whether generally or specifically) by this or any other Act or by a licence, permit or other authority granted under this or any other Act and, in determining whether or not the construction of a dam is authorised, no account is to be taken of any direction given under section 80(1) or (2) or of the fact that any such direction has been complied with;

authorised person means a person authorised in writing by an Authority for the purpose of the provision in which the expression appears;

authorised water officer means a person appointed as an authorised water officer under section 291A;

S. 3(1) def. of *authorised water officer* inserted by No. 29/2007 s. 13.

S. 3(1) def. of
Authority
amended by
Nos 50/1992
s. 10(Sch.
item 11.1(a)),
49/1994
s. 4(1)(a),
25/2001
s. 3(1),
substituted by
No. 85/2006
s. 3(b).

Authority means a water corporation or a
Catchment Management Authority;

S. 3(1) def. of
biosolids
inserted by
No. 85/2006
s. 3(a).

biosolids means stabilised organic solids derived
from the treatment of sewage;

S. 3(1) def. of
*board of
directors*
inserted by
No. 85/2006
s. 3(a).

board of directors means—

- (a) in relation to a water corporation, the
board of directors established under
Division 3 of Part 6 for that
corporation; and
- (b) in relation to a Catchment Management
Authority, the board established under
Division 4 of Part 2 of the **Catchment
and Land Protection Act 1994** for that
Authority;

bore means any bore, well or excavation or any
artificially constructed or improved
underground cavity used or to be used for the
purpose of—

- (a) the interception, collection, storage or
extraction of groundwater; or
- (b) groundwater observation or the
collection of data concerning
groundwater; or
- (c) the drainage or desalination of any
land; or

(d) in the case of a bore that does not form part of a septic tank system, the disposal of any matter below the surface of the ground; or

(e) the recharge of an aquifer—

but does not include a bore that is used solely for purposes other than those specified in paragraphs (a), (b) and (d);

building line means a building line that is declared by an Authority under section 203(1);

bulk entitlement means an entitlement granted under Division 1 of Part 4;

S. 3(1) def. of *bulk entitlement* amended by Nos 50/1992 s. 6(1), 62/1995 s. 4(a), substituted by No. 32/2010 s. 3(1).

Catchment Management Authority means an Authority within the meaning of the **Catchment and Land Protection Act 1994**;

S. 3(1) def. of *Catchment Management Authority* inserted by No. 25/2001 s. 3(2).

Central Gippsland Region Water Authority means the Central Gippsland Region Water Authority constituted by Order made on 16 December 1994 by the Minister and published in the Government Gazette on 19 December 1994;

S. 3(1) def. of *Central Gippsland Region Water Authority* inserted by No. 85/2006 s. 3(a).

central plan office means the Central Plan Office of the Department of Sustainability and Environment;

S. 3(1) def. of *central plan office* inserted by No. 85/2006 s. 3(a).

Coliban water district—

- (a) includes any property that was, immediately before the commencement of this section, supplied with water from the Coliban system and any property that is so supplied on or after the commencement; and
- (b) does not include any property referred to in paragraph (a) that, on or after that commencement, ceases to be supplied with water from the Coliban system;

S. 3(1) def. of *Commission* substituted as *Corporation* by No. 50/1992 s. 10(Sch. item 11.1(b)), repealed by No. 65/1995 s. 22(a)(i).

* * * * *

Council has the same meaning as in the **Local Government Act 1989**;

S. 3(1) def. of *dam* inserted by No. 5/2002 s. 4(a).

dam means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated;

S. 3(1) def. of *Dandenong Valley* repealed by No. 54/1992 s. 56(a).

* * * * *

S. 3(1) def. of *declared water system* inserted by No. 99/2005 s. 38(1)(a).

declared water system means a water system that has, under a declaration under section 6A become a declared water system;

Department means the Department of Sustainability and Environment;

S. 3(1) def. of *Department* amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 108/2004 s. 117(1) (Sch. 3 item 232.1).

Department Head means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3(1) def. of *Department Head* inserted by No. 76/1998 s. 29(a)(ii), amended by No. 108/2004 s. 117(1) (Sch. 3 item 232.2).

designated land means land that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, is declared under section 188 as designated land; and
- (b) in relation to Melbourne Water Corporation, is designated land under section 188A;

S. 3(1) def. of *designated land* inserted by No. 85/2006 s. 3(a).

designated waterway means a waterway that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, is declared under section 188 as a designated waterway; and
- (b) in relation to Melbourne Water Corporation, is a designated waterway under section 188A;

S. 3(1) def. of *designated waterway* inserted by No. 85/2006 s. 3(a).

S. 3(1) def. of
*designated
works*
inserted by
No. 85/2006
s. 3(a).

designated works means works that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, are declared under section 188 as designated works; and
- (b) in relation to Melbourne Water Corporation, are designated works under section 188A, or are declared as designated works under that section;

S. 3(1) def. of
*Director-
General*
amended by
Nos 62/1995
s. 4(b),
46/1998
s. 7(Sch. 1),
repealed by
No. 76/1998
s. 29(a)(i).

* * * * *

S. 3(1) def. of
*domestic and
stock use*
amended by
No. 5/2002
s. 4(b).

domestic and stock use, in relation to water,
means use for—

- (a) household purposes; or
- (b) watering of animals kept as pets; or
- (c) watering of cattle or other stock; or
- (ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1·2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or

(d) irrigation of a kitchen garden—

but does not include use for dairies, piggeries, feed lots, poultry or any other intensive or commercial use;

domestic partner of a person means—

(a) in sections 110 and 114—

- (i) a person who is in a registered relationship with the person; or
- (ii) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

(A) for fee or reward; or

(B) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

(b) in section 128—

- (i) a person who is in a registered domestic relationship with the person; or
- (ii) a person to whom the person is not married but with whom the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 72/2001 s. 3(Sch. item 12.1), amended by No. 85/2006 s. 3(c), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 65.1), amended by No. 4/2009 s. 37(Sch. 1 item 29.1).

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S. 3(1) def. of
election
inserted by
No. 12/1992
s. 4,
repealed by
No. 85/2006
s. 3(d).

* * * *

S. 3(1) def. of
*environment
Minister*
inserted by
No. 85/2006
s. 3(a).

environment Minister means the Minister
administering Part 4 of the **Catchment and
Land Protection Act 1994**;

S. 3(1) def. of
*Environment
Protection
Authority*
inserted by
No. 99/2005
s. 3(a).

Environment Protection Authority has the same
meaning as *Authority* has under the
Environment Protection Act 1970;

S. 3(1) def. of
*environ-
mental
entitlement*
inserted by
No. 99/2005
s. 3(a).

environmental entitlement means an entitlement
under Division 1A of Part 4;

financial year, in relation to an Authority, means
the year ending 30 June, unless the Minister
determines otherwise for that particular
Authority;

S. 3(1) def. of
*First Mildura
Irrigation
Trust*
inserted by
No. 85/2006
s. 3(a).

First Mildura Irrigation Trust means the water
corporation known as First Mildura
Irrigation Trust;

flood fringe area means an area of land that is
declared by an Authority under section
203(1) to be a flood fringe area;

flood level means a flood level that is declared by an Authority under section 203(1);

floodway area means an area of land that is declared by the Minister under section 205 to be a floodway area;

S. 3(1) def. of *floodway area* inserted by No. 12/1996 s. 3(a).

flow, in relation to water, includes discharge, release, escape, percolation, seepage and passage, and includes both surface and underground flow;

groundwater means any water occurring in or obtained from an aquifer and includes any matter dissolved or suspended in any such water;

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S. 3(1) def. of *groundwater supply protection area* repealed by No. 5/2002 s. 4(c).

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S. 3(1) def. of *holding* repealed by No. 99/2005 s. 38(2)(a).

houseboat means any boat containing a toilet or sleeping accommodation or capable of containing enclosed or semi-enclosed sleeping accommodation;

S. 3(1) def. of *houseboat* inserted by No. 39/1996 s. 11(1).

in-stream uses, in relation to water, includes—

- (a) the maintenance of aquatic, riparian, floodplain and wetland ecosystems; and
- (b) the maintenance of aesthetic, scientific and cultural values; and
- (c) water-based recreational activities; and
- (d) fishing for commercial purposes; and

- (e) the maintenance of water quality; and
- (f) navigation;

S. 3(1) def. of
irrigation
inserted by
No. 99/2005
s. 38(1)(a).

irrigation means the application of water to land—

- (a) for the purpose of watering plants (other than in connection with domestic and stock use, plant nursery use or other prescribed uses); or
- (b) any other prescribed agricultural purposes;

S. 3(1) def. of
irrigation district
substituted by
No. 85/2006
s. 3(e).

irrigation district, in relation to an Authority, means—

- (a) any district that the Authority is deemed to have as an irrigation district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and
- (b) any district that is declared to be an irrigation district of the Authority under Division 2 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;

S. 3(1) def. of
irrigation period
substituted by
No. 12/1996
s. 3(b).

irrigation period means any period fixed by by-law or (if the period does not exceed 12 months) fixed by the Authority by resolution published in a newspaper circulating generally in the area concerned, in respect of which an irrigation charge is made;

kitchen garden means a garden—

- (a) that is used solely in connection with a dwelling; and
- (b) no produce from which is sold; and

- (c) in the case of a garden irrigated solely with surface water that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0.1 hectares; and
- (d) in the case of a garden irrigated with both surface water and groundwater that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0.4 hectares; and
- (e) in the case of a garden irrigated solely with groundwater, that is not bigger than 0.4 hectares; and
- (f) in the case of a garden that is part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 1.2 hectares;

Latrobe Valley means, subject to subsection (2), the municipal districts of the shires of Buln Buln, Mirboo, Morwell, Narracan, Rosedale, Traralgon and Warragul and the cities of Moe, Sale and Traralgon, and the Yallourn works area;

licensed driller means a person who holds a licence granted under section 312;

licensee means the holder of a licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**;

S. 3(1) def. of *licensee* inserted by No. 121/1994 s. 186(a).

limited term transfer, in relation to a water share, means the transfer of a right to future water allocations for a limited period under the share under section 33T;

S. 3(1) def. of *limited term transfer* inserted by No. 99/2005 s. 38(1)(a).

s. 3

S. 3(1) def. of
*Melbourne
Water*
inserted by
No. 5/2002
s. 4(a),
substituted as
*Melbourne
Water
Corporation*
by No.
85/2006 s. 3(f).

Melbourne Water Corporation means the water
corporation known as Melbourne Water
Corporation;

S. 3(1) def. of
member
amended by
Nos 50/1992
s. 10(Sch.
item 11.1(c)),
65/1995
s. 22(a)(ii),
repealed by
No. 85/2006
s. 3(g).

* * * *

mineral water means groundwater which in its
natural state contains carbon dioxide and
other soluble matter in sufficient
concentration to cause effervescence or
impart a distinctive taste;

S. 3(1) def. of
*municipal
district*
inserted by
No. 85/2006
s. 3(a).

municipal district, in relation to a Council, has the
same meaning as in the **Local Government
Act 1989**;

S. 3(1) def. of
*Murray-
Darling Basin
Agreement*
inserted by
No. 75/2008
s. 21.

Murray-Darling Basin Agreement has the same
meaning as *Agreement* has in the **Murray-
Darling Basin Act 1993**;

S. 3(1) def. of
*nominated
officer*
inserted by
No. 85/2006
s. 3(a).

nominated officer means each senior officer of a
water corporation who is nominated by the
water corporation;

non-declared water system means a water system that is not a declared water system;

S. 3(1) def. of *non-declared water system* inserted by No. 99/2005 s. 38(1)(a).

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S. 3(1) def. of *non water user limit* inserted by No. 99/2005 s. 38(1)(a), repealed by No. 54/2009 s. 4(1).

occupier—

- (a) in relation to any bore that is being constructed or altered, means the holder of a licence issued under section 67 in respect of the bore; and
- (b) in relation to any bore that is not being constructed or altered means—
 - (i) the holder of a licence issued under section 51 in respect of the bore; or
 - (ii) any person disposing of any matter by means of the bore in accordance with an approval given under section 76; or
 - (iii) if there is no such licensee or person, the occupier of the land on which the bore is situated;

permanent water saving plan means a plan prepared, adopted and (where the case so requires) varied under Part 8;

S. 3(1) def. of *permanent water saving plan* inserted by No. 29/2007 s. 13.

s. 3

S. 3(1) def. of
*permissible
annual
volume*
inserted by
No. 5/2002
s. 4(a),
substituted as
*permissible
consumptive
volume* by
No. 99/2005
s. 3(b).

permissible consumptive volume, in relation to—

- (a) an area or water system; and
- (b) a period of time—

specified in an Order under section 22A,
means the volume specified in that Order for
that area or water system for that period;

S. 3(1) def. of
person
substituted by
No. 32/2010
s. 3(2).

person—

- (a) in Part 3A, Division 1A of Part 4,
Part 4B, Part 5A and Schedule 12A,
means an individual or an incorporated
body;
- (b) in any other part of the Act, means an
individual, a body or an association
(incorporated or unincorporated) or a
partnership;

pollute, in relation to any water, means to alter
(directly or indirectly) the physical, thermal,
chemical, biological or radioactive properties
of the water so as to make the water—

- (a) less fit for any beneficial purpose for
which it is, or may reasonably be
expected to be, used; or
- (b) harmful or potentially harmful to—
 - (i) the health, welfare or safety of
human beings; or
 - (ii) animals, birds, wildlife, fish or
other aquatic life; or
 - (iii) plants or other vegetation; or
 - (iv) other organisms;

private dam means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated but does not include—

S. 3(1) def. of *private dam* amended by No. 121/1994 s. 186(b).

- (a) anything owned or operated by a public statutory body; or
- (b) any works of an Authority or a licensee; or
- (c) a channel, drain or pipe; or
- (d) a bore;

public statutory body includes a council;

recording body means—

S. 3(1) def. of *recording body* inserted by No. 99/2005 s. 38(1)(a).

- (a) in relation to water shares, the Registrar;
- (b) in relation to water-use licences, water-use registrations, works licences under section 67(1), bulk entitlements and environmental entitlements, the Minister;
- (c) in relation to the matters referred to in section 84C(3), an Authority;

recycled water means water derived from sewage or trade waste that has been treated for the purposes of re-use;

S. 3(1) def. of *recycled water* inserted by No. 99/2005 s. 3(a).

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S. 3(1) def. of *Regional Management Board* inserted by No. 50/1992 s. 10(Sch. item 11.1(d)), repealed by No. 49/1994 s. 4(1)(b).

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S. 3(1) def. of
register
repealed by
No. 99/2005
s. 38(2)(b).

* * * *

S. 3(1) def. of
Registrar
inserted by
No. 99/2005
s. 38(1)(a).

Registrar means the person employed under
Part 5A to be the Registrar of the water
register;

S. 3(1) def. of
*registration
licence*
inserted by
No. 5/2002
s. 4(a).

registration licence means a licence issued under
section 51(1A);

S. 3(1) def. of
*related body
corporate*
inserted by
No. 99/2005
s. 38(1)(a).

related body corporate has the same meaning as
in the Corporations Act;

S. 3(1) def. of
related person
inserted by
No. 99/2005
s. 38(1)(a).

related person means a person who is related to
another person in accordance with any of the
following provisions—

- (a) natural persons are related persons if
one of them is a relative of the other;
- (b) companies are related persons if they
are related bodies corporate within the
meaning of the Corporations Act;
- (c) a natural person and a company are
related persons if the natural person is a
majority shareholder or director of the
company or of another company that is
a related body corporate of the
company within the meaning of the
Corporations Act;
- (d) a natural person and a trustee are
related persons if the natural person is a
beneficiary of the trust (not being a

public unit trust scheme) of which the trustee is a trustee;

- (e) a company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

relative in relation to a natural person, means a person who is—

S. 3(1) def. of *relative* inserted by No. 99/2005 s. 38(1)(a).

- (a) a child or remoter lineal descendant of the person or of the partner of the person;
- (b) a parent or remoter lineal ancestor of the person or of the partner of the person;
- (c) a brother or sister of the person or of the partner of the person;
- (d) the partner of the person or a partner of any person referred to in paragraph (a), (b) or (c);
- (e) a child of a brother or sister of the person or of the partner of the person;
- (f) a brother or sister of a parent of the person or of a parent of the partner of the person;

return period, in relation to the ordinary return of a member of the board of directors of a water corporation or a nominated officer in section 114, means—

S. 3(1) def. of *return period* inserted by No. 85/2006 s. 3(a).

- (a) if the last return of the member or nominated officer was a primary return, the period between the date of the primary return and the next 30 June; or

- (b) if the last return of the member or nominated officer was an ordinary return, the period between the date of the ordinary return and the next 30 June;

S. 3(1) def. of *seasonal determination* inserted by No. 99/2005 s. 38(1)(a).

seasonal determination in relation to a water system, means a determination for that system made under section 64GB;

S. 3(1) def. of *secretary* repealed by No. 85/2006 s. 3(h).

* * * * *

septic tank system means a system for the bacterial, biological, chemical or physical treatment of sewage, and includes all tanks, beds, sewers, drains, pipes, fittings, appliances and land used in connection with the system;

S. 3(1) def. of *serviced property* amended by Nos 121/1994 s. 186(c), 12/1996 s. 4(1), 85/2006 s. 3(i).

serviced property means—

- (a) a property in respect of which a notice under section 144(1) or 179(3) of this Act or section 64(1) of the **Water Industry Act 1994** is published, on and from the date specified in the notice; or

* * * * *

- (c) a property in respect of which, before the commencement of this section, a notice under section 162, 207(1) or 207A(1) of the **Water Act 1958** had been published; or

- (d) a property that was, immediately before the commencement of this section, a sewered property under the **Sewerage Districts Act 1958**; or

- (e) a property in respect of which, before the commencement of this section, a rate had been levied under section 76 or 163 of the **Water Act 1958**; or
- (f) a property that was, immediately before the commencement of this section, supplied with water from the Coliban system; or
- (g) a property that was, immediately before the commencement of this section, within the Koo Wee Rup or Loch Garry flood protection district;
- (h) in relation to the waterway management district of Melbourne Water Corporation, means any land that is serviced property under section 144A;

sewage means any human excreta or domestic waterborne waste, whether untreated or partially treated, but does not include trade waste;

sewer means any pipe, channel, tunnel or other conduit which is constructed or provided for the conveyance of sewage or trade waste and is vested in or owned by an Authority;

sewerage district, in relation to an Authority, means—

- (a) any district that the Authority is deemed to have as a sewerage district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and

S. 3(1) def. of **sewerage district** substituted by No. 85/2006 s. 3(j).

- (b) any district that is declared to be a sewerage district of the Authority under Division 3 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;

S. 3(1) def. of *spouse* inserted by No. 72/2001 s. 3(Sch. item 12.1).

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *standard water-use condition* inserted by No. 99/2005 s. 38(1)(a).

standard water-use condition means a condition determined by the Minister under Division 4 of Part 4B;

S. 3(1) def. of *State observation bore* inserted by No. 5/2002 s. 4(a), amended by No. 108/2004 s. 117(1) (Sch. 3 item 232.3).

State observation bore means a bore constructed at any time, whether before or after the commencement of section 4(a) of the **Water (Irrigation Farm Dams) Act 2002**, by or on behalf of the Department that is used or intended to be used to monitor the level, quantity or quality of groundwater;

S. 3(1) def. of *storage manager* inserted by No. 85/2006 s. 3(a).

storage manager means—

- (a) where an Authority is appointed under Part 6C as a storage manager, the Authority in relation to any land for which it is so appointed;
- (b) in any other case, an Authority where it is exercising the functions of a storage manager under Part 8;

trade waste means—

- (a) any waterborne waste (other than sewage) which is suitable, according to the criteria of an Authority, for discharge into the Authority's sewerage system; or
- (b) any other matter which is declared by a by-law made under this Act to be trade waste;

traditional owner group entity has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 3(1) def. of *traditional owner group entity* inserted by No. 62/2010 s. 130.

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* inserted by No. 52/1998 s. 311(Sch. 1 item 105.1(b)).

water means water, whether or not it contains impurities;

water allocation—

- (a) in relation to an environmental entitlement means—
 - (i) the volume of water determined under a seasonal determination to be available for the entitlement; or
 - (ii) if no seasonal determination is made for the entitlement, the water that is available to be taken in any water season, under the terms of the entitlement; or

S. 3(1) def. of *water allocation* inserted by No. 99/2005 s. 38(1)(a), substituted by Nos 85/2006 s. 3(k), 32/2010 s. 3(3).

- (b) in relation to a bulk entitlement means—
- (i) the volume of water determined under a seasonal determination to be available for the entitlement; or
 - (ii) if no seasonal determination is made for the entitlement, the water that is available to be taken in any water season, under the terms of the entitlement; or
- (c) in relation to a water share, means the amount of water allocated to the water share at any particular time, in accordance with Division 7 of Part 3A;

S. 3(1) def. of *water allocation assignment* inserted by No. 99/2005 s. 38(1)(a).

water allocation assignment, in relation to a water share, means an assignment of the water allocation for the share under section 33U or section 33V;

S. 3(1) def. of *water corporation* inserted by No. 85/2006 s. 3(a).

water corporation means a water corporation established or re-structured under Division 1 of Part 6;

S. 3(1) def. of *water district* substituted by No. 85/2006 s. 3(l).

water district, in relation to an Authority, means—

- (a) any district that the Authority is deemed to have as a water district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and
- (b) any district that is declared to be a water district of the Authority under Division 3 of Part 6A, and (where the

case so requires) any such district as extended or changed under Part 6A;

water register means the Victorian water register established under Part 5A;

S. 3(1) def. of *water register* inserted by No. 99/2005 s. 38(1)(a).

water season means any period of 12 calendar months beginning on 1 July in any year and ending on 30 June in the following year;

S. 3(1) def. of *water season* inserted by No. 99/2005 s. 38(1)(a).

water share means a water share issued under Division 2 of Part 3A;

S. 3(1) def. of *water share* inserted by No. 99/2005 s. 38(1)(a).

water supply protection area means an area declared to be a water supply protection area by an Order made under section 27(1);

S. 3(1) def. of *water supply protection area* inserted by No. 5/2002 s. 4(a).

water-use licence means a licence granted under Division 2 of Part 4B;

S. 3(1) def. of *water-use licence* inserted by No. 99/2005 s. 38(1)(a).

water-use objective means an objective determined by the Minister under Division 3 of Part 4B;

S. 3(1) def. of *water-use objective* inserted by No. 99/2005 s. 38(1)(a).

water-use registration means a registration granted under Division 9 of Part 4B;

S. 3(1) def. of *water-use registration* inserted by No. 99/2005 s. 38(1)(a).

waterway means¹—

- (a) a river, creek, stream or watercourse; or
- (b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
- (c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or
- (d) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
 - (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or
- (e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or
- (f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel

or work which diverts water away from such a waterway; or

- (g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip;

waterway management district, in relation to an Authority, means—

S. 3(1) def. of *waterway management district* substituted by No. 85/2006 s. 3(m).

- (a) any district that the Authority is deemed to have as a waterway management district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and
- (b) any district that is declared to be a waterway management district of the Authority under Division 3 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;

works includes—

S. 3(1) def. of *works* amended by No. 5/2002 s. 4(d).

- (a) reservoirs, dams, bores, channels, sewers, drains, pipes, conduits, fire plugs, machinery, equipment and apparatus, whether on, above or under land; and
- (b) works described in section 10, whether on, above or under land; and
- (c) fencing;

Yallourn works area has the same meaning as in Part III of the **State Electricity Commission Act 1958**.

S. 3(1A)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
Nos 76/1998
s. 29(b),
108/2004
s. 117(1)
(Sch. 3
item 232.4).

(1A) If under the **Public Administration Act 2004** the name of the Department of Sustainability and Environment is changed, the reference in the definition of *department* and *Department Head* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

- (2) The Minister may, by notice published in the Government Gazette—
- (a) declare any area to be included in the Latrobe Valley; and
 - (b) declare any area to be excluded from the Latrobe Valley.

S. 3(3)
inserted by
No. 72/2001
s. 3(Sch.
item 12.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 65.2).

- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 3(3)(aa)
inserted by
No. 4/2009
s. 37(Sch. 1
item 29.2(a)).

- (aa) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and

S. 3(3)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 29.2(b)).

- (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants.

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S. 3(4)
inserted by
No. 99/2005
s. 38(3),
repealed by
No. 54/2009
s. 4(2).

4 Power to declare lake, lagoon, swamp or marsh

- (1) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette, declare a collection of water (other than water collected and contained in a private dam or a natural depression on private land) to be a lake, lagoon, swamp or marsh.
- (2) The Minister must not recommend to the Governor in Council the making of a declaration under subsection (1) unless—
 - (a) the Minister is satisfied that—
 - (i) the declaration has been applied for by a person who, if the collection of water was a lake, lagoon, swamp or marsh, would have the right to take and use water from it under section 8(1); and
 - (ii) the applicant has caused notice of the application to be published in a newspaper circulating generally in the area in which the water is situated; and
 - (iii) the applicant has caused notice of the application to be given or sent by post to—
 - (A) the owner and occupier of the land on which the water is situated; and
 - (B) the council in whose municipal district the water is situated; and

-
- (C) the responsible authority in relation to a planning scheme for the area in which the water is situated; and
- (b) the Minister has considered any submissions made on the application within the period of 60 days after the publication or giving of notice of the application under paragraph (a)(ii) or (a)(iii), whichever is the later.
- (3) The Minister may require further information with respect to an application to be provided by the applicant or an Authority.
- (4) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette at the same time as a declaration under subsection (1), require a person who—
- (a) owns land on which the declared collection of water is situated; or
- (b) who will benefit from the declaration—
- to pay the amount of compensation specified in the Order to another person who—
- (c) owns land on which the declared collection of water is situated; or
- (d) will suffer detriment from the declaration.
- (5) A copy of an Order made under subsection (4) must be given or sent by post to any Authority or person affected by the Order.
- (6) A person whose interests are affected by a decision of the Governor in Council to make an Order under subsection (1) or (4) may apply to the Tribunal for review of the decision.

S. 4(6)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.2).

- (7) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 4(7)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.2).

4A The Environmental Water Reserve

S. 4A
inserted by
No. 99/2005
s. 4.

- (1) The environmental water reserve comprises water that is set aside for the environment—
- (a) as an environmental entitlement; and
 - (b) through the operation of—
 - (i) conditions on any bulk entitlement, or any licence, permit or authority issued under this or any other Act, or regulations made under this or any other Act; and
 - (ii) any management plan under this Act; and
 - (iii) any other provision of this Act, the **Murray-Darling Basin Act 1993** or the **Groundwater (Border Agreement) Act 1985** or any regulations made under this Act or those Acts.
- (2) In this Act a reference to the environmental water reserve is a reference to any water to which subsection (1) applies.

S. 4B
inserted by
No. 99/2005
s. 4.

4B Environmental Water Reserve Objective

- (1) The environmental water reserve objective is the objective that the environmental water reserve be maintained so as to preserve the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and quality of water and the other uses that depend on environmental condition.
- (2) In this Act a reference to the environmental water reserve objective is a reference to the objective set out in subsection (1).

5 Certain provisions to bind Crown

The following provisions of this Act bind the Crown not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities—

- (a) sections 12, 15 and 16;
- (b) section 23;
- (c) section 63;
- (d) sections 75, 76, 78, 79, 80(3), 80(4) and 81;
- (e) sections 141, 143, 145, 148(1), 149, 150, 151, 153 and 154;
- (f) section 178;
- (g) sections 194, 195, 200, 208 and 218;
- (h) sections 265, 268 to 270 and 281;
- (i) sections 288 to 290.

6 Interstate groundwater agreements to prevail over Act

- (1) Every power, discretion, function, authority and duty of the Minister, the Authority and the Tribunal under this Act must be construed subject to—
- (a) the **Groundwater (Border Agreement) Act 1985** and the agreement approved by that Act; and
- (b) the **Murray-Darling Basin Act 1993** and the Murray-Darling Basin Agreement.
- (2) A purported exercise of a power, discretion, function, authority or duty by the Minister, an Authority or the Tribunal is of no effect to the extent that it is inconsistent with an agreement referred to in subsection (1).
- (3) An agreement referred to in subsection (1) prevails over a right to take or to use water conferred by or under this Act, other than section 7(1), 8(1) or 8(4)(c).
- (4) The Minister, an Authority or the Tribunal, in exercising a power, discretion, function, authority or duty under this Act, must not act in a manner detrimental to or inconsistent with the operation of an agreement referred to in subsection (1).

S. 6(1) amended by No. 52/1998 s. 311(Sch. 1 item 105.3), substituted by No. 5/2002 s. 5(1).

S. 6(1)(b) substituted by No. 75/2008 s. 22.

S. 6(2) amended by Nos 52/1998 s. 311(Sch. 1 item 105.3), 5/2002 s. 5(2)(a)(b).

S. 6(3) inserted by No. 5/2002 s. 5(3).

S. 6(4) inserted by No. 5/2002 s. 5(3).

6A Power to declare water systems

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette, make a declaration that, on the day specified in the declaration, a water system becomes a declared water system.

S. 6A inserted by No. 99/2005 s. 39.

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- (2) A declaration under subsection (1)—
- (a) must not be amended, unless to correct any clerical, factual or other inadvertent mistake in the declaration; and
 - (b) must not be revoked.
- (3) Before making a declaration under subsection (1), the Minister must consult with—
- (a) the Authority or Authorities responsible for the supply of water from the water system to which the declaration relates; and
 - (b) the Registrar.
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PART 2—RIGHTS AND LIABILITIES

Division 1—Rights

7 Continuation of the Crown's rights to water

- (1) The Crown has the right to the use, flow and control of all water in a waterway and all groundwater².
- (2) Subject to subsection (3), the right of the Crown to the use, flow and control of all water referred to in subsection (1) is not diminished by the fact that—
 - (a) by or under this or any other Act rights to water are conferred on other persons; or
 - (b) under this Act the Minister may issue licences for the taking or use of water; or
 - (c) under this or any other Act approval may be given for works or activities that affect the use, flow or control of water.
- (3) The Crown must not exercise a right conferred by subsection (1) so as to limit a right to water conferred on any other person by section 8(1)(b), (c) or (d) or section 8(4)(c).
- (4) Despite anything to the contrary in this or any other Act—
 - (a) a right to water must not be conferred on another person by or under this or any other Act; and
 - (b) a licence for the taking or use of water must not be issued by or under this or any other Act; and

S. 7(4)
inserted by
No. 99/2005
s. 5.

- (c) an approval must not be given for works or activities that affect the use, flow or control of water under this or any other Act—

unless regard is had to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective.

8 Continuation of private rights to water

- (1) A person has the right to take water, free of charge, for that person's domestic and stock use from a waterway or bore to which that person has access—
- (a) by a public road or public reserve; or
 - (b) because that person occupies the land on which the water flows or occurs; or
 - (c) in the case of a waterway, because that person occupies land adjacent to it and the bed and banks of the waterway have remained the property of the Crown by virtue of section 385 of the **Land Act 1958**³ or any corresponding previous enactment; or
 - (d) subject to section 33C, in the case of a bore, because that person occupies it.
- (2) If required to do so by the regulations, a person taking water under subsection (1) must give the Minister, in accordance with the regulations, written notice of the amount taken.
- (3) A person has the right to use water taken by that person from a waterway under subsection (1)(a), if the water is being used at the place at which it is taken.

S. 8(1)(d)
amended by
No. 5/2002
s. 6(1).

S. 8(3)
substituted by
No. 32/2010
s. 4.

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- (3A) A person has the right to use water taken by that person from a waterway under subsection (1)(b), (c) or (d). **S. 8(3A) inserted by No. 32/2010 s. 4.**
- (3B) A person has the right to use water taken by that person from a bore under subsection (1). **S. 8(3B) inserted by No. 32/2010 s. 4.**
- (3C) A person has the right to use, while it is within the waterway or bore, water which that person has the right to take under subsection (1). **S. 8(3C) inserted by No. 32/2010 s. 4.**
- (4) A person has the right to use—
- (a) water taken or received by that person in accordance with a licence or other authority issued to that person under this Act or any corresponding previous enactment; or
 - (b) water lawfully taken or received by that person from the works of an Authority or of any other person; or
 - (c) rainwater or other water that occurs or flows (otherwise than in a waterway or bore) on land occupied by that person or, with the permission of the other person, on land occupied by another person.
- (5) Water referred to in subsection (4)(c) may be used for any purpose and on any land.
- (5A) Subsections (4)(c) and (5) do not apply to the use, other than domestic and stock use, of water from a spring or soak or water from a private dam (to the extent that it is not rainwater supplied to the dam from the roof of a building). **S. 8(5A) inserted by No. 5/2002 s. 6(2).**
- (6) A right conferred by this section is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
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s. 8

S. 8(6)(a)
substituted by
No. 99/2005
s. 6.

- (a) this Act, any regulations or by-laws under this Act, or any permission, authority or agreement made under this Act; or
- (b) any other Act or in any permission or authority granted under any other Act; or
- (c) the conditions of a licence issued under this Act; or
- (d) the prescriptions contained in an approved management plan drawn up under Division 3 of Part 3 for a water supply protection area.

S. 8(6)(d)
amended by
No. 5/2002
s. 6(3).

- (7) The rights to water conferred by or under this Act on a person who has an interest in land replace any rights⁴—

- (a) to take or use water; or
- (b) to obstruct or deflect the flow of water⁵; or
- (c) to affect the quality of any water; or
- (d) to receive any particular flow of water; or
- (e) to receive a flow of water of any particular quality—

that the person might otherwise have been able to enforce against the Crown or any other person because of, or as an incident to, that interest.

- (8) This section does not authorise any act or omission that may—

- (a) cause any water to be polluted; or
- (b) obstruct the flow of any water in a waterway; or
- (c) erode or otherwise damage the surrounds of any waterway.

8A Traditional owner rights

S. 8A
inserted by
No. 62/2010
s. 131.

- (1) If a traditional owner group entity has a natural resource agreement under Part 6 of the **Traditional Owner Settlement Act 2010** in relation to an area of land any member of the entity has the right to take and use water under and in accordance with an authorisation order given under section 85 of the **Traditional Owner Settlement Act 2010**.
- (2) Nothing in subsection (1) is to be taken as derogating from any right a member of the traditional owner group entity has to take and use water under section 8.

9 Authority rights to water

- (1) An Authority within the meaning of Division 1 of Part 4 has the right to take the amounts of water that are made available to it—

(a) under a bulk entitlement; or

S. 9(1)(a)
amended by
No. 62/1995
s. 6(1),
substituted by
No. 32/2010
s. 5(1).

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S. 9(1)(b)
repealed by
No. 85/2006
s. 4.

* * * *

S. 9(1)(c)
amended by
No. 62/1995
s. 11,
repealed by
No. 85/2006
s. 4.

(d) under any other entitlement, licence or right under this Act.

S. 9(1)(d)
inserted by
No. 62/1995
s. 11.

Water Act 1989
No. 80 of 1989
Part 2—Rights and Liabilities

s. 9

(2) An Authority referred to in subsection (1) has the right to use water taken by it under a right conferred by subsection (1)—

S. 9(2)(a)
amended by
No. 62/1995
s. 9(1).

(a) in the case of an Authority referred to in paragraph (a) or (b) of the definition of *Authority* in section 34, for any purpose connected with the exercise of its functions under this Act or the **Local Government Act 1989**, as the case requires;

S. 9(2)(b)
substituted by
No. 32/2010
s. 5(2).

(b) in the case of a generation company within the meaning of the **Electricity Industry Act 2000**, for any purpose connected with the exercise of its functions or powers;

S. 9(2)(c)
substituted by
No. 130/1993
s. 122(Sch. 4
item 17.1),
amended by
Nos 53/1994
s. 34(Sch. 1
item 11.1),
110/1994
s. 41(Sch. 1
item 11.1),
56/1995 s. 65,
substituted by
No. 69/2000
s. 65(1),
repealed by
No. 32/2010
s. 5(3).

* * * * *

S. 9(2)(d)
amended by
No. 32/2010
s. 5(4).

(d) in the case of an Authority referred to in paragraph (d) of the definition of *Authority* in section 34, for any public purpose.

S. 9(2)(e)
repealed by
No. 32/2010
s. 5(3).

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- (3) The right conferred by subsection (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
- (a) this Act; or
 - (b) any other Act; or
 - (c) the conditions attached to the bulk entitlement.

10 Right to construct or operate works

- (1) An Authority or any other person may, in accordance with this Act, construct or operate works for, or which may result in—
- (a) the drainage of any land; or
 - (b) the collection, storage, taking, use or distribution of any water; or
 - (c) the obstruction or deflection of the flow of any water.
- (2) The right conferred by subsection (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
- (a) this Act; or
 - (b) any other Act; or
 - (c) the provisions of a licence issued, or entitlement granted, under this or any other Act.

11 Allocation of water right on subdivision

- (1) If—
- (a) at the commencement of this section a right is conferred on a person by section 8(1)(b) or (c) to take water from a waterway because that person occupies land on which the water

flows or occurs or land adjacent to the waterway; and

- (b) on or after that commencement that land is subdivided—

only the person who occupies one of the subdivided lots has, after the subdivision, the right conferred by that section.

- (2) The subdivided lot the occupier of which has the right to take water from the waterway, must—
- (a) have the waterway flowing or occurring on it; or
- (b) be adjacent to the waterway.
- (3) The Minister may, on the application of the subdivider, exempt a subdivision from subsections (1) and (2) and allocate the right or part of it to all or any of the subdivided lots.
- (4) The Minister may require an applicant under subsection (3) to give notice of the application in any manner specified by the Minister.
- (5) A notice given under subsection (4) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.
- (6) The Minister may appoint a panel of persons to consider submissions made on an application under subsection (3).
- (7) Subsections (2) to (6) of section 50 apply to a panel appointed under subsection (6) as if the reference in subsection (3) of that section to a notice given under section 49(2) were a reference to a notice given under subsection (4) of this section.

(8) In considering an application under subsection (3), the Minister must have regard to—

- (a) the report of any panel appointed under subsection (6); and
- (b) the matters mentioned in paragraphs (b) to (l) of section 40(1) as if the reference in paragraph (e) to the applicant were a reference to the occupiers of the subdivided lots; and
- (c) any other matter that the Minister thinks fit to have regard to.

S. 11(8)(b)
amended by
No. 5/2002
s. 7(1).

(9) In considering an application under subsection (3), the Minister must give effect to an approved management plan for any relevant water supply protection area.

S. 11(9)
inserted by
No. 5/2002
s. 7(2).

12 Authorisation may be conditional⁶

(1) An Authority, a public statutory body or any other person that has power under this or any other Act to authorise or permit any activity, or any change in the use of land, that may affect the existing drainage regime—

- (a) must make the authorisation or permission subject to any conditions that, in the opinion of the Authority, body or other person, are required to ensure the conservation of waterways, wetlands and aquifers; and
- (b) may withhold the authorisation or permission until any works are carried out, or any measures undertaken (including the payment of compensation), that are required by the Authority, body or other person for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.

- (2) In subsection (1), *drainage regime* means all physical and hydrological circumstances that may affect drainage in a catchment, including the use of land but not including any circumstances arising from works that are unlawfully carried out or from any unlawful use of the land.
- (3) The failure of an Authority, a public statutory body or other person to comply with subsection (1)(a) does not invalidate any authorisation or permission granted by that Authority, body or other person.

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S. 13
repealed by
No. 99/2005
s. 7.

Division 2—Liabilities

14 Application

Sections 15 and 16 apply whether the taking, using, polluting, constructing, maintaining, operating or interfering occurred before or after the commencement of this section.

15 Civil liability for unauthorised taking or use of water or for unauthorised works⁷

- (1) A person who—
- (a) takes water in an unauthorised manner or in unauthorised quantities; or
 - (b) uses water in an unauthorised manner or for an unauthorised purpose; or
 - (c) pollutes water, whether or not authorised to do so; or

(d) constructs, maintains or operates any unauthorised works—

and by that act causes injury to any other person or damage to the property (whether real or personal) of any other person or causes any other person to suffer economic loss is liable to pay damages to that other person in respect of that injury or damage.

- (2) Paragraph (c) of subsection (1) does not apply to the discharge of saline matter in accordance with by-laws made under section 160(1)(d) of this Act or regulations made under section 50(d) of the **Water Industry Act 1994** and all other necessary authorisations.
- (3) Paragraph (d) of subsection (1) does not apply to any injury, damage or loss to which section 16 applies.

S. 15(2)
amended by
No. 121/1994
s. 187(a).

16 Liability arising out of flow of water etc.⁸

(1) If—

- (a) there is a flow of water from the land of a person onto any other land; and
- (b) that flow is not reasonable; and
- (c) the water causes—
- (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

the person who caused the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

(2) If—

- (a) a person interferes with a reasonable flow of water onto any land or by negligent conduct interferes with a flow of water onto any land which is not reasonable; and
- (b) as a result of that interference water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

the person who interfered with the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

(3) If the person who caused, or interfered with, the flow (as the case requires)—

- (a) is the servant of another person and acted in the course of the servant's employment; or
- (b) is the agent of another person and acted within the scope of the agent's authority—

that other person is liable to pay damages in respect of the injury, damage or loss.

(4) The existence of a liability under subsection (3) does not extinguish the liability of the servant or agent under subsection (1) or (2), as the case requires.

(5) If the causing of, or the interference with, the flow (as the case requires) was given rise to by works constructed or any other act done or omitted to be done on any land at a time before the current occupier became the occupier of the land, the current occupier is liable to pay damages in respect of the injury, damage or loss if the current occupier has failed to take any steps reasonably

available to prevent the causing of, or the interference with, the flow (as the case requires) being so given rise to.

- (6) The existence of a liability under subsection (5) extinguishes the liability under subsection (1) of the person who caused the flow or the liability under subsection (2) of the person who interfered with the flow (as the case requires).

17 Protection from liability⁹

- (1) A person does not incur any civil liability in respect of any injury, damage or loss caused by water to which section 16 or 157 of this Act or section 74 of the **Water Industry Act 1994** applies except to the extent provided by this Act.

S. 17(1)
amended by
No. 121/1994
s. 187(b)(c).

- (2) Sections 15 and 16 do not create any liability in respect of a flow of water from the works (including any dam) of an Authority in the exercise of a function under Part 8, Division 2, 3 or 5 of Part 10 or Part 11 or any corresponding previous enactment or of a licensee in the exercise of a function under its licence.

S. 17(2)
amended by
No. 121/1994
s. 187(d).

- (3) Nothing in this section takes away from the power of a court to make an order against a person under section 86 of the **Sentencing Act 1991** with respect to an offence under the **Environment Protection Act 1970**.

S. 17(3)
amended by
No. 62/1995
s. 44(1).

18 Liability for damage caused by escape of water from private dam

Nothing in section 17 extinguishes the liability at common law of the owner of a private dam for any damage caused by the escape of water from that dam.

19 Jurisdiction of Tribunal

S. 19(1)
amended by
Nos 121/1994
s. 187(e),
52/1998
s. 311(Sch. 1
item 105.4(a)
(i)(ii)) (as
amended by
No. 101/1998
s. 22(1)(p)).

- (1) The Tribunal has jurisdiction in relation to all causes of action (other than any claim for damages for personal injury) arising under sections 15(1), 16, 17(1) and 157(1) of this Act or at common law in respect of the escape of water from a private dam.

S. 19(2)
amended by
No. 62/1991
s. 40(2),
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.4(b)).

* * * * *

S. 19(3)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.5).

- (3) In exercising jurisdiction conferred by subsection (1), the Tribunal—
- (a) may by order, whether interim or final, grant an injunction (including one to prevent an act that has not yet taken place) if it is just and convenient to do so; or

S. 19(3)(ab)
inserted by
No. 90/2003
s. 3(1).

- (ab) may make an order for payment of a sum of money awarding damages in the nature of interest; or
- (b) may make an order that is merely declaratory.

S. 19(3A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.5).

- (3A) Nothing in subsection (3) takes away from or affects the Tribunal's powers under section 123 or 124 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 19(4)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.6(a)),
new s. 19(4)
inserted by
No. 90/2003
s. 3(2).

- (4) In awarding damages in the nature of interest, the Tribunal may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate that it considers appropriate.

- (5) The Tribunal may in respect of any works that give rise to a cause of action of a kind referred to in subsection (1) make any order with respect to—
- (a) compensation for damage to land; or
 - (b) the continuation, removal or modification of works; or
 - (c) payment of the costs of the removal or modification of works—
- that it considers appropriate.

S. 19(5)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.6(b)).

* * * * *

S. 19(6)(7)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.6(c)).

- (8) Nothing in this section prevents a person from bringing before a court a claim for damages for personal injury based on a cause of action of a kind referred to in subsection (1).
- (9) In determining a cause of action arising under section 15(1), 16, 17(1) or 157(1) of this Act the Tribunal must apply to the questions of causation and remoteness of damage the same tests as a court would apply to those questions in an action based on negligence.
- (10) Subject to subsection (8), a proceeding based on a cause of action of a kind referred to in subsection (1) must not be brought otherwise than before the Tribunal.

S. 19(9)
amended by
Nos 121/1994
s. 187(f),
52/1998
s. 311(Sch. 1
item 105.6(d)).

S. 19(10)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.6(e)).

20 Matters to be taken into account in determining whether flow is reasonable or not reasonable

- (1) In determining whether a flow of water is reasonable or not reasonable, account must be taken of all the circumstances including the following matters—

-
- (a) whether or not the flow, or the act or works that caused the flow, was or were authorised;
 - (b) the extent to which any conditions or requirements imposed under this Act in relation to an authorisation were complied with;
 - (c) whether or not the flow conforms with any guidelines or principles published by the Minister with respect to the drainage of the area;
 - (d) whether or not account was taken at the relevant time of the likely impact of the flow on drainage in the area having regard to the information then reasonably available about the cumulative effects on drainage of works and activities in the area;
 - (e) the uses to which the lands concerned and any other lands in the vicinity are put;
 - (f) the contours of the lands concerned;
 - (g) whether the water which flowed was—
 - (i) brought onto the land from which it flowed; or
 - (ii) collected, stored or concentrated on that land; or
 - (iii) extracted from the ground on that land—and if so, for what purpose and with what degree of care this was done;
 - (h) whether or not the flow was affected by any works restricting the flow of water along a waterway;
 - (i) whether or not the flow is likely to damage any waterway, wetland or aquifer.
-

- (2) In taking account of the matters specified in subsection (1), greater weight must be attached to the matters specified in paragraphs (a), (b), (c) and (d) than to the other specified matters.
- (3) An Authority that has a waterway management function in the area to which a proceeding before the Tribunal relates may make a submission to the Tribunal on the matters specified in paragraphs (c), (d) and (i) of subsection (1).

S. 20(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.7).

21 Matters to be taken into account with respect to public works

S. 21
amended by
No. 121/1994
s. 187(g).

If the Crown, an Authority, a licensee or a public statutory body is the owner or has the management and control of any works which interfere, or may interfere, with the reasonable flow of water, in determining whether those works should be continued, removed or modified, account must be taken of all the circumstances including the following matters—

- (a) the circumstances, state of scientific knowledge and knowledge of local conditions at the time the works were constructed;
- (b) the nature and position of the works;
- (c) the likely effects and costs of continuing, removing or modifying the works;
- (d) the nature of any interest in land affected by the works and the effect on that interest of continuing, removing or modifying the works.

**PART 3—ASSESSMENT OF AND ACCOUNTING FOR
WATER**

Division 1—Role of Minister

22 Role of Minister

(1) The Minister—

- S. 22(1)(ab)
inserted by
No. 99/2005
s. 8(1)(a).

(a) must make sure that a continuous program of assessment of the water resources of the State is undertaken; and
- S. 22(1)(ac)
inserted by
No. 99/2005
s. 8(1)(a).

(ac) must make sure that a program of sustainable water strategies is undertaken for the State in accordance with this Act; and
- S. 22(1)(b)
amended by
No. 99/2005
s. 8(1)(b).

(b) subject to and in accordance with this Act, may allocate the available water resources; and
- S. 22(1)(c)
inserted by
No. 99/2005
s. 8(1)(c).

(c) may require an assessment of the environmental water reserve to be carried out.

(2) The water resources assessment program must provide for the collection, collation, analysis and publication of information about—

- S. 22(2)(a)
substituted by
No. 99/2005
s. 8(2)(a).

(a) the availability of water, including surface water and groundwater; and
- S. 22(2)(ab)
inserted by
No. 99/2005
s. 8(2)(a).

(ab) the use of one water source as a substitute for another water source; and

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- | | |
|--|--|
| (ac) the environmental water reserve; and | S. 22(2)(ac)
inserted by
No. 99/2005
s. 8(2)(a). |
|
 | |
| (b) the disposal of wastewater (including trade waste, sewage and saline water); and | |
| (c) the use and re-use of water resources; and | |
| (d) floodwaters; and | |
| (e) drainage and waterway management; and | |
| (f) water quality (including salinity); and | |
| (g) in-stream uses of water; and | |
| (ga) current and historic levels of allocation and use of surface water and groundwater; and | S. 22(2)(ga)
inserted by
No. 99/2005
s. 8(2)(b). |
| (gb) current and historic condition of waterways and aquifers; and | S. 22(2)(gb)
inserted by
No. 99/2005
s. 8(2)(b). |
|
 | |
| (h) anything else that the Minister decides is appropriate. | |
| (2A) The Minister must make sure that information about the water resources assessment program is published every 5 years by— | S. 22(2A)
inserted by
No. 99/2005
s. 8(3). |
| (a) making the information available for inspection, during business hours, free of charge at the office of the Department Head; and | |
| (b) making the information available on the Department's website. | |
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s. 22

(3) Water may be allocated by the Minister under—

(aa) an environmental entitlement; or

S. 22(3)(aa)
inserted by
No. 99/2005
s. 8(4)(a).

(a) a bulk entitlement granted to an Authority
under Division 1 or 3 of Part 4; or

S. 22(3)(a)
amended by
No. 62/1995
s. 6(2).

(ab) a water share; or

S. 22(3)(ab)
inserted by
No. 99/2005
s. 40(1).

(b) a licence to take and use water issued under
section 51; or

S. 22(3)(c)
repealed by
No. 99/2005
s. 8(4)(b).

* * * * *

(4) An Authority that has an irrigation district
specified in column 1 of Schedule 11 has, subject
to section 223(3), a bulk entitlement for that
district to the amount of water specified in
column 2 of that Schedule.

(5) The First Mildura Irrigation Trust has a bulk
entitlement equal to the entitlement granted to it
under section 71(1) of the **Mildura Irrigation
Trusts and Sunraysia Water Board Act 1958**
and continued under this Act.

S. 22(6)
inserted by
No. 62/1995
s. 31,
substituted by
No. 99/2005
s. 40(2).

(6) The Minister may, by Order published in the
Government Gazette set rules with respect to the
adjustment of volumes to be applied to transfers,
whether permanent or temporary, of water rights
in non-declared water systems.

- (7) The Minister may amend or revoke an Order made under subsection (6), in the same manner in which the Order is made under that subsection.

S. 22(7)
inserted by
No. 99/2005
s. 40(2).

Division 1A—Permissible consumptive volumes

Pt 3 Div. 1A
(Heading and
s. 22A)
inserted by
No. 5/2002
s. 8.

Pt 3 Div. 1A
(Heading)
amended by
No. 99/2005
s. 9.

22A Permissible consumptive volumes

S. 22A
(Heading)
substituted by
No. 99/2005
s. 10(1).

S. 22A
inserted by
No. 5/2002
s. 8.

- (1) The Minister may, from time to time, by Order published in the Government Gazette, declare, in respect of an area or a water system specified in the Order, that the total volume of—

S. 22A(1)
substituted by
No. 99/2005
s. 10(2).

- (a) both surface water and groundwater; or
- (b) surface water only; or
- (c) groundwater only—

that may be taken in the area or from the water system (whether for use in that area or water system or elsewhere) under this or any other Act, during the period specified in the Order, must not exceed the volume specified in the Order for that period.

- (1A) The Minister may, by Order published in the Government Gazette, revoke an Order made under subsection (1).

S. 22A(1A)
inserted by
No. 99/2005
s. 10(2).

(2) If—

(a) an annual reserve volume of groundwater has been specified for the area under section 49A of the **Groundwater Act 1969**; or

(b) a prescription has been made under section 62(1) of the **Groundwater Act 1969** of the maximum total amounts of water to be extracted per annum from all licensed bores within the area—

a volume specified in an Order under subsection (1) of this section must not affect the volume referred to in paragraph (a) and must not be less than the amounts referred to in paragraph (b).

(3) The Minister may make an Order under subsection (1) on the Minister's initiative or at the request of an Authority.

S. 22A(3A)
inserted by
No. 99/2005
s. 10(3).

(3A) The Minister must not make a declaration under subsection (1) unless the Minister has first consulted with the Minister administering Part 4 of the **Catchment and Land Protection Act 1994**.

(4) In this section, *area* includes a sub-surface stratum of land or geological formation.

Pt 3 Div. 1B
(Heading and
ss 22B–22J)
inserted by
No. 99/2005
s. 11.

Division 1B—Sustainable water strategies

S. 22B
inserted by
No. 99/2005
s. 11.

22B Preparation of a Sustainable Water Strategy

The Minister may cause a Sustainable Water Strategy to be prepared for a region of the State determined by the Minister.

22C Contents of a Sustainable Water Strategy

S. 22C
inserted by
No. 99/2005
s. 11.

- (1) A Sustainable Water Strategy must provide for the strategic planning of the use of water resources in the region to which it applies—
 - (a) to identify threats to the reliability of supply and quality of water for both environmental and consumptive uses in the region; and
 - (b) to identify ways to improve and set priorities for improving the reliability of supply and quality of water, including managing demand for water, and investing in infrastructure for the supply of recycled water; and
 - (c) to identify ways to improve and set priorities for improving the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; and
 - (d) to identify ways to increase and set priorities for increasing the volume of water in the environmental water reserve to improve the environmental values and health of water ecosystems; and
 - (e) to include an implementation plan, setting out timelines or targets for implementing key actions identified by the strategy.
- (2) A Sustainable Water Strategy must take into account—
 - (a) the results of any long-term water resources assessment undertaken under Division 1C;
 - (b) any relevant strategy or statement of policy or plan prepared under this Act, the **Catchment and Land Protection Act 1994**, the **Flora and Fauna Guarantee Act 1988**, the **Heritage Rivers Act 1992**, the **Planning**

S. 22C(1)(e)
amended by
No. 32/2010
s. 77(Sch.).

**and Environment Act 1987 or the
Environment Protection Act 1970;**

- (c) the principles set out in sections 1B to 1L of
the **Environment Protection Act 1970**.

S. 22D
inserted by
No. 99/2005
s. 11.

**22D Consultative committee—Sustainable Water
Strategy**

- (1) The Minister must appoint a consultative
committee to advise the Minister on—
- (a) the preparation of each Sustainable Water
Strategy; and
 - (b) the matters the strategy must provide for
under section 22C(1); and
 - (c) any other matter requested by the Minister
relating to the preparation of the Strategy.
- (2) The Minister must make sure that, so far as it is
possible, the membership consists of persons who
have knowledge or experience in the matters to be
covered in a Sustainable Water Strategy.

S. 22E
inserted by
No. 99/2005
s. 11.

22E Preparation of a draft Sustainable Water Strategy

In preparing a draft Sustainable Water Strategy,
the Minister must—

- (a) consult with the consultative committee
appointed by the Minister under section 22D;
- (b) give notice of the preparation of the Strategy
to any Authority whose interests the Minister
considers are likely to be affected by the
Strategy;
- (c) publish notice of the undertaking of the
strategy and the preparation of the Strategy
in a local newspaper circulating generally in
the area to which the Strategy applies;

- (d) make the draft Strategy available for inspection by the public for at least 2 months after its preparation;
- (e) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the region which will be affected by the Strategy stating where and when the draft Strategy can be inspected and inviting public comment by a set date;
- (f) consider any comments made by the set date;
- (g) consider any comments of any panel appointed under section 22F;
- (h) make any appropriate changes to the draft Strategy.

22F Appointment of Panel

**S. 22F
inserted by
No. 99/2005
s. 11.**

- (1) The Minister may, by instrument, appoint a panel of persons to consider comments made under section 22E(f) on a draft Strategy, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to consider.
- (2) Subject to anything specified by the Minister in the instrument of appointment of the panel, a panel may regulate its own proceedings.
- (3) After considering all comments referred to it, the panel must report its findings to the Minister within the period specified by him or her.
- (4) The panel may include in its report any recommendations that it thinks fit.
- (5) A member of the panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

s. 22G

- (6) The Minister is not bound by the report of the panel under this section.
- (7) The Minister must make a copy of any report of the panel available for inspection by the public within 1 month after it is received by the Minister.

S. 22G
inserted by
No. 99/2005
s. 11.

22G Consideration of draft Strategy by the Minister

- (1) The Minister must consider the draft Strategy and may—
 - (a) endorse the Strategy; or
 - (b) endorse the Strategy with any amendments the Minister considers appropriate; or
 - (c) refuse to endorse the draft strategy.
- (2) Before making a decision under subsection (1) the Minister must—
 - (a) consider a report of any panel prepared on the draft Strategy under section 22F; and
 - (b) make any such report available to the public under section 22F(7).

S. 22H
inserted by
No. 99/2005
s. 11.

22H Publication of Sustainable Water Strategy

The Minister must make sure that a Sustainable Water Strategy is published as soon as practicable after it is endorsed under section 22G by—

- (a) making a copy of the Strategy available for inspection, during business hours, free of charge at—
 - (i) the office of the Department Head; and
 - (ii) the office of the Department located in the region to which the Strategy applies; and
- (b) making a copy of the Strategy available on the Department's website; and

- (c) publishing a notice of the availability of the copy of the Strategy in a newspaper circulating generally in the area to which the Strategy applies.

22I Review of Sustainable Water Strategy

S. 22I
inserted by
No. 99/2005
s. 11.

- (1) The Minister must review a Sustainable Water Strategy—
 - (a) if the findings of a long-term water resources assessment undertaken under this Part have any impact on the Strategy; or
 - (b) at the end of 10 years following the endorsement of the Strategy.
- (2) The Minister may review a Sustainable Water Strategy at any time.
- (3) A review under this section must determine whether or not the timelines and targets in the implementation plan of the Strategy being reviewed have been met.
- (4) The procedures that apply to the making of a Sustainable Water Strategy under this Division apply, with any necessary modifications to the review of a Sustainable Water Strategy.

22J Report on Sustainable Water Strategies

S. 22J
inserted by
No. 99/2005
s. 11.

- (1) A report on any current Sustainable Water Strategies and on any current draft Strategies must be included in each annual report of the Department.
- (2) A report under subsection (1) must—
 - (a) specify the measures being taken to implement the Strategy; and
 - (b) identify the priorities that apply to actions required by the implementation plan.

Pt 3 Div. 1C
(Heading and
ss 22K–22V)
inserted by
No. 99/2005
s. 11.

Division 1C—Long-term water resources assessments

S. 22K
inserted by
No. 99/2005
s. 11.

22K Preparation of a program of long-term water resources assessments

The Minister must cause a program of the preparation of long-term water resources assessments to be commenced—

- (a) by the end of 12 years from the commencement of section 14 of the **Water (Resource Management) Act 2005**; and
- (b) after that, by the end of the twelfth year in each consecutive 15 year period, where the first such period commences immediately after the fifteenth anniversary of the commencement of section 14 of the **Water (Resource Management) Act 2005**.

S. 22L
inserted by
No. 99/2005
s. 11.

22L Contents of a long-term water resources assessment

A long-term water resources assessment must identify whether or not either or both of the following has occurred—

- (a) there has been any decline in the long-term availability of surface water or groundwater and whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes;
- (b) there has been any deterioration in waterway health for reasons related to flow.

22M Preparation of a draft long-term water resources assessment

S. 22M
inserted by
No. 99/2005
s. 11.

In preparing a draft long-term water resources assessment, the Minister must—

- (a) give notice of the undertaking of the preparation of the assessment and the process by which the assessment will be carried out to any Authority whose interests the Minister considers are likely to be affected by the assessment;
- (b) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the area to which the assessment applies stating when and where the draft assessment can be inspected and inviting public comment by a set date;
- (c) make the draft assessment available for inspection by the public for at least 2 months after its preparation;
- (d) consider any comments made by the set date;
- (e) consider any comments made by the Environment Protection Authority in a review under section 22N;
- (f) make any appropriate changes to the draft assessment.

S. 22M(a)
amended by
No. 85/2006
s. 5.

22N Review by Environment Protection Authority

S. 22N
inserted by
No. 99/2005
s. 11.

- (1) The Minister must cause the draft assessment to be submitted to the Environment Protection Authority for a review of—
 - (a) the methods and criteria adopted to carry out the assessment; and
 - (b) any other matter required by the Minister.

s. 22O

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- (2) In reviewing the draft assessment the Environment Protection Authority must review—
- (a) the methodology adopted to carry out the draft assessment; and
 - (b) whether or not the data used in the draft assessment was the best data available; and
 - (c) whether or not the conclusions reached in the draft assessment are supported by the methodology and data; and
 - (d) any other matter required by the Minister.
- (3) At the completion of the review, the Environment Protection Authority must—
- (a) report its findings to the Minister;
 - (b) make a copy of its report available on the Authority's website.
- (4) The Environment Protection Authority must ensure that the report under subsection (3)(a) is made within the period specified by the Minister, which must be not later than 4 months after the draft assessment is submitted to the Authority under subsection (1).

S. 22O
inserted by
No. 99/2005
s. 11.

22O Consideration and publication of long-term water resources assessment

- (1) The Minister, after considering the report of the Environment Protection Authority under section 22N, may—
- (a) endorse a long-term water resources assessment; or
 - (b) endorse a long-term water resources assessment with any amendments the Minister considers appropriate; or
 - (c) refuse to endorse a long-term water resources assessment.
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- (2) As soon as practicable after completing a long term water resources assessment, the Minister must—
 - (a) make a copy of the assessment and the review of the assessment by the Environment Protection Authority available for inspection, during business hours, free of charge at the offices of the Department located in the region to which the assessment applies; and
 - (b) make a copy of the assessment available on the Department's website; and
 - (c) publish a notice of the availability of the copy of the assessment in a newspaper circulating generally in the area to which the assessment applies.
- (3) If a long-term water resources assessment has not been completed within 12 months of the publication of a notice under section 22M(a) for that assessment, the Minister must, on publication of the assessment, publish reasons for the delay in the preparation of the assessment.

22P Review following long-term water resources assessment

**S. 22P
inserted by
No. 99/2005
s. 11.**

If, in the opinion of the Minister, a long-term water resources assessment has identified—

- (a) a decline in the long-term availability of surface water or groundwater which has a disproportionate effect on the environmental water reserve or on the allocation of water for consumptive purposes; or
- (b) a deterioration in waterway health for reasons related to flow—

the Minister must cause a review to be undertaken to determine the action that is required to be taken—

(c) to restore the balance between the environmental water reserve and the allocation of water for consumptive purposes; or

(d) to restore the health of waterways—

having regard to any relevant social, economic and environmental matters.

S. 22Q
inserted by
No. 99/2005
s. 11.

22Q Consultative committee for review

(1) The Minister must appoint a consultative committee to advise the Minister on a review to be undertaken under section 22P.

(2) The following provisions apply with respect to the membership of a consultative committee appointed under this section—

(a) the Minister must make sure that, so far as it is possible—

(i) all relevant interests are fairly represented on the committee;

(ii) the membership consists of persons who have knowledge or experience in the matters to be covered by the review;

(iii) the membership consists of persons who represent the community to which the review relates;

(b) at least one half of the membership must consist of persons, who are owners or occupiers of land in the area to which the review relates, appointed after consultation by the Minister with bodies representative of those persons;

(c) any public statutory body which the Minister considers to be directly affected by the review must, after consultation with the Minister, be represented on the committee.

- (3) Section 318(2) to (6) applies to a consultative committee appointed under this section.

22R Review process

S. 22R
inserted by
No. 99/2005
s. 11.

- (1) In conducting a review under section 22P, the Minister must—
- (a) consult with the consultative committee appointed by the Minister under section 22Q;
 - (b) give notice of the review to any Authority or other person whose interests the Minister considers are likely to be affected by the review;
 - (c) publish notice of the commencement of the review in a local newspaper circulating generally in the area to which the review relates;
 - (d) make any draft review available for inspection by the public for at least 2 months after its preparation;
 - (e) publish a notice in a newspaper, circulating generally in the State and a local newspaper circulating generally in the area to which the review relates, stating where and when the draft review can be inspected and inviting public comment by a set date;
 - (f) consider any comments made by the set date;
 - (g) consider any comments of the panel appointed under section 22S;
 - (h) make any appropriate changes to the draft review.

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- (2) The Minister must ensure that any review under section 22P—
- (a) that is conducted as a result of a long-term water resources assessment commenced under section 22K(a) is conducted in such a manner as to be completed not more than 14 years and 6 months after the commencement of section 14 of the **Water (Resource Management) Act 2005**; and
 - (b) that is conducted as a result of a long-term water resources assessment commenced under section 22K(b) is conducted in such a manner as to be completed 6 months before the end of the 15 year period in which it commenced.
- (3) Failure to comply with subsection (2) does not affect the validity of the review or of any action the Minister takes under the review, including, but not limited to any action under section 33AAB.

S. 22S
inserted by
No. 99/2005
s. 11.

22S Reporting of panel

- (1) The Minister, by instrument, must appoint a panel of persons to consider comments made under section 22R(f) on a draft review, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to consider.
- (2) Subject to anything specified by the Minister in the instrument of appointment of the panel, it may regulate its own proceedings.
- (3) After considering all comments referred to it, the panel must report its findings to the Minister within the period specified by him or her.

- (4) The panel may include in its report any recommendations that it thinks fit.
- (5) A member of the panel is entitled to be paid any fees and allowances fixed by the Governor in Council.
- (6) The Minister is not bound by the report of the panel under this section.
- (7) The Minister must make a copy of the report of the panel under this section available for inspection by the public within one month after the report is received by the Minister.
- (8) A panel appointed under this section must ensure that its report under subsection (3) is made within the period specified by the Minister which must be not later than 6 months after the panel is appointed under subsection (1).

22T Consideration and publication of review

**S. 22T
inserted by
No. 99/2005
s. 11.**

- (1) After—
 - (a) considering the report prepared by the panel under section 22S; and
 - (b) after making the report available to the public under section 22S(7)—the Minister must consider the review and may—
 - (c) endorse the Review; or
 - (d) endorse the Review with any amendments the Minister considers appropriate; or
 - (e) refuse to endorse the Review.
- (2) On completion of a review under section 22P, the Minister must—
 - (a) make a copy of the review available for inspection, during business hours, free of charge at the offices of the Department; and

s. 22U

- (b) make a copy of the review available on the Department's website; and
- (c) publish a notice of the availability of the copy of the review in a newspaper circulating generally in the area to which the review applies; and
- (d) make a copy of the review available for inspection during business hours, free of charge, at the office of the Department located in the region to which the assessment applies.

S. 22U
inserted by
No. 99/2005
s. 11.

22U Annual report on long-term water resources assessment

A report on any long-term water resources assessment completed in the preceding 12 month period must be included in each annual report of the Department.

S. 22V
inserted by
No. 99/2005
s. 11.

22V Program of implementation of review

- (1) Within 6 months of the publication of a notice under section 22T(2)(c) the Minister must determine a program of implementation of the review and publish a statement of the actions required to implement that program.
- (2) If, as part of a program of implementation of a review, the Minister determines to qualify rights under section 33AAB, the Minister must set out notice of that determination in the statement published under subsection (1).

Division 2—Water resources assessment program

23 Powers of Minister in relation to assessment program¹⁰

- (1) The Minister may do anything that is necessary or convenient to be done for or in connection with, or as incidental to, the undertaking of the water resources assessment program including (but not limited to) the following—
- (a) carrying out surveys and holding inquiries;
 - (b) measuring and recording the flow of water in—
 - (i) waterways; and
 - (ii) other areas in which water collects;
 - (c) investigating groundwater;
 - (ca) investigating whether or not the environmental water reserve is being maintained in accordance with the environmental water reserve objective;
 - (d) monitoring the physical, chemical and bacteriological quality of water;
 - (e) investigating the effect of climatic conditions on the occurrence and quality of water;
 - (f) investigating the interaction between groundwater and surface water;
 - (g) monitoring the flows of receiving waters for drainage, sewage and trade waste;
 - (h) establishing and maintaining works.
- (2) For the purposes of the water resources assessment program the Minister may—
- (a) purchase or compulsorily acquire any land that is required for the establishment of works or State observation bores; or

S. 23(1)(ca)
inserted by
No. 99/2005
s. 12.

S. 23(2)(a)
amended by
No. 5/2002
s. 9(1).

- (b) subject to section 24, authorise a person to enter any land and drill for groundwater; or
 - (c) require any person (including a public statutory body) taking part in the program or otherwise collecting information of a kind referred to in section 22(2)—
 - (i) to keep records of all information collected; and
 - (ii) to give the Minister copies of those records on request; or
 - (d) direct any Authority—
 - (i) to collect and record information of a kind referred to in section 22(2) that is related to the Authority's functions; and
 - (ii) to provide that information to the Minister in any form that the Minister requires.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Division and for that purpose—
 - (a) this Division is the special Act; and
 - (b) the Minister is the Authority.
- (4) Section 74 of the **Land Acquisition and Compensation Act 1986** applies to an entry on land under subsection (2)(b).
- (5) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any works established under subsection (1)(h).

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

S. 23(5)
inserted by
No. 5/2002
s. 9(2).

- (6) A person who is guilty of an offence under subsection (5) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.

S. 23(6)
inserted by
No. 5/2002
s. 9(2).

24 Drilling for groundwater

- (1) Before entering under section 23(2)(b) land of a type specified in column 1 of the Table, an authorised person must obtain the consent of the person specified in column 2 of the Table in relation to that land.

TABLE

Column 1	Column 2
Land owned by a public statutory body	The owner of the land
Land that is a road	The person responsible for maintaining the road
Land that is reserved either temporarily or permanently under section 4 of the Crown Land (Reserves) Act 1978	The Minister administering the Conservation, Forests and Lands Act 1987
Land that is leased under section 134 or 151E of the Land Act 1958	"
Land in respect of which a licence has been granted under section 138 or 401 of the Land Act 1958	"

s. 25

S. 24(2)
amended by
No. 76/1998
s. 29(c).

- (2) As soon as possible after entering under section 23(2)(b) unoccupied Crown land, an authorised person must notify the Department Head of the entry.

25 Giving of information to Minister

- (1) A person must comply with a requirement of the Minister under section 23(2)(c).

Penalty: 10 penalty units.

- (2) Except with the permission of the person who gave a copy of the record to the Minister, the Minister must not disclose to any person any information contained in a copy of a record given to him or her under section 23(2)(c).

S. 26
amended by
Nos 50/1992
s. 10(Sch.
item 11.2),
49/1994
s. 5(1)(a).

26 Reports on assessment program

A report on the water resources assessment program must be included in each annual report of the Department.

Pt 3 Div. 3
(Heading and
ss 27–32)
amended by
Nos 49/1994
s. 10(a),
62/1995 s. 37,
86/1995
s. 4(a)(b),
110/1997 s. 14,
52/1998 s. 311
(Sch. 1
items 105.8,
105.9),
substituted by
5/2002 s. 10.

Division 3—Water supply protection areas

S. 27
substituted by
No. 5/2002
s. 10.

27 Declaration of water supply protection area

- (1) The Minister, on the Minister's initiative or on an application from a person referred to in subsection (3), may, by Order published in the Government Gazette, declare an area to be a water supply protection area.

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- (2) An area may be declared under subsection (1) to be a water supply protection area for the protection of the groundwater resources in the area or the surface water resources in the area or both.
- (3) An application for a declaration under subsection (1) may be made by—
- (a) a person authorised to use groundwater or surface water under this Act; or
 - (b) an Authority that—
 - (i) holds a bulk entitlement; or
 - (ii) uses groundwater; or
 - (iii) supplies water; or
 - (c) a body that has responsibilities under any Act relating to the conservation or management of water, or of land—
in the area concerned or in an area where the water supply is affected by the taking and use of groundwater or surface water (as the case requires) in the area concerned.
- (4) The Minister may only make a declaration under subsection (1) if—
- (a) the Minister has first caused notice of the proposed declaration to be—
 - (i) published in a newspaper circulating generally in the area concerned; and
 - (ii) given by post to the relevant persons listed in subsection (5); and
 - (b) the Minister has considered any submissions made within 60 days after the publication or giving of notice of the proposed declaration under subparagraph (i) or (ii) of paragraph (a), whichever is the later.
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- (5) For the purposes of subsection (4)(a)(ii) the relevant persons are—
- (a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and
 - (b) the Minister administering the **Planning and Environment Act 1987**; and
 - (c) any Authority exercising a function under Part 8 or 11 in the area concerned; and
 - (d) any Authority that holds a bulk entitlement to water from a source in the area concerned; and
 - (e) any public statutory body which the Minister considers may be directly affected by the declaration; and
 - (f) any council in whose municipal district the area concerned is wholly or partly situated; and
 - (g) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.
- (6) If an application under subsection (1) is made for a declaration, the publication or giving notice of the proposed declaration is to be at the expense of the applicant.
- (7) The Minister may require further information with respect to the proposed declaration to be provided by the applicant for the declaration or any Authority with a function under this Act in the area concerned.
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- (8) The Minister must make a decision whether to declare an area to be a water supply protection area within 60 days after the period of 60 days referred to in subsection (4)(b).
- (9) If the Minister decides to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.
- (10) If the Minister decides not to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.
- (11) The Minister must cause a declaration under subsection (1) to be laid before each House of Parliament within 5 sitting days of that House after it is made.

28 Amendment or abolition of water supply protection area

S. 28
substituted by
No. 5/2002
s. 10.

- (1) The Minister may, by a subsequent Order published in the Government Gazette, amend the boundaries of, or abolish, a water supply protection area.
- (2) Section 27 applies (with any necessary modifications) to an Order under subsection (1) as if it were a declaration under section 27(1).

29 Consultative committee

S. 29
substituted by
No. 5/2002
s. 10.

- (1) If the Minister makes a declaration under section 27(1), the Minister must appoint a consultative committee to prepare a draft management plan for the area that is the subject of the declaration.
- (2) The following provisions apply with respect to the membership of a consultative committee appointed under this section—

- (a) the Minister must make sure that, so far as is possible—
 - (i) all relevant interests are fairly represented on the committee;
 - (ii) the membership consists of persons who have knowledge or experience in the matters to be covered in the management plan;
 - (b) at least one half of the membership must consist of persons who are owners or occupiers of land in the area concerned appointed after consultation by the Minister with bodies representative of those persons;
 - (c) any public statutory body which the Minister considers to be directly affected by the declaration must, after consultation by the Minister with it, be represented on the committee.
- (3) Unless the area that is the subject of the declaration is wholly within an urban area, the persons referred to in subsection (2)(b) must be farmers who own or occupy farming land in the area, appointed by the Minister after consultation with the Victorian Farmers Federation.
- (4) Section 318(2) to (6) applies to a consultative committee appointed under this section.

S. 30
substituted by
No. 5/2002
s. 10.

30 Guidelines for preparation of draft management plans

- (1) The Minister may prepare guidelines for the preparation of a draft management plan for an area that is the subject of a declaration under section 27(1).
- (2) The Minister may from time to time amend or revoke any guidelines prepared under subsection (1).

(3) The Minister, as soon as practicable after preparing, amending or revoking guidelines under this section must give the relevant consultative committee—

- (a) a copy of the guidelines or the amendment;
or
- (b) notice of the revocation of the guidelines.

31 Preparation of draft management plan

S. 31
substituted by
No. 5/2002
s. 10.

(1) A consultative committee appointed under section 29 must, within 18 months after its appointment—

- (a) prepare a draft management plan in accordance with any guidelines prepared by the Minister under section 30; and
- (b) make the draft management plan available for comment by interested persons.

(1A) The consultative committee must consider any comments made by interested persons and make any appropriate changes to the draft management plan.

S. 31(1A)
inserted by
No. 48/2005
s. 13.

(1B) On completion of the draft management plan, the consultative committee must refer it to the Minister for consideration.

S. 31(1B)
inserted by
No. 48/2005
s. 13.

(2) If the consultative committee does not prepare a draft management plan within the period referred to in subsection (1), the Minister may—

- (a) from time to time extend the time within which the draft management plan may be prepared and made available for comment by interested persons; or
- (b) prepare the draft management plan.

s. 32

- (3) If, under subsection (2), the Minister prepares the draft management plan, the Minister must make that plan available for comment by interested persons.

S. 32
substituted by
No. 5/2002
s. 10.

32 Overlapping management plans to be taken into account

In preparing a draft management plan for an area declared to be a water supply protection area, the consultative committee must take into account any other draft or approved management plan that applies to the area or part of the area under this Division.

S. 32A
inserted by
No. 5/2002
s. 10.

32A Management plan

- (1) The object of a management plan is to make sure that the water resources of the relevant water supply protection area are managed in an equitable manner and so as to ensure the long-term sustainability of those resources.
- (2) A management plan may relate to groundwater resources, surface water resources or both in the relevant water supply protection area.
- (3) A management plan may prescribe for the relevant water supply protection area or any part of that area—
- (a) requirements for metering, monitoring and accounting for groundwater or surface water or both; or
 - (b) requirements to notify the Authority that has the duty of administering and enforcing the plan of the taking of groundwater from any specified bore or group of bores under a right conferred by section 8(1); or

- | | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | S. 32A(3)(e)
repealed by
No. 48/2005
s. 14(1)(a). |
| <p>(f) restrictions to be imposed on the taking of groundwater from any specified bore, group of bores or aquifer, if necessary—</p> <p style="padding-left: 40px;">(i) to prevent the level of groundwater declining below a specified level or specified average level; or</p> <p style="padding-left: 40px;">(ii) to prevent a relevant permissible consumptive volume being exceeded; or</p> <p style="padding-left: 40px;">(iii) to ensure that the environmental water reserve is maintained in accordance with the environmental water reserve objective; or</p> | | | | | <p>S. 32A(3)(f) amended by No. 99/2005 s. 13(1)(a)(i).</p> <p>S. 32A(3)(f)(i) substituted by No. 48/2005 s. 14(1)(b), amended by No. 99/2005 s. 13(1)(a)(ii).</p> <p>S. 32A(3)(f)(ii) substituted by No. 99/2005 s. 13(1)(a)(iii).</p> <p>S. 32A(3)(f)(iii) inserted by No. 99/2005 s. 13(1)(a)(iii).</p> |
| <p>(g) restrictions to be imposed on the taking of surface water at any location specified in the area, if necessary to ensure that—</p> <p style="padding-left: 40px;">(i) specified flows at any particular time or for any particular circumstances are maintained; or</p> <p style="padding-left: 40px;">(ii) the permissible consumptive volume for the area is not exceeded; or</p> | | | | | <p>S. 32A(3)(g)(ii) amended by No. 99/2005 s. 13(1)(b)(i).</p> |

s. 32A

S. 32A(3)(g)(iii)
inserted by
No. 99/2005
s. 13(1)(b)(iii).

(iii) the environmental water reserve is maintained in accordance with the environmental water reserve objective; or

(h) restrictions to be imposed on the supply of groundwater by an Authority that takes groundwater from a source in the area or part; or

(i) conditions relating to the protection of the environment, including the riverine and riparian environment; or

S. 32A(3)(ia)
inserted by
No. 99/2005
s. 13(1)(c).

(ia) conditions relating to the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(j) conditions relating to payment for the amount of groundwater taken and used from any specified bore or group of bores under a right conferred by section 8(1); or

(k) conditions to which licences issued under section 51 are to be subject; or

(l) without derogating from rights to water for domestic and stock use conferred by section 8, conditions to which licences issued under section 67 are to be subject; or

(m) conditions to which licences issued under section 51 to take and use groundwater or surface water, and transferred under section 62, are to be subject, including a condition relating to the maximum volume of water which may be taken and used under the transferred licence; or

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- (n) the maximum volume of water that may be retained—
- (i) in each private dam on a particular lot in a plan of subdivision in the area concerned; or
 - (ii) in all private dams on every lot in a plan of subdivision in the area concerned; or
- (o) any matter relevant to the object of the management plan or its implementation.
- (4) A draft management plan may make a recommendation to the Minister as to the total volume of water that should be declared to be the permissible consumptive volume for the area concerned.
- (5) A draft management plan must name the Authority which is to have the duty of administering and enforcing the plan if it is approved.
- (6) The Minister may—
- (a) approve a draft management plan; or
 - (ab) approve a draft management plan with any amendments the Minister considers appropriate; or
 - (b) refuse to approve a draft management plan.
- (7) The Minister must cause—
- (a) notice of the approval or refusal (as the case requires) of a draft management plan to be published and given in accordance with section 27(4)(a); and
 - (b) if the draft management plan is refused, the reasons for the refusal to be published with that notice.
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S. 32A(4)
amended by
No. 99/2005
s. 13(2).

S. 32A(6)(ab)
inserted by
No. 48/2005
s. 14(2).

s. 32A

S. 32A(7A)
inserted by
No. 48/2005
s. 14(3).

(7A) If a draft management plan is refused, the Minister may—

- (a) appoint a consultative committee under section 29 to prepare a new draft management plan for the relevant water supply protection area; or
- (b) prepare a new draft management plan; or
- (c) abolish the water supply protection area under section 28; or
- (d) take any other action that the Minister considers appropriate in the circumstances.

S. 32A(7B)
inserted by
No. 48/2005
s. 14(3).

(7B) This Division applies to the preparation and approval of a new draft management plan referred to in subsection (7A)(a) or (b) in the same way as it applies to a draft management plan.

(8) The Minister must cause an approved management plan to be laid before each House of Parliament within 5 sitting days of that House after it is approved under subsection (6).

(9) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an approved management plan as if the approved management plan were a statutory rule within the meaning of that Act.

(10) An approved management plan may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

S. 32A(10A)
inserted by
No. 48/2005
s. 14(4).

(10A) An approved management plan is not invalid merely because of a defect or irregularity in, or in connection with the approval of the plan.

- (11) An approved management plan is binding on every person (including every public statutory body) except to the extent that the Minister otherwise specifies by notice published in the Government Gazette.
- (12) On the approval of a draft management plan that prescribes a requirement, restriction or condition to which a licence issued under section 51 or 67 is to be subject, every licence issued under section 51 or 67, whether issued before or after the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, is deemed to be subject to that requirement, restriction or condition, despite anything to the contrary specified in the licence or any condition that is prescribed or fixed or imposed by the Minister under section 56 or 71 (as the case requires) in relation to the licence.
- (13) A person must not contravene an approved management plan.

Penalty: 20 penalty units.

32B Administration and enforcement of management plan

S. 32B
inserted by
No. 5/2002
s. 10.

- (1) The Authority that has the duty of administering and enforcing an approved management plan may—
 - (a) direct that any specified works be carried out or any specified equipment be installed; or
 - (b) order the removal of any specified works (other than a private dam) or the discontinuance of any specified action—

if, in the opinion of the Authority, it is necessary to do so in order to secure compliance with the plan.

- (2) A person whose interests are affected by a decision of an Authority under subsection (1) to give a direction or make an order may apply to the Tribunal for review of the decision.
- (3) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (4) A person must not contravene a direction given or order made by an Authority under subsection (1).

Penalty: 20 penalty units.

S. 32C
inserted by
No. 5/2002
s. 10.

32C Report on administration and enforcement of management plan

- (1) The Authority that has the duty of administering and enforcing an approved management plan must prepare a report in respect of its activities in carrying out its duties in relation to the plan—
 - (a) for the period commencing on the day the management plan is approved and ending on 30 June next following; and
 - (b) from then on, for each year ending on 30 June or for such other period of time requested by the Authority and approved by the Minister.

- (2) The Authority must, on or before 30 September in each year, give a copy of the report to—
- (a) the Minister; and
 - (b) every Catchment Management Authority whose catchment and land protection region is wholly or partly in the area; and
 - (c) Melbourne Water Corporation, if the area is wholly or partly in the waterway management district of Melbourne Water Corporation.

S. 32C(2)(b)
amended by
No. 85/2006
s. 6(a).

S. 32C(2)(c)
inserted by
No. 85/2006
s. 6(b).

32D Public availability of report

S. 32D
inserted by
No. 5/2002
s. 10.

An Authority that has prepared a report in accordance with section 32C must, as soon as practicable after giving a copy of the report to the Minister—

- (a) make a copy of the report available for inspection, during business hours, free of charge at the offices of the Authority; and
- (b) publish a notice of that availability in a newspaper circulating generally in the area to which the approved management plan applies.

32E Certain plans deemed to be approved management plans

S. 32E
inserted by
No. 5/2002
s. 10.

- (1) Despite anything to the contrary in this Division but subject to this section, the Minister may approve a plan for the management of surface water resources that has been prepared or partly prepared by or for the department for a particular area before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**.

s. 32F

- (2) Before approving a plan as a management plan under subsection (1), the Minister may—
 - (a) review or revise the plan; or
 - (b) appoint an advisory committee to assist in developing or completing the plan.
- (3) An advisory committee is to consist of such persons as the Minister thinks fit.
- (4) The Minister must not approve the plan unless the Minister is satisfied that the plan complies with section 32A(1) to (5).
- (5) On the approval by the Minister of a plan under subsection (1)—
 - (a) the particular area to which the plan relates is deemed to be a water supply protection area for the protection of surface water resources; and
 - (b) the plan is deemed to be an approved management plan for the surface water resources of the relevant water supply protection area and may be amended or revoked in accordance with this Division.

S. 32F
inserted by
No. 5/2002
s. 10.

32F Compensation in certain circumstances

- (1) The owner and occupier of any works is entitled to be paid, by the person specified by the consultative committee that prepared the plan, or specified by the Minister in a plan referred to in section 32E, compensation for any loss suffered or expenses sustained as a result of—
 - (a) being directed under section 32B(1)(a) to carry out works or install equipment; or
 - (b) being ordered under section 32B(1)(b) to remove works.

- (2) If as a result of the enforcement of an approved management plan a benefit is conferred on one person and a detriment is suffered by another person, the second-mentioned person is entitled to be paid by the first-mentioned person compensation for the detriment suffered.
- (3) The amount of compensation payable under subsection (1) or (2) is as agreed by the parties or, in the absence of agreement, as determined by the Authority that has the duty of administering and enforcing the plan, and that amount may be enforced as a debt in a court of competent jurisdiction.
- (4) A person whose interests are affected by a decision—
 - (a) of an Authority under subsection (3) as to the amount of compensation payable; or
 - (b) of a consultative committee or the Minister under subsection (1)—
 - (i) that a specified person must pay compensation; or
 - (ii) that no compensation is payable—may apply to the Tribunal for review of the decision.
- (5) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 32F(4)
substituted by
No. 48/2003
s. 12(1).

s. 32G

S. 32G
inserted by
No. 5/2002
s. 10.

32G Amendment or revocation of approved management plan

- (1) The Minister may amend or revoke an approved management plan.
- (2) The Minister may only amend or revoke an approved management plan if—
 - (a) the Minister has caused notice of the proposed amendment or revocation to be published and given in accordance with section 27(4)(a); and
 - (b) the Minister has considered any submissions made on the proposed amendment or revocation within 60 days after the publication or giving of notice of it in accordance with section 27(4)(a)(i) or (ii), whichever is the later; and
 - (c) in the case of a proposed amendment of the plan, the Minister has appointed a consultative committee to advise on the amendment.
- (3) Sections 29 and 31 apply in the case of a proposed amendment to an approved management plan with any necessary modifications, and as if in those sections—
 - (a) a reference to a consultative committee appointed for the preparation of a draft management plan were a reference to a consultative committee appointed under this section for the amendment of the plan; and
 - (b) a reference to a draft management plan were a reference to the proposed amendment of the plan.

S. 32G(2)(c)
amended by
No. 85/2006
s. 7.

32H Plan must be available for inspection

S. 32H
inserted by
No. 5/2002
s. 10.

The following must keep a copy of an approved management plan (as amended from time to time) available at their offices for any person to inspect during office hours free of charge—

- (a) any Authority exercising a function under this Act in the area concerned;
- (b) any council in whose municipal district the area concerned is wholly or partly situated;
- (c) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.

Division 4—Minister's powers to qualify rights

Pt 3 Div. 4
(Heading and
s. 33)
substituted as
Pt 3 Div. 4
(Heading and
ss 33–33AAC)
by
No. 99/2005
s. 14.

33 Definitions

S. 33
substituted by
No. 99/2005
s. 14.

In this Division—

qualify includes suspend, reduce, increase and otherwise alter;

right to water means—

- (a) any right to water conferred by any provision of Division 1 of Part 2 other than section 7(1) or 8(4)(c); and
- (b) any environmental entitlement; and
- (c) any bulk entitlement; and
- (d) in relation to any non-declared water system, any licence issued under section 51; and

s. 33AAA

- (e) in relation to any declared water system, any water share issued in relation to the system.

S. 33AAA
inserted by
No. 99/2005
s. 14.

33AAA Temporary qualification of rights to water

- (1) If the Minister declares under this section that a water shortage exists in an area or water system, he or she may temporarily qualify any rights to water whether or not they relate to the same area or water system.
- (2) The Minister may declare that a water shortage exists in an area or water system if he or she is of the opinion that the volume or quality of water available in the area or system to satisfy any rights to water (whether or not they relate to that area or water system) is or will shortly be inadequate for any reason.
- (3) Before making a qualification to rights to water under subsection (1) the Minister must notify the Minister responsible for administering the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**.

S. 33AAB
inserted by
No. 99/2005
s. 14.

33AAB Permanent qualification of rights to water

- (1) Subject to subsection (2), following the endorsement of a review under section 22T(1)(c) or (d), the Minister may permanently qualify any rights to water having regard to—
 - (a) the review as endorsed by the Minister; and
 - (b) any relevant report of a panel under section 22S; and
 - (c) any relevant social, economic and environmental matters.
- (2) A permanent qualification of rights to water under subsection (1) must not take effect in relation to an area or water system—

- (a) within 15 years of the commencement of section 14 of the **Water (Resource Management) Act 2005**; or
- (b) if such a permanent qualification has taken effect in relation to that area or water system within the preceding 15 years.

33AAC Procedures applying to qualifications

S. 33AAC
inserted by
No. 99/2005
s. 14.

- (1) A qualification of rights to water under this Division must be done by—
 - (a) giving notice of the qualification to the person affected; or
 - (b) causing notice of it to be published in a newspaper generally circulating—
 - (i) in the area to which the qualified rights to water relate; or
 - (ii) in the area served by the water system to which the qualified rights to water relate.
- (2) A notice given or published under subsection (1) may specify the criteria according to which the Minister determined the qualification.
- (3) For the purposes of a qualification under section 33AAA, the Minister may, by Order published in the Government Gazette—
 - (a) determine the class of any rights to water; and
 - (b) assign a priority to each of those classes—and any qualification under that section of rights to water must be made in accordance with the priority of the class of right concerned.
- (4) Subject to subsection (3), any qualification under section 33AAA of rights to water must apply to all rights in the same proportion, unless the Minister

is of the opinion that the circumstances are so extreme as to justify some other basis.

**S. 33AAD
inserted by
No. 32/2010
s. 6.**

33AAD Conditions on certain qualifications

- (1) If a bulk entitlement has been qualified under this Division, the Minister may impose conditions or duties as to one or more of the following matters on the holder of the bulk entitlement—
 - (a) monitoring the impacts of the qualification and advising the Minister of the outcomes of the monitoring;
 - (b) requiring any program of works or actions to be carried out by the holder of the bulk entitlement for the purpose of mitigating any adverse effect or the risk of any adverse effect—
 - (i) on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or
 - (ii) on the holder of any other entitlement, licence or right under this Act;
 - (c) requiring payments to be made to other Authorities for the purposes specified in the notice of qualification under section 33AAC, including conditions as to—
 - (i) if any program of works is carried out by another Authority for a purpose specified in paragraph (b), payments that are to be made to reimburse the cost of the carrying out of the program; and
 - (ii) the manner in which any payments are to be made;
 - (d) operating arrangements that are required as a result of the qualification.

- (2) A condition or duty imposed on the holder of a bulk entitlement under subsection (1) must be set out in the notice of the qualification under section 33AAC.

Division 5—State observation bores

Pt 3 Div. 5
(Heading and
ss 33A–33D)
inserted by
No. 5/2002
s. 11.

33A Power to enter land

S. 33A
inserted by
No. 5/2002
s. 11.

- (1) The Minister, or a person authorised in writing by the Minister for the purpose, may enter, in accordance with subsection (2), any land on which a State observation bore is located for the purpose of—
- (a) carrying out observations (including taking water samples); or
 - (b) operating, maintaining, altering or decommissioning the bore.
- (2) The power of entry under subsection (1) may be exercised—
- (a) in the case of Crown land, at any time; or
 - (b) in the case of land other than Crown land, between 7 a.m. and 7 p.m. or, during an emergency, at any time.

33B Compensation

S. 33B
inserted by
No. 5/2002
s. 11.

- (1) The Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A, must cause as little damage and inconvenience as possible in the performance of his or her functions under this Division.

s. 33C

- (2) The Minister is liable to compensate any person who has—
- (a) sustained any pecuniary loss; or
 - (b) incurred any expense—
- as a direct, natural and reasonable consequence of the performance of a function under this Division by the Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A.
- (3) The Minister is not liable to compensate a person for consequential loss.
- (4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.

S. 33C
inserted by
No. 5/2002
s. 11.

33C Right to take water for domestic and stock use from a State observation bore

A person may only exercise the right conferred by section 8(1)(d) in relation to a State observation bore if the person first obtains the written permission of the Minister.

S. 33D
inserted by
No. 5/2002
s. 11.

33D Offence to interfere etc. with State observation bore

- (1) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any State observation bore.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

-
- (2) A person who is guilty of an offence under subsection (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.
-

Pt 3A
(Heading and
ss 33E–33AZ)
inserted by
No. 99/2005
s. 41.

PART 3A—WATER SHARES

Division 1—Offence as to taking of water

S. 33E
inserted by
No. 99/2005
s. 41.

33E Offence to take water without authorisation

- (1) A person must not take water from—
- (a) a waterway (including the River Murray); or
 - (b) an aquifer; or
 - (c) a spring or soak; or
 - (d) a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore)—

in a declared water system unless that person is authorised to do so under a water share.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months;

For a second or subsequent offence,
120 penalty units or imprisonment for
12 months.

- (2) Subsection (1) does not apply to—
- (a) water taken from a spring, soak or dam for domestic and stock use; or
 - (b) water taken under any other authorisation to do so by or under this or any other Act.

Division 2—Issuing and nature of water share

33F Issuing and nature of water shares

S. 33F
inserted by
No. 99/2005
s. 41.

- (1) The Minister may issue a water share in respect of a declared water system.

S. 33F(1)
amended by
No. 54/2009
s. 14.

- (2) Subject to this Act, a water share authorises the taking of water under the water allocation for the share during the water season for which the water allocation is allocated.

S. 33F(2)
amended by
No. 32/2010
s. 7(1).

Note

The operation of some provisions of this Act affects the taking or use of water under a water share. Section 33AD is an example of such a provision.

Note to
s. 33F(2)
inserted by
No. 32/2010
s. 7(2).

- (3) The authority to take water under a water share is subject to any other provisions of this Act or any regulations or instruments made under this Act or a licence or permit issued under this Act regulating the following—
- (a) the place at which water can be taken;
 - (b) the times or rate at which water can be taken.
- (4) The Minister may issue a share under this section—
- (a) on receiving an application for a share under section 33L; or
 - (b) under a contract for the sale of the share entered into in accordance with section 33P; or
 - (c) on receiving an application under section 33M, in the case of the holder of a right in another State or a Territory that is equivalent to that of ownership of a water share.

s. 33G

S. 33G
inserted by
No. 99/2005
s. 41.

33G Matters the Minister must determine in issuing a water share

On issuing a water share the Minister must determine—

- (a) the water system for which the share is issued, and, if that water system is divided into zones, the zone for which the water share is issued; and
- (b) the share of water available from the water system under the water share, which must be expressed as a maximum volume of water over a period defined by the Minister; and
- (c) the class of reliability of the share; and
- (d) any other prescribed matter.

S. 33H
inserted by
No. 99/2005
s. 41.

33H Matters Minister must specify in issuing water share

On issuing a water share the Minister must specify—

- (a) in the case of a water share issued under this Part to more than one person, whether the share is to be held by those persons—
 - (i) as joint tenants; or
 - (ii) as tenants in common;
- (b) whether or not the water share is an associated water share, and if the water share is an associated water share—
 - (i) the land specified in a water-use licence or water-use registration with which it is associated; and
 - (ii) the water-use licence or water-use registration in which the land is so specified;

- (c) the Authority (if any) that is responsible for providing services in respect of the water share.

33I Circumstances in which Minister must not issue a share

S. 33I
inserted by
No. 99/2005
s. 41.

* * * * *

S. 33I(1)
repealed by
No. 54/2009
s. 5.

- (2) The Minister must not issue a share under this Division if the Minister is of the opinion that—

- (a) the issue of the share would be in conflict with any approved management plan for a water supply protection area under Division 3 of Part 3; or
- (b) the issue of the share may result in the permissible consumptive volume for the proposed associated water system being exceeded; or
- (c) the issue of the share would be in conflict with any relevant bulk entitlement.

33J Matters to be considered in issuing certain water shares

S. 33J
inserted by
No. 99/2005
s. 41.

- (1) The Minister, in issuing a water share and in making a determination under section 33G(b) or (c) in respect of a water share, where the associated water system for that water share is subject to a bulk entitlement or is a water system in respect of which a permissible consumptive volume has been declared, must consider—
- (a) whether the issue of the share would be consistent with the bulk entitlement or with the permissible consumptive volume for the water system (as the case requires); and

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- (b) the effect that the issue is likely to have on—
- (i) other water shares for which the water system is the associated water system; and
 - (ii) any environmental entitlement to which the associated water system is subject; and
 - (iii) the needs of other potential applicants.
- (2) The Minister, in issuing a water share and in making a determination under section 33G(b) or (c) in respect of a water share to which subsection (1) does not apply, must consider—
- (a) the existing and projected availability of water in the associated water system for the water share; and
 - (b) the existing and projected quality of water in the associated water system; and
 - (c) any adverse effect that the allocation or use of water under the water share is likely to have on—
 - (i) existing authorised uses of water provided from the associated water system; and
 - (ii) any waterway or aquifer; and
 - (d) any water in the associated water system in respect of which the applicant is already the owner of a water share; and
 - (e) the need to protect the environment, including the riverine and riparian environment; and
 - (f) the conservation policy of the government; and
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- (g) any adverse effect the issue of the share or the determination (as the case requires) is likely to have on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; and
 - (h) government policies concerning the preferred allocation or use of water resources; and
 - (i) the needs of other potential applicants; and
 - (j) so far as is available to the Minister—
 - (i) any relevant report or statement prepared under any Act; and
 - (ii) the findings of or any evidence given or submissions made to any relevant investigation or inquiry held under any Act or held by any Committee of the Cabinet, government department or public statutory body, whether or not under an Act; and
 - (k) any other matter that the Minister thinks fit to have regard to.
- (3) This section does not apply to the issue of a water share under an application under section 33M.

33K Matters to be considered in issuing water shares on interstate applications

S. 33K
inserted by
No. 99/2005
s. 41.

The Minister, in issuing a water share on an application under section 33M must consider—

- (a) any relevant rules made under Division 13; and
- (b) the provisions of any agreement under Division 8; and
- (c) the effect of the issue of the share on usage of water; and

s. 33L

- (d) the impact of subsidies; and
- (e) any other matter that the Minister considers relevant.

Division 3—Application for or sale of water shares

S. 33L
inserted by
No. 99/2005
s. 41.

33L Application for water share

- (1) A person may apply to the Minister for the issue of a water share.
- (2) An application under subsection (1)—
 - (a) must specify the proposed associated water system for the share; and
 - (b) in the case of an application by more than one person, must specify whether the share is to be held by the applicants—
 - (i) as joint tenants; or
 - (ii) as tenants in common.

S. 33M
inserted by
No. 99/2005
s. 41.

33M Applications for water shares by holders of interstate right

A person who is the holder of a right in another State or a Territory that is equivalent to that of ownership of a water share, may apply to the Minister, in accordance with the agreement entered into under Division 8, for a water share to be issued under this Part on the cancellation of the equivalent right in the other State or Territory.

S. 33N
inserted by
No. 99/2005
s. 41.

33N Minister to defer application where area is proposed to be a water supply protection area

- (1) The Minister must defer consideration of an application for the issue of a water share under section 33L or under section 33M if a notice has been published under section 27(4)(a)(i) that relates to either or both of the following—

- (a) the protection of groundwater resources that are specified as a water system in the application;
 - (b) the protection of surface water resources that are specified as a water system in the application.
- (2) Deferral of an application under subsection (1) has effect until either of the following occurs—
 - (a) an Order is made under section 27(1); or
 - (b) a notice is published under section 27(10).
- (3) If—
 - (a) an Order is made under section 27(1); and
 - (b) a management plan for the area that is the subject of the Order has not been approved under section 32A(6)—

the Minister must further defer consideration of an application deferred under subsection (1) in respect of the area until notice of the approval or refusal of a draft management plan has been published under section 32A(7).

33O Minister to advise applicant of decision

The Minister must advise an applicant for a water share of the Minister's decision on the application in writing.

S. 33O
inserted by
No. 99/2005
s. 41.

33P Sale of water shares by Minister

- (1) The Minister may enter into a contract for the sale of a water share either—
 - (a) on conducting an auction for the sale of water shares; or
 - (b) after inviting and considering tenders for the sale of water shares; or

S. 33P
inserted by
No. 99/2005
s. 41.

- (c) in any other manner that the Minister thinks fit.
- (2) The Minister must not enter into a contract for the sale of a water share unless he or she has first caused a notice to be published in the Government Gazette and in a newspaper circulating generally in the area of the proposed associated water system for the share—
 - (a) declaring that the water share is available to be purchased by any person who satisfies the requirements specified in the notice; and
 - (b) giving details of the method by which the water share is to be sold.

Division 4—Variation of water shares

S. 33Q
inserted by
No. 99/2005
s. 41.

33Q Power of Minister to vary water shares

- (1) The Minister, on receiving an application under this Division to do so may vary his or her determination under section 33G as to a water share by—
 - (a) determining that the water share is to be converted to a water share with a different associated water system, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or
 - (b) determining that the water share is to be converted to a water share for another zone in the associated water system, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or

- (c) determining that the water share is to be converted to a water share with a different class of reliability, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or
 - (d) varying any determination of a matter prescribed under section 33G(d).
- (2) In making a determination under subsection (1), the Minister must have regard to the relevant rules made under Division 13.

33R Applications for variation of water shares

The owner of a water share may apply to the Minister for a determination under this Division.

S. 33R
inserted by
No. 99/2005
s. 41.

Division 5—Dealings with water shares

33S Transfer of ownership of water share

S. 33S
inserted by
No. 99/2005
s. 41.

- (1) The owner of a water share may transfer ownership of that share to a person.
- (2) In the case of transfer of ownership of a water share owned by more than one person—
- (a) a person who is the owner of a portion of a water share as a tenant in common may transfer that person's portion of the undivided whole of the water share without the consent of the other tenants in common;
 - (b) in any other case, one of the owners of the water share must not transfer his or her ownership of the water share without the consent of each of the other owners of the water share.

S. 33S(1)
amended by
No. 32/2010
s. 8.

S. 33S(2)(b)
substituted by
No. 85/2006
s. 8.

s. 33T

- (3) A transfer of ownership of a water share under this section does not have the effect of assigning any water allocated under the water allocation for that share before the recording of the transfer.

S. 33T
inserted by
No. 99/2005
s. 41.

33T Limited term transfers

S. 33T(1)
amended by
No. 85/2006
s. 9(1).

- (1) The owner of a water share may transfer the whole of the right to future water allocations under that share for a limited, identified and consecutive period to the owner or occupier of land specified in a water-use licence or water-use registration or of land in another State or a Territory of the Commonwealth.

- (2) A transfer under this section must specify the period for which the right is being transferred, being a period of not more than 20 years.

S. 33T(3)
substituted by
No. 32/2010
s. 9.

- (3) A transfer under this section entitles the holder of the transfer to take water under future water allocations under the water share—

- (a) from the date on which the transfer is recorded in the water register; or
- (b) if a later date is specified in the transfer, that date.

- (4) A transfer under this section may have the effect, if so specified in the transfer, of enabling the taking of water under a water allocation from a water system that is not the associated water system for the water share.

S. 33T(5)
inserted by
No. 85/2006
s. 9(2).

- (5) The holder of a limited term transfer may surrender the limited term transfer.

33U Assignment of water allocation

S. 33U
inserted by
No. 99/2005
s. 41.

(1) The holder of a water share may assign the whole or a part of the water allocation available to that person under that share (at the time at which the assignment is made) to—

S. 33U(1)
amended by
No. 85/2006
s. 10(1).

(a) a person who is the holder of a bulk entitlement; or

S. 33U(1)(a)
inserted by
No. 85/2006
s. 10(1).

(b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or

S. 33U(1)(b)
inserted by
No. 85/2006
s. 10(1).

(c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or

S. 33U(1)(c)
inserted by
No. 85/2006
s. 10(1).

(d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or

S. 33U(1)(d)
inserted by
No. 85/2006
s. 10(1).

(e) the environment Minister on behalf of the Crown.

S. 33U(1)(e)
inserted by
No. 85/2006
s. 10(1),
amended by
No. 28/2007
s. 3(Sch.
item 75.1).

(1A) A person who, as a result of the operation of section 33S(3), has a water allocation available to that person, may assign the whole or a part of the water allocation to—

S. 33U(1A)
inserted by
No. 85/2006
s. 10(2).

(a) a person who is the holder of a bulk entitlement; or

s. 33U

- (b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
 - (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
 - (d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or
 - (e) the environment Minister on behalf of the Crown.
- (2) A tenant in common of a water share may not separately assign the water allocation available to that person under the share.
- (3) An assignment under this section entitles the holder of the assignment to take water under the water allocation under the water share from the date specified in the assignment.
- (4) An assignment under this section may have the effect, if so specified in the assignment, of enabling water to be taken under a water allocation from a water system that is not the associated water system for the water share.
- (5) In this section ***holder of a water share*** means—
- (a) in the case of a water share in respect of which there is no limited term transfer, the owner of the water share; or
 - (b) in the case of a water share in respect of which there is a limited term transfer, the holder of that transfer.

S. 33U(3)
amended by
Nos 85/2006
s. 10(3),
32/2010
s. 10(1).

S. 33U(4)
amended by
Nos 85/2006
s. 10(4),
32/2010
s. 10(2).

33V Further assignment of water allocation

S. 33V
inserted by
No. 99/2005
s. 41.

- (1) A person to whom the whole or a part of a water allocation has been assigned under section 33U(1) or under this section, may assign the whole or a part of the assigned water allocation to—
- (a) a person who is the holder of a bulk entitlement; or
 - (b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
 - (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
 - (d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or
 - (e) the environment Minister, on behalf of the Crown.
- (2) An assignment under this section may have the effect, if so specified in the assignment, of enabling the taking of water under a water allocation from a water system that is not the associated water system for the water share.

S. 33V(1)
amended by
No. 85/2006
s. 11(1).

S. 33V(1)(a)
inserted by
No. 85/2006
s. 11(1).

S. 33V(1)(b)
inserted by
No. 85/2006
s. 11(1).

S. 33V(1)(c)
inserted by
No. 85/2006
s. 11(1).

S. 33V(1)(d)
inserted by
No. 85/2006
s. 11(1).

S. 33V(1)(e)
inserted by
No. 85/2006
s. 11(1),
amended by
No. 28/2007
s. 3(Sch.
item 75.2).

s. 33W

S. 33V(3)
inserted by
No. 85/2006
s. 11(2),
amended by
No. 32/2010
s. 11.

- (3) An assignment under this section entitles the holder of the assignment to take water under the water allocation under the water share from the date specified in the assignment.

S. 33W
inserted by
No. 99/2005
s. 41.

33W Offence to give a transfer or assignment without Ministerial approval

- (1) A person must not—
- (a) transfer ownership of a water share under this Division; or
 - (b) give a limited term transfer under this Division; or
 - (c) give a water allocation assignment under this Division—

unless the Minister has approved the transfer or assignment (as the case requires).

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to a transfer of ownership of a water share on the death of a person by the legal personal representative of the person to the person entitled to inherit the water share from the deceased person.

S. 33X
inserted by
No. 99/2005
s. 41.

33X Ministerial approval

- (1) The Minister may, on application by a person, approve—
- (a) the transfer of ownership of a water share under this Division; or
 - (b) the giving of a limited term transfer under this Division; or
 - (c) the giving of a water allocation assignment under this Division.

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S. 33X(2)
repealed by
No. 54/2009
s. 6.

(3) The Minister must not—

S. 33X(3)
amended by
No. 85/2006
s. 12(1),
substituted by
No. 32/2010
s. 12.

(a) give an approval under subsection (1)(a)—

(i) if any fee under Division 9 that is payable in relation to the share is outstanding; or

(ii) for any other prescribed reason; or

(b) give an approval under subsection (1)(b) or (c) for any prescribed reason.

(4) In giving an approval under subsection (1), the Minister must have regard to any relevant rules made under Division 13.

(5) An approval under subsection (1)(a) or (b) remains in force—

S. 33X(5)
amended by
No. 85/2006
s. 12(2).

(a) for the prescribed period; or

(b) if no period has been prescribed under paragraph (a), for 2 months.

33Y Division of water shares

S. 33Y
inserted by
No. 99/2005
s. 41.

(1) The Minister may, on the application of the owner of a water share, divide the water share either—

(a) by cancelling the water share and by issuing new shares in respect of the volume of the water share; or

(b) by varying the water share so as to reduce the volume that is specified in the application, and issuing one or more new water shares in respect of the volume that is specified in the application.

s. 33Z

S. 33Y(2)
substituted by
No. 85/2006
s. 13.

- (2) In granting an application under subsection (1), the Minister must consider any relevant rules made under Division 13.
- (3) On the division of a water share under subsection (1), any mortgage that applied to the water share immediately before that division is, on and from the division, deemed to apply—
 - (a) in the case of the cancellation of the old share under subsection (1)(a), to each new share that is issued; or
 - (b) in the case of the variation of one share and the issue of one or more new shares under subsection (1)(b), to the share that is varied and to each new share that is issued.

S. 33Y(3)
substituted by
No. 85/2006
s. 13.

S. 33Y(4)
inserted by
No. 32/2010
s. 13.

- (4) On the division of a water share under subsection (1), any limited term transfer that applied to the water share immediately before that division is, on and from that division, deemed to apply—
 - (a) in the case of the cancellation of the old share under subsection (1)(a), to each new share that is issued; or
 - (b) in the case of the variation of one share and the issue of one or more new shares under subsection (1)(b), to the share that is varied and to each new share that is issued.

S. 33Z
inserted by
No. 99/2005
s. 41.

33Z Consolidation of water shares

- (1) The Minister may, on the application of an owner of two or more water shares, consolidate those water shares either—
 - (a) by cancelling the water shares and issuing one water share in respect of the maximum volumes of both shares; or
 - (b) by cancelling one or more of the water shares and adding the maximum volumes of the cancelled water shares to the maximum

volume of one or more of the other water shares.

- (2) The Minister must not consolidate water shares under subsection (1) unless—
- (a) the persons who own each of the shares are the same; and
 - (b) each of the shares is owned in the same proportions and the same manner.
- (3) In consolidating a water share under subsection (1), the Minister—
- (a) must not cancel a water share if there is a recorded mortgage or limited term transfer over the water share; and

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S. 33Z(3)(b)
repealed by
No. 85/2006
s. 14.

- (c) must not do so unless each of the shares specifies the same water system and the same class of reliability; and
 - (d) must consider any relevant rules made under Division 13.
- (4) On the consolidation of water shares under subsection (1), if the rules made under Division 13 so provide—
- (a) any recorded mortgage; or
 - (b) any limited term transfer—

over a water share to which maximum volume has been added is deemed to apply to the whole of the share (including that part to which the volume has been added).

s. 33AA

Division 6—Surrender and cancellation of water shares

S. 33AA
inserted by
No. 99/2005
s. 41.

33AA Surrender of water share

- (1) The owner of a water share may apply to the Minister to surrender the water share to the Crown.
- (2) On receiving an application under this section, the Minister may authorise the applicant to surrender the water share to the Crown.
- (3) The Minister may refund to a person who has surrendered a water share under this section, the whole or that part of a fee paid under Division 9 that relates to any period of time occurring after the surrender of the water share.

S. 33AB
inserted by
No. 99/2005
s. 41.

33AB Cancellation where interstate rights are obtained

- (1) A person who is or persons who are the owners of a water share may, in accordance with the agreement entered into under Division 8, apply to the Minister for the water share to be cancelled, on the issuing of the equivalent right in the other State or Territory.

S. 33AB(2)
repealed by
No. 54/2009
s. 7.

* * * * *

- (3) The Minister, in cancelling a water share under this section must consider—
 - (a) any relevant rules made under Division 13;
and
 - (b) the provisions of the agreement.

33ABA Cancellation where rights outside declared water system are obtained

S. 33ABA
inserted by
No. 85/2006
s. 15.

- (1) A person who is the owner of a water share may apply to the Minister for the water share to be cancelled on the issuing of a right in a non-declared water system.
- (2) The Minister, in cancelling a water share under this section must consider any relevant rules under Division 13.

Division 7—Water allocations

33AC Water allocations

S. 33AC
inserted by
No. 99/2005
s. 41.

- (1) In the case of a declared water system for which a seasonal determination has been made for a water season, the Minister must, from time to time during the water season, determine, for each water share for which that system is the associated system, amounts of water that are to be allocated to that share from the water determined to be available for allocation to water shares in the seasonal determination.
- (2) In the case of a declared water system for which an Authority has not been appointed under section 64GA to make seasonal determinations, the water allocation that may be taken in a water season for each water share for which that system is the associated water system, is to be the maximum volume determined by the Minister under section 33G(b) for that share.

S. 33AC(2)
amended by
No. 32/2010
s. 14.

33AD Declaration for taking of water allocation under water share in subsequent water season

S. 33AD
inserted by
No. 99/2005
s. 41,
substituted by
No. 32/2010
s. 15.

- (1) The Minister may make a declaration in respect of water shares, authorising the taking of water that is entitled to be taken under any water allocation for the water shares in a subsequent water season.

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- (2) A declaration under subsection (1) may apply to—
- (a) water shares in a water system or part of a water system; or
 - (b) a class or classes of water shares in a water system or part of a water system.
- (3) Any taking of water under a declaration under subsection (1) is subject to any terms and conditions specified by the Minister in the declaration.
- (4) The Minister must cause notice of the making of a declaration under subsection (1) to be published—
- (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the declaration applies.
- (5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

Division 8—Intrastate and interstate agreements and approvals

S. 33AE
inserted by
No. 99/2005
s. 41.

33AE Interstate agreement as to dealings in water rights

The Minister may enter into an agreement with a Minister of any other State or a Territory of the Commonwealth—

- (a) for the conversion of water shares or equivalent rights in one State or Territory into water shares or equivalent rights in another State or Territory; and
- (b) for the recognition of rights in one State or Territory in another State or Territory; and
- (c) for the assignment of water allocations from one State or Territory to another State or Territory.

33AF Offence to take interstate water without approval of Minister

S. 33AF
inserted by
No. 99/2005
s. 41.

A person must not take water from a declared water system in Victoria under a right in another State or a Territory of the Commonwealth that is an equivalent right to a water share unless that person has first obtained the approval of the Minister to do so under this Division.

Penalty: 60 penalty units.

33AG Approval of Minister to taking of interstate water

S. 33AG
inserted by
No. 99/2005
s. 41.

- (1) For the purposes of section 33AF the Minister, on application, may approve a taking of water from a declared water system by the applicant subject to any conditions that the Minister thinks fit.
- (2) In giving an approval under subsection (1) the Minister must consider—
 - (a) any relevant rules made under Division 13; and
 - (b) the provisions of any agreement under this Division; and
 - (c) the effect of the giving of the approval on the usage of water; and
 - (d) the impact of subsidies; and
 - (e) any other matter the Minister considers relevant.

s. 33AH

S. 33AH
inserted by
No. 99/2005
s. 41.

33AH Offence to take water under a water allocation outside the associated water system without approval of Minister

A person must not take water under a water allocation outside the associated water system for a water share under which that allocation is made unless that person has first obtained the approval of the Minister to do so under this Part.

Penalty: 60 penalty units.

S. 33AI
inserted by
No. 99/2005
s. 41.

33AI Approval of Minister to taking of water outside water system

- (1) For the purposes of section 33AH the Minister, on application, may approve a taking of water by the applicant subject to any conditions that the Minister thinks fit.
- (2) In giving an approval under subsection (1) the Minister must consider—
 - (a) any relevant rules made under Division 13; and
 - (b) the provisions of any agreement under this Division; and
 - (c) the effect of the giving of the approval on the usage of water; and
 - (d) the impact of subsidies; and
 - (e) any other matter the Minister considers relevant.

Division 9—Fees for provision of services to owners of water shares

33AJ Service provision fees

S. 33AJ
inserted by
No. 99/2005
s. 41.

- (1) Each Authority that provides services to the owners of water shares, that are services provided in relation to the water shares may make a determination for or with respect to fees to be paid by the owner of the water share for the provision of those services including but not limited to—
- (a) obligations as to the payment of any such fees; and
 - (b) the amount of any such fees.
- (2) The Authority may make a determination under subsection (1) at any time while any such water shares are in force.
- (3) An Authority that has made a determination under subsection (1) may do any of the following—
- (a) amend or revoke the determination;
 - (b) impose conditions on the determination (either as to the manner of payment of fees or any other matter).

S. 33AJ(1)
substituted by
No. 85/2006
s. 16.

33AK Fee to be a charge over water share

Where a person is liable to pay a fee determined by an Authority under this Division to the Authority in respect of a water share owned by that person, the amount due is a charge on the water share, (whether or not the Authority has agreed to defer the whole or a part of the payment of the amount) that ranks before any mortgage over the water share.

S. 33AK
inserted by
No. 99/2005
s. 41.

Division 10—Associated water shares

S. 33AL
inserted by
No. 99/2005
s. 41.

33AL Determination as to water share being an associated water share

- (1) The Minister may determine that a water share is associated with land that is specified in a water-use licence or a water-use registration.
- (2) The Minister may make a determination under subsection (1) on receiving an application under this Division.

S. 33AM
inserted by
No. 99/2005
s. 41.

33AM Matters to be considered in making of the determination as to associated water shares

- (1) The Minister must not make a determination under section 33AL unless the Minister is satisfied that—
 - (a) in the case of an application by a person who wholly owns or who will wholly own the share, the applicant is—
 - (i) the owner or occupier of land specified in a water-use licence or water-use registration; or
 - (ii) a related person to a person who is the owner or occupier of any such land; or
 - (b) in the case of an application by a person or persons who are or who will become joint tenants of the share, half or more of the tenants are persons who are—
 - (i) the owner or owners or occupier or occupiers of land specified in a water-use licence or water-use registration; or
 - (ii) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of any such land; or

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- (c) in the case of an application by a person or persons who are or who will become tenants in common of the share, half or more of the ownership of the share is by a person who is or persons who are—
- (i) the owner or owners or occupier or occupiers of land specified in a water-use licence or water-use registration; or
 - (ii) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of any such land.
- (2) The Minister must not make a determination under section 33AL unless—
- (a) the Minister is satisfied that the maximum volume of the share together with the maximum volumes of any other water shares that are associated with the land specified in the application is not more than twice the maximum volume of water that is allowed to be used under the water-use licence or water-use registration (as the case requires) on the land; and
 - (b) the application is consistent with any relevant rules made under Division 13.
- (3) The Minister must not determine that a water share is associated with land that is specified in a water-use licence or a water-use registration if there are no works or systems that are available or that are reasonably likely to be available to supply or deliver water to the land.
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s. 33AN

S. 33AN
inserted by
No. 99/2005
s. 41.

33AN Determination as to cessation as associated water share where no works etc. available

- (1) The Minister may revoke a determination under section 33AL, in relation to a water share, if the Minister is satisfied that there are no works or systems that are available or that are reasonably likely to be available to supply or deliver water to the land with which the share is associated.
- (2) The Minister may make a determination under subsection (1) either of his or her own motion or after receiving an application under this Division.
- (3) The Minister must not make a determination under subsection (1) of his or her own motion unless the Minister has first notified the owner of the water share of the proposal to make the determination.

S. 33AO
inserted by
No. 99/2005
s. 41.

33AO Revocation of associated water share determination by Minister

- (1) Where section 33AN does not apply, the Minister may revoke a determination under section 33AL, in relation to a water share, of his or her own motion if the Minister is satisfied that—
 - (a) in the case of a water share—
 - (i) that is wholly owned by one person the owner is not—
 - (A) the owner or occupier of the land with which the share is associated;
or
 - (B) a related person to a person who is the owner or occupier of the land with which the share is associated;
or

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- (ii) the owners of which are joint tenants, more than half of the tenants are not—
 - (A) the owner or owners or occupier or occupiers of the land with which the share is associated; or
 - (B) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of the land with which the share is associated; or
 - (iii) that is owned by persons who are tenants in common, more than half of the ownership of the share is by a person who is not or persons who are not—
 - (A) the owner or owners or occupier or occupiers of the land with which the share is associated; or
 - (B) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of the land with which the share is associated; or
 - (b) the land with which the water share is associated is no longer the subject of a water-use licence or water-use registration.
- (2) In any case except that of a transfer of ownership under section 33S, the Minister must not make a determination under subsection (1), unless the Minister has first notified the owner or owners of the water share of the proposal to make the determination.
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s. 33AP

S. 33AP
inserted by
No. 99/2005
s. 41.

33AP Revocation of associated water share determination on application

- (1) The Minister may, on application by a person under this Division, revoke a determination under section 33AL in relation to a water share.

S. 33AP(2)
repealed by
No. 54/2009
s. 8.

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S. 33AQ
inserted by
No. 99/2005
s. 41.

33AQ Applications for and notices of determinations under this Division

- (1) On making a determination under this Division the Minister must give notice in writing of the making of the determination to the owner of the water share.
- (2) A person may apply to the Minister for a determination under section 33AL if that person—
- (a) is an owner of the water share to which the application relates; or
 - (b) has applied under Division 2 for the issue of the water share to which the application relates; or
 - (c) is a person to whom ownership of the water share to which the application relates is being transferred under Division 5.

S. 33AQ(2A)
inserted by
No. 32/2010
s. 16.

- (2A) The owner of an associated water share may apply to the Minister for a determination under section 33AN.
- (3) The owner of an associated water share may apply to the Minister for a determination under section 33AP in respect of that share.

Water Act 1989
No. 80 of 1989
Part 3A—Water Shares

s. 33AS

*	*	*	*	*	Pt 3A Div. 11 (Heading) repealed by No. 54/2009 s. 9.
*	*	*	*	*	S. 33AR inserted by No. 99/2005 s. 41, amended by No. 85/2006 s. 17, repealed by No. 54/2009 s. 10.
33AS Obligations for water share owners on cessation of ownership or occupation of land					S. 33AS inserted by No. 99/2005 s. 41.
(1) A person who owns a water share that is an associated water share must notify the Minister of any cessation of ownership or occupation of the land that is associated with the water share.					
Penalty: 20 penalty units.					
*	*	*	*	*	S. 33AS(2) repealed by No. 54/2009 s. 11.
*	*	*	*	*	S. 33AS(3) amended by No. 85/2006 s. 18, repealed by No. 54/2009 s. 11.
*	*	*	*	*	S. 33AS(4) repealed by No. 54/2009 s. 11.
*	*	*	*	*	S. 33AT inserted by No. 99/2005 s. 41, repealed by No. 54/2009 s. 12.

s. 33AV

S. 33AU
inserted by
No. 99/2005
s. 41,
amended by
No. 85/2006
s. 19,
repealed by
No. 54/2009
s. 12.

* * * *

Division 12—Miscellaneous matters as to water shares

S. 33AV
(Heading)
substituted by
No. 32/2010
s. 17(1).
S. 33AV
inserted by
No. 99/2005
s. 41,
substituted by
No. 85/2006
s. 20.

33AV Effect of death of owner or holder of certain other interests

- (1) On the death of a person who is the sole owner of a water share, the share forms part of the estate of that person.
- (2) On the death of a person who owns a water share as a joint tenant with other persons, the remaining owners of the water share become the joint owners of the share.
- (3) On the death of a person who owns a water share as a tenant in common with other persons, that person's portion of the water share becomes part of the estate of that person.
- (4) On the death of a person who is the sole holder of a limited term transfer, the transfer forms part of the estate of that person.
- (5) On the death of a person who holds a limited term transfer as a joint tenant with other persons, the remaining holders of the limited term transfer become the joint holders of the transfer.
- (6) On the death of a person who holds a limited term transfer as a tenant in common with other persons, that person's portion of the limited term transfer becomes part of the estate of that person.

- (7) On the death of a person who holds a mortgage over a water share, the mortgage forms part of the estate of that person. S. 33AV(7)
inserted by
No. 32/2010
s. 17(2).
- (8) On the death of a person who holds a mortgage over a water share as a joint tenant with other persons, the remaining holders of the mortgage become the joint holders of the mortgage. S. 33AV(8)
inserted by
No. 32/2010
s. 17(2).
- (9) On the death of a person who holds a mortgage over a water share as tenant in common with other persons, that person's portion of the mortgage becomes part of the estate of that person. S. 33AV(9)
inserted by
No. 32/2010
s. 17(2).

33AW Applications under this Part

S. 33AW
inserted by
No. 99/2005
s. 41.

An application to the Minister under this Part—

- (a) must be in the form and made in the manner approved by the Minister; and
- (b) must be accompanied by the prescribed fee.

33AX Application for Tribunal to review certain decisions of Minister as to water shares

S. 33AX
inserted by
No. 99/2005
s. 41.

A person may apply to the Tribunal for a review of a decision of the Minister to—

- (a) refuse an application by the person for the issue of a water share; or
- (b) refuse an application by the person for the variation of a water share; or
- (c) make a determination under section 33G; or
- (d) refuse to approve the transfer of ownership of a water share under section 33X(1)(a); or
- (e) refuse to approve a limited term transfer of a water share under section 33X(1)(b); or
- (f) refuse to approve a water allocation assignment under section 33X(1)(c); or

S. 33AX(d)
amended by
No. 54/2009
s. 13.

s. 33AY

- (g) refuse an application by the person to divide a water share or to consolidate two or more water shares; or
- (h) refuse an application by the person for the cancellation of a water share under section 33AB; or
- (i) refuse an application under section 33AG or section 33AI.

S. 33AY
inserted by
No. 99/2005
s. 41.

33AY Time for making application

An application under section 33AX must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 13—Rule making powers of Minister

S. 33AZ
inserted by
No. 99/2005
s. 41.

33AZ Rule making powers for water shares

- (1) The Minister may, by Order, published in the Government Gazette, set out rules—
 - (a) with respect to adjustment of volumes to be applied to transfers, assignments and variations of water shares; and
 - (b) as to the circumstances in which the consent of any Authority under this Act will be required to transfers or assignments under this Part; and
 - (c) as to any matters relating to applications under this Part; and

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- (d) as to the circumstances in which the Minister will give or refuse to give approvals under this Part; and
 - (e) as to the circumstances in which water shares will be consolidated or divided under this Part; and
 - (f) as to the circumstances in which the Minister will make determinations under Division 10 of this Part; and
 - (g) as to any other matters the Minister is authorised to make rules for under this Part.
- (2) An Order under this section may be amended or revoked in the same manner as that in which it is made.
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PART 4—ALLOCATION OF WATER

Division 1—Bulk entitlements

34 Definition and disallowance

S. 34(1)
amended by
Nos 130/1993
s. 122(Sch. 4
item 17.2),
53/1994
s. 34(Sch. 1
items 11.2,
11.3),
110/1994
s. 41(Sch. 1
items 11.2,
11.3),
121/1994
s. 188(a)(b),
62/1995
s. 9(2),
69/2000
s. 65(2),
substituted by
No. 32/2010
s. 18(1).

- (1) In this Division *Authority* means—
- (a) any water corporation empowered to carry out any function under this Act in relation to water supply or irrigation; or
 - (b) a person holding—
 - (i) a water licence; or
 - (ii) a water and sewerage licence—
issued under Division 1 of Part 2 of the **Water Industry Act 1994**; or
 - (c) a generation company within the meaning of the **Electricity Industry Act 2000**; or
 - (d) the Minister administering the **Conservation, Forests and Lands Act 1987**.

S. 34(2)
amended by
Nos 62/1995
s. 7(a),
12/1996
s. 5(1),
32/2010
s. 18(2).

- (2) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an Order made under this Division by the Minister or Governor in Council as if the Order were a statutory rule within the meaning of that Act that had been laid before each House of Parliament on the day on which the Order, or a notice stating the place where copies of the Order can be obtained, was published in the Government Gazette.

S. 34(3)
amended by
No. 62/1995
s. 7(b).

- (3) An Order referred to in subsection (2) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

(4) Disallowance under subsection (3) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1994**.

S. 34(4)
amended by
No. 62/1995
s. 7(c).

(5) It is sufficient compliance with the requirements of sections 42(1)(c), 42(5)(b), 44(1), 47(4)(b), 47C(10)(b)(i) and (ii) and 64C(1)(b)(i) and (ii) for an Order to be published in the Government Gazette if a notice is published in the Government Gazette stating the place where copies of the Order can be obtained.

S. 34(5)
inserted by
No. 12/1996
s. 5(2).

34A Grant of bulk entitlement

The Minister may by Order published in the Government Gazette grant a bulk entitlement to water to an Authority, on approving an application under section 42(1)(c).

S. 34A
inserted by
No. 32/2010
s. 19.

34B Authorisation of entitlement

Subject to this Act, a bulk entitlement authorises the holder to take and use water in accordance with the terms of the entitlement.

S. 34B
inserted by
No. 32/2010
s. 19.

Note

The operation of some provisions of this Act affects the taking and use of water under a bulk entitlement. Section 47DA is an example of such a provision.

35 Applications for conversion of pre-existing entitlements

S. 35
(Heading)
inserted by
No. 32/2010
s. 20(1).

* * * * *

S. 35(1)
amended by
No. 62/1995
s. 6(3),
repealed by
No. 32/2010
s. 20(2).

S. 35(2)(aa)
inserted by
No. 50/1992
s. 6(2).

(2) An Authority that has an entitlement to take water—

- (aa) that was granted before the commencement of this Division by or under an Act that was repealed before that commencement and was continued by an Act that is repealed by this Act and is further continued by this Act; or
- (a) that was granted before the commencement of this Division by or under an Act that is repealed by this Act and is continued by this Act; or
- (b) that is granted by or under an Act that is not repealed by this Act—

may apply in accordance with section 47 to have that entitlement converted into an entitlement granted under this Division.

S. 35(3)
inserted by
No. 85/2006
s. 21.

(3) Melbourne Water Corporation may, in relation to any entitlement to take water that it has and that is continued by clause 14 of Schedule 16, apply in accordance with section 47 to have that entitlement converted to an entitlement under this Division.

36 Application for bulk entitlement

- (1) An Authority may apply to the Minister for the grant of a bulk entitlement to—
 - (a) water in a waterway (including the River Murray); or
 - (b) groundwater; or

(c) water, other than recycled water, in any works of another Authority; or

S. 36(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.3), 121/1994 s. 188(c), 62/1995 s. 10(a), 99/2005 s. 15(a).

* * * * *

S. 36(1)(d) inserted by No. 121/1994 s. 188(c), amended by No. 99/2005 s. 15(b), repealed by No. 85/2006 s. 22.

(e) water, other than recycled water, in any works of a person holding a water licence, a water and sewerage licence or a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**; or

S. 36(1)(e) inserted by No. 121/1994 s. 188(c), amended by Nos 62/1995 s. 10(b), 86/1995 s. 5, 99/2005 s. 15(c).

(f) any other water, other than recycled water, to which an Authority has access.

S. 36(1)(f) inserted by No. 62/1995 s. 10(b), amended by No. 99/2005 s. 15(d).

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

* * * * *

S. 36(2)(b) amended by No. 5/2002 s. 12, repealed by No. 32/2010 s. 21.

- (c) be accompanied by the prescribed application fee.
- (3) The Minister must forward a copy of an application to—
 - (a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and
 - (b) the Minister administering the **Planning and Environment Act 1987**; and
 - (c) any public statutory body which the Minister considers may be directly affected by the application.
- (4) For the purposes of this section, *waterway* includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 37
repealed by
No. 32/2010
s. 22.

* * * * *

38 Advertisement etc. of application

- (1) This section applies to an application—
 - (a) under section 36(1) for the grant of a bulk entitlement; or
 - (b) under section 44 for the amendment of a bulk entitlement; or

S. 38(1)(c)
repealed by
No. 50/2010
s. 9.

* * * * *

- (d) under section 47 for the conversion of an existing entitlement.

(2) The Minister may do either or both of the following—

S. 38(2)
amended by
Nos 62/1995
s. 18(a),
32/2010 s. 23.

(a) himself or herself give notice of an application to which this section applies in any manner that he or she thinks fit or require the applicant to do so in any manner specified by the Minister;

S. 38(2)(a)
amended by
Nos 62/1995
s. 18(b),
32/2010 s. 23.

(b) by notice served on the applicant require the applicant—

(i) to provide the further information specified in the notice within the period specified in the notice; or

(ii) to participate in an investigation specified in the notice designed to enable the Minister to assess the likely effects of granting the application and to bear all of the cost of that investigation or the part of that cost specified in the notice.

S. 38(2)(b)(ii)
amended by
No. 32/2010
s. 23.

(3) A notice given under paragraph (a) of subsection (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

39 Appointment of panel

(1) The Minister may appoint a panel of persons to consider submissions made on an application under section 36(1).

S. 39(1)
amended by
No. 32/2010
s. 24(1).

(2) Subject to anything specified by the Minister when appointing the panel, a panel may regulate its own proceedings.

S. 39(2)
amended by
No. 32/2010
s. 24(2).

s. 39

S. 39(4)
amended by
No. 32/2010
s. 24(3).

- (3) If submissions on the application have not been invited by a notice given under section 38(2)(a), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.
- (4) The Minister must make sure that any person that receives a copy of the application under section 36(3) is informed of—
 - (a) the appointment of a panel under subsection (1); and
 - (b) that person's right to make a submission on the application.

S. 39(5)
substituted by
No. 32/2010
s. 24(4).

- (5) In considering the matter before it, a panel must have regard to—
 - (a) all submissions referred to it that were made in accordance with a notice under section 38(1)(a) in the manner and within the period specified in the notice; and
 - (b) all submissions made to the panel in the manner and within the period specified by the panel; and
 - (c) any further information provided to the Minister under section 38(2)(b)(i); and
 - (d) the results of any investigation carried out by the Minister under section 38(2)(b)(ii).

S. 39(5A)
inserted by
No. 32/2010
s. 24(4).

- (5A) The panel must report its findings to the Minister within the period specified by the Minister.

S. 39(7)
amended by
No. 32/2010
s. 24(5).

- (6) The panel may include in its report any recommendations that it thinks fit.
- (7) A member of a panel is entitled to be paid any fees and allowances fixed by the Minister.

40 Matters to be taken into account

S. 40
amended by
No. 5/2002
s. 13(2) (ILA
s. 39B(1)).

- (1) In considering an application under section 36(1), the Minister must have regard to the following matters—

S. 40(1)
amended by
No. 32/2010
s. 25(1)(a).

- (a) the report of any panel appointed under section 39(1);
- (ab) all submissions received by the Minister that were made in accordance with a notice under section 38(2)(a) in the manner and within the period specified in the notice;
- (b) the existing and projected availability of water in the area;
- (ba) the permissible consumptive volume, if any, for the area;
- (c) the existing and projected quality of water in the area;
- (d) any adverse effect that the allocation or use of water under the entitlement is likely to have on—
 - (i) existing authorised uses of water; or
 - (ii) a waterway or an aquifer; or
 - (iii) the drainage regime within the meaning of section 12(1); or

S. 40(1)(ab)
inserted by
No. 32/2010
s. 25(1)(b).

S. 40(1)(ba)
inserted by
No. 5/2002
s. 13(1)(a),
amended by
No. 99/2005
s. 16(a).

S. 40(1)(d)(iii)
amended by
Nos 5/2002
s. 13(1)(b)(i),
99/2005
s. 16(b)(i).

Water Act 1989
No. 80 of 1989
Part 4—Allocation of Water

s. 40

S. 40(1)(d)(iv)
repealed by
No. 5/2002
s. 13(1)(b)(iii),
new
s. 40(1)(d)(iv)
inserted by
No. 99/2005
s. 16(b)(ii).

(iv) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

(e) any water to which the applicant is already entitled;

S. 40(1)(f)
repealed by
No. 32/2010
s. 25(1)(c).

* * * *

(g) the need to protect the environment, including the riverine and riparian environment;

S. 40(1)(h)
repealed by
No. 5/2002
s. 13(1)(c).

* * * *

(i) the conservation policy of the government;

(j) government policies concerning the preferred allocation or use of water resources;

S. 40(1)(ja)
inserted by
No. 36/1992
s. 21(1).

(ja) whether the proposed source of water is within a heritage river area or natural catchment area within the meaning of the **Heritage Rivers Act 1992** and whether there is any restriction on the use of the area under that Act¹¹;

(k) if appropriate, the proper management of the waterway and its surrounds or of the aquifer;

(l) the purposes for which the water is to be used;

(m) the needs of other potential applicants;

(n) so far as available to the Minister—

S. 40(1)(n)
amended by
No. 32/2010
s. 25(1)(d).

(i) any relevant report or statement
prepared under any Act; or

(ii) the findings of, or any evidence given
or submission made to, any relevant
investigation or inquiry held under any
Act or held by any Committee of the
Cabinet, government department or
public statutory body whether or not
under an Act;

(o) any other matter that the Minister thinks fit
to have regard to.

S. 40(1)(o)
amended by
No. 32/2010
s. 25(1)(d).

(2) In considering an application under section 36(1),
the Minister must give effect to an approved
management plan for any relevant water supply
protection area.

S. 40(2)
inserted by
No. 5/2002
s. 13(2),
amended by
No. 32/2010
s. 25(2).

41 Application to be deferred in certain circumstances

S. 41
amended by
No. 32/2010
s. 26.

If—

(a) a notice is published under section
27(4)(a)(i); and

S. 41(a)
amended by
No. 5/2002
s. 14(a).

(b) an application is subsequently made under
section 36(1) in respect of groundwater in an
area that is the subject of the proposed
declaration—

the Minister must defer consideration of the
application until either—

(c) an Order is made under section 27(1); or

s. 42

S. 41(d)
amended by
Nos 62/1995
s. 44(2),
5/2002
s. 14(b).

(d) a notice is published under section 27(10).

42 Determination of application

S. 42(1)
amended by
No. 32/2010
s. 27(1)(a).

(1) The Minister or may deal with an application under section 36(1) in any of the following ways—

(a) refuse it;

S. 42(1)(b)
repealed by
No. 32/2010
s. 27(1)(b).

* * * *

S. 42(1)(c)
amended by
No. 32/2010
s. 27(1)(c).

(c) approve it.

S. 42(2)
amended by
Nos 5/2002
s. 15, 32/2010
s. 27(2).

(2) The Minister must not approve an application under subsection (1)(c) unless he or she considers that the allocation of water under the entitlement is not likely to have any significant impact in terms of the matters required to be considered and given effect to under section 40.

S. 42(3)–(6)
repealed by
No. 32/2010
s. 27(3).

* * * *

43 Order granting entitlement

An Order granting an entitlement under this Division may specify in relation to the entitlement granted all or any of the following—

S. 43(a)
amended by
No. 62/1995
s. 12(a).

(a) a means of quantifying the amount of water, whether by volume or by reference to the level of flow at a specified point or by

reference to a share of flow or storage or by any other means or combination of means, and if the amount of water is quantified by reference to a share of storage, then by reference, for example, to—

- (i) the volumetric share of system capacity available to the Authority;
- (ii) the share of inflow to the storage available to the Authority;
- (iii) the volumetric share of releases from the storage available to the Authority;
- (iv) the seepage and evaporative loss adjustments to be debited to the Authority;
- (v) the share of inflow to be credited to the Authority when its share of storage capacity does not allow it to receive its full share of inflow;
- (b) if the amount of water is quantified by reference to a share of flow, then by reference, for example, to the share of flow past a specified point; S. 43(b)
amended by
No. 62/1995
s. 12(b).
- (ba) if the amount of water is part of the bulk entitlement of another Authority, the circumstances in which that other Authority may exercise powers under section 141; S. 43(ba)
inserted by
No. 62/1995
s. 19.
- * * * * * S. 43(bb)
inserted by
No. 62/1995
s. 19,
repealed by
No. 32/2010
s. 28(a).
- (c) the obligations of the storage manager, the resource manager and the environmental manager; S. 43(c)
amended by
Nos 86/1995
s. 6, 99/2005
s. 17(a),
85/2006 s. 23.

s. 43

S. 43(e)
amended by
Nos 50/1992
s. 6(3),
32/2010
s. 28(b).

- (d) whether and, if so, in what manner and to what extent the entitlement is transferable;
- (e) the financial obligations of the Authority (which may include the making of payments to another Authority);
- (f) water accounting procedures (which may include the granting of credits to the Authority in respect of water returned to the source);
- (g) a requirement that the Authority provide, install and maintain at its own expense metering equipment approved by the Minister;
- (h) a requirement that the Authority carry out at its own expense a metering program approved by the Minister for the purpose of providing the Minister with the type of information specified in the Order at the times and in the form and manner specified in the Order;
- (i) any other matter that the Minister thinks fit to specify, which may include conditions relating to—
 - (i) if appropriate, the protection of the waterway or aquifer;
 - (ii) the returning of water to the source;
 - (iii) the protection of the environment, including the riverine and riparian environment;
 - (iv) the implementation of the conservation policy of the Government;

S. 43(i)
amended by
No. 50/2010
s. 10.

S. 43(i)(iv)
amended by
No. 99/2005
s. 17(b)(i).

- (v) any other requirements as to the maintenance of the environmental water reserve in accordance with the environmental water reserve objective.

S. 43(i)(v)
inserted by
No. 99/2005
s. 17(b)(ii).

**43A Appointment of resource managers and
environmental managers**

S. 43A
(Heading)
inserted by
No. 99/2005
s. 18(1),
substituted by
No. 85/2006
s. 24(1).

S. 43A
inserted by
No. 86/1995
s. 7.

- (1) The Minister may, in respect of each bulk entitlement granted under this Division, appoint, by instrument, an Authority or any other persons as—

S. 43A(1)
amended by
32/2010
s. 77(Sch.).

* * * * *

S. 43A(1)(a)
repealed by
No. 85/2006
s. 24(2).

- (b) a resource manager; or

S. 43A(1)(b)
amended by
No. 99/2005
s. 18(2)(a).

- (c) an environmental manager—

S. 43A(1)(c)
inserted by
No. 99/2005
s. 18(2)(b).

on the terms and conditions specified in the instrument of appointment.

- (2) A person appointed under subsection (1) holds office for the term specified by the Minister.

44 Amendment of entitlement by Order

S. 44(1)
amended by
Nos 50/1992
s. 6(4),
62/1995
s. 14(a)–(c),
substituted by
No. 32/2010
s. 29(1).

- (1) The Minister may amend a bulk entitlement, or an entitlement to which section 35(2) applies by Order published in the Government Gazette.
- (2) An entitlement may only be amended under subsection (1) on the application of—
 - (a) the Authority holding the entitlement; or
 - (b) another Authority with the support of another Minister.
- (3) The provisions of this Division relating to the procedure to be followed with respect to an application for the grant of an entitlement apply, with any necessary modifications, with respect to an application for the amendment of an entitlement.
- (4) In this section *amend*, in relation to an entitlement to which this section applies, includes the consolidation of the entitlement with another such entitlement.

S. 44(4)
inserted by
No. 32/2010
s. 29(2).

44A Amendment of entitlement where water allocated to environmental entitlement

S. 44A
inserted by
No. 99/2005
s. 19.

- (1) A bulk entitlement granted to an Authority under this Division may be amended (by notice in writing given by the Minister to the holder of the entitlement) by removing from the entitlement any water that is set aside for the environment through the operation of a condition on the entitlement.
- (2) An entitlement must not be amended under subsection (1) unless the Minister is allocating to an environmental entitlement the water that is subject of the condition under the bulk entitlement.

44B Cancellation of bulk entitlement where water to be transferred to environmental entitlement

S. 44B
inserted by
No. 99/2005
s. 19.

- (1) On application by an Authority to which a bulk entitlement has been granted under this Division, the Minister may cancel the bulk entitlement and allocate an environmental entitlement under Division 1A, either—
 - (a) for an equivalent volume to that in the bulk entitlement; or
 - (b) on equivalent terms and conditions to those specified in the bulk entitlement.
- (2) An entitlement must not be cancelled under subsection (1) unless the Minister is allocating to an environmental entitlement the water that is subject of the bulk entitlement.
- (3) The cancellation of a bulk entitlement under subsection (1) has effect from the time at which notice in writing is given by the Minister to the holder of the entitlement.

45 Minor amendment of bulk entitlement by notice

S. 45
substituted by
No. 32/2010
s. 30.

- (1) The Minister may amend a bulk entitlement by notice given to the holder of the entitlement.
- (2) The Minister must not amend a bulk entitlement under subsection (1) unless—
 - (a) the Authority holding the entitlement has applied to the Minister for the amendment; or
 - (b) the Minister has consulted with the Authority holding the entitlement about the amendment before making the amendment.
- (3) In making an amendment under subsection (1), the Minister must be of the opinion that the amendment is necessary—

- (a) to correct a mistake in the description of any element of the entitlement; or
 - (b) to make a minor variation arising from practical operations (including any dealing in a right or entitlement under this Act); or
 - (c) to vary an obligation or impose a new obligation on a resource manager, storage manager or environmental manager; or
 - (d) to make any other amendment to the entitlement that does not impact on another person's entitlement to water and does not adversely affect the environmental water reserve.
- (4) An amendment to a bulk entitlement that is made by notice under subsection (1) does not have effect until notice of the making of the amendment has been published in the Government Gazette.

S. 46
amended by
Nos 62/1995
s. 13, 5/2002
s. 16, 99/2005
s. 20, 32/2010
s. 31,
substituted by
No. 50/2010
s. 11.

46 Assignment of water allocation

- (1) An Authority may, by instrument, assign the whole or a part of a water allocation available under a bulk entitlement held by the Authority under this Division (at the time at which the assignment is made) to—
- (a) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
 - (b) the holder of a licence under section 51; or
 - (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
 - (d) a person who represents the Crown in the right of another State or a Territory of the Commonwealth; or

- (e) a person who is the holder of an environmental entitlement; or
 - (f) a person who is the holder of a bulk entitlement.
- (2) The Authority must not assign a water allocation under subsection (1) unless the Authority has first obtained the approval of—
- (a) the Minister; and
 - (b) where the case so requires, any other Authority whose works will be used to deliver the water.
- (3) An assignment under this section entitles the holder of the assignment to take and, subject to any other requirements of this Act, use water under the water allocation under the bulk entitlement from the date specified in the assignment.

46A Further assignment of water allocation

- (1) A person to whom the whole or a part of a water allocation has been assigned under section 46, or under this section, may assign the whole of the assigned allocation to another person to whom section 46(1)(a), (b), (c), (d), (e) or (f) applies.
- (2) An assignment under this section entitles the holder of the assignment to take and use water under the water allocation under the bulk entitlement from the date specified in the assignment.

S. 46A
inserted by
No. 62/1995
s. 28,
amended by
Nos 86/1995
s. 8, 99/2005
ss 21, 42,
32/2010 s. 32,
substituted by
No. 50/2010
s. 11.

s. 46B

S. 46B
inserted by
No. 62/1995
s. 28,
amended by
Nos 5/2002
s. 17, 99/2005
s. 22, 32/2010
s. 33,
substituted by
No. 50/2010
s. 11.

46B Offence to give an assignment without Ministerial approval

- (1) A generation company, within the meaning of the **Electricity Industry Act 2000**, must not assign a water allocation under section 46 unless the Minister has approved the assignment.

Penalty: 60 penalty units.

- (2) A person to whom the whole or a part of a bulk entitlement has been assigned under section 46 or 46A, must not further assign the water allocation under section 46A unless the Minister has approved the assignment.

Penalty: 60 penalty units.

S. 46C
inserted by
No. 50/2010
s. 11.

46C Ministerial approval

- (1) The Minister may—
- (a) on a request from the Authority, approve the assigning of a water allocation for the purposes of section 46; or
 - (b) on an application by a person, approve the assigning of a water allocation for the purposes of section 46A.
- (2) The Minister, in deciding whether or not to approve an assignment under subsection (1), must have regard to—
- (a) any adverse effect that the assignment is likely to have on—
 - (i) other persons that take water from the same water system; and
 - (ii) on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

- (b) whether the assignment is in accordance with any relevant rules made by the Minister under section 47E;
 - (c) any other prescribed reason.
- (3) Any request or application to the Minister to which subsection (1) applies must—
- (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that is required by the Minister; and
 - (c) be accompanied by the prescribed fee, if any for the application.

46D Transfer of bulk entitlement

S. 46D
inserted by
No. 50/2010
s. 11.

- (1) An Authority that holds a bulk entitlement under this Division may, by instrument, transfer the bulk entitlement, in whole or in part, to any person.
- (2) An Authority must not transfer a bulk entitlement under subsection (1) unless the Authority has first applied for and obtained the approval of the Minister.
- (3) An application to the Minister under subsection (2) must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that is required by the Minister; and
 - (c) be accompanied by the prescribed fee, if any, for the application.

46E Ministerial approval for transfer

S. 46E
inserted by
No. 50/2010
s. 11.

- (1) Subject to this section, the Minister, on receiving an application under section 46D(2), may approve a transfer under section 46D.

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- (2) The Minister must not approve a transfer of the whole or a part of a bulk entitlement held by the Water Holder unless the Minister has first obtained the approval of the environment Minister.
- (3) The Minister—
- (a) must not approve the transfer if he or she is of the opinion that—
 - (i) the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or
 - (ii) the entitlement or part to be transferred is not surplus to the needs of the Authority; or
 - (b) in any other case, the Minister, in considering whether or not to approve the transfer, must have regard to—
 - (i) any of the matters mentioned in section 40(1); and
 - (ii) any relevant rules made under section 47E.
- (4) In considering whether or not to approve the transfer the Minister must give effect to an approved management plan for any relevant water supply protection area.
- (5) The Minister must not deal with a transfer in a way that is inconsistent with anything specified in the Order granting the entitlement under section 43(d).
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46F Sale of bulk entitlement

**S. 46F
inserted by
No. 50/2010
s. 11.**

- (1) For the purposes of transferring a bulk entitlement under section 46D, the Authority has the power to sell the whole or part of the bulk entitlement—
 - (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner it thinks fit.
- (2) If an Authority decides to sell the whole or part of a bulk entitlement under this section, the Authority must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—
 - (a) declaring that the bulk entitlement, or a part of the bulk entitlement, is available for purchase; and
 - (b) giving details of the method by which the bulk entitlement or part is to be sold.

46G Effect of transfer of bulk entitlement

**S. 46G
inserted by
No. 50/2010
s. 11.**

- (1) For the purposes of the transfer of a bulk entitlement or a part of a bulk entitlement under this Division, the Minister, by notice published in the Government Gazette—
 - (a) must determine the right or entitlement under this Act that the transferred entitlement is to become; and
 - (b) may determine any conditions that are to apply to the specified right or entitlement.
- (2) The Minister must not determine a right or entitlement under subsection (1) that the person to whom it is being transferred is not otherwise capable of holding.

- (3) On the publication of the notice under subsection (1), the entitlement or part that has been transferred becomes the right or entitlement determined by the Minister and is taken to have been granted in accordance with this Act to the person to whom the entitlement has been transferred.
- (4) On the publication of the notice under subsection (1), in the case of the transfer of a part of a bulk entitlement, the transfer has, in respect of the bulk entitlement from which it is to be transferred, the effect that the bulk entitlement is taken to be varied in accordance with this Act to remove that part of the entitlement that is transferred.
- (5) In making a determination as to a right or entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

47 Conversion of existing entitlements

S. 47(1)
amended by
Nos 50/1992
s. 6(5),
121/1994
s. 188(d),
62/1995
s. 15(1),
85/2006 s. 25.

- (1) An Authority that has an entitlement to take water referred to in paragraph (aa), (a) or (b) of section 35(2) or section 35(3) may apply to the Minister to have the whole or part of that entitlement converted into an entitlement or two or more entitlements granted under this Division.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain particulars of the entitlement held by the applicant; and
 - (c) be accompanied by any prescribed application fee.

- (3) The Minister must forward a copy of an application to any entitlement holder whom the Minister considers may be directly affected by the application.
- (4) After considering any comments made on the application by an entitlement holder to whom the Minister forwarded a copy of the application, the Minister may deal with an application in any of the following ways—
 - (a) refuse it;
 - (b) approve it (with or without modification) and by Order published in the Government Gazette in accordance with section 43 convert the whole or part of the entitlement into an entitlement or two or more entitlements granted under this Division.
- (5) Without limiting subsection (4)(b), a modification under that subsection may provide for the granting of a reduced or increased entitlement.

S. 47(4)(b)
amended by
Nos 121/1994
s. 188(d),
62/1995
s. 15(2),
22/1999
s. 3(1).

S. 47(5)
inserted by
No. 22/1999
s. 3(2).

47A Compliance with terms of bulk entitlement

S. 47A
inserted by
No. 62/1995
s. 16.

- (1) An Authority referred to in section 34(1)(c) must comply with the specifications of an Order granting a bulk entitlement to it.
- (2) An Authority which contravenes subsection (1) is guilty of an offence against this Act and liable to a penalty of not more than 200 penalty units and in the case of a continuing offence to a daily penalty of not more than 80 penalty units for each day the offence continues after conviction or after service by or on behalf of the Minister of notice of contravention of this section.

S. 47A(1)
substituted by
No. 32/2010
s. 34.

s. 47B

- (3) The Minister may, by notice in writing to an Authority which contravenes subsection (1), require the Authority to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Minister, to remedy the contravention.
- (4) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Minister, the Minister may—
 - (a) cause to be carried out any works and take any other action the Minister decides is necessary to remedy the contravention, and recover reasonable costs from the Authority on which the notice was served; and
 - (b) cause to be removed or disconnected any works of the Authority in relation to which the contravention occurs, and recover reasonable costs from the Authority on which the notice was served; and
 - (c) apply to a court for an injunction restraining the Authority on which the notice was served from contravening the notice.

S. 47B
inserted by
No. 62/1995
s. 16.

47B Minister may request application

- (1) The Minister may request an Authority, by notice in writing to the Authority, to make an application under section 36 or 47.
- (2) If the Authority fails to make the application requested under subsection (1) within 2 months after the request the Minister may give notice to the Authority that the Minister intends—
 - (a) to grant a bulk entitlement under this Division to the Authority; or

S. 47B(2)
amended by
No. 22/1999
s. 3(3).

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- (b) to convert the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division.
- (3) After giving notice in accordance with subsection (2), the Minister may prepare a proposed Order in accordance with section 43.
- (3A) A proposed Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may propose the granting of a reduced or increased entitlement.
- (4) The Minister must give notice of the proposed Order in any manner that the Minister thinks fit.
- (5) A notice given under subsection (4) may invite submissions on the proposed Order to be made in the manner specified in the notice within the period specified in the notice.
- (6) If the proposed Order converts the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division, the Minister must—
- (a) forward a copy of the proposed Order to any entitlement holder whom the Minister considers may be directly affected by the proposed Order; and
 - (b) consider any comments made on the proposed Order by an entitlement holder to whom the Minister forwarded a copy.
- (7) After considering any submissions or comments made on the proposed Order, the Minister may, by Order published in the Government Gazette—

S. 47B(3)
amended by
No. 86/1995
s. 9.

S. 47B(3A)
inserted by
No. 22/1999
s. 3(4).

s. 47C

- (a) grant the bulk entitlement under this Division; or
- (b) convert the whole or part of the entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements granted under this Division—

as the case may be.

S. 47B(7A)
inserted by
No. 22/1999
s. 3(5).

- (7A) An Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may provide for the granting of a reduced or increased entitlement.
- (8) The provisions of this section apply despite any other provisions of this Division.

S. 47C
inserted by
No. 62/1995
s. 16,
amended by
Nos 5/2002
s. 18, 99/2005
s. 43, 32/2010
s. 35,
substituted by
No. 50/2010
s. 12.

47C Application for conversion of licences or water shares to bulk entitlements

- (1) An Authority that holds a water share or licence under section 51 may apply to the Minister to have the water share or licence converted to a bulk entitlement under this Division.
- (2) An Authority that holds a water share or licence under section 51 must apply to the Minister to have the water share or licence converted to a bulk entitlement under this Division, if requested to do so by the Minister.
- (3) An application to the Minister under this section must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that is required by the Minister; and
 - (c) be accompanied by the prescribed fee, if any for the application.

47CA Minister may convert licence or water share to bulk entitlement

S. 47CA
inserted by
No. 50/2010
s. 12.

- (1) The Minister may convert a water share or licence under section 51 that is held by an Authority to a bulk entitlement under this Division held by that Authority, on receiving an application from the Authority under section 47C.
- (2) In considering an application under section 47C, the Minister must have regard to any matter referred to in section 40(1)(a) to (o).

47CB Effect of conversion

S. 47CB
inserted by
No. 50/2010
s. 12.

- (1) On determining that a licence under section 51 or water share is converted to a bulk entitlement, the Minister must, by notice published in the Government Gazette—
 - (a) in the case of a licence under section 51, cancel the licence and either—
 - (i) amend an existing bulk entitlement to add the amount of water that may be taken and used in accordance with the licence; or
 - (ii) create a new bulk entitlement to the amount of water that may be taken and used in accordance with the licence; or
 - (b) in the case of a water share, cancel the water share and either—
 - (i) amend the bulk entitlement to add the maximum volume of the water share; or
 - (ii) create a new bulk entitlement with the maximum volume of the water share.
- (2) The Minister may impose any terms and conditions on the bulk entitlement created or amended under subsection (1) that the Minister thinks fit.

s. 47D

- (3) In creating or amending bulk entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

S. 47D
inserted by
No. 86/1995
s. 10.

47D Minister may sell unallocated water

- (1) If—

- (a) an entitlement to take water has been converted, whether before or after the commencement of section 11 of the **Water (Further Amendment) Act 1995**, in accordance with section 47; and
- (b) the entitlement is in respect of water in a storage which on 1 January 1995 was owned by the Rural Water Corporation; and
- (c) there is water in the storage that is not allocated to the converted entitlement; and
- (d) the Minister has determined that the flow of water out of the storage is adequate having regard to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective—

S. 47D(1)(d)
substituted by
No. 99/2005
s. 23.

the Minister may, by notice published in the Government Gazette, declare that an amount of water is unallocated water.

- (2) If the Minister has made a declaration under subsection (1), the Minister—
- (a) may by notice published in a newspaper circulating generally in the area concerned, declare that the unallocated water is available for purchase by any person holding the qualifications specified in the notice on the terms and conditions specified in the notice; and

-
- (b) must consult with the Authority responsible for delivery of the water before determining the terms and conditions of sale.
- (3) A declaration under subsection (2)(a) must—
- (a) specify a means referred to in section 43(a) of quantifying the amount of water; and
 - (b) specify the adjustment, if any, of volumes to be applied to the transfer; and
 - (c) specify that, if unallocated water is to be converted to a bulk entitlement after sale, the sale is void if the Order granting the bulk entitlement is disallowed by the Parliament under section 34; and
 - (d) give details of the method by which the unallocated water is to be sold, whether at auction or by inviting tenders or in any other manner that the Minister thinks fit.
- (4) A transfer under this section is permanent.
- (5) Following a transfer under this section, the Minister must do any or all of the following as is appropriate in the circumstances—
- (a) grant a bulk entitlement to the purchaser by Order published in the Government Gazette;
 - (b) amend a bulk entitlement held by the purchaser in accordance with section 44 or 45;
 - (c) in the case of—
 - (i) water in a non-declared water system, issue a licence under section 51 to the purchaser; or
 - (ii) water in a declared water system, issue a water share under Part 3A to the purchaser;
-

**S. 47D(5)(c)
substituted by
No. 99/2005
s. 44.**

s. 47DA

S. 47D(5)(d)
substituted by
No. 32/2010
s. 36.

S. 47DA
inserted by
No. 32/2010
s. 37.

- (d) ensure that details of the sale are given to the relevant Authority for entry on the water register.

47DA Declaration for taking of water allocation under bulk entitlement in subsequent water season

- (1) The Minister may make a declaration in respect of a bulk entitlement to take water in a water system, authorising the taking of water that is entitled to be taken under any water allocation for the bulk entitlement in a subsequent water season.
- (2) A declaration under subsection (1) may apply to—
 - (a) bulk entitlements in a water system or part of a water system; or
 - (b) a class or classes of bulk entitlements in a water system or part of a water system.
- (3) Any taking of water under a declaration of the Minister under subsection (1) is subject to—
 - (a) the terms and conditions of the bulk entitlement to which the water allocation applies; and
 - (b) any terms and conditions specified by the Minister in the declaration.
- (4) The Minister must cause notice of the making of a declaration under subsection (1) to be published—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the declaration applies.
- (5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

47E Rule making powers for bulk entitlements

S. 47E
inserted by
No. 99/2005
s. 45.

- (1) The Minister may, by Order, published in the Government Gazette, set out rules—
- (a) with respect to adjustment of volumes to be applied to transfers (whether permanent or temporary) of bulk entitlements under this Division; and
 - (b) as to the circumstances in which the consent of any Authority under this Act will be required to any such transfers; and
 - (c) as to any matters relating to applications for such transfers; and
 - (d) as to the circumstances in which the Minister will give or refuse to give approvals for such transfers; and
 - (e) as to any other matters the Minister is authorised to make rules for under this Division.
- (2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

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S. 48
amended by
Nos 62/1995
s. 6(4),
76/1998
s. 29(d),
repealed by
No. 32/2010
s. 38.

s. 48A

Pt 4 Div. 1A
(Heading and
ss 48A–48Q)
inserted by
No. 99/2005
s. 24.

Division 1A—Environmental entitlements

S. 48A
inserted by
No. 99/2005
s. 24.

48A Definitions

In this Division—

S. 48A def. of
apply
inserted by
No. 85/2006
s. 26(a).

apply, in relation to water, includes the taking or
use of water;

S. 48A def. of
*environment
Minister*
repealed by
No. 85/2006
s. 26(b).

* * * *

request means a request for the grant of an
environmental entitlement made under
section 48C(1)(b).

S. 48B
inserted by
No. 99/2005
s. 24.

48B Allocation of environmental entitlement

- (1) The Minister may, by instrument, allocate to the
environment Minister, on behalf of the Crown, an
entitlement to—
 - (a) water in a waterway (including the River
Murray); or
 - (b) groundwater; or
 - (c) water (other than recycled water) in any
works of an Authority; or
 - (d) water (other than recycled water) in any
works of the Melbourne Water Corporation;
or

- (e) water (other than recycled water) in any works of a person holding a water licence, a water and sewerage licence or a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**.
- (2) The Minister may allocate an environmental entitlement under subsection (1) for the purpose of—
 - (a) maintaining the environmental water reserve in accordance with the environmental water reserve objective; or
 - (b) improving the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and water quality, and the other uses that depend on environmental condition.

48BA Authorisation of entitlement

Subject to this Act, an environmental entitlement authorises—

- (a) the holder of the entitlement to apply any water allocation under the entitlement (other than a water allocation that has been assigned under section 48L or 48M) for the purpose set out in section 48B(2); or
- (b) a person to whom a water allocation has been assigned under section 48L or 48M to apply any water allocation that has been assigned to that person for any purpose (whether or not it is a purpose set out in section 48B(2)).

Note

The operation of some provisions of this Act affects the application of water under an environmental entitlement. Section 48MA is an example of such a provision.

S. 48BA
inserted by
No. 85/2006
s. 27,
amended by
No. 32/2010
s. 39(a).

Note to
s. 48BA
inserted by
No. 32/2010
s. 39(b).

s. 48C

S. 48C
inserted by
No. 99/2005
s. 24.

48C Requirements as to making of allocation

- (1) The Minister may make an allocation under section 48B either—
 - (a) of his or her own motion; or
 - (b) at the request of the environment Minister.
- (2) The Minister, on allocating an entitlement under this section, must cause a copy of the instrument allocating the entitlement to be published in the Government Gazette.

S. 48D
inserted by
No. 99/2005
s. 24.

48D Advertisement etc. of request

- (1) Where a request has been made, the Minister must either—
 - (a) cause notice of the request to be advertised in any manner that he or she thinks fit; or
 - (b) require the environment Minister to advertise the request in any manner specified by the Minister.
- (2) A notice under subsection (1) may invite submissions on the request to be made in the manner specified in the notice within the period specified in the notice.

S. 48E
inserted by
No. 99/2005
s. 24.

48E Appointment of panel

- (1) The Minister may, by instrument, appoint a panel of persons to consider submissions made under section 48D(2) on the request, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to consider.
- (2) Subject to any specifications of the Minister when appointing the panel, a panel may regulate its own proceedings.

- (3) If submissions on the request have not been invited by a notice given under section 48D(1)(a), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the request within the period specified in the notice.
- (4) After considering all submissions referred or made to it, the panel must report its findings to the Minister within the period specified by the Minister.
- (5) The panel may include in its report any recommendations that it thinks fit.
- (6) A member of a panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

48F Matters to be considered

**S. 48F
inserted by
No. 99/2005
s. 24.**

- (1) Before making an allocation under section 48B, the Minister must have regard to the following matters—
 - (a) the report of any panel appointed under this Division;
 - (b) any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water in the water systems for which the allocation is to be made;
 - (c) the conservation policy of the government;
 - (d) government policies concerning the preferred allocation or use of water resources;
 - (e) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

s. 48G

- (f) whether the water for which the allocation is to be made is from a water system that is within a heritage river area or natural catchment area (within the meaning of the **Heritage Rivers Act 1992**);
 - (g) any relevant Sustainable Water Strategy that has been endorsed under section 22G(1);
 - (h) any other matter that the Minister thinks fit to have regard to.
- (2) In considering a request, the Minister must give effect to an approved management plan for any relevant water supply protection area.

S. 48G
inserted by
No. 99/2005
s. 24.

48G Determination of request

The Minister may—

- (a) refuse a request; or
- (b) give preliminary approval to a request; or
- (c) approve a request and allocate the entitlement.

S. 48H
inserted by
No. 99/2005
s. 24.

48H Procedures required in determining request

- (1) If the Minister gives preliminary approval to a request, he or she must make sure that—
- (a) everyone who made a submission on the request is notified of the giving of preliminary approval; and
 - (b) a notice of the giving of preliminary approval is published in a newspaper circulating generally in the area concerned.

-
- (2) A notice published under subsection (1)(b) must—
- (a) set out the prescribed particulars of the request; and
 - (b) set out particulars of the place or places at which a copy or summary of the request and the preliminary approval may be inspected; and
 - (c) advise that any interested person may ask for a summary of the preliminary approval in the manner specified in the notice; and
 - (d) invite written comments on the preliminary approval to be made within 60 days or any longer period that is specified in the notice; and
 - (e) advise that anyone who so applies will be notified of the final outcome of the request.
- (3) After considering all written comments made on the preliminary approval in response to a notice published under subsection (1)(b), the Minister must decide either to—
- (a) refuse the request; or
 - (b) approve the request and allocate the entitlement under section 48B.
- (4) If the Minister refuses a request under subsection (3)(a), he or she must make sure that a notice of the refusal is published in a newspaper circulating generally in the area concerned.

48I Requirements as to instrument allocating entitlement

S. 48I
inserted by
No. 99/2005
s. 24.

An instrument allocating an entitlement under this Division may specify in relation to the entitlement allocated all or any of the following—

- (a) a means of quantifying the amount of water that the entitlement consists of;

Note

The means of quantifying the amount of water that the entitlement consists of may be by volume or by reference to the level of flow at a specified point or by reference to a share of flow or storage or by any other means or combination of means, and if the amount of water is quantified by reference to a share of storage, then by reference, for example, to—

- (i) the volumetric share of the system capacity of any system within the water system in which the entitlement is allocated;
- (ii) the share of inflow to any storage within the water system in which the entitlement is allocated;
- (iii) the volumetric share of releases from any storage within the water system in which the entitlement is allocated;
- (iv) the seepage and evaporative loss adjustments to be debited from the entitlement;
- (v) the share of inflow to be credited to the entitlement when the share of storage capacity of any storage within the area does not allow for a full share of inflow determined under subparagraph (ii) to be available—

and if the amount of water is quantified by reference to a share of flow, then by reference, for example, to the share of flow past a specified point.

- (b) water accounting procedures for accounting for the water in the entitlement;
- (c) any condition imposed on the allocation of the entitlement under section 48J;
- (d) the class of reliability of the entitlement.

48J Conditions relating to entitlements

S. 48J
inserted by
No. 99/2005
s. 24.

- (1) In allocating or amending an entitlement under this Division the Minister may impose, any conditions that the Minister thinks fit to specify as to the operation and management of the entitlement including conditions relating to—
- (a) the protection of any waterway or aquifer in that area; or
 - (b) the returning of water in that area to its water system; or
 - (c) the protection of the environment in that area, including the riverine and riparian environment; or
 - (d) payments to be made in relation to services provided by other persons in relation to the entitlement; or
 - (e) the assignment of water allocations under the entitlement; or
 - (f) the implementation of the conservation policy of the Government.
- (2) For the purposes of giving effect to any conditions imposed under subsection (1), the Minister may require an Authority to perform any functions or duties specified in the entitlement by the Minister.

48K Amendment of entitlement by the Minister

S. 48K
inserted by
No. 99/2005
s. 24.

- (1) The Minister, at the request of the environment Minister, may amend an entitlement under this Division.

S. 48K(1)
substituted by
No. 85/2006
s. 28.

s. 48KA

S. 48K(2)
substituted by
No. 85/2006
s. 28.

- (2) The environment Minister must not request an amendment to an entitlement under this Division unless he or she is of the opinion that the amendment would benefit the environmental water reserve.

S. 48K(3)
substituted by
No. 85/2006
s. 28.

- (3) An amendment to an entitlement under this section must be made by instrument and published in the Government Gazette.

S. 48K(4)
amended by
No. 32/2010
s. 77(Sch.).

- (4) The provisions of this Division relating to the procedure to be followed with respect to a request for the allocation of an entitlement under this Division apply, with any necessary modifications, with respect to a request for an amendment under this section that is not for an amendment that is necessary because of—

- (a) a mistake in the description in any element of the entitlement; or
- (b) a minor variation arising from practical operations.

S. 48KA
inserted by
No. 85/2006
s. 29.

48KA Water allocations may be applied for other environmental entitlements

The environment Minister, after consulting the Minister, may apply a water allocation (that has been determined by an Authority for an environmental entitlement in a water system) for the purposes of an environmental entitlement that is not the environmental entitlement in the water system for which the water allocation was determined.

48L Assignment of water allocation

S. 48L
(Heading)
amended by
No. 85/2006
s. 30(1).

S. 48L
inserted by
No. 99/2005
s. 24.

S. 48L(1)
substituted by
No. 85/2006
s. 30(2).

- (1) The environment Minister may, by instrument, assign the whole or a part of a water allocation available under an environmental entitlement (at the time at which the assignment is made) to—
- (a) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
 - (b) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
 - (c) a person who represents the Crown in the right of another State or a Territory of the Commonwealth; or
 - (d) a person who is the holder of a bulk entitlement.

- (1A) The environment Minister must not make an assignment under subsection (1) unless he or she has first obtained the approval of the Minister for the assignment.

S. 48L(1A)
inserted by
No. 85/2006
s. 30(2).

- (1B) An assignment under this section entitles the holder of the assignment to receive water under the water allocation under the environmental entitlement from the date specified in the assignment.

S. 48L(1B)
inserted by
No. 85/2006
s. 30(2).

- (2) The environment Minister must not make an assignment under subsection (1) unless the environment Minister is of the opinion that the assignment would benefit the environmental water reserve.

s. 48M

S. 48M
inserted by
No. 99/2005
s. 24,
amended by
No. 85/2006
s. 31(1)(2) (ILA
s. 39B(1)).

48M Further assignment of water allocation

- (1) A person to whom the whole or a part of a water allocation has been assigned under section 48L, or under this section, may assign the whole of the assigned allocation to another person who is the owner or occupier of land specified in a water-use licence or water-use registration.
- (2) An assignment under this section entitles the holder of the assignment to receive water under the water allocation under the environmental entitlement from the date specified in the assignment.

S. 48M(2)
inserted by
No. 85/2006
s. 31(2).

S. 48MA
inserted by
No. 32/2010
s. 40.

48MA Declaration for taking of water allocation under environmental entitlement in subsequent water season

- (1) The Minister may make a declaration in respect of an environmental entitlement to apply water in a water system, authorising the application of water available to be applied under any water allocation for the environmental entitlement in a subsequent water season.
- (2) A declaration under subsection (1) may apply to—
 - (a) environmental entitlements in a water system or part of a water system; or
 - (b) a class or classes of environmental entitlements in a water system or part of a water system.
- (3) Any application of water under a declaration of the Minister under subsection (1) is subject to—
 - (a) the terms and conditions of the environmental entitlement to which the water allocation applies; and
 - (b) any terms and conditions specified by the Minister in the declaration.

-
- (4) The Minister must cause notice of the making of a declaration under subsection (1) to be—
- (a) published in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the declaration applies.
- (5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

48N Offence to give an assignment without Ministerial approval

S. 48N
inserted by
No. 99/2005
s. 24.

A person must not assign a water allocation under section 48M unless the Minister has approved the assignment.

Penalty: 60 penalty units.

48O Ministerial approval

S. 48O
inserted by
No. 99/2005
s. 24.

- (1) The Minister may—
- (a) on a request from the environment Minister, approve the assigning of a water allocation for the purposes of section 48L; or
 - (b) on an application by a person, approve the assigning of a water allocation for the purposes of section 48M.
- (2) The Minister must not give an approval under subsection (1) for any prescribed reason.
- (3) In giving an approval under subsection (1), the Minister must have regard to any relevant rules determined under section 48P.

S. 48O(1)
substituted by
No. 85/2006
s. 32(1).

* * * * *

S. 48O(4)
repealed by
No. 85/2006
s. 32(2).

s. 48P

S. 48P
inserted by
No. 99/2005
s. 24.

48P Rule making powers for environmental entitlements

- (1) The Minister may, by Order, published in the Government Gazette, set out rules—
 - (a) with respect to adjustment of volumes to be applied to, assignments of water allocations under entitlements under this Division; and
 - (b) as to the circumstances in which the consent of any Authority under this Act will be required to assignments under this Division; and
 - (c) as to any matters relating to applications under this Division; and
 - (d) as to the circumstances in which the Minister will give or refuse to give approvals under this Division; and
 - (e) as to any other matters the Minister is authorised to make rules for under this Division.
- (2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

S. 48PA
inserted by
No. 85/2006
s. 33.

48PA Applications under this Division

An application under this Division—

- (a) must be in the form and made in the manner approved by the Minister; and
- (b) must be accompanied by the prescribed fee.

S. 48PB
inserted by
No. 85/2006
s. 33,
amended by
No. 32/2010
s. 41.

48PB Power of environment Minister to delegate

The environment Minister may delegate, by instrument, any of the environment Minister's functions, powers or duties under this Division, or under a subordinate instrument made under this Division, other than this power of delegation, to—

- (a) a Catchment Management Authority; or

- (b) Melbourne Water Corporation; or
- (c) the Chief Executive of Parks Victoria; or
- (d) the Department Head.

48Q Volume of assignments to be recorded in annual report

S. 48Q
inserted by
No. 99/2005
s. 24.

The environment Minister must ensure that the total volume of assignments of water allocation made by him or her under section 48L within each twelve month period for which the department prepares an annual report must be included in that annual report.

Division 2—Licences

49 Advertisement etc. of application

- (1) This section applies to an application—
 - (a) under section 51 for the issue of a licence to take and use water; or
 - * * * *
 - (c) under section 58(1) for the renewal of a licence referred to in paragraph (a) or (b); or
 - (d) under section 62(3) for approval of the transfer of a licence referred to in paragraph (a) or (b).
- (2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.
- (3) A notice given under subsection (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

S. 49(1)(b)
repealed by
No. 29/2007
s. 24(1).

50 Appointment of panel

- (1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 49 applies.
- (2) Subject to anything specified by the Minister when appointing the panel, a panel may regulate its own proceedings.
- (3) If submissions on the application have not been invited by a notice given under section 49(2), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.
- (4) After considering all submissions referred or made to it, the panel must report its findings to the Minister within the period specified by him or her.
- (5) The panel may include in its report any recommendations that it thinks fit.
- (6) A member of a panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

51 Licence to take and use water

- (1) A person may apply to the Minister for the issue of a licence to take and use—
 - (a) water from a waterway (including the River Murray); or
 - (b) groundwater; or
 - (ba) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

S. 51(1)(ba)
inserted by
No. 5/2002
s. 19(1).

-
- (c) water, other than recycled water, from any works of an Authority; or
- (d) water, other than recycled water, from any works of a person holding a water licence, a water and sewerage licence or a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**.
- (1AA) An application may not be made under subsection (1) to take and use water in a declared water system unless—
- (a) the water to be taken and used is to be subject to a condition that a proportion of the water so taken and used is to be returned to the water system; or
- (b) the water is to be taken and used for a prescribed purpose.
- (1A) During the period commencing on 1 July 2002 and ending on 30 June 2003, a person may apply, without payment of an application fee, to the Minister for the issue of a registration licence to take and use—
- (a) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
- S. 51(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.4), 49/1994 s. 5(1)(b), substituted by No. 86/1995 s. 11, amended by No. 99/2005 s. 25(a).
- S. 51(1)(d) inserted by No. 86/1995 s. 11, amended by No. 99/2005 s. 25(b).
- S. 51(1AA) inserted by No. 99/2005 s. 46, substituted by No. 29/2007 s. 14.
- S. 51(1A) inserted by No. 5/2002 s. 19(2) (as amended by No. 6/2002 s. 4(1)).

s. 51

- (b) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use.

S. 51(1B)
inserted by
No. 5/2002
s. 19(2) (as
amended by
No. 6/2002
s. 4(1)).

- (1B) Subsection (1A) only applies, in relation to a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—

- (a) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
- (b) water from the dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use for which a licence under subsection (1)(a) is not in force—

as the case may be.

S. 51(1C)
inserted by
No. 5/2002
s. 19(3).

- (1C) Nothing in this section requires a person to hold a licence issued under this section to re-use water that—
 - (a) is stored in a dam that complies with design criteria specified by the Minister under section 80A; and
 - (b) does not exceed the volume determined in accordance with the formula specified by the Minister under section 80A; and
 - (c) is supplied to the person under a licence issued under this section, under section 124(7) or in accordance with section 222.

(2) An application under this section must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

(ba) in the case of an application under subsection (1)(ba) or (1A) in relation to a spring or soak or dam by a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—

(i) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(ii) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use—

as the case may be, set out the maximum volume of water to be used by the applicant in each year during the period of the licence, determined in accordance with the criteria specified by Order under section 52A; and

(c) be accompanied by the application fee, if any, fixed by the Minister for that type of application.

S. 51(2)
amended by
No. 5/2002
s. 19(4)(a).

S. 51(2)(ba)
inserted by
No. 5/2002
s. 19(4)(b).

S. 51(2)(c)
amended by
No. 110/1997
s. 17(1),
substituted by
No. 5/2002
s. 19(4)(c).

s. 51A

S. 51(3)
amended by
No. 35/1998
s. 21(1).

- (3) After consultation with the Minister administering the **Conservation, Forests and Lands Act 1987**, a licence issued under this section may include authority to enter on any Crown land other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** and to install and operate works on that land for the purpose of raising water to be taken and used under the licence.
- (4) An authority granted under subsection (3) does not remove the need to apply for any licence that is necessary under Part 5.
- (5) The licensee is liable to compensate any person who suffers any pecuniary loss as a direct, natural and reasonable consequence of the exercise of an authority granted under subsection (3).
- (6) The amount of compensation payable is as agreed by the parties or, in the absence of agreement, as determined by the Tribunal.
- (7) For the purposes of this section, *waterway* includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 51(6)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.10).

S. 51A
inserted by
No. 5/2002
s. 20.

51A Surrender of registration licence

S. 51A(1)
substituted by
No. 99/2005
s. 47(1).

- (1) The holder of a registration licence may, during the term of the licence, surrender the licence to the Minister and apply, without payment of an application fee, for—
 - (a) the issue of a licence under section 51(1)(a) or (ba) in a non-declared water system; or

(b) the issue of a water share under Part 3A in a declared water system—

(as the case requires).

- (2) Sections 51B and 51C do not apply to an application made under subsection (1).
- (3) On an application made under subsection (1), the Minister must issue, within 14 days after the application is made, a licence under section 51(1)(a) or (ba), or a water share under Part 3A, as the case may be, for the same maximum volume of water to be used in each year during the period of the licence as that which applied to the registration licence formerly held by the applicant.
- (4) A registration licence surrendered under subsection (1) is deemed to continue in operation until the issue of a licence under section 51(1)(a) or (ba) or a water share under Part 3A, as the case requires, in accordance with subsection (3).

S. 51A(3)
amended by
No. 99/2005
s. 47(2).

S. 51A(4)
amended by
No. 99/2005
s. 47(3).

51B Application to go to certain bodies

The Minister must, without delay, give a copy of an application under section 51 in respect of a dam, whether or not on a waterway, to—

- (a) the Department Head; and
- (b) the relevant Catchment Management Authority; and
- (c) Melbourne Water Corporation, if the dam is or will be located in the waterway management district of Melbourne Water Corporation; and
- (d) any Authority holding a bulk entitlement that may be affected by the approval of the application.

S. 51B
inserted by
No. 5/2002
s. 21.

S. 51B(c)
substituted by
No. 85/2006
s. 34.

s. 51C

S. 51C
inserted by
No. 5/2002
s. 21.

51C Bodies must consider application

- (1) Within 30 days after receipt of an application referred to a body under section 51B, the body—
 - (a) must consider the application; and
 - (b) may advise the Minister in writing that—
 - (i) it does not object to the issue of a licence; or
 - (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
 - (iii) it objects to the issue of the licence on any specified ground; and
 - (c) may give to the Minister its comments on the application.
- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 51B, the Minister may proceed to determine the application.

* * * * *

S. 52
amended by
Nos 50/1992
s. 10(Sch.
item 11.5),
49/1994
s. 5(1)(c),
110/1997
s. 17(2),
repealed by
No. 99/2005
s. 26.

S. 52A
inserted by
No. 5/2002
s. 22.

52A Criteria to determine maximum volume of water use for certain licence applications

The Minister may, by Order published in the Government Gazette, specify the criteria for determining the maximum volume of water to be used each year during the period of—

- (a) a registration licence; or

- (b) a licence issued under section 51(1)(ba), in respect of a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use.

53 Matters to be taken into account

S. 53
amended by
No. 5/2002
s. 23(2) (ILA
s. 39B(1)).

- (1) In considering an application under section 51, the Minister must have regard to the following matters—

S. 53(1)
amended by
No. 32/2010
s. 77(Sch.).

- (a) the report of any panel appointed under section 50;

- (ab) any advice and comments received within the period of 30 days referred to in section 51C(1);

S. 53(1)(ab)
inserted by
No. 5/2002
s. 23(1)(a).

- (b) the matters mentioned in paragraphs (b) to (m) of section 40(1);

S. 53(1)(b)
amended by
No. 5/2002
s. 23(1)(b).

* * * *

S. 53(1)(c)(d)
repealed by
No. 5/2002
s. 23(1)(c).

* * * *

S. 53(1)(da)
inserted by
No. 62/1995
s. 8,
repealed by
No. 5/2002
s. 23(1)(c).

s. 54

(e) any other matter that the Minister thinks fit to have regard to.

S. 53(2)
inserted by
No. 5/2002
s. 23(2),
amended by
No. 32/2010
s. 77(Sch.).

(2) In considering an application under section 51, the Minister must give effect to—

- (a) any relevant Order under section 52A; and
- (b) any relevant Order made by the Governor in Council under section 49A of the **Groundwater Act 1969** specifying an annual reserve volume of groundwater; and
- (c) any relevant prescription made under section 62(1) of the **Groundwater Act 1969** in respect of a groundwater conservation area declared under section 61 of that Act; and

S. 53(2)(d)
repealed by
No. 29/2007
s. 24(2).

* * * * *

(e) an approved management plan for any relevant water supply protection area.

S. 54
amended by
No. 5/2002
s. 24(2) (ILA
s. 39B(1)).

54 Minister to defer application in certain circumstances

(1) If—

S. 54(1)(a)
amended by
No. 5/2002
s. 24(1)(a).

(a) a notice is published under section 27(4)(a)(i); and

S. 54(1)(b)
substituted by
No. 5/2002
s. 24(1)(b).

(b) a relevant application is subsequently made under—

S. 54(1)(b)(i)
amended by
No. 32/2010
s. 77(Sch.).

(i) section 51 in respect of an area that is the subject of the proposed declaration; or

- (ii) section 62 for approval of the permanent transfer of a licence issued under section 51 into or within that area—

S. 54(1)(b)(ii)
amended by
No. 32/2010
s. 77(Sch.).

the Minister must defer consideration of the application until either—

- (c) an Order is made under section 27(1); or
(d) a notice is published under section 27(10).

S. 54(1)(d)
amended by
No. 5/2002
s. 24(1)(c).

- (2) If—

S. 54(2)
inserted by
No. 5/2002
s. 24(2).

- (a) an Order is made under section 27(1); and
(b) no management plan for the area has been approved under section 32A(6)—

the Minister must defer consideration of a relevant application—

- (c) under section 51 in respect of the area; or

S. 54(2)(c)
amended by
No. 32/2010
s. 77(Sch.).

- (d) under section 62 for approval of the permanent transfer of a licence issued under section 51 into or within the area—

S. 54(2)(d)
amended by
No. 32/2010
s. 77(Sch.).

until notice of the approval or refusal of a draft management plan has been published under section 32A(7).

- (3) This section does not apply to—

S. 54(3)
inserted by
No. 5/2002
s. 24(2).

- (a) an application for a registration licence; or
(b) an application for a licence under section 51(1)(a) or (ba) on the surrender of a registration licence; or

(c) an application under section 62 for approval of the transfer of a licence issued under section 51 if the application arises as a result of the transfer or conveyance of land on which the water is taken or used under the licence.

S. 54(4)
inserted by
No. 5/2002
s. 24(2).

- (4) For the purposes of this section, a relevant application in relation to an area proposed to be declared or declared as a water supply protection area—
- (a) for the protection of the groundwater resources, is an application relating to groundwater; and
 - (b) for the protection of the surface water resources, is an application relating to surface water; and
 - (c) for the protection of both groundwater resources and surface water resources, is an application relating to either groundwater or surface water—

made on or after the commencement of section 24 of the **Water (Irrigation Farm Dams) Act 2002**.

55 Determination of application

S. 55(1)
amended by
Nos. 5/2002
s. 25(1),
32/2010
s. 77(Sch.).

- (1) Subject to section 51A, the Minister may either refuse an application under section 51 or approve it and issue a licence under that section.

S. 55(2)
amended by
No. 5/2002
s. 25(1)(2).

- (2) Subject to section 51A, the Minister must refuse the application if, in his or her opinion, the allocation or use of water under the licence would be in conflict with an approved management plan for any relevant water supply protection area.

S. 55(2A)
inserted by
No. 5/2002
s. 25(3).

- (2A) If an application under section 51 relates to a State observation bore, the Minister must refuse the application if, in the Minister's opinion, the

exercise of rights under the proposed licence will or may interfere with the function of the bore as a State observation bore.

- (2B) Subject to section 51A, the Minister must refuse an application under section 51 if, in the Minister's opinion—
- (a) the allocation or use of water under the licence will or may result in the permissible consumptive volume for the area for that year or a future year being exceeded; or
 - (b) the allocation under the licence is likely to have an adverse effect on maintaining the environmental water reserve in accordance with the environmental water reserve objective.
- (3) Without limiting subsection (1), the Minister may refuse the application if, in his or her opinion, the applicant should instead have applied for the grant of a bulk entitlement to water under Division 1.

S. 55(2B)
inserted by
No. 5/2002
s. 25(4),
substituted by
No. 99/2005
s. 27.

56 Conditions of licence

- (1) A licence issued under section 51 is subject to—
- (a) any conditions that are prescribed or fixed by the Minister relating to—
 - (i) the protection of a waterway or an aquifer; or
 - (ii) the purposes for which the water may be used; or
 - (iii) in the case of a licence issued under section 51, the maximum amounts of water which may be taken in particular periods or circumstances; or
 - (iv) in the case of a licence issued under section 51, payment for the amount of water used; or

S. 56(1)
amended by
No. 32/2010
s. 77(Sch.).

S. 56(1)(a)(va)
inserted by
No. 99/2005
s. 28(1).

- (v) the protection of the environment, including the riverine and riparian environment; or
- (va) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or
- (vi) the conservation policy of the Government; or
- (vii) the efficient use of water resources; or
- (viii) if appropriate, the proper management of the waterway and its surrounds or of the aquifer; or
- (ix) the drainage regime within the meaning of section 12(1); or
- (x) the manner in which the licensee is to compensate any person whose existing authorised use of water may be adversely and materially affected by the allocation or use of water under the licence; or
- (xi) the protection or control of in-stream uses; or
- (xii) in the case of a licence issued under section 51, the installation and use of measuring devices or pumps; and
- (xiii) notification of change of ownership of land on which water is taken under a licence issued under section 51(1A); and

S. 56(1)(a)(xiii)
inserted by
No. 5/2002
s. 26(1).

S. 56(1)(b)
amended by
No. 69/1993
s. 4.

- (b) in the case of a licence issued under section 51 to take and use mineral water, the payment of a surcharge of 1.5 cents per litre for each litre of mineral water taken and used

under the licence in a period specified in the licence; and

(c) any other conditions that the Minister thinks fit and specifies in the licence.

(2) Compensation under subsection (1)(a)(x) may be financial or may be constituted by the making available of, or granting of access to, water.

(3) Unless sooner revoked or cancelled, a licence issued under section 51(1) remains in force for the period (not exceeding 15 years) specified in the licence but may be renewed under section 58.

S. 56(3)
amended by
Nos. 5/2002
s. 26(2),
32/2010
s. 77(Sch.).

(3A) Unless sooner revoked, cancelled or surrendered, a licence issued under section 51(1A) remains in force for an unlimited period.

S. 56(3A)
inserted by
No. 5/2002
s. 26(3).

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S. 56(4)
inserted by
No. 62/1995
s. 32(1),
amended by
No. 5/2002
s. 26(4),
repealed by
No. 99/2005
s. 28(2).

(5) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use groundwater for purposes associated with an open cut coal mine, the licence may, despite subsection (3), be issued for a period exceeding 15 years (but not exceeding 30 years) specified in the licence, subject to any special conditions determined by the Minister.

S. 56(5)
inserted by
No. 79/1995
s. 34,
amended by
No. 69/2000
s. 65(3).

(6) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use water for purposes associated with the operation of a hydro-electric power station, the licence may, despite

S. 56(6)
inserted by
No. 35/1997
s. 29,
amended by
No. 69/2000
s. 65(3).

subsection (3), be issued for a period exceeding 15 years (but not exceeding 40 years) specified in the licence, subject to any special conditions determined by the Minister.

57 Sale of licence by Minister

S. 57(1)
amended by
Nos 5/2002
s. 27(a),
32/2010
s. 77(Sch.).

- (1) Instead of issuing a licence on an application under section 51(1) the Minister may, after having considered the matters mentioned in section 53, sell a licence—
 - (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner that he or she thinks fit.
- (2) If the Minister decides to sell a licence under subsection (1), he or she must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—
 - (a) declaring that the licence is available for purchase by any person holding the qualifications specified in the notice; and
 - (b) giving details of the method by which the licence is to be sold; and
 - (c) specifying the conditions to which the licence will be subject and the period for which it is capable of remaining in force.
- (3) For the purposes of this Act a licence sold under subsection (1) must be treated as if it had been issued to the purchaser on application by the purchaser under section 51(1).

S. 57(3)
amended by
Nos 5/2002
s. 27(b),
32/2010
s. 77(Sch.).

58 Renewal of licence

- (1) The holder of a licence issued under section 51(1) may, before the expiry of the licence, apply to the Minister for the renewal of the licence.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by the application fee, if any, fixed by the Minister for that kind of licence.
- (3) In considering an application for the renewal of a licence issued under section 51(1), the Minister must have regard to the matters mentioned in section 53 and must renew the licence unless, in the opinion of the Minister, there are good reasons not to do so.
- (4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 56(1).
- (5) A licence under section 51(1) may be renewed for a period not exceeding 15 years.

S. 58(1)
amended by
Nos 5/2002
s. 28(1),
32/2010
s. 77(Sch.).

S. 58(2)(c)
amended by
No. 110/1997
s. 17(3),
substituted by
Nos 5/2002
s. 28(2),
48/2003
s. 12(2).

S. 58(3)
amended by
Nos 5/2002
s. 28(3),
32/2010
s. 77(Sch.).

S. 58(5)
amended by
No. 5/2002
s. 28(4),
substituted by
No. 99/2005
s. 48.

s. 59

S. 58(6)
amended by
Nos 5/2002
s. 28(4),
32/2010
s. 77(Sch.).

- (6) A licence issued under section 51(1) may be renewed under this section from time to time.

S. 59
(Heading)
inserted by
No. 32/2010
s. 42(1).

59 Amendment of licence issued under section 51 on motion of Minister

S. 59(1)
amended by
Nos 5/2002
s. 29, 32/2010
s. 42(2).

- (1) The Minister, of the Minister's own motion, may amend a licence issued under section 51 to take and use water to the extent necessary to ensure compliance with an approved management plan for any relevant water supply protection area.

S. 59(1A)
inserted by
No. 62/1995
s. 32(2),
repealed by
No. 29/2007
s. 24(3).

* * * * *

- (2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

S. 59A
inserted by
No. 32/2010
s. 43.

59A Amendment of licence issued under section 51 on application of licence holder

- (1) The Minister, on the application of the holder of a licence issued under section 51, may amend the licence.
- (2) The holder of a licence issued under section 51 may apply to the Minister for an amendment of the licence under this section.
- (3) An application under this section—
- (a) must be in a form and made in a manner approved by the Minister; and

- (b) contain any information that is required by the Minister; and
- (c) be accompanied by the fee fixed by the Minister for that class of application (if any).

59B Procedure applying to application

S. 59B
inserted by
No. 32/2010
s. 43.

The procedure that applies under this Division to an application for the issue of a licence under section 51 applies, with any necessary modifications and subject to section 59C, to an application under section 59A for the amendment of such a licence.

59C Ministerial consideration of application

S. 59C
inserted by
No. 32/2010
s. 43.

In considering an application under section 59A, the Minister—

- (a) must have regard to any matter referred to in section 53(1)(a) to 53(1)(b); and
- (b) must give effect to the matters referred to in section 53(2); and
- (c) may have regard to any other matter that the Minister thinks fit.

60 Revocation of licence

- (1) The Minister may revoke a licence issued under section 51 if—
 - (a) in the opinion of the Minister there has been a failure to comply with any condition to which the licence is subject; or
 - (b) in the case of a licence relating to works, in the opinion of the Minister the works are being operated contrary to the provisions of this Act.

S. 60(1)
amended by
No. 32/2010
s. 77(Sch.).

S. 60(1)(b)
amended by
No. 5/2002
s. 30(a)(b).

s. 61

- (2) The Minister must give at least 3 months' written notice of the revocation to the licensee and must specify in the notice the reasons for the revocation.

61 Surrender of licence

S. 61(1)
amended by
No. 32/2010
s. 77(Sch.).

- (1) A licensee may surrender to the Minister a licence issued under section 51.

- (2) The Minister may refund to the licensee all or part of any charge paid by the licensee in respect of a licence surrendered under subsection (1).

S. 61A
inserted by
No. 85/2006
s. 35.

61A Cancellation of licence where water share obtained in declared water system

- (1) The holder of a licence issued under section 51 may apply to the Minister for the licence to be cancelled on the issuing of a water share in a declared water system.
- (2) In cancelling a licence under this section, the Minister must have regard to any relevant rules made under this Division.

62 Transfer of licence

S. 62(1)
amended by
Nos 5/2002
s. 31(1),
32/2010
s. 77(Sch.).

- (1) A licence issued under section 51 (other than a registration licence) may, in accordance with this section, be transferred to another person.

- (2) A transfer may be either permanent or temporary.

S. 62(2AA)
inserted by
No. 5/2002
s. 31(2).

- (2AA) On the transfer or conveyance of land on which water is taken under a registration licence, the registration licence is deemed to be transferred to the successor in title of that land.

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- (2A) If the Minister approves, a permanent or temporary transfer of a licence under section 51 may be made to the owner or occupier of land outside Victoria.
- S. 62(2A) inserted by No. 62/1995 s. 23(1), amended by No. 110/1997 s. 15(1).
- (3) A licensee may apply to the Minister for approval of the transfer of the licence.
- (3A) Without limiting subsection (5), the Minister may approve a transfer referred to in subsection (2A), having regard to the effect of the transfer on usage of water, the impact of subsidies and any other matter that the Minister considers relevant.
- S. 62(3A) inserted by No. 62/1995 s. 23(2).
- (4) An application must—
- (a) be made in a form and manner approved by the Minister; and
- (b) contain any information that—
- (i) is prescribed; or
- (ii) is required by the Minister; and
- (c) be accompanied by any application fee fixed by the Minister.
- S. 62(4)(c) amended by No. 110/1997 s. 17(4).
- (5) In considering an application, the Minister must have regard to the matters mentioned in section 53.
- S. 62(5) amended by No. 99/2005 s. 29(1).
- (6) If an application is made—
- (a) the Minister, if he or she is of the opinion that the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective must refuse to approve the transfer; or
- S. 62(6) amended by No. 62/1995 s. 23(3), substituted by No. 99/2006 s. 29(2).
-

s. 62A

S. 62(6)(b)(ii)
amended by
No. 32/2010
s. 77(Sch.).

- (b) in any other case, the Minister may—
- (i) refuse to approve the transfer of the licence; or
 - (ii) approve the transfer of the licence and may, in addition, amend or delete any of the conditions to which the licence is subject or add a new condition, but must not make the licence subject to any condition to which it could not have been made subject under section 56(1).

(7) A licence may be transferred under this section even if the water is to be used in an irrigation district.

S. 62(8)
inserted by
No. 62/1995
s. 23(4).

- (8) For the purposes of transfers under this section, the holder of a licence under section 51 has power to sell the licence—
- (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner that the holder thinks fit.

S. 62(9)
inserted by
No. 62/1995
s. 23(4),
repealed by
No. 99/2005
s. 49.

* * * * *

S. 62A
inserted by
No. 32/2010
s. 44.

62A Declaration for taking of water under a licence in subsequent water season

- (1) The Minister may make a declaration in respect of licences issued under section 51 to take water in a water system, authorising that holders of the licences may take water that is entitled to be taken under the licences in any particular water season in a subsequent water season.

- (2) A declaration under subsection (1) may apply to—
 - (a) licences in a water system or part of a water system; or
 - (b) a class or classes of licences in a water system or part of a water system.
- (3) Any taking of water under a declaration of the Minister under subsection (1) is subject to—
 - (a) any terms and conditions of the licence to which the water allocation applies; and
 - (b) any terms and conditions specified by the Minister in the declaration.
- (4) The Minister must cause notice of the making of a declaration under subsection (1) to be—
 - (a) published in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the declaration applies.
- (5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

63 Offence¹²

- (1) A person must not take or use water from—
 - (a) a waterway (including the River Murray); or
 - (b) a bore—

in a non-declared water system unless authorised to do so by or under this or any other Act.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

S. 63(1)
amended by
Nos 90/2003
s. 4(1),
99/2005 s. 50.

s. 63

S. 63(1A)
inserted by
No. 5/2002
s. 32(1),
amended by
No. 90/2003
s. 4(1).

(1A) A person must not take or use—

- (a) water from a spring or soak; or
- (b) water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore)—

for a use other than domestic and stock use, unless authorised to do so by or under this Act or any other Act.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

S. 63(2)
amended by
Nos 5/2002
s. 32(2)(a),
90/2003
s. 4(2).

(2) A person who is guilty of an offence under subsection (1) or (1A) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction.

S. 63(3)
amended by
No. 5/2002
s. 32(2)(b).

(3) For the purposes of subsections (1) and (1A), **waterway** includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 63(4)
inserted by
No. 5/2002
s. 32(3) (as
amended by
No. 6/2002
s. 4(2)).

(4) If, at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002**, a person was taking and using water from a spring or soak or water from a dam not on a waterway, subsection (1A) does not apply to that

person in respect of that spring or soak or dam
until 1 July 2003.

64 Review of decisions

- (1) A person whose interests are affected by the
decision may apply to the Tribunal for review of a
decision by the Minister—

S. 64
amended by
No. 52/1998
s. 311(Sch. 1
items 105.11,
105.12) (ILA
s. 39B(1)).

- (a) under section 55(1) to refuse an application
under section 51; or

S. 64(1)(a)
amended by
No. 32/2010
s. 77(Sch.).

- (b) under section 55(1) to approve an application
under section 51; or

S. 64(1)(b)
amended by
No. 32/2010
s. 77(Sch.).

- (c) under section 56(1) to make a licence subject
to any condition; or

- (d) under section 58 to refuse an application for
the renewal of a licence; or

- (e) under section 58 to approve an application
for the renewal of a licence; or

- (f) under section 58 to impose any condition on
a licence or to amend or delete any of the
conditions to which a licence is subject; or

- (g) under section 59(1) or (1A) to amend a
licence; or

S. 64(1)(g)
amended by
No. 62/1995
s. 32(3).

- (ga) under section 59A(1) or (2) to amend a
licence; or

S. 64(1)(ga)
inserted by
No. 32/2010
s. 45.

- (h) under section 60(1) to revoke a licence; or

- (i) under section 62(6)(a) to refuse to approve
the transfer of a licence; or

s. 64AAA

- (j) under section 62(6)(b) to approve the transfer of a licence; or
- (k) under section 62(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject.

S. 64(2)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.12).

- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 64AAA
inserted by
No. 99/2005
s. 51.

64AAA Rule making powers for licences under section 51

- (1) The Minister may, by Order, published in the Government Gazette, set out rules—
 - (a) with respect to adjustment of volumes to be applied to transfers of licences issued under section 51; and
 - (b) as to the circumstances in which the consent of any Authority under this Act will be required to transfers of licences under section 51; and
 - (c) as to any matters relating to applications under section 62; and
 - (d) as to the circumstances in which the Minister will give or refuse to give approvals under section 62; and
 - (e) as to any other matters the Minister is authorised to make rules for under this Division.

- (2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

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Pt 4 Div. 3
(Heading and ss 64A–64E)
inserted by
No. 62/1995
s. 5,
amended by
Nos 52/1998
s. 311(Sch. 1
item 105.13),
5/2002 s. 33,
repealed by
No. 85/2006
s. 36.

Division 4—Periodic amendment of entitlements

Pt 4 Div. 4
(Heading and ss 64F, 64G)
inserted by
No. 62/1995
s. 29.

64F Records and reports of transfers

S. 64F
inserted by
No. 62/1995
s. 29.

- (1) An Authority which is a party to or approves or has notice of—

(a) a transfer, whether permanent or temporary, under section 46A or 62; or

S. 64F(1)(a)
amended by
No. 86/1995
s. 12(1)(a).

(b) a temporary transfer under section 224 or 224A; or

S. 64F(1)(b)
amended by
No. 86/1995
s. 12(1)(b).

(c) a permanent transfer under section 47D, 226 or 226AA; or

S. 64F(1)(c)
amended by
Nos 86/1995
s. 12(1)(c),
110/1997
s. 15(2).

(d) a conversion to a bulk entitlement under section 47C—

must cause a record in the form approved by the Minister to be kept of each transfer or conversion.

s. 64GA

- (2) An Authority must provide to the Minister, if the Minister so requires, a report of transfers or conversions referred to in subsection (1) containing information specified by the Minister.

S. 64G
inserted by
No. 62/1995
s. 29,
amended by
Nos 86/1995
s. 12(2),
110/1997
s. 15(3)(a)(b),
repealed by
No. 32/2010
s. 46.

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Pt 4 Div. 5
(Heading and
ss 64GA,
64GB)
inserted by
No. 99/2005
s. 52.

Division 5—Seasonal determinations

S. 64GA
inserted by
No. 99/2005
s. 52.

64GA Appointment of Authorities to be responsible for seasonal determinations

The Minister may appoint an Authority to be responsible for making determinations in respect of a declared water system under section 64GB.

S. 64GB
inserted by
No. 99/2005
s. 52.

64GB Seasonal determinations by Authorities

- (1) If the Minister has appointed an Authority under section 64GA, the Authority must, for each water season for each declared water system for which the Authority has been so appointed, determine, the water that is available in the water system for that season—
- (a) for each class of water shares issued in that system; and
- (b) for each bulk entitlement in the system in respect of which the water available to be taken, in any water season, under the

S. 64GB(1)(b)
substituted by
No. 32/2010
s. 47.

- entitlement is not able to be established from the terms of the entitlement; and
- (c) for each environmental entitlement in the system in respect of which the water available to be taken, in any water season, under the entitlement is not able to be established from the terms of the entitlement.
- (2) A determination under subsection (1) must be made before the commencement of the water season to which it relates.
- (3) An Authority that has made a determination under subsection (1) may, from time to time during the season, if the Authority is of the opinion that there is additional water available in the system, determine that additional water is available in the water system—
- (a) for each class of water shares issued in the system; and
- (b) for each bulk entitlement in the system; and
- (c) for each environmental entitlement in the system.
- (4) An Authority must not make a determination under this section until the Authority has assessed the amount of water available in the system to be taken and the amount reserved for the environment—
- (a) in any case where a bulk entitlement applies to the system, by applying the rules specified for the purposes of any such determination in any Order granting the bulk entitlement; or
- (b) in the case where a bulk entitlement does not apply to the system, by applying the rules specified for the purposes of any such determination in the management plan,

S. 64GB(1)(c)
substituted by
No. 32/2010
s. 47.

approved under section 32A, applying to the system.

- (5) In making a determination under this section, the Authority may have regard to the state of the system in the part of the season to which the determination relates and the expected state of the system.
- (6) A determination under this section must apply—
 - (a) to each water share in a class of water shares in the same proportion; and
 - (b) to each bulk entitlement in the same proportion; and
 - (c) to each environmental entitlement in the same proportion—subject to—
 - (d) any rules specified for the purposes of any such determination in any Order granting any bulk entitlement in the system; or
 - (e) any requirement, restriction or condition contained in a management plan under section 32A in relation to the allocation of water; or
 - (f) any condition that applies to the allocation of water under this section determined by the Minister.
- (7) An Authority that has made a determination under this section must cause a notice of the determination to be published in a newspaper generally circulating in the area that is the subject of the determination or the area served by the water system that is the subject of the determination.

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- (8) In the case of a determination under this section as to the amount of water available for water shares in a water system, the determination may be expressed as a percentage of the maximum volume of water that has been determined for each water share.
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S. 64GB(8)
amended by
No. 28/2007
s. 3(Sch.
item 75.3).

Pt 4A
(Heading and
ss 64H, 64I)
inserted by
No. 62/1995
s. 30.

PART 4A—DELIVERY OF INTERSTATE WATER

S. 64H
inserted by
No. 62/1995
s. 30.

64H Temporary supply of interstate water

- (1) The holder of a licence under section 51 or the owner or occupier of a holding within an irrigation district may, in accordance with this section and the by-laws made under section 64I, apply to an Authority for approval to use the works of the Authority for the temporary supply of water to the applicant by an owner or occupier of land outside Victoria.
- (2) An application under subsection (1) must be accompanied by the prescribed fee, if any.
- (3) If an application under subsection (1) is made—
 - (a) the Authority, if the Authority is of the opinion that approval of the use of the works is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective, must refuse to approve the use of the works; or
 - (b) in any other case, the Authority may—
 - (i) refuse to approve the use of its works for any temporary supply; or
 - (ii) approve the use of its works for any temporary supply, subject to the prescribed terms and conditions and may, in addition, impose any other terms and conditions on the approval of which notice is given to the parties by the Authority when the approval is given.

S. 64H(3)
substituted by
No. 99/2005
s. 30.

- (4) An approval given under this section expires—
 - (a) if the application is approved during an irrigation period, on the expiry of that irrigation period;
 - (b) if the application is approved between irrigation periods, on the expiry of the next irrigation period after the application is approved.
- (5) This section does not apply in a declared water system.

S. 64H(5)
inserted by
No. 99/2005
s. 53.

64I By-laws about temporary supply of interstate water

S. 64I
inserted by
No. 62/1995
s. 30.

- (1) An Authority may, in accordance with section 160, make by-laws for or with respect to the use of the Authority's works for the temporary supply of water under section 64H.
- (2) Without limiting subsection (1), by-laws may—
 - (a) prescribe procedures for applications for approval; and
 - (b) fix any fees payable to the Authority for processing and approving an application; and
 - (c) fix any fees payable to the Authority for the use of the Authority's works for the temporary supply of water; and
 - (d) set limits on the use of works for the temporary supply of water under section 64H; and
 - (e) prescribe any other terms and conditions in relation to an approval under section 64H.

S. 64I(1)
amended by
No. 85/2006
s. 37.

Pt 4B
(Heading and
ss 64J–64AZ)
inserted by
No. 99/2005
s. 54.

PART 4B—WATER-USE LICENCES AND WATER USE REGISTRATIONS

Division 1—Offences

S. 64J
inserted by
No. 99/2005
s. 54.

64J Offence to use water for certain purposes on land without licence

S. 64J(1)
amended by
No. 85/2006
s. 38(1).

- (1) A person must not use water for irrigation on land, or knowingly cause or permit water to be used for irrigation on land, being water that is from a declared water system, unless the person does so under a water-use licence that authorises the use of water for that purpose on that land.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months;

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

S. 64J(2)
amended by
No. 85/2006
s. 38(2).

- (2) A person must not use water on land or knowingly cause or permit water to be used on land for purposes other than the purpose of irrigation, being water that is from a declared water system, unless the person does so under a water-use registration that authorises the use of water for purposes other than irrigation on that land.

Penalty: For a first offence, 20 penalty units;

For a subsequent offence, 60 penalty units.

- (3) This section does not apply to a person who is using water on land under any other authorisation to do so by or under this or any other Act.

64K Further offence for use of water in certain cases

S. 64K
inserted by
No. 99/2005
s. 54.

- (1) A person must not use water that is authorised to be taken under Part 3A or under an assignment under section 48L or 48M on land specified in a water-use licence or water-use registration unless—
- (a) the water share is, under that Part, associated with the land specified in that water-use licence or water-use registration; or
 - (b) the Minister has, in writing, approved the use of water on that land.
- Penalty: 60 penalty units.
- (2) For the purposes of subsection (1), a person may apply to the Minister for approval to the use of water on land.
- (3) An application under subsection (2) must—
- (a) be made in the form and manner approved by the Minister; and
 - (b) contain the prescribed particulars; and
 - (c) be accompanied by any documents or information required by the Minister; and
 - (d) be accompanied by the prescribed fee.
- (4) For the purposes of subsection (1), the Minister may give approval, subject to any conditions that the Minister thinks fit.
- (5) In giving an approval under subsection (1), the Minister must have regard to any relevant rules made under Division 11.

S. 64K(1)
amended by
No. 85/2006
s. 39(1).

S. 64K(3)(c)
amended by
No. 85/2006
s. 39(2).

Division 2—Grant of water-use licences

S. 64L
inserted by
No. 99/2005
s. 54.

64L Power to grant water-use licences

- (1) The Minister, on receiving an application under this Division from an owner of land, may grant to that person a licence that authorises—
 - (a) the use of water (authorised to be taken under Part 3A) for the purposes of irrigation on the land that is owned by that person and that is specified in the licence; and
 - (b) the use of water (authorised to be taken under Part 3A) on the land specified in the licence for any other purposes that are specified in the licence.
- (2) The Minister must set out in the licence—
 - (a) the name and address of the licence holder; and
 - (b) a description of the land specified in the licence; and
 - (c) the conditions to which the licence is subject (including the annual use limit); and
 - (d) the date on which the licence takes effect.

S. 64M
inserted by
No. 99/2005
s. 54.

64M Matters to be considered in granting water-use licences

The Minister, in granting a water-use licence, must consider the following matters—

- (a) the impact the proposed use of water may have on other persons or the environment (in particular waterlogging, salinity and nutrient impacts); and
- (b) whether or not the proposed use can meet standard water-use conditions that would apply to the licence, if granted; and

- (c) whether or not the proposed use is consistent with the water use objectives that would apply to the licence, if granted; and
- (d) if the application has been referred to the Catchment Management Authority, any comments received from that Authority, within 30 days of the application being referred to that Authority; and
- (e) any other matters the Minister considers relevant.

64N Obligation not to grant licence in certain circumstances

S. 64N
inserted by
No. 99/2005
s. 54.

The Minister must not grant a water-use licence if, after considering the matters set out in section 64M—

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S. 64N(a)
repealed by
No. 85/2006
s. 40.

- (b) the Minister is of the opinion that the granting of the licence would be inconsistent with the water-use objectives that would apply to the licence, if granted; or
- (c) the Minister is of the opinion that there are no works or systems in place or likely to be installed in the near future for delivering water to the land that is to be the land specified in the licence.

64O Applications for water-use licences

S. 64O
inserted by
No. 99/2005
s. 54.

An owner of land may apply for a water-use licence to authorise the use of water on that land.

s. 64P

S. 64P
inserted by
No. 99/2005
s. 54.

64P Form of application

An application for a water-use licence must—

- (a) be in the form and made in the manner approved by the Minister; and
- (b) contain the prescribed particulars; and
- (c) be accompanied by any prescribed documents or prescribed information or information or documents required by the Minister; and
- (d) be accompanied by the fee determined by the Minister.

S. 64P(d)
amended by
No. 85/2006
s. 41.

S. 64Q
inserted by
No. 99/2005
s. 54.

64Q Referral of application

On receiving an application for a water-use licence, if the Minister is of the opinion that the application does not meet the relevant standard water-use conditions, but may meet the relevant water-use objectives, the Minister must refer the application to the Catchment Management Authority responsible for managing the catchment in which the land that is to be specified in the licence is situated, without delay.

S. 64R
inserted by
No. 99/2005
s. 54.

64R Licence fees

- (1) The Minister may fix fees to be paid by licence holders for the provision of services by the Minister to the licence holders.
- (2) A fee under subsection (1) may apply at consecutive periods of twelve months while any water-use licences are in force.

64S Change of ownership of specified land

S. 64S
inserted by
No. 99/2005
s. 54.

- (1) In the case of a transfer of ownership of the whole of the land specified in a water-use licence, the person to whom ownership is transferred is deemed to be the holder of the licence.
- (2) In the case of a transfer of ownership of part only of the land specified in a water-use licence, the licence is to be taken to be cancelled on the day on which transfer of the ownership of the land takes place.

Division 3—Water-use objectives for licences

64T Objectives as to water use

S. 64T
inserted by
No. 99/2005
s. 54.

- (1) The Minister may determine, for the whole or any part of the State, objectives that are to apply in the administration of this Part.
- (2) The Minister may make a determination under subsection (1), either—
 - (a) of his or her own motion; or
 - (b) on the recommendation of the Catchment Management Authority for the catchment and land protection region in which the area to which the determination relates is situated.
- (3) The Minister must not make a determination of his or her own motion under this section until the Minister has consulted with—
 - (a) any Catchment Management Authorities and water Authorities that have responsibilities in the part of the State to which the determination relates; and
 - (b) any bodies, that the Minister thinks fit to consult with, that represent persons whose interests are likely to be affected by the making of the determination.

s. 64U

S. 64U
inserted by
No. 99/2005
s. 54.

64U Matters that objectives may provide for

Objectives determined under this Division may provide for minimising impacts of water use on other persons and the environment in the part of the State to which the objectives apply, including the following—

- (a) minimising salinity;
- (b) managing groundwater infiltration;
- (c) managing disposal of drainage;
- (d) protecting biodiversity;
- (e) minimising cumulative effects of water use.

S. 64V
inserted by
No. 99/2005
s. 54.

64V Recommendations by Catchment Management Authorities

- (1) In making a recommendation under section 64T(2)(b), the Minister may request a Catchment Management Authority to give consideration to matters specified by the Minister when making its recommendation under that subsection.
- (2) Before making a recommendation under section 64T the Authority must—
 - (a) give notice of the proposal to make the objectives to any other Authority or any holders of water-use licences whose interests the Authority considers are likely to be affected by the objectives;
 - (b) consult with those persons or bodies that the Authority considers represent the interests of persons who are likely to be affected by the recommendation and then prepare draft objectives and make the draft objectives available for inspection by the public for at least 2 months after their preparation;

- (c) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the part of the State to which the proposal applies stating where and when the draft objectives can be inspected and inviting public comment by a set date;
 - (d) comply with any other consultative processes required by directions given by the Minister;
 - (e) consider any comments made by the set date.
- (3) In making a recommendation under section 64T the Authority must have regard to any comments made under subsection (2).

64W Revoking or amending determinations as to objectives

S. 64W
inserted by
No. 99/2005
s. 54.

- (1) The Minister may make a determination amending or revoking a determination made under section 64T, either—
 - (a) of his or her own motion; or
 - (b) on the recommendation of the Catchment Management Authority.
- (2) In making a recommendation under subsection (1)(b) as to an amending determination, the Catchment Management Authority may recommend all or any of the water use objectives that are to be included in the amending determination.
- (3) Sections 64T(3) and 64V apply to the making of a determination or recommendation under this section in the same manner as they apply to the making of a determination or recommendation under section 64T.

s. 64X

S. 64X
inserted by
No. 99/2005
s. 54.

64X Notification and effect of determinations as to objectives

A determination under this Division—

- (a) must specify the day on which it comes into force; and
- (b) must be published in a newspaper circulating generally in the part of the State to which the objectives apply.

S. 64X(b)
amended by
No. 32/2010
s. 48.

Division 4—Standard water-use conditions for licences

S. 64Y
inserted by
No. 99/2005
s. 54.

64Y Standard water-use conditions

- (1) The Minister may determine for the whole or any part of the State, conditions that are to apply to all water-use licences, or to all water-use licences of a particular class, that specify land that is in the area to which the determination relates.
- (2) The Minister may make a determination under subsection (1), either—
 - (a) of his or her own motion; or
 - (b) on the recommendation of the Catchment Management Authority for the catchment and land protection region in which the area to which the determination relates is situated.
- (3) The Minister must not make a determination of his or her own motion under this section until the Minister has consulted with—
 - (a) any Catchment Management Authorities and water Authorities that have responsibilities in the area to which the determination relates; and

- (b) any bodies, that the Minister thinks fit to consult with, that represent persons whose interests are likely to be affected by the making of the determination.

64Z General provisions applying to standard water-use conditions

S. 64Z
inserted by
No. 99/2005
s. 54.

- (1) Conditions determined by the Minister under this Division may vary according to the nature of all or any of the following—
 - (a) the use of water under licences;
 - (b) the water that is to be used under licences;
 - (c) the way water is applied under licences;
 - (d) any other relevant matter.
- (2) Conditions determined by the Minister under this Division must be consistent with water-use objectives that apply to the part of the State to which the conditions apply.
- (3) Conditions determined by the Minister under this Division may include conditions as to all or any of the following matters—
 - (a) maximum volumes of water per hectare that may be applied to land specified in licences over any 12 month period;
 - (b) requirements to minimize impacts of the use of water on other persons or on the environment;
 - (c) the way that water is used and re-used on land specified in licences;
 - (d) drainage from land specified in licences;
 - (e) monitoring and reporting requirements of licence holders;
 - (f) any other matter that the Minister thinks fit.

S. 64AA
inserted by
No. 99/2005
s. 54.

64AA Recommendations by Catchment Management Authorities

- (1) In making a recommendation under section 64Y(2)(b), the Minister may request a Catchment Management Authority to give consideration to matters specified by the Minister when making its recommendation under that subsection.
- (2) Before making a recommendation under section 64Y(2)(b) the Authority must—
 - (a) give notice of the proposal to make the conditions to any other Authority or any holders of water-use licences whose interests the Authority considers are likely to be affected by the conditions;
 - (b) make the draft conditions available for inspection by the public for at least 2 months after their preparation;
 - (c) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the region which will be affected by the proposal to make the conditions stating where and when the draft conditions can be inspected and inviting public comment by a set date;
 - (d) consult with those persons or bodies that the Authority considers represent the interests of persons who are likely to be affected by the recommendation and comply with any other consultative processes required by directions given by the Minister;
 - (e) consider any comments made by the set date.
- (3) In making a recommendation under section 64Y(2)(b) the Authority must have regard to any comments made under subsection (2).

64AB Revoking or amending determinations as to standard water-use conditions

S. 64AB
inserted by
No. 99/2005
s. 54.

- (1) The Minister may make a determination amending or revoking a determination made under section 64Y, either—
 - (a) of his or her own motion; or
 - (b) on the recommendation of the Catchment Management Authority.
- (2) In making a recommendation under subsection (1)(b) as to an amending determination, the Catchment Management Authority may recommend all or any of the water-use conditions that are to be included in the amending determination.
- (3) Sections 64Y(3) and 64AA apply to the making of a determination or recommendation under this section in the same manner as they apply to the making of a determination or recommendation under section 64Y.

64AC Notification and effect of determinations as to standard water-use conditions

S. 64AC
inserted by
No. 99/2005
s. 54.

- (1) A determination under this Division—
 - (a) must specify the day on which it comes into force; and
 - (b) must be published in a newspaper circulating generally in the region to which the determination relates.
- (2) The conditions determined under this Division apply to any water-use licence that specifies land that is in the area to which the determination applies.

S. 64AC(1)(b)
amended by
No. 32/2010
s. 49.

s. 64AD

- (3) On the making of a determination under this Division, the Minister must notify all the holders of water-use licences to which the determination applies of the making of the determination and of the conditions set out in the determination.
- (4) A failure to comply with subsection (3) does not affect the validity of a determination made under this Division.

Division 5—Particular conditions on licences

S. 64AD
inserted by
No. 99/2005
s. 54.

64AD Particular conditions on water-use licences

The Minister may impose any particular conditions on a water-use licence that the Minister thinks fit as to the following matters—

- (a) the meeting of water-use objectives that apply in the area in which the land that is specified in the licence is situated; and
- (b) specifying the annual use limit on the licence.

Division 6—Further provisions as to conditions on licences

S. 64AE
inserted by
No. 99/2005
s. 54.

64AE Effect of inconsistency between standard water-use conditions and other conditions on licences

- (1) If a water-use licence is subject to a standard water-use condition at the time a particular condition is imposed on the licence, being a standard water-use condition that is inconsistent with the particular condition, the standard water-use condition is void (on and from the imposition of the particular condition) to the extent of that inconsistency.

- (2) If a water-use licence becomes subject to a standard water-use condition after a particular condition has been imposed on a water-use licence, being a standard water-use condition that is inconsistent with the particular condition, the particular condition is void (on and from the commencement of the application of the standard water-use condition to the licence) to the extent of that inconsistency.
- (3) In this section *particular condition* means a condition that is imposed under Division 5 on a water-use licence.

64AF Offence to fail to comply with licence condition

The holder of a water-use licence must comply with the conditions imposed on the licence in accordance with Division 4 or Division 5 to the extent that the conditions are not void under section 64AE.

Penalty: 60 penalty units.

S. 64AF
inserted by
No. 99/2005
s. 54.

Division 7—Variations of licences

64AG Variation of water-use licences on motion of Minister

- (1) The Minister, on the Minister's own motion, may vary a water-use licence by imposing a new condition on the licence or by amending an existing condition on the licence.
- (2) The Minister must not vary a condition on a licence or impose a new condition on a licence under subsection (1) unless the Minister is satisfied that the variation or new condition (as the case requires) is consistent with the water-use objectives that apply to the licence.

S. 64AG
inserted by
No. 99/2005
s. 54.

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- (3) Before making a variation under this section, the Minister must—
- (a) notify the holder of the licence as to—
 - (i) the nature of the proposal to vary the licence; and
 - (ii) the rights the holder of the licence has under this section to make submissions on the proposal; and
 - (b) allow the holder an opportunity to make written submissions on the proposal to vary the licence.
- (4) Submissions under subsection (3) must be made within 2 months of the giving of the notice.
- (5) In deciding whether or not to make a variation under this section, the Minister must—
- (a) have regard to submissions made under subsection (3) within the period for the making of submissions; and
 - (b) notify the holder of the licence of the Minister's decision.
- (6) A variation under this section has effect from the later of—
- (a) the date that the notice under subsection (5) is served; or
 - (b) the date that is specified by the Minister in that notice.

S. 64AH
inserted by
No. 99/2005
s. 54.

64AH Variation of water-use licence on application of licence holder

- (1) The Minister may, on the application of the holder of a water-use licence, vary or revoke a condition on the licence.
 - (2) The holder of a licence may apply to the Minister for a variation of a licence under subsection (1).
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(3) Where there is a joint application under this section for the variation of two water-use licences by the holders of the licences, being an application where—

- (a) the holder of one licence is applying to reduce the annual use limit for the licence held by that person; and
- (b) the holder of the other licence is applying to increase the annual use limit for the licence held by that person; and
- (c) the application is made under an agreement between both parties—

the Minister must approve the applications if the Minister is satisfied that the salinity impacts of the proposed reduction and increase will not have an adverse impact on other persons or the environment.

64AI Form of applications for variation

(1) An application under this Division must—

- (a) be in a form approved by the Minister; and
- (b) contain any prescribed particulars; and
- (c) be accompanied by any prescribed documents or prescribed information or information or documents required by the Minister; and

- (d) be accompanied by the fee determined by the Minister.

S. 64AI
inserted by
No. 99/2005
s. 54.

S. 64AI(1)(c)
substituted by
No. 85/2006
s. 42.

S. 64AI(1)(d)
substituted by
No. 85/2006
s. 42.

(2) The powers of the Minister in relation to applications for licences apply in respect of an application for variation of a licence under this Division as if it were an application for a water-use licence.

- (3) The Minister must notify an applicant under this section of his or her decision on the application.

Division 8—Suspension, revocation, cancellation and other powers for licences

S. 64AJ
inserted by
No. 99/2005
s. 54.

64AJ Suspension of water-use licence

- (1) The Minister may suspend a water-use licence if the Minister reasonably believes that—
- (a) there has been a failure to comply with a condition to which the licence is subject; or
 - (b) there has been a failure to comply with a notice of contravention under section 151 that relates to the licence; or
 - (c) the holder of the licence has not paid a fee payable in respect of the licence or any charge payable under section 287A.
- (2) Before suspending a licence under this section, the Minister must—
- (a) notify the holder of the licence as to—
 - (i) the reason for proposing to suspend the licence; and
 - (ii) the rights the holder of the licence has under this section to make submissions on the proposal; and
 - (iii) the terms on which the suspension will be lifted; and
 - (b) allow the holder an opportunity to make written submissions on the proposal to suspend the licence; and
 - (c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed suspension of the licence.

- (3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.
- (4) In deciding whether or not to suspend a licence under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.
- (5) The Minister must not suspend the licence on the ground of the failure to pay—
 - (a) a fee payable in respect of the licence; or
 - (b) a charge payable under section 287A—if the fee has been paid within the period allowed under subsection (3) for the making of submissions.
- (6) On making a decision as to whether or not to suspend a licence under this section, the Minister must notify the holder of the licence of that decision.
- (7) A suspension under this section remains in force until the Minister, in writing, notifies the holder of the licence that it is no longer in force.

64AK Revocation of water-use licence

**S. 64AK
inserted by
No. 99/2005
s. 54.**

- (1) The Minister may revoke a water-use licence if the Minister reasonably believes that—
 - (a) in the case of the holder of a water-use licence who has been found guilty of a failure to comply with a condition of the licence, that person has continued after that finding of guilt to fail to comply with that condition; or
 - (b) in the case of a licence that is or has been suspended, water has been used during the suspension on the land specified in the licence for a purpose for which a water-use licence would be required; or

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- (c) in the case of a licence that has been suspended, the holder of the licence has, within 3 years of the completion of the period of suspension, failed to comply with a condition of the licence.
- (2) Before revoking a licence under this section, the Minister must—
- (a) notify the holder of the licence as to—
- (i) the reason for proposing to revoke the licence; and
- (ii) the rights the holder of the licence has under this section to make submissions on the proposal; and
- (b) allow the holder an opportunity to make written submissions on the proposal to revoke the licence; and
- (c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed revocation of the licence.
- (3) Submissions under subsection (2) must be made within 2 months of the giving of the notice.
- (4) In deciding whether or not to revoke a licence under this section, the Minister must have regard to submissions made under subsection (2) within the period for the making of submissions.
- (5) On making a decision as to whether or not to revoke a licence under this section, the Minister must notify the holder of the licence of that decision.

64AL Cancellation of water-use licence on motion of the Minister

S. 64AL
inserted by
No. 99/2005
s. 54.

- (1) The Minister may cancel a water-use licence if the Minister reasonably believes that water has not been used on the land specified in the licence for the purposes for which use of water is authorised under the licence for the immediately preceding period of 10 years.
- (2) Before cancelling a licence under this section, the Minister must—
 - (a) notify the holder of the licence as to—
 - (i) the reason for proposing to cancel the licence; and
 - (ii) the rights the holder of the licence has under this section to make submissions on the proposal; and
 - (b) allow the holder an opportunity to make written submissions on whether or not water has been used on the land in the preceding 10 years; and
 - (c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed cancellation of the licence.
- (3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.
- (4) In deciding whether or not to cancel a licence under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.
- (5) On making a decision as to whether or not to cancel a licence under this section, the Minister must notify the holder of the licence of that decision.

s. 64AM

S. 64AM
inserted by
No. 99/2005
s. 54.

64AM Other powers to cancel water-use licences

- (1) The holder of a water-use licence may apply to the Minister for the cancellation of the licence.
- (2) On receiving an application made by a licence holder under subsection (1), the Minister must cancel the licence.
- (3) At least 30 days before cancelling a licence under subsection (2), the Minister must notify any person who holds a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposal to cancel the licence.

S. 64AN
inserted by
No. 99/2005
s. 54.

64AN Application for review of Minister's decisions as to licences

- (1) A person may apply to the Tribunal for a review of a decision of the Minister to refuse an application by the person for a water-use licence.
- (2) The holder of a water-use licence may apply for a review of a decision of the Minister—
 - (a) on an application by the holder of the licence to vary the licence; or
 - (b) on the Minister's own motion, to vary the licence; or
 - (c) to suspend the licence; or
 - (d) to revoke the licence; or
 - (e) on the Minister's own motion, to cancel the licence; or
 - (f) to impose conditions (other than standard water-use conditions) on the licence.

64AO Time period for making an application for review

An application for review under section 64AN must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 64AO
inserted by
No. 99/2005
s. 54.

Division 9—Registration of water uses

64APAA Definition

In this Division—

occupier, in relation to land, means a prescribed person, or a person of a prescribed class of person, who has a right of access to the land or responsibility for the provision of a service to the land.

S. 64APAA
inserted by
No. 50/2010
s. 24.

64AP Power to register water uses

The Minister, on receiving an application under this Division from an owner or occupier of land, may grant to that person a registration that authorises the use of water, being water that is from a declared water system, for purposes other than the purpose of irrigation on the land owned or occupied by the person that is specified in the registration.

S. 64AP
inserted by
No. 99/2005
s. 54,
amended by
Nos 85/2006
s. 43, 50/2010
s. 25.

s. 64AQ

S. 64AQ
inserted by
No. 99/2005
s. 54.

64AQ Matters to which a Minister must have regard in registering use

The Minister must grant a water-use registration if the Minister is reasonably satisfied that—

- (a) there are works or systems in place or likely to be installed in the near future for delivering water to the land; and
- (b) the use of water for the purpose set out in the application is not prohibited by or under an Act; and
- (c) the maximum volume of water proposed in the application is reasonable for use for the purpose set out in the application.

S. 64AR
inserted by
No. 99/2005
s. 54.

64AR Applications for water-use registrations

S. 64AR(1)
amended by
No. 50/2010
s. 26.

- (1) An owner or occupier of land may apply for a water-use registration to authorise the use of water for purposes other than irrigation on that land.

- (2) An application for a water use registration must—

- (a) be in the form and made in the manner approved by the Minister; and
- (b) contain any prescribed particulars; and
- (c) be accompanied by any documents or information required by the Minister; and

S. 64AR(2)(d)
amended by
No. 85/2006
s. 44.

- (d) be accompanied by the fee determined by the Minister.

64AS Change of ownership of land specified in registration

S. 64AS
inserted by
No. 99/2005
s. 54,
substituted by
No. 50/2010
s. 27.

- (1) If a person who is the holder of a water-use registration is the owner of the land specified in the registration and that person transfers his or her ownership of the whole of the land so specified to another person, that person is taken to be the holder of the water-use registration.
- (2) If a person who is the holder of a water-use registration is the owner of the land specified in the registration and that person transfers his or her ownership of part only of the land so specified to another person, the registration is taken to be cancelled on the day on which the transfer of ownership takes place.

64AT Condition on water-use registrations as to annual use limit

S. 64AT
inserted by
No. 99/2005
s. 54.

The Minister may impose a condition on a water-use registration specifying the annual use limit for the registration.

Division 10—Variation, cancellation and other powers as to registration

64AU Variation of water-use registrations on application

S. 64AU
inserted by
No. 99/2005
s. 54.

- (1) The Minister may, on the application of the holder of a water use registration, vary the terms or conditions of the water-use registration.
- (2) The holder of a water use registration may apply to the Minister for a variation under subsection (1).

S. 64AU(1)
amended by
No. 32/2010
s. 50.

s. 64AV

S. 64AU(3)(c)
amended by
No. 85/2006
s. 45(a).

S. 64AU(3)(d)
amended by
No. 85/2006
s. 45(b).

- (3) An application under subsection (2) must—
 - (a) be in a form approved by the Minister; and
 - (b) contain any prescribed particulars; and
 - (c) be accompanied by any documents or information required by the Minister; and
 - (d) be accompanied by the fee determined by the Minister.
- (4) The powers of the Minister in relation to applications for water-use registrations apply in respect of an application under this section as if it were an application for a water-use registration.
- (5) The Minister must notify an applicant under this section of his or her decision on the application.

S. 64AV
inserted by
No. 99/2005
s. 54.

64AV Cancellation of water-use registration on motion of the Minister

- (1) The Minister may cancel a water-use registration if the Minister reasonably believes that water has not been used on the land specified in the registration for the purposes for which use of water is authorised by the registration for the preceding period of 10 years.
- (2) Before cancelling a water-use registration under this section, the Minister must—
 - (a) notify the holder of the water use registration as to—
 - (i) the reason for proposing to cancel the registration; and
 - (ii) the rights the holder of the water use registration has under this section to make submissions on the proposal; and

- (b) allow the holder an opportunity to make written submissions on whether or not water has been used on the land in the preceding 10 years.
- (3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.
- (4) In deciding whether or not to cancel a registration under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.
- (5) On making a decision as to whether or not to cancel a registration under this section, the Minister must notify the holder of the water use registration of that decision.

64AW Other powers to cancel water-use registrations

S. 64AW
inserted by
No. 99/2005
s. 54.

- (1) The holder of the water use registration may apply to the Minister for the cancellation of the registration.
- (2) On receiving an application made by the holder of a water use registration under subsection (1), the Minister must cancel the registration.

64AX Application for review of Minister's decisions as to registrations

S. 64AX
inserted by
No. 99/2005
s. 54.

- (1) A person may apply to the Tribunal for a review of a decision of the Minister to refuse an application by the person for a water-use registration.
- (2) The holder of a water use registration may apply for a review of a decision of the Minister—
 - (a) to vary the registration; or
 - (b) on the Minister's own motion, to cancel the registration; or
 - (c) to impose conditions on the registration.

s. 64AY

S. 64AY
inserted by
No. 99/2005
s. 54.

64AY Time period for making an application for review

An application for review under section 64AX must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 11—Rule making powers of Minister

S. 64AZ
inserted by
No. 99/2005
s. 54.

64AZ Rule making powers for water-use licences and water-use registrations

- (1) The Minister may, by Order, published in the Government Gazette, set out rules—
 - (a) as to the circumstances in which the Minister will give consents under this Part;
 - (b) as to any other matters the Minister is authorised to make rules for under this Part.
- (2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

PART 5—WORKS

Division 1—General

65 Advertisement etc. of application

- (1) This section applies to an application—
- (a) under section 67 for the issue of a licence to construct, alter, operate, remove or decommission works, a bore or a private dam; or
 - (b) under section 72(1) for the renewal of a licence referred to in paragraph (a); or
 - (c) under section 74(3) for approval of the transfer of a licence referred to in paragraph (a); or
 - (d) under section 76(1) for approval to dispose of any matter underground by means of a bore.
- (2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.
- (3) A notice given under subsection (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

S. 65(1)(a)
amended by
No. 5/2002
s. 34(a)(b).

66 Appointment of panel

- (1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 65 applies.
- (2) Subsections (2) to (6) of section 50 apply to a panel appointed under subsection (1) as if the reference in subsection (3) of that section to a notice given under section 49(2) were a reference to a notice given under section 65(2).

Division 2—Licence to construct works, etc.

67 Licence to construct works etc.

S. 67(1)
amended by
No. 5/2002
s. 35(1).

- (1) An Authority or any other person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission—
- (a) any works on a waterway (including the River Murray), including works to deviate (temporarily or permanently) a waterway; or
 - (b) a bore.

S. 67(1A)
inserted by
No. 5/2002
s. 35(2).

- (1A) A person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission a private dam, other than on a waterway, that—
- (a) has a wall that is 5 metres or more high above ground level at the downstream end of the dam and a capacity of 50 megalitres or more; or
 - (b) has a wall that is 10 metres or more high above ground level at the downstream end of the dam and a capacity of 20 megalitres or more; or
 - (c) has a wall that is 15 metres or more high above ground level at the downstream end of the dam, regardless of the capacity; or
 - (d) is a dam belonging to a prescribed class of dams.
- (2) An application must—
- (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and

-
- (c) be accompanied by—
- (i) any application fee fixed by the Minister; and S. 67(2)(c)(i) amended by No. 110/1997 s. 17(5).
 - (ii) if the land on which the works are, or are proposed to be, situated— S. 67(2)(c)(ii) amended by No. 5/2002 s. 35(3).
 - (A) is not Crown land (other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**); and S. 67(2)(c)(ii)(A) amended by No. 35/1998 s. 21(2).
 - (B) is not occupied by the applicant—
the written consent of the occupier.
- (3) This section does not apply to the abandonment or decommissioning of any works of an Authority, if the works are major works. S. 67(3) inserted by No. 85/2006 s. 46.
- (4) After consultation with the Minister administering the **Conservation, Forests and Lands Act 1987**, a licence issued under this section may include authority to enter on any Crown land other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** and to install and operate works on that land, under the licence, for the purpose of raising water. S. 67(4) inserted by No. 85/2006 s. 46.
- (5) The licensee is liable to compensate any person who suffers any pecuniary loss as a direct, natural and reasonable consequence of the exercise of an authority granted under subsection (4). S. 67(5) inserted by No. 85/2006 s. 46.
- (6) The amount of compensation payable is as agreed by the parties or, in the absence of agreement, as determined by the Tribunal. S. 67(6) inserted by No. 85/2006 s. 46.
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s. 67A

S. 67A
inserted by
No. 5/2002
s. 36.

67A Application to go to certain bodies

The Minister must, without delay, give a copy of an application under section 67 in respect of a dam, whether or not on a waterway, to—

- (a) the Department Head; and
- (b) the relevant Catchment Management Authority; and
- (c) the relevant Council; and
- (d) Melbourne Water Corporation, if the dam is or will be located in the waterway management district of Melbourne Water Corporation; and
- (e) any Authority holding a bulk entitlement that may be affected by the approval of the application.

S. 67A(d)
substituted by
No. 85/2006
s. 47.

S. 67B
inserted by
No. 5/2002
s. 36.

67B Bodies must consider application

- (1) Within 30 days after receipt of an application referred to a body under section 67A, the body—
 - (a) must consider the application; and
 - (b) may advise the Minister in writing that—
 - (i) it does not object to the issue of a licence; or
 - (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
 - (iii) it objects to the issue of the licence on any specified ground; and
 - (c) may give to the Minister its comments on the application.

- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 67A, the Minister may proceed to determine the application.

68 Matters to be taken into account

In considering an application under section 67, the Minister must—

- (a) have regard to the report of any panel appointed under section 66; and
- (ab) have regard to any advice and comments received within the period of 30 days referred to in section 67B(1); and
- (b) have regard to any adverse effect that the exercise of rights under the licence is likely to have—
 - (i) on the drainage regime within the meaning of section 12(1); or
 - (ii) on in-stream uses of water; or
 - (iii) otherwise on the aquifer or on the flow of water within the waterway, including effects on the land that forms the waterway or its surrounds; or
 - (iv) on the implementation of the conservation policy of the government; and
- (ba) have regard to the matters mentioned in paragraphs (b) to (n) of section 40(1); and
- (bb) give effect to an approved management plan for any relevant water supply protection area; and

S. 68
amended by
Nos 49/1994
s. 10(b),
5/2002
s. 37(a).

S. 68(ab)
inserted by
No. 5/2002
s. 37(b).

S. 68(ba)
inserted by
No. 5/2002
s. 37(c).

S. 68(bb)
inserted by
No. 5/2002
s. 37(c).

s. 69

S. 68(c)
amended by
No. 36/1992
s. 21(2),
substituted by
No. 5/2002
s. 37(d).

- (c) consider the likely effects of the escape of water from the works; and

S. 68(d)
inserted by
No. 36/1992
s. 21(2),
amended by
No. 5/2002
s. 37(e).

- (d) have regard to whether the site of the proposed works is within a heritage river area or natural catchment area within the meaning of the **Heritage Rivers Act 1992** and whether there is any restriction on the use of the area under that Act; and¹³

S. 68(e)
inserted by
No. 5/2002
s. 37(f).

- (e) have regard to any other matter that the Minister thinks fit.

69 Determination of application

S. 69(1)
amended by
No. 5/2002
s. 38(1).

- (1) The Minister may either refuse an application under section 67 or approve it and issue a licence under that section.
- (2) The Minister must defer consideration of the application pending the determination of any related application under Part 4.
- (3) The Minister must refuse the application if—

S. 69(3)(b)
amended by
No. 76/1998
s. 29(e).

- (a) a related application under Part 4 is refused;
or
- (b) the application relates to works to deviate, in the opinion of the Minister, a waterway in a major way and the Department Head does not consent to the issue of a licence.

S. 69(4)
amended by
No. 5/2002
s. 38(2).

- (4) Neither the Minister nor the Crown is liable to pay damages in respect of any injury, damage or loss caused by the flow of water from works authorised to be constructed, altered, operated, removed or decommissioned by a licence issued under section 67.

70 Other permits etc. still necessary

The issue of a licence under section 67 does not remove the need to apply for any authorisation or permission necessary under any other Act with respect to anything authorised by the licence.

71 Conditions on which licence may be issued

(1) A licence issued under section 67 is subject to—

- (a) the prescribed conditions; and
- (ab) a condition requiring payment of any annual charge fixed by the Minister in accordance with section 74A; and
- (ac) any condition that the Minister thinks fit—
 - (i) as to the maximum amounts of water that may be taken in particular periods and circumstances; and
 - (ii) the installation and use of measuring devices and pumps; and
- (b) any other conditions that the Minister thinks fit relating to—
 - (i) the standard of construction, dimensions and any other feature of the works and any associated works; or
 - (ii) the future maintenance and operation of the works and any associated works and the date on which operation of those works may commence; or
 - (iii) the date of commencement of the works and the notice required to be given of that commencement; or
 - (iv) the submission of reports on the carrying out of the work; or

S. 71(1)(ab)
inserted by
No. 5/2002
s. 39(a).

S. 71(1)(ac)
inserted by
No. 99/2005
s. 31(a).

s. 71

S. 71(1)(b)(iva)
inserted by
No. 99/2005
s. 31(b).

- (iva) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or
- (v) the qualifications required to be held by persons undertaking, designing, constructing or operating the whole or any part of the work; or
- (vi) the protection of the environment, including the riverine and riparian environment; or
- (vii) the implementation of the conservation policy of the government; or
- (viii) in the case of works on a waterway, additional works or measures to be undertaken for—
 - (A) the protection and enhancement of in-stream uses of water; or
 - (B) the protection of the waterway and its surrounds; or
 - (C) the maintenance of flow in the waterway; or
 - (D) the maintenance of the drainage regime within the meaning of section 12(1); or
- (ix) in the case of works for the storage of water within a waterway, steps to be taken to maintain the availability of water to satisfy other entitlements; or
- (ixa) without limiting subparagraph (ix), in the case of any dam, whether or not on a waterway—

S. 71(1)(b)(ixa)
inserted by
No. 5/2002
s. 39(b).

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- (A) surveillance of the dam, including surveillance by the Minister or a person holding one or more qualifications approved by the Minister and engaged by the licensee; or
 - (B) the procedures for management of dam safety; or
 - (C) the procuring of water, by transfer or otherwise, for every year that the dam is in operation; or
 - (x) in the case of a bore—
 - (A) additional works or measures to be undertaken for the protection of the aquifer or for the maintenance of flow; or
 - (B) requiring samples of materials excavated from the bore and of water encountered in the bore to be taken and given to a specified Authority; or
 - (C) requiring all or any part of the works to be carried out by, or under the direction of, a licensed driller; and
 - (c) without derogating from rights to water for domestic and stock use conferred by section 8, any other conditions that the Minister thinks fit and specifies in the licence.
 - (1A) In addition to any conditions to which a licence under section 67 is subject under subsection (1), a licence under section 67 is subject to conditions that are prescribed or fixed by the Minister relating to—
- S. 71(1)(b)
(x)(C)
amended by
No. 5/2002
s. 39(c).

S. 71(1)(c)
inserted by
No. 5/2002
s. 39(d).

S. 71(1A)
inserted by
No. 85/2006
s. 48.
-

- (a) the maximum amounts of water which may be taken in particular periods or circumstances from any bore or works to which the licence relates; or
 - (b) the installation and use of measuring devices and pumps; or
 - (c) the operation of any bore or works (to which the licence relates) for extracting water from waterways.
- (2) A licence issued under section 67 remains in force for the period specified in the licence but, if necessary, may be renewed under section 72.

72 Renewal of licence

- (1) The holder of a licence issued under section 67 may, before the expiry of the licence, apply to the Minister for the renewal of the licence.
- (2) An application must—
- (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by any application fee fixed by the Minister.
- (3) In considering an application for the renewal of a licence issued under section 67, the Minister must have regard to the matters mentioned in section 68.

S. 72(2)(c)
amended by
No. 110/1997
s. 17(6).

- (4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 71(1).
- (5) A licence may be renewed for a period determined by the Minister or for an unlimited period.
- (6) A licence may, if necessary, be renewed under this section from time to time.

73 Amendment of licence

- (1) The Minister may amend a licence issued under section 67 to the extent necessary to ensure compliance with an approved management plan for any relevant water supply protection area. S. 73(1)
amended by
No. 5/2002
s. 40(1).
- (1A) Within 12 months after the commencement of section 40 of the **Water (Irrigation Farm Dams) Act 2002**, the Minister may amend a licence in respect of a private dam issued under section 67 before that commencement to impose conditions referred to in section 71(1)(b)(ixa) if— S. 73(1A)
inserted by
No. 5/2002
s. 40(2).
 - (a) the dam has the dimensions referred to in paragraph (a), (b) or (c) of section 67(1A); or
 - (b) the dam belongs to a class of dams prescribed under section 67(1A)(d).
- (1B) The Minister may amend a licence in respect of a private dam issued under section 67 to include conditions relating to the management of dam safety. S. 73(1B)
inserted by
No. 5/2002
s. 40(2).
- (2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

s. 73A

S. 73A
inserted by
No. 99/2005
s. 55.

73A Amendment of conditions on works licences

- (1) The Minister may, on application by the holder of a licence under section 67, amend a condition on the licence that—
 - (a) authorises works for the extraction of water in a declared water system; and
 - (b) that relates to a bore or works for extracting water from waterways—

to vary the maximum amounts of water that may be taken in particular periods or circumstances.

- (2) The powers of the Minister in relation to applications for licences under section 67 apply in respect of an application under this section as if it were an application for a licence under section 67.
- (3) An application under this section must—
 - (a) be in the form approved by the Minister; and
 - (b) contain any prescribed particulars; and
 - (c) be accompanied by any documents or information required by the Minister; and

S. 73A(3)(c)
amended by
No. 85/2006
s. 49(a).

- (d) be accompanied by the fee determined by the Minister.

S. 73A(3)(d)
amended by
No. 85/2006
s. 49(b).

74 Transfer of licence

- (1) A licence issued under section 67 may, in accordance with this section, be transferred to another person.
- (2) A transfer may be either permanent or temporary.
- (3) A licensee may apply to the Minister for approval of the transfer of the licence.

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- (4) An application must—
- (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by any application fee fixed by the Minister.
- (5) In considering an application, the Minister must have regard to the matters mentioned in section 68.
- (6) If an application for approval is made under subsection (3)—
- (a) the Minister, if the Minister is of the opinion that—
 - (i) approval of the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or
 - (ii) it is necessary to refuse to approve the transfer in order to preserve the environmental water reserve in accordance with the environmental water reserve objective—must refuse to approve the transfer; or

S. 74(4)(c)
amended by
No. 110/1997
s. 17(7).

S. 74(5)
amended by
No. 99/2005
s. 32(1).

S. 74(6)
substituted by
No. 99/2005
s. 32(2).

s. 74A

- (b) in any other case, the Minister may—
- (i) refuse to approve the transfer of the licence; or
 - (ii) approve the transfer of the licence and may, in addition, amend or delete any of the conditions to which the licence is subject or add a new condition, but must not make the licence subject to any condition to which it could not have been made subject under section 71(1).

S. 74A
inserted by
No. 5/2002
s. 41.

74A Annual charge for surveillance etc.

The Minister may fix an annual charge in respect of—

- (a) a licence to operate a dam referred to in section 67(1A); or
- (b) a licence amended under section 73(1A)—
by reference to the surveillance of the dam, the procedures for management of dam safety or any other operations or work required for the dam.

S. 74AA
inserted by
No. 99/2005
s. 56.

74AA Licence fees for works licences

- (1) The Minister may, in the case of licences under section 67 that—
- (a) authorise works for the extraction of water in a declared water system; and
 - (b) relate to a bore or works for extracting water from waterways—

S. 74AA(1)(b)
amended by
No. 32/2010
s. 77(Sch.).

charge fees for the provision of services in respect of those licences by the Minister to the licence holders.

- (2) A fee under subsection (1) may apply at consecutive periods of twelve months while any licences under section 67 are in force.
- (3) This section applies to licences under section 67 whether or not issued before the coming into operation of section 56 of the **Water (Resource Management) Act 2005**.

75 Offences¹⁴

- (1) A person who—

- (a) obstructs or interferes with a waterway; or
- (b) constructs, alters, operates, removes or decommissions any works on a waterway; or
- (c) obstructs or interferes with any works on a waterway; or
- (d) erodes or otherwise damages the surrounds of a waterway—

S. 75(1)(b)
amended by
No. 5/2002
s. 42(1).

without being authorised to do so by or under this or any other Act is guilty of an offence.

- (1A) A person who constructs, alters, operates, removes or decommissions a private dam referred to in section 67 without being authorised to do so by or under this or any other Act is guilty of an offence.

S. 75(1A)
inserted by
No. 5/2002
s. 42(2).

- (2) A person who—

- (a) constructs, deepens, enlarges or alters a bore; or
- (b) interferes with, damages or destroys a bore or ancillary works—

without being authorised to do so by or under this or any other Act is guilty of an offence.

- (3) A person who—
- (a) performs work on a bore that is necessary—
 - (i) to prevent the immediate waste, misuse or pollution of groundwater; or
 - (ii) for the purpose of obtaining water for domestic and stock use; and
 - (b) gives notice to the Minister of the work within 7 days after starting it—

is not guilty of an offence under subsection (2).

S. 75(4)
substituted by
No. 5/2002
s. 42(3).

- (4) If a licence is issued under section 67 to construct or alter any works and the licence is subject to any condition relating to the future maintenance or operation of the works, a person who operates the works without complying with that condition is guilty of an offence.

S. 75(5)
inserted by
No. 5/2002
s. 42(4) (as
amended by
No. 6/2002
s. 4(3)).

- (5) Subsection (1A) does not apply until 1 July 2003 in relation to a dam which exists immediately before the commencement of section 42(4) of the **Water (Irrigation Farm Dams) Act 2002**.

Division 3—Underground disposal

76 Power of Minister to approve underground disposal¹⁵

- (1) A person may apply to the Minister for approval to dispose of any matter underground by means of a bore.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and

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- (b) contain any information that—
- (i) is prescribed; or
 - (ii) is required by the Minister; and
- (c) be accompanied by any application fee fixed by the Minister.
- (3) In considering an application the Minister must have regard to the report of any panel appointed under section 66.
- (4) The Minister may by notice in writing to the applicant—
- (a) approve the application subject to any conditions that he or she thinks fit and specifies in the notice; or
 - (b) refuse to approve the application and specify the reasons for that refusal.
- (5) The Minister must not approve an application in respect of a disposal which, in the opinion of the Minister, would cause the pollution of any groundwater or be detrimental to any aquifer or bore.
- (5A) The Minister must not approve an application in respect of a disposal by means of a State observation bore if, in the opinion of the Minister, the disposal would interfere with the function of the bore as a State observation bore.
- (6) A person who disposes of any matter underground by means of a bore without approval under this section is guilty of an offence¹⁶.
- (7) This section does not apply to the holder of an authority under the **Greenhouse Gas Geological Sequestration Act 2008** in relation to work carried out in accordance with an approved
- S. 76(2)(c) amended by No. 110/1997 s. 17(8).
- S. 76(5A) inserted by No. 5/2002 s. 43.
- S. 76(7) inserted by No. 61/2008 s. 323.

injection testing plan or an approved injection and monitoring plan.

77 Other permits etc. still necessary

The approval of an application under section 76 in respect of a disposal does not remove the need to apply for any authorisation or permission necessary under any other Act with respect to the disposal.

Division 4—Directions

78 Power of Minister to give directions¹⁷

- (1) The Minister may, by notice in writing, direct the occupier of any works on a waterway or of a bore—
 - (a) to operate or alter those works in compliance with the conditions specified in the notice; or
 - (b) to take the measures specified in the notice, being measures that the Minister thinks necessary—
 - (i) to secure compliance with this Act or the conditions of any licence granted under this Act; or
 - (ii) to prevent the waste, misuse or pollution of water;
 - (iii) to protect the environment, including the riverine and riparian environment; or
 - (iv) to maintain the environmental water reserve in accordance with the environmental water reserve objective.
- (2) Any condition of a licence issued under section 67 relating to works that is inconsistent with a direction given by the Minister under subsection

S. 78(1)(b)(ii)
amended by
No. 99/2005
s. 33(a).

S. 78(1)(b)(iii)
inserted by
No. 99/2005
s. 33(b).

S. 78(1)(b)(iv)
inserted by
No. 99/2005
s. 33(b).

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- (1) is of no effect to the extent that it is inconsistent.
- (3) The Minister may, by notice in writing, direct the occupier of any works to which this subsection applies to remove those works.
- (4) Subsection (3) applies to—
- (a) works on a collection of water declared by the Governor in Council to be a lake, lagoon, swamp or marsh under section 4 if the works were constructed before the making of the declaration; and
 - (b) works constructed before the commencement of this subsection on a waterway that immediately before that commencement was not a water-course within the meaning of Part II of the **Water Act 1958**; and
 - (c) works constructed on a waterway on or after that commencement in contravention of this Act.
- (5) The occupier of works or of a bore must comply with any direction given under subsection (1) or (3).

Penalty applying to this subsection: 20 penalty units.

79 Power of Minister to give direction to bore occupier¹⁸

- (1) If a bore that is not used or intended to be used for the collection or extraction of groundwater or the disposal of any matter is found to be capable of being used for any such purpose, the occupier of the bore must immediately notify the Minister of that fact.

Penalty applying to this subsection: 10 penalty units.

- (2) The Minister may direct an occupier who is required to give notice under subsection (1) to take any measures that the Minister thinks necessary or desirable to ensure that the groundwater resources of the State are protected and conserved.
- (3) The occupier of a bore must comply with any direction given under subsection (2).

Penalty applying to this subsection: 10 penalty units.

80 Power to give directions concerning dams

S. 80(1)
amended by
No. 5/2002
s. 44(1)(a).

- (1) The Minister may, by notice in writing—
 - (a) direct the owner of any private dam to make specified improvements to the dam, to take specified measures to keep the dam under surveillance or to remove the dam; or
 - (b) direct the proposed owner of any proposed private dam to resite the dam or to build it to specified standards or not to build the dam—if the Minister decides that the dam or proposed dam is, or is likely to be, hazardous to life or property because of its location or proposed location or the nature of its construction or proposed construction.
- (2) The Governor in Council may—
 - (a) direct the owner of any dam other than a private dam to make specified improvements to the dam, to take specified measures to keep the dam under surveillance or to remove the dam; or

(b) direct the proposed owner of any proposed dam other than a private dam to resite the dam or to build it to specified standards or not to build the dam—

if the Governor in Council decides that the likely effects of a flow of water from the dam or proposed dam warrant the giving of that direction.

(3) The owner of a dam or the proposed owner of a proposed dam must comply with any direction given under subsection (1) or (2)¹⁹.

Penalty applying to this subsection: 20 penalty units.

(3A) Without limiting any power to give directions under this section, the Governor in Council may make regulations for or with respect to regulating the planning, construction, surveillance, operation and maintenance of any dam or class of dams.

S. 80(3A) inserted by No. 65/1995 s. 15, amended by No. 5/2002 s. 44(1)(b).

* * * * * S. 80(3A)(a)(b) repealed by No. 5/2002 s. 44(1)(b).

(3B) The regulations made under subsection (3A) may apply both to existing dams and to proposed dams.

S. 80(3B) inserted by No. 65/1995 s. 15.

(3C) Without limiting subsection (3A), the regulations made under that subsection may provide for any matter that may be the subject of conditions under section 71.

S. 80(3C) inserted by No. 5/2002 s. 44(2).

* * * * * S. 80(4) repealed by No. 5/2002 s. 44(3).

- (5) A notice giving a direction under subsection (1) must contain details of the circumstances that, in the opinion of the Minister, warrant the giving of the direction.
- (6) The giving or not giving of directions under this section does not make the Minister or the Crown liable in respect of a flow of water from a dam.

S. 80A
inserted by
No. 5/2002
s. 45.

80A Design criteria etc. for re-use dams

The Minister may, by Order published in the Government Gazette, specify—

- (a) design criteria for private dams for the re-use of water; and
- (b) a formula to determine the maximum volume of water that may be re-used each year by a person by means of such dams.

81 Power of Minister to carry out works²⁰

(1) If—

- (a) a person fails to carry out the work necessary to comply with a direction given under this Division within the time specified in the direction; or
- (b) it appears to the Minister to be necessary for work to be carried out urgently on any works on a waterway or any bore to prevent the waste, misuse or pollution of water—

the Minister may carry out the work and recover its reasonable cost from the occupier of the works or bore as a civil debt recoverable summarily.

- (2) As soon as possible after the work is carried out under subsection (1) the Minister must give the occupier written notice of—
 - (a) the work carried out; and
 - (b) the cost of that work.

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| (3) Any costs incurred by the Minister under this section are a charge on the land. | S. 81(3)
inserted by
No. 5/2002
s. 46. |
| (4) Land is so charged when the Minister deposits with the Registrar of Titles a certificate under seal describing the land to be charged and stating the amount of the charge. | S. 81(4)
inserted by
No. 5/2002
s. 46. |
| (5) The Registrar of Titles must make in the Register a recording of the certificate lodged under this section. | S. 81(5)
inserted by
No. 5/2002
s. 46. |
| (6) The Minister must notify the land owner in writing that—
(a) the certificate has been deposited under this section; and
(b) the land is charged with the amount stated in the notice. | S. 81(6)
inserted by
No. 5/2002
s. 46. |
| (7) When an amount due is paid or recovered the Registrar of Titles must, if so required by the Minister, delete the recording of the charge from the Register or make a recording in the Register of the payment or recovery of the charge. | S. 81(7)
inserted by
No. 5/2002
s. 46. |

82 Compensation

- (1) The owner and occupier of any works is entitled to be paid compensation for any loss suffered or expenses sustained as a result of—
- (a) being directed under section 78(1)(a) to alter works referred to in section 78(4)(b); or
 - (b) being directed under section 78(3) to remove works referred to in section 78(4)(a) or (b).

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- (2) Compensation payable under subsection (1) must be paid as follows—
- (a) compensation payable under paragraph (a) must be paid by an Authority specified by the Minister;
 - (b) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(a) must be paid by the person ordered by the Governor in Council to pay compensation under section 4(4);
 - (c) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(b) must be paid by an Authority specified by the Minister.
- (3) The amount of compensation payable under subsection (1) is as agreed by the parties or, in the absence of agreement, as determined by the Authority or other person responsible for its payment.

Division 5—Review of decisions

83 Review of decisions

S. 83(1)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.14).

- (1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision by the Minister—

S. 83(1)(a)
amended by
No. 5/2002
s. 47(a).

- (a) under section 69(1) to refuse an application under section 67; or

S. 83(1)(b)
amended by
No. 5/2002
s. 47(b).

- (b) under section 69(1) to approve an application under section 67; or

- (c) under section 71(1) to make a licence subject to any condition; or
 - (d) under section 72 to refuse an application for the renewal of a licence; or
 - (e) under section 72 to approve an application for the renewal of a licence; or
 - (f) under section 72(4) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or
 - (g) under section 73(1), (1A) or (1B) to amend a licence; or
 - (h) under section 74(6)(a) to refuse to approve the transfer of a licence; or
 - (i) under section 74(6)(b) to approve the transfer of a licence; or
 - (j) under section 74(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or
 - (k) under section 76(4)(a) to approve an application under section 76(1); or
 - (l) under section 76(4)(b) to refuse to approve an application under section 76(1); or
 - (m) to give a direction under section 78(1) or (3);
 - (n) to give a direction under section 79(2);
 - (o) to give a direction under section 80(1).
- (2) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision under section 82(3) by an Authority or other person responsible for the payment of compensation as to the amount of compensation payable.

S. 83(1)(g)
amended by
No. 5/2002
s. 47(c).

S. 83(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.14).

S. 83(2A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.15).

(2A) An application under subsection (1) or (2) for review must be made within 28 days after the later of—

- (a) the day on which the decision is made;
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 83(3)
amended by
Nos 52/1998
s. 311(Sch. 1
item
105.16(a)),
79/2005 s. 5.

(3) The State of South Australia may apply to the Tribunal for review of a decision by the Minister under clause 29(5) of the Border Groundwaters Agreement (a copy of which is set out in Schedule 1 to the **Groundwater (Border Agreement) Act 1985**) as that agreement is amended by the Border Groundwaters Agreement Amendment Agreement (a copy of which is set out in Schedule 2 to that Act).

S. 83(4)
amended by
No. 52/1998
s. 311(Sch. 1
item
105.16(b)).

(4) An application under subsection (3) may be made at any time within the period of 30 days after the Minister of the State of South Australia is notified of the decision under the clause referred to in that subsection.

Division 6—Penalties

84 Penalties

- (1) A person who is guilty of an offence under—
- (a) section 75; or
 - (b) section 76(6)—

is liable for a first offence to a penalty of not more than 20 penalty units or to imprisonment for not more than 3 months and for a subsequent offence

to a penalty of not more than 40 penalty units or to imprisonment for not more than 6 months.

- (2) A person who is guilty of an offence referred to in subsection (1) that is of a continuing nature is liable, in addition to the penalty set out in that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.
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Pt 5A
(Heading and
ss 84A–84ZM)
inserted by
No. 99/2005
s. 57.

PART 5A—VICTORIAN WATER REGISTER

Division 1—Victorian water register

S. 84A
inserted by
No. 99/2005
s. 57.

84A Object of Part

The object of this Part is to provide for a Victorian water register, being records and information kept by various recording bodies relating to water-related entitlements in Victoria, together with a centralised system for those records and information.

S. 84B
inserted by
No. 99/2005
s. 57.

84B Purpose of water register

The purpose of the water register is to facilitate the responsible, transparent and sustainable use of the State's water resources and includes—

- (a) facilitating the monitoring of, and reporting in relation to, records and information about water-related entitlements and allocation and use of water resources; and
- (b) facilitating a market for water-related entitlements and water resources by providing publicly available records and information and other records and information about ownership and use of water-related entitlements.

S. 84C
inserted by
No. 99/2005
s. 57.

84C Responsibilities for water register

S. 84C(1)
substituted by
No. 32/2010
s. 51.

- (1) The Minister is responsible for establishing and maintaining the system for the water register in which is kept records and information referred to in subsections (2), (2A) and (3).

- (2) The Minister is responsible for establishing and maintaining records and information in the water register relating to—

S. 84C(2)
substituted by
No. 32/2010
s. 51.

- (a) water-use licences; and
- (b) water-use registrations; and
- (c) bulk entitlements; and
- (d) environmental entitlements; and
- (e) the recording of amounts of water that are to be allocated to each water share under section 33AC; and
- (f) works licences under section 67(1) where the licence relates to a declared water system.

- (2A) The Registrar is responsible for establishing and maintaining records and information in the water register relating to water shares.

S. 84C(2A)
inserted by
No. 32/2010
s. 51.

- (3) An Authority is responsible for establishing and maintaining records and information in the water register relating to—

- (a) services delivered by that Authority under section 222(1); and
- (b) the recording of any water allocation assignment and any consumption of allocated water in a water system for which that Authority is responsible for supplying water.

84D Form and manner of keeping water register

S. 84D
inserted by
No. 99/2005
s. 57.

- (1) Subject to any regulations made under this Act, the Minister may establish and maintain the system for the water register in any form and manner the Minister thinks fit.

S. 84D(1)
amended by
No. 32/2010
s. 52(1).

- (2) For the purposes of ensuring the integrity, efficiency and viability of the water register and consistency and compatibility—

S. 84D(2)(a)
amended by
No. 32/2010
s. 52(2).

- (a) the Minister must consult with the other recording bodies in relation to the form and manner of establishing, maintaining and altering the system of the water register, including, but not limited to, the form and manner of the recording of information and keeping records and the processes involved; and
- (b) each recording body must consult with the other recording bodies in relation to the form and manner of establishing and maintaining the water register, including, but not limited to, the recording of information and keeping records and the processes involved.

S. 84E
inserted by
No. 99/2005
s. 57.

84E Disclosure of information

- (1) The Registrar must ensure that all records and information for which the Registrar is responsible which are necessary to enable—

- (a) an Authority to carry out its functions under this Act; or
- (b) the Minister—

S. 84E(1)(b)
substituted by
No. 32/2010
s. 53(1).

- (i) to establish and maintain the system of the water register; and
- (ii) to carry out the Minister's functions under this Act—

are disclosed to the Authority or Minister, as the case requires, for those purposes.

(2) An Authority must ensure that all records and information for which it is responsible which are necessary to enable—

(a) the Registrar to carry out the Registrar's functions under this Act; or

**S. 84E(2)(a)
substituted by
No. 32/2010
s. 53(2)(a).**

(b) another Authority to carry out its functions under this Act; or

(c) the Minister—

**S. 84E(2)(c)
substituted by
No. 32/2010
s. 53(2)(b).**

(i) to establish and maintain the system of the water register; and

(ii) to carry out the Minister's functions under this Act—

are disclosed to the Registrar, Authority or Minister, as the case requires, for those purposes.

(3) The Minister must ensure that all records and information for which the Minister is responsible which are necessary to enable—

(a) the Registrar to carry out the Registrar's functions under this Act; or

**S. 84E(3)(a)
substituted by
No. 32/2010
s. 53(3).**

(b) an Authority to carry out its functions under this Act—

are disclosed to the Registrar or Authority as the case requires, for those purposes.

(4) A recording body is authorised to collect and use information disclosed under this section for the purposes of carrying out its functions under this Act.

Pt 5A Div. 1A
(Heading and
s. 84EA)
inserted by
No. 32/2010
s. 54.

Division 1A—Minister's functions

S. 84EA
inserted by
No. 32/2010
s. 54.

84EA Functions of Minister as to water register

- (1) The functions of the Minister as to the water register are—
 - (a) to establish and maintain the system for the water register and ensure the system's integrity, efficiency, viability, compatibility and consistency; and
 - (b) to consult with other recording bodies about matters relating to the form and operation of the system of the water register and the maintaining of records and information, including alterations, in the water register; and
 - (c) to create, or enable the creation of, reports derived from records and information in the water register, including reports created in accordance with the direction of the Minister.
- (2) The Minister may make a report created under subsection (1)(c) available to the public, if the report does not include the names and addresses of individuals.

Division 2—Registrar

S. 84F
inserted by
No. 99/2005
s. 57.

84F Employment of Registrar and staff

- (1) A Registrar of the water register must be employed under Part 3 of the **Public Administration Act 2004** for the purposes of this Act.

- (2) Any other employees that are necessary for the purposes of this Part may be employed under the **Public Administration Act 2004**.

84G Registrar's functions

S. 84G
inserted by
No. 99/2005
s. 57.

- (1) The Registrar's functions are—

* * * * *

S. 84G(1)(a)
repealed by
No. 32/2010
s. 55(1).

- (b) to administer records and information in the water register relating to water shares; and

- (c) to provide information from the records and information in the water register relating to water shares in accordance with this Act; and

* * * * *

S. 84G(1)(d)
repealed by
No. 32/2010
s. 55(1).

- (e) to train persons responsible for maintaining records and information in the water register relating to water shares; and

* * * * *

S. 84G(1)(f)
repealed by
No. 32/2010
s. 55(1).

- (g) to keep records of prior transactions in relation to water shares; and

- (h) any other functions conferred on the Registrar by this Act.

* * * * *

S. 84G(2)
repealed by
No. 32/2010
s. 55(2).

s. 84H

S. 84H
inserted by
No. 99/2005
s. 57.

84H Delegation

S. 84H(1)
substituted by
No. 32/2010
s. 56.

- (1) The Registrar, by instrument, may delegate any of the Registrar's powers, duties or functions under this Act or under a subordinate instrument made under this Act, other than this power of delegation, to—
 - (a) a person employed under Part 3 of the **Public Administration Act 2004**; or
 - (b) an Authority.
- (2) A delegation under subsection (1) may be subject to any conditions which the Registrar considers appropriate.

Division 3—Recordings of water shares by the Registrar

S. 84I
inserted by
No. 99/2005
s. 57.

84I What is recorded in the water register about water shares?

The Registrar must ensure that the following details are recorded in the water register in relation to a water share—

- (a) the name and address of—
 - (i) the owner of the share; and
 - (ii) any other party with a recording with respect to the share; and
- (b) any other matter that is required to be recorded in respect of a water share by or under this Act; and
- (c) a description of the water system from which the share is issued; and

- (d) the share of water available from the water system under that share, which must be expressed as a maximum volume over a specified period; and
- (e) the class of reliability of the water share; and
- (f) if the share is associated with land specified in a water-use licence or water-use registration, the identifying details of the land and the water-use licence or water-use registration; and
- (g) the Authority responsible for imposing fees under Division 5 of Part 3A in relation to the water share; and
- (h) any other information that the Minister considers necessary; and
- (i) any other prescribed matters.

84J Recording of transfers

S. 84J
inserted by
No. 99/2005
s. 57.

- (1) If—
 - (a) a transfer of ownership of a water share under section 33S occurs; or
 - (b) a limited term transfer occurs—a person may lodge with the Registrar a document for the recording of the transfer to be made in the water register in respect of that share.
- (2) A document lodged under subsection (1) must be in the appropriate approved form.
- (3) The Registrar must not record a transfer of ownership of a water share under section 33S or a limited term transfer unless the Registrar is satisfied that, at the time the transfer was lodged for recording, the Minister has approved the transfer.

S. 84J(3)
amended by
No. 32/2010
s. 57.

s. 84JA

- (4) If a recording is made of a limited term transfer and the rights under that limited term transfer are transferred back to the owner of the water share or surrendered before the expiry of the limited term, the water share ceases to be subject to the limited term transfer.

S. 84JA
inserted by
No. 85/2006
s. 50.

84JA Recording of surrender of limited term transfer

- (1) If the holder of a limited term transfer surrenders the limited term transfer, that person may lodge with the Registrar a document for a recording of the surrender to be made in the water register in respect of the water share that is the subject of the limited term transfer.
- (2) A document lodged under subsection (1) must be in the approved form.

S. 84K
inserted by
No. 99/2005
s. 57,
substituted by
No. 32/2010
s. 58.

84K Recording of legal personal representatives

- (1) A legal personal representative may lodge a document with the Registrar for the recording of the transmission to the legal personal representative of—
- (a) the ownership of a water share owned by a deceased person represented by the legal personal representative; or
 - (b) the holding of a limited term transfer held by a deceased person represented by the legal personal representative; or
 - (c) a deceased person's interest as a mortgagee of a water share, where the deceased person is represented by the legal personal representative.
- (2) A document under subsection (1) must be in the approved form.

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- (3) On being satisfied as to the legal personal representative's authority to be recorded under this section, the Registrar may make a recording of—
- (a) the appointment of that legal personal representative; and
 - (b) the date of death of the person represented by the legal personal representative.
- (4) On the making of a recording under this section in a case where subsection (1)(a) applies—
- (a) the legal personal representative becomes the owner of the water share in respect of the interest of the deceased owner of the water share; and
 - (b) the legal personal representative holds the water share subject to all equities to which the deceased owner was subject in relation to the water share, but for the purpose of any dealing with the water share under this Act, is the owner of the water share; and
 - (c) the status of the legal personal representative as owner of the water share relates back to, and is deemed to have arisen on, the death of the owner of the water share as if there has been no interval of time between the death and the recording.
- (5) On the making of a recording under this section in a case where subsection (1)(b) applies—
- (a) the legal personal representative becomes the holder of the limited term transfer in respect of the deceased holder of the limited term transfer; and
 - (b) the status of the legal personal representative as holder of the limited term transfer relates back to, and is deemed to have arisen on, the death of the holder of the limited term
-

transfer as if there has been no interval of time between the death and the recording.

- (6) On the making of a recording under this section in a case where subsection (1)(c) applies—
- (a) the legal personal representative becomes the mortgagee in respect of the deceased mortgagee; and
 - (b) the status of the legal personal representative as mortgagee relates back to, and is deemed to have arisen on, the death of the deceased mortgagee as if there has been no interval of time between the death and the recording.

S. 84L
inserted by
No. 99/2005
s. 57,
amended by
No. 85/2006
s. 51,
substituted by
No. 32/2010
s. 59.

84L Recording of survivor of joint ownership or holding

- (1) Subject to this Act, on the death of a person recorded in the water register with any other person as—
- (a) joint owners of a water share; or
 - (b) joint holders of a limited term transfer; or
 - (c) joint holders of a mortgagee interest in a water share—
- the survivor may lodge a document with the Registrar for a recording to be made in the water register of the transmission to the survivor of the deceased person's ownership or holding.
- (2) A document lodged under subsection (1) must be in the approved form.
- (3) The Registrar may make a recording of the transmission by survivorship of the joint ownership of a water share or the joint holding of a limited term transfer on being satisfied as to proof of the death of the joint owner or joint holder (as the case requires).

84M Recording of trustee of bankrupt

S. 84M
inserted by
No. 99/2005
s. 57.

- (1) The trustee in bankruptcy of an owner of a water share may lodge with the Registrar a document for a recording of the transmission to the trustee in bankruptcy to be made in the water register in respect of that water share.
- (2) A document lodged under subsection (1) must be in the approved form.
- (3) On being satisfied as to the trustee in bankruptcy's authority to be recorded under this section, the Registrar may make a recording of the appointment of that trustee in bankruptcy.
- (4) On the making of a recording under this section—
 - (a) the trustee in bankruptcy becomes the owner of the water share in respect of the interest of the owner of the water share; and
 - (b) the trustee in bankruptcy holds the water share subject to all equities on which the owner held it, but for the purpose of any dealing with the water share under this Act, is the owner of the water share.
- (5) Unless prior to a bankrupt owner of a water share dealing with the water share, the trustee in bankruptcy has applied to be recorded under this section, any dealings by the bankrupt owner with a person dealing bona fide and for value with that owner is not to be affected by any order of sequestration.
- (6) This section is subject to any law of the Commonwealth of Australia relating to bankruptcy.

s. 84N

S. 84N
inserted by
No. 99/2005
s. 57.

84N Recording of mortgages

Schedule 12A has effect.

S. 84O
inserted by
No. 99/2005
s. 57.

84O Electronic lodgement system

Schedule 12B has effect.

S. 84P
inserted by
No. 99/2005
s. 57.

84P Recording and incorporation of common provisions

- (1) A person may lodge with the Registrar a memorandum in the approved form containing one or more provisions which are intended for inclusion in documents to be subsequently lodged for recording in the part of the water register for which the Registrar is responsible.
- (2) The Registrar may retain a memorandum lodged under subsection (1).
- (3) The Registrar may prepare and retain a memorandum containing any provisions which seem appropriate for inclusion in documents to be subsequently lodged for recording in the part of the water register for which the Registrar is responsible.
- (4) A memorandum retained by the Registrar under this section is to be deemed to be part of the water register relating to water shares.
- (5) A document lodged with the Registrar for the making of a recording in the water register in relation to a water share may incorporate a provision in a memorandum retained by the Registrar under this section by reference to the provision in a way sufficient to clearly identify it.

84Q Priority of recordings

- (1) For the purposes of determining the priority of recordings in relation to water shares, the Registrar must ensure that the time and date of lodgement of any document for the making of a recording in the water register is recorded.
- (1A) If two or more documents for the making of a recording in relation to the same water share are lodged and are waiting recording, the Registrar may make the recordings in the water register arising from those documents in the order which will give effect to the intentions of all the parties, as expressed in or apparent to the Registrar from those documents.
- (2) Subject to subsection (1A), the priority of documents lodged for the making of a recording in relation to a water share as between themselves is according to the time and date of lodgement.
- (3) A recording takes effect at the date the recording is made.

S. 84Q
inserted by
No. 99/2005
s. 57.

S. 84Q(1A)
inserted by
No. 32/2010
s. 60(1).

S. 84Q(2)
amended by
No. 32/2010
s. 60(2).

Division 4—Recordings by the Minister

84R What is recorded in the water register about water-use licences?

The Minister must ensure that the following details are recorded in the water register in relation to a water-use licence—

- (a) the name and address of the holder of the licence; and
- (b) a description of the land specified in the licence; and
- (c) the conditions to which the licence is subject; and
- (d) the annual use limit; and

S. 84R
inserted by
No. 99/2005
s. 57.

- (e) any other information that the Minister considers necessary; and
- (f) any other prescribed matters.

S. 84S
inserted by
No. 99/2005
s. 57.

84S What is recorded in the water register about water-use registration?

The Minister must ensure that the following details are recorded in the water register in relation to a water-use registration—

- (a) the name and address of the holder of the water use registration; and
- (b) a description of the land specified in the water-use registration; and
- (c) the purpose for which water may be used on the land under the water-use registration; and
- (d) the annual use limit; and
- (e) any other information that the Minister considers necessary; and
- (f) any other prescribed matters.

S. 84T
inserted by
No. 99/2005
s. 57.

84T What is recorded in the water register about bulk entitlements?

The Minister must ensure that bulk entitlements are recorded in the water register including—

- (a) the name of the person who holds the bulk entitlement; and
- (b) any other information that the Minister considers necessary; and
- (c) any other prescribed matters.

S. 84U
inserted by
No. 99/2005
s. 57.

84U What is recorded in the water register about environmental entitlements?

The Minister must ensure that environmental entitlements are recorded in the water register including—

- (a) any information that the Minister considers necessary; and
- (b) any prescribed matters.

84V What is recorded in the water register about works licences?

S. 84V
inserted by
No. 99/2005
s. 57.

The Minister must ensure that the following details are recorded in the water register in relation to a works licence under section 67(1) which relates to a declared water system—

- (a) the name and address of the holder of the licence; and
- (b) a description of the land specified in the licence; and
- (c) a description of the works; and
- (d) the conditions to which the licence is subject; and
- (e) the period specified in the licence; and
- (f) any other information that the Minister considers necessary; and
- (g) any other prescribed matters.

Division 5—Recordings by Authorities

84W What must an Authority record in the part of the water register for which it is responsible?

S. 84W
inserted by
No. 99/2005
s. 57.

An Authority must record and maintain the following records and information—

- (a) in relation to services delivered by that Authority under section 222(1)—
 - (i) the name and address of the owner of each serviced property within the irrigation district; and

- (ii) in relation to each serviced property in the irrigation district—
 - (A) the volumes at which and the periods for which the Authority determines under section 223 that water is to be delivered for irrigation to the property; and
 - (B) any other terms and conditions that apply to the property; and
- (b) any water allocation assignment and any consumption of allocated water in a water system for which that Authority is responsible for supplying water; and
- (c) any other information that the Authority considers necessary; and
- (d) any other prescribed matters; and
- (e) any other information that the Minister considers necessary to be recorded in the part of the water register for which an Authority is responsible.

Division 6—Searching information in the water register

S. 84X
inserted by
No. 99/2005
s. 57.

84X What information is available from the water register?

- (1) Subject to this Division, the following records and information in the water register are publicly available—
 - (a) records and information in the water register referred to in sections 84I, 84R, 84S, 84T, 84U, 84V and 84W (except for any records or information referred to in section 84W(b)); and
 - (b) prescribed records or information.

- (2) Information available under subsection (1)(a) does not include the address of any person.
- (3) For a prescribed purpose, a prescribed person or prescribed class of person may search the water register for prescribed information or records or prescribed classes of information or records, whether or not that prescribed information or those prescribed records are information or records referred to in subsection (1).
- (4) Despite subsection (1) and (3), the regulations may prescribe records or information or classes of records or information which are not publicly available.

84Y Suppression of certain personal records and information

**S. 84Y
inserted by
No. 99/2005
s. 57.**

- (1) A person whose personal information is held in the water register may apply to a recording body to restrict public access to some or all of that personal information.
- (2) If a recording body is satisfied that exceptional circumstances exist justifying the restriction of public access to that person's personal information, the recording body may restrict public access to some or all of that personal information.
- (3) The restriction of public access under subsection (2) may be for the period and on the conditions that the recording body thinks fit.
- (4) If a recording body is satisfied that it is in the public interest that personal information restricted under this section be released to a person who applies for it, the recording body may release some or all of the information to the person on any condition that the recording body thinks fit.

s. 84Z

- (5) If a recording body decides to release restricted personal information under subsection (4), the recording body must give written notice of the decision to the person whose restricted personal information is to be released.
- (6) A recording body must not release restricted personal information under this section until 28 days after giving written notice of the decision to release the information to the person whose restricted personal information is to be released.

S. 84Z
inserted by
No. 99/2005
s. 57.

84Z Rights of review

- (1) A person whose interests are affected by a decision of a recording body under section 84Y may apply to VCAT for review of the decision.
- (2) An application for review under subsection (1) must be lodged with VCAT within 28 days after—
 - (a) notice of the decision was given; or
 - (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 84ZA
inserted by
No. 99/2005
s. 57.

84ZA Searching the water register

- (1) A person may apply to a recording body for information or records from the part of the water register for which that body is responsible.
- (2) An application under this section must be accompanied by—
 - (a) in the case of an application to the Registrar or the Minister, the relevant prescribed fee (if any); or

- (b) in the case of an application to an Authority, the relevant fee (if any) fixed by the Authority.
- (3) On receiving an application under this section, a recording body may search the part of the water register for which it is responsible and provide the information or records to the applicant in any manner permitted by the system.
- (4) A recording body may provide information or records under this section in relation to—
 - (a) current information or records in the water register maintained by a recording body;
 - (b) other non-current information or records in the water register maintained by a recording body;
 - (c) documents or images of documents in the water register maintained by a recording body;
 - (d) any other prescribed information or records in the water register maintained by a recording body;
 - (e) a combination of the matters referred to in paragraphs (a) to (d).

Division 7—Corrections and amendment of water register

84ZB Correction and amendment of water register

**S. 84ZB
inserted by
No. 99/2005
s. 57.**

- (1) A recording body, if satisfied that it is necessary to do so to reflect the current status of a record or information, may correct or amend the part of the water register for which that body is responsible—
 - (a) to correct any error in a recording; or
 - (b) to amend any recording; or
 - (c) to delete or cancel any recording.

- (2) A recording body must correct or amend the part of the water register for which it is responsible if required to do so—
 - (a) by a court or tribunal; or
 - (b) by virtue of this Act or any other Act.
- (3) A recording body may correct or amend the part of the water register for which it is responsible by—
 - (a) adding, cancelling or deleting a recording; or
 - (b) adding, altering or deleting particulars or details contained in a recording; or
 - (c) recording details of any change in the name or address of any person in respect of whom the matter recorded in the water register relates.
- (4) A recording body—
 - (a) may correct the water register on the body's own initiative; or
 - (b) may correct or amend the water register on the application of a person in the approved form accompanied by—
 - (i) the prescribed fee (if any); or
 - (ii) in the case of an Authority, the fee fixed by the Authority (if any); or
 - (c) may correct or amend the water register as a consequence of the Minister exercising a power under section 33AAB.

S. 84ZB(4)(c)
amended by
No. 85/2006
s. 52.

S. 84ZC
inserted by
No. 99/2005
s. 57.

84ZC Notification of parties

If a recording body corrects a part of the water register under section 84ZB(4)(a) in relation to a substantial error affecting a person's recorded interest, the body must notify each person who is recorded in the water register as having an interest

in the matter in respect of which the correction has been made.

Division 8—General

84ZD Power to require statutory declarations

A recording body may require that information be given by statutory declaration.

S. 84ZD
inserted by
No. 99/2005
s. 57.

84ZE Recording body may require proof of identity

- (1) A recording body may require a person who requests the recording of any matter in the water register or the approval of any matter for recording in the water register to provide any proof of identity of a person that the recording body considers sufficient to establish that person's identity.
- (2) A recording body is not required to make a recording in the water register or approve any matter for recording in the water register if the recording body is not satisfied as to the identity of any person by or on behalf of whom any document relating to that matter was executed.
- (3) A recording body may require or permit the identity of a person to be verified by a person or class of persons approved as a verifier for the purposes of this section.
- (4) A recording body, by notice published in the Government Gazette, may approve—
 - (a) a person or class of persons as a verifier or verifiers for the purposes of this section; or
 - (b) standards of proof of identity that the recording body considers sufficient for the purposes of this section.

S. 84ZE
inserted by
No. 99/2005
s. 57.

s. 84ZF

S. 84ZF
inserted by
No. 99/2005
s. 57.

84ZF Recording body may require production of documents

- (1) Before making a recording in the water register, a recording body may require a person to submit any documents related to a recording or give any information related to a recording for the purposes of enabling any matter to be recorded in the part of the water register for which that body is responsible.
- (2) If any information or document required by a recording body under this section is withheld or not complied with, the recording body—
 - (a) may refuse to make the recording until the relevant information or document is produced or complied with; or
 - (b) if the relevant information or document is not produced or complied with and the recording is not made, may—
 - (i) return any documents or information that have been submitted to the responsible body to the person requesting the recording; and
 - (ii) retain any fee that has been paid by the person requesting the recording.
- (3) A recording body, at that body's discretion, may dispense with the submission or production of any document or information.

S. 84ZG
inserted by
No. 99/2005
s. 57.

84ZG Monetary consideration to be stated in transfer

Any—

S. 84ZG(a)
amended by
No. 85/2006
s. 53.

- (a) transfer of ownership of a water share under section 33S; and

(b) limited term transfer—

must state the monetary consideration in relation to the transfer.

84ZH Method of giving of notices

S. 84ZH
(Heading)
substituted by
No. 32/2010
s. 63(1).
S. 84ZH
inserted by
No. 99/2005
s. 57.

(1) A notice under this Part may be given—

S. 84ZH(1)
amended by
No. 32/2010
s. 63(2)(a).

(a) by being sent by letter posted to the person concerned at the address of the person recorded in the water register, which may be a post office box; or

S. 84ZH(1)(a)
substituted by
No. 32/2010
s. 63(2)(b).

(b) by facsimile, e-mail or other electronic means of communication; or

(c) at that person's last known place of residence or business.

S. 84ZH(1)(c)
amended by
No. 32/2010
s. 63(2)(c).

* * * * *

S. 84ZH(2)
repealed by
No. 32/2010
s. 63(3).

(3) A recording body may cause a copy of any notice sent by the recording body to be filed with a memorandum that it was so sent and the memorandum is sufficient proof that the notice was duly sent.

(4) If a notice is sent by letter posted to any person at the address recorded in the water register under subsection (1)(a) and the letter is returned by the post office, a recording body may, if it thinks fit—

S. 84ZH(4)
amended by
No. 32/2010
s. 63(4).

s. 84ZI

- (a) direct any further notice to be given; or
- (b) direct substituted service; or
- (c) proceed without notice.

S. 84ZH(5)
repealed by
No. 32/2010
s. 63(5).

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S. 84ZI
inserted by
No. 99/2005
s. 57.

84ZI Approved forms

- (1) A recording body may approve forms for the purposes of this Part in relation to those parts of the water register for which that body is responsible.
- (2) A recording body must ensure that approved forms are available—
 - (a) at the office of the recording body; and
 - (b) on the Internet.

S. 84ZJ
inserted by
No. 99/2005
s. 57.

84ZJ Power to remit fees

In appropriate cases, a recording body may remit to a person the whole or part of a fee paid or payable under this Part and the Consolidated Fund is hereby appropriated accordingly.

Division 9—Offences and enforcement

S. 84ZK
inserted by
No. 99/2005
s. 57.

84ZK Certificates and evidentiary effect

- (1) For the purposes of proceedings in any court or tribunal, a recording body may issue a certificate under that body's signature or seal (as the case requires) certifying as to any matter—
 - (a) that is recorded in the part of the water register for which that body is responsible; or

- (b) that can be ascertained from—
 - (i) the part of the water register for which that body is responsible; or
 - (ii) any other records or information maintained by that recording body.
- (2) All courts and persons acting judicially must take judicial notice of a recording body's signature or seal (as the case requires) on a certificate issued under subsection (1) and, until the contrary is proved, must presume that it was duly signed or sealed.
- (3) In any proceedings, a certificate issued under subsection (1) purporting to be signed or sealed (as the case requires) by a recording body is evidence and, in the absence of evidence to the contrary, is proof, of the matters specified in the certificate.

84ZL False or misleading information

A person must not knowingly give false or misleading information—

- (a) in any document lodged with or provided to a recording body under this Part; or
- (b) in relation to a recording in the water register.

Penalty: 60 penalty units or imprisonment for 6 months.

S. 84ZL
inserted by
No. 99/2005
s. 57.

84ZM Making false entries etc. in water register

A person must not knowingly make, or cause to be made—

- (a) a false recording in the water register; or
- (b) a recording or an alteration, cancellation or deletion of a recording in the water register without—

S. 84ZM
inserted by
No. 99/2005
s. 57.

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- (i) the authority of the Registrar; or
 - (ii) being otherwise authorised to do so.

Penalty: 60 penalty units or imprisonment for
6 months.

PART 6—WATER CORPORATIONS

Pt 6
(Heading and
ss 85–122)
substituted.²¹

**Division 1—Establishment, restructuring, abolition and
administration of water corporations**

85 Establishment of water corporations

S. 85
substituted by
No. 85/2006
s. 54.

- (1) There are established water corporations each of which is to be known by a name set out in an item in Column 1 of the table in Schedule 1.
- (2) The Minister may, by determination, with the approval of the Treasurer, establish a water corporation, if the Minister is satisfied that it is necessary to do so for the purposes of section 87, which is to be known by the name set out in the determination.
- (3) Each water corporation established under this section—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold or dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (4) All courts must take judicial notice of the seal of a water corporation affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

- (5) The official seal of each water corporation must be kept in the custody that is directed by the water corporation and must not be used, except as authorised by the water corporation.

S. 86
substituted by
No. 85/2006
s. 54.

86 Application of Public Administration Act 2004

The **Public Administration Act 2004** applies to each water corporation as if that water corporation were a public entity, but not a small entity, within the meaning of that Act, established on or after the commencement of Part 5 of that Act.

S. 87
substituted by
No. 85/2006
s. 54.

87 Restructuring of water corporations

- (1) The Minister may, by determination, with the approval of the Treasurer appoint a water corporation to take over the whole or any part of the functions, powers and duties of another water corporation under this Act.
- (2) The Minister must not make a determination under subsection (1) unless—
- (a) the Minister has reached agreement with each water corporation that is affected by the determination as to the terms and conditions of the determination; or
 - (b) the Minister has before making such a determination—
 - (i) given reasons for the determination to all water corporations affected by the determination; and
 - (ii) laid a copy of the reasons for the determination before both Houses of the Parliament.
- (3) If the water corporation to which section 95(2) applies is restructured under this section, section 95(1) applies to the restructured water corporation and section 95(2) does not apply.

88 Abolition of water corporations

S. 88
substituted by
No. 85/2006
s. 54.

- (1) The Minister may, by determination, with the approval of the Treasurer, abolish a water corporation.
- (2) The Minister must not make a determination under subsection (1) unless—
 - (a) a petition is delivered by a majority of the persons subject to a tariff within the water, sewerage, waterway management and irrigation districts (if any) of the water corporation to the Minister requesting the abolition of the water corporation; or
 - (b) the water corporation has no functions to perform.

89 Publication of determinations as to establishment, restructuring and abolition

S. 89
substituted by
No. 85/2006
s. 54.

The Minister must publish a determination under section 85(2), 87 or 88 in the Government Gazette.

90 Effect of Schedule 2

S. 90
substituted by
No. 85/2006
s. 54.

Schedule 2 has effect with respect to any determination made under section 87 or 88.

91 Appointment of administrator

S. 91
substituted by
No. 85/2006
s. 54.

- (1) The Minister may, by determination, appoint an administrator to carry out the functions of a water corporation, if the water corporation has failed to comply with a direction of the Minister under section 307.
- (2) A determination of the Minister under subsection (1)—
 - (a) must specify the term for which the Administrator is appointed, which must be not more than 12 months; and

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- (b) must set out reasons for the actions proposed in it; and
 - (c) must be published in the Government Gazette; and
 - (d) must be laid by the Minister before both Houses of Parliament within 5 sitting days of each House after the determination is made.
 - (3) During the period for which an administrator is appointed under this section, the administrator acts in substitution for the board of directors in performing the functions and duties of the water corporation.
 - (4) Any defect in relation to the appointment of the administrator does not invalidate that appointment or anything done by the administrator.
 - (5) On the expiry of a determination under this section the Minister must determine whether or not to—
 - (a) reinstate to his or her office each member of the board of directors of the water corporation whose term has not expired; or
 - (b) dismiss each member of the board of directors of the water corporation.
 - (6) The administrator goes out of office—
 - (a) if members are reinstated under subsection (5)(a), at the time of that reinstatement; or
 - (b) if all the members are dismissed under subsection (5)(b), on the appointment of new members—as the case requires.
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- (7) If the term of appointment of the administrator expires and a determination under subsection (5) has not been made, members of the board of directors of the water corporation whose term has not expired, are reinstated.

Division 2—Functions, powers, duties and objectives of water corporations

92 Functions, powers and duties of water corporations

S. 92
substituted by
No. 85/2006
s. 54.

- (1) Each water corporation has the functions, powers and duties conferred on it by or under this or any other Act.
- (2) In addition to any other functions conferred on a water corporation by or under this or any other Act, a water corporation has the functions of—
- (a) investigating, promoting and conducting research into any matter relating to its other functions, its powers and its duties; and
 - (b) educating the community about its functions.
- (3) Schedule 3 has effect with respect to Melbourne Water Corporation.

93 Sustainable management principles for water corporations

S. 93
substituted by
No. 85/2006
s. 54.

Each water corporation, in performing its functions, exercising its powers and carrying out its duties must have regard to the following principles—

- (a) the need to ensure that water resources are conserved and properly managed for sustainable use and for the benefit of present and future generations; and
- (b) the need to encourage and facilitate community involvement in the making and implementation of arrangements relating to

the use, conservation and management of water resources; and

- (c) the need to integrate both long term and short term economic, environmental, social and equitable considerations; and
- (d) the need for the conservation of biological diversity and ecological integrity to be a fundamental consideration; and
- (e) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty as to measures to address the threat should not be used as a reason for postponing such measures.

S. 94
substituted by
No. 85/2006
s. 54.

94 Business objective for water corporations

Each water corporation, in performing its functions, exercising its powers and carrying out its duties has the objective that the water corporation must act as efficiently as possible consistent with commercial practice.

Division 3—Boards of directors

S. 95
substituted by
No. 85/2006
s. 54.

95 Board of directors

- (1) Subject to subsection (2), each water corporation must have a board of directors consisting of—
 - (a) not less than 2 and not more than 8 directors appointed by the Minister, or, in the case of Melbourne Water Corporation, appointed by the Minister together with the Treasurer (of whom one is to be appointed as chairperson under section 104); and
 - (b) the managing director of the water corporation.

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- (2) The First Mildura Irrigation Trust must have a board of directors consisting of—
- (a) 6 directors elected by the owners or occupiers of rateable land within the irrigation district of the Authority in accordance with Schedule 6 and any regulations made under section 324A (of whom one is to be appointed as chairperson under section 104); and
 - (b) the managing director of the First Mildura Irrigation Trust.
- (3) For the purposes of subsection (1)(a), the Minister, or in the case of Melbourne Water Corporation, the Minister together with the Treasurer, may from time to time, by instrument, determine the number of directors for each water corporation.
- (4) The board of directors of a water corporation—
- (a) is responsible for—
 - (i) the strategic planning of the corporation; and
 - (ii) the management of the affairs of the corporation; and
 - (b) may exercise the powers of the corporation.
- (5) When acting under subsection (4), the board of directors of a water corporation must do so having regard to the principles set out in section 93 and the objective set out in section 94.

96 Other duties not affected

This Part has effect in addition to and not in derogation of, any Act or law relating to the criminal or civil liability of directors and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

S. 96
substituted by
No. 85/2006
s. 54.

s. 97

S. 97
substituted by
No. 85/2006
s. 54.

97 Appointment of members of board of directors

In appointing persons to be members of the board of directors of a water corporation, the Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, must ensure that each person so appointed has qualifications and experience that are relevant to the operations of the water corporation.

S. 98
substituted by
No. 85/2006
s. 54.

98 Terms and conditions of appointment of members of board of directors

- (1) A member of the board of directors of a water corporation holds office, subject to this Act—
 - (a) for the term, not exceeding 4 years, that is specified in the instrument of his or her appointment and is eligible for re-appointment; and
 - (b) subject to this section, on the other terms and conditions that are determined by the Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer.
- (2) Each member of the board of directors of a water corporation holds office on a part-time basis.
- (3) In this section *member of the board of directors* does not include the managing director.

S. 99
substituted by
No. 85/2006
s. 54.

99 Managing Director

- (1) The board of a water corporation may appoint a person as the managing director of the water corporation, on a full-time or part-time basis.

- (2) The managing director of a water corporation holds office, subject to this Act—
 - (a) for the term, not exceeding 5 years that is specified in the instrument of his or her appointment, and is eligible for re-appointment; and
 - (b) subject to the terms and conditions that are specified in that instrument.
- (3) The managing director of a water corporation is not capable of being appointed as the chairperson, deputy chairperson or another director of the corporation.

100 When a member of the board of directors of a water corporation ceases to hold office

S. 100
substituted by
No. 85/2006
s. 54.

- (1) The office of member of the board of directors becomes vacant if the member—
 - (a) resigns in accordance with subsection (3); or
 - (b) becomes an insolvent under administration;
or
 - (c) fails to attend 3 consecutive meetings of the board of directors without the approval of the board; or
 - (d) is found guilty of an indictable offence; or
 - (e) holds a paid office in the water corporation.
- (2) Subsection (1)(e) does not apply to the managing director.
- (3) A person may resign from the office of member of the board of directors by notice in writing delivered to the Minister.

S. 100(1)(b)
amended by
Nos 4/2008
s. 32(Sch.
item 37.1),
32/2010
s. 77(Sch.).

s. 101

S. 101
substituted by
No. 85/2006
s. 54.

101 Removal from office of member of the board of directors

- (1) The Minister, or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, may at any time remove a member of the board of directors of a water corporation, other than the managing director, from the office of member.
- (2) The Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, must remove a person from the office of member of the board of directors, other than the managing director, if the member—
 - (a) is found guilty of such an offence that the Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, is satisfied may affect the member's ability to carry out the duties of his or her office as member; or
 - (b) fails without reasonable cause to disclose any interest under section 109.

S. 102
substituted by
No. 85/2006
s. 54.

102 Acting Managing Director

- (1) The board of directors of a water corporation may appoint a person to act as managing director of the water corporation if—
 - (a) the office of managing director is vacant; or
 - (b) the managing director is absent or is unable, for any reason, to perform the duties of the office.
- (2) The acting managing director of a water corporation is not capable of being the chairperson, deputy chairperson or another director of the corporation.

103 Removal of managing director

The board of directors of a water corporation must remove a person from the office of managing director if the managing director—

- (a) is found guilty of an offence relating to his or her duties as managing director; or
- (b) fails without reasonable cause to disclose any interest under section 109.

S. 103
substituted by
No. 85/2006
s. 54.

104 Chairperson

The Minister, or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, must appoint a member of the board of directors of a water corporation to be the chairperson of the water corporation.

S. 104
substituted by
No. 85/2006
s. 54.

105 Deputy chairperson

- (1) The board of directors of a water corporation must appoint one of the members of the board of directors to be the deputy chairperson of the board or directors.
- (2) The deputy chairperson, if present, must preside at meetings of the board of directors at which the chairperson is not present.

S. 105
substituted by
No. 85/2006
s. 54.

106 Acting appointments

- (1) The deputy chairperson must act as chairperson if—
 - (a) the office of chairperson is vacant; or
 - (b) the chairperson is unable, for any reason, to perform the duties of the office.
- (2) While the deputy chairperson is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.

S. 106
substituted by
No. 85/2006
s. 54.

- (3) The Minister may appoint a person who has the qualifications and experience as required under section 97 to be a member of the board of directors of a water corporation during any period, or during all periods, when—
- (a) the deputy chairperson is acting as chairperson; or
 - (b) a member of the board of directors is unable for any reason to attend meetings of the board.

S. 107
substituted by
No. 85/2006
s. 54.

107 Validity of decisions

- (1) An act or decision of the board of directors of a water corporation is not invalid merely because of—
- (a) a vacancy in the membership of the board of directors; or
 - (b) a defect or irregularity in, or in connection with, the appointment of a member of the board of directors.
- (2) Anything done by or in relation to a person purporting to act as a member of the board of directors of a water corporation, whether as chairperson, deputy chairperson or another director, is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

108 Improper use of information

**S. 108
substituted by
No. 85/2006
s. 54.**

A member or a person who has been a member of the board of directors of a water corporation must not make improper use of information acquired by virtue of that person's position as a member—

- (a) to gain directly or indirectly any pecuniary advantage for himself or herself or for any other person; or
- (b) with intent to cause detriment to the water corporation, whether or not detriment was caused.

Penalty: 20 penalty units.

109 Effect of pecuniary interests

**S. 109
substituted by
No. 85/2006
s. 54.**

- (1) A member of the board of directors of a water corporation who has a pecuniary interest in any matter in which the water corporation is concerned must—
 - (a) if the member is present at a meeting of the board of directors or any of its committees at which the matter is to be considered, disclose the nature of the interest immediately before the consideration; or
 - (b) if the member is aware that the matter is to be considered at a meeting of the board of directors or any of its committees at which the member does not intend to be present, disclose the nature of the interest to the chairperson of the water corporation before the meeting is held.
 - (2) If a member of the board of directors of a water corporation has disclosed an interest to the chairperson under subsection (1)(b), the chairperson must disclose that interest at the meeting at which the matter is considered, before the consideration of the matter.
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- (3) The member of the board of directors—
- (a) may stay in the meeting during any consideration of the matter; and
 - (b) may take part in the discussion; and
 - (c) must not move or second a motion on a question relating to the matter; and
 - (d) must leave the meeting while any vote is taken on a question relating to the matter; and
 - (e) may, when notified by the chairperson that the vote has been declared, return to the meeting.
- (4) If a member of the board of directors discloses an interest under subsection (1), a statement showing—
- (a) that the disclosure was made; and
 - (b) the nature of the matter and the nature of the disclosed interest; and
 - (c) whether any vote was taken on a question relating to the matter and, if so, whether the member was present while the vote was taken; and
 - (d) whether the member left the meeting at any time during consideration of the matter and, if so, at what stage the member left—
- must—
- (e) in the case of a disclosure made at or before a meeting of the board of directors, be included in the minutes of the meeting; and
 - (f) in the case of a disclosure made at or before a meeting of a committee, be recorded by the committee and presented to, and included in
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the minutes of the next ordinary meeting of the board of directors.

- (5) A person must comply with subsections (1) and (3).

Penalty: 20 penalty units.

- (6) It is a defence to a charge under subsection (5) for the person charged to prove that the person did not know—

- (a) that he or she had a pecuniary interest in the matter; or
- (b) that a matter in which he or she had a pecuniary interest was considered or to be considered at the meeting.

- (7) The Magistrates' Court has jurisdiction over a charge under this section even though title to land may be genuinely in question.

- (8) A charge may not be filed for an offence under this section more than 3 years after the commission of the alleged offence.

- (9) The Minister may, by notice in writing to a water corporation, remove any disability imposed by this section in any case if so many of the members of the board of directors of the water corporation are affected that the Minister decides that the transaction of the business of the water corporation would be impeded.

- (10) For the purposes of subsection (9), the Minister may remove, either indefinitely or for a specified time, any disability that would otherwise attach to a member, or class of members, of the board of directors, because of any interests, and in respect of any matters, that the Minister specifies in the notice.

s. 110

S. 110
substituted by
No. 85/2006
s. 54.

110 What constitutes a pecuniary interest?

- (1) In this section *shares* includes stock, and *share capital* must be read accordingly.
- (2) A member of the board of directors of a water corporation does not have a pecuniary interest to which section 109 applies in relation to a matter only because that member has an interest in the matter—
 - (a) as a person who receives a service from the water corporation in common with other persons who receive a service from the water corporation; or
 - (b) as a person who is, or may become, entitled to an allowance or other payment under this Act, if the maximum amount of the allowance or payment, or the rate at which the amount is to be calculated, is fixed under this Act; or
 - (c) as a member of a club or other association (incorporated or not) that is conducted primarily for charitable, benevolent, recreational or community purposes; or
 - (d) as a member of an employers' or employees' association; or
 - (e) as a person to whom the water corporation offers, or proposes to offer, goods and services which are, or are proposed to be, offered generally by the water corporation on the same terms and conditions as to that member; or
 - (f) as a person who receives a service from the water corporation, or as a resident of a district under the control of the water corporation, who may be required by the water corporation to make any payment that other persons who receive that service, or

other residents of the district, may be required by the water corporation to make.

- (3) Unless subsection (4) provides otherwise, a person has a pecuniary interest in a matter if—
 - (a) the person or his or her nominee is a member of a company or other body which has a pecuniary interest in the matter; or
 - (b) the person is the sole proprietor, a partner, a director or an employee of a person who has a pecuniary interest in the matter.
- (4) Subsection (3) does not apply—
 - (a) to membership of any body (incorporated or not) which results from an appointment or nomination made by the board of directors of a water corporation; or
 - (b) to membership or directorship of any body (incorporated or not) if the member or director has no beneficial interest in any capital or income of the body.
- (5) If a member of a board of directors of a water corporation has a pecuniary interest in a matter only because he or she has a beneficial interest in the shares of a body, and if the total nominal value of those shares is not more than \$2000 or 1 per cent of the total nominal value of the issued share capital of the body (whichever is less), section 109 does not preclude the member from taking part in the consideration of the matter.
- (6) If the share capital of a body is of more than one class, subsection (5) does not apply if the total nominal value of all the shares of any one class in which the member of the board of directors has a beneficial interest is more than 1 per cent of the total nominal value of the issued share capital of that class of the body.

- (7) The interest of a spouse or domestic partner of a member of the board of directors must, if known to the member, be taken to be an interest of the member for the purposes of this section.

S. 111
substituted by
No. 85/2006
s. 54.

111 Pecuniary interest does not prevent voting and consideration of some questions

Nothing in section 109 precludes any person from taking part in the consideration of, or voting on—

- (a) any question as to whether the amount payable for goods or services previously supplied or provided under any contract should be paid from any fund of the water corporation or from any other money belonging to the water corporation; or
- (b) any question as to whether an application should be made to the Minister for the exercise of the powers conferred by section 109(9).

S. 112
substituted by
No. 85/2006
s. 54.

112 Effect of finding of guilt for offence against section 109

- (1) A member of the board of directors of a water corporation who is found guilty of an offence against section 109 or any corresponding previous enactment is not capable of being or continuing to be a member of a board of directors of a water corporation for 7 years after that finding of guilt, unless—

- (a) on application by the person found guilty, the court by which he or she is found guilty; or
- (b) a court hearing an appeal under subsection (2)—

thinks it is appropriate in the circumstances to reduce or waive the period of disqualification.

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- (2) A person may, within 6 months after a decision on an application under subsection (1)(a), appeal from that decision—
- (a) if the person was found guilty by the Magistrates' Court—to the County Court; and
 - (b) in any other case—to the Supreme Court.
- (3) An appeal is by way of re-hearing of the application, and the court may do anything that it would be entitled to do if the appeal were an appeal against the sentence imposed on the finding of guilt giving rise to the disqualification.

113 Submission of returns by members of the board and nominated officers

**S. 113
substituted by
No. 85/2006
s. 54.**

- (1) A person who becomes a member of a board of directors of a water corporation must within 30 days after becoming a member submit a primary return in the prescribed form to the managing director of the water corporation.
- Penalty: 20 penalty units.
- (2) If a person is re-appointed on completion of his or her term of office as a member of the board of directors of a water corporation, the member need not submit a new primary return.
- (3) If the board of directors of a water corporation has resolved that nominated officers must submit returns—
- (a) each nominated officer must within 30 days after the resolution; and

- (b) any person who becomes a nominated officer after the resolution must within 30 days after his or her nomination as a nominated officer—

submit a primary return in the prescribed form to the managing director of the water corporation.

Penalty: 20 penalty units.

- (4) A member of the board of directors of a water corporation or a nominated officer of a water corporation must, on or before 31 July each year, submit an ordinary return in the prescribed form to the managing director of the water corporation.

Penalty: 20 penalty units.

S. 114
substituted by
No. 85/2006
s. 54.

114 Information to be disclosed in primary and ordinary returns

- (1) Each member of the board of directors of a water corporation and each nominated officer of a water corporation must disclose the following information in the primary return as at the date of the primary return—

- (a) the name of any company or other body, corporate or unincorporate, in which he or she held an office whether as a director or otherwise;
- (b) the information referred to in paragraphs (b), (c), (d) and (f) of subsection (2).

Penalty: 20 penalty units.

- (2) Each member of the board of directors of a water corporation and each nominated officer must disclose in an ordinary return the following information in relation to the return period—

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- (a) if he or she has held an office, whether as director or otherwise, in any company or body, corporate or unincorporate—the name of the company or body;
 - (b) the name or description of any company, partnership, association or other body in which he or she holds a beneficial interest which exceeds \$2000 in value;
 - (c) the address or description of any land in any district of the water corporation or in a district which adjoins a district of the water corporation in which he or she has any beneficial interest other than by way of security for any debt;
 - (d) a concise description of any trust—
 - (i) in which he or she holds a beneficial interest; or
 - (ii) of which he or she is a trustee and in which a relative holds a beneficial interest;
 - (e) particulars of any gift of \$2000 or more in value received by him or her from a person other than a relative; and
 - (f) any other substantial interest, whether of a pecuniary nature or not, of the person, or of a relative of which interest the person is aware and which the person ought reasonably to consider might appear to raise a material conflict between his or her private interest and his or her public duty as a member or nominated officer.

Penalty: 20 penalty units.

- (3) If a member of the board of directors of a water corporation or a nominated officer has already submitted one or more ordinary returns he or she must disclose in any subsequent ordinary return any change in the information disclosed in the last return and any additional information of the kind set out in subsection (2)(a) to (f) required to be disclosed, but he or she is not required to disclose any information already disclosed in a previous return.

Penalty: 20 penalty units.

- (4) In this section *relative* of a member of the board of directors of a water corporation or nominated officer includes a domestic partner, or relative of a domestic partner, of the member or nominated officer.

S. 115
substituted by
No. 85/2006
s. 54.

115 Water corporation to maintain register

- (1) A water corporation must—
- (a) maintain a register of the interests of members of the board of directors and, where required, nominated officers; and
 - (b) enter in the register all the information given in the returns.
- (2) A water corporation must allow a person to inspect the register if that person applies, in writing and in accordance with the regulations, to the water corporation to do so.
- (3) The register may be inspected at the principal office of the water corporation during normal office hours.
- (4) A water corporation must take all reasonable steps to make sure that a person who has not applied does not have access to, and is not permitted to inspect, the register or any return.

- (5) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

Penalty: 20 penalty units.

- (6) A person employed by a water corporation must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the water corporation, or make use of that information for any purpose other than the discharge of his or her official duties under this Act.

Penalty: 20 penalty units.

- (7) A water corporation must—

(a) retain the returns of a member of the board of directors or a nominated officer for 3 years after the person has ceased to be a member or a nominated officer; and

(b) at the end of that period, destroy the returns.

- (8) As soon as practicable after a person ceases to be a member of the board of directors of a water corporation or a nominated officer, the water corporation must delete the entries relating to that person from the register.

116 Contracts of insurance

The board of directors of a water corporation may by resolution allow members of the board to enter into contracts of insurance in respect of activities undertaken by directors as members of the board of directors.

**S. 116
substituted by
No. 85/2006
s. 54.**

s. 117

S. 117
substituted by
No. 85/2006
s. 54.

117 Allowances

- (1) A water corporation may, subject to subsection (2), pay remuneration and allowances to its members of the board of directors.
- (2) The amounts of any remuneration and allowances paid by a water corporation must not exceed the amounts fixed by the Minister and, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, in respect of that water corporation.
- (3) The amounts fixed by the Minister under this section may vary between water corporations.
- (4) This section does not apply to the remuneration and allowances paid to the Managing Director of a water corporation.

S. 118
substituted by
No. 85/2006
s. 54.

118 Expenses

Despite anything in this or any other Act, the members of the board of directors of a water corporation are, if the board so resolves, entitled to be reimbursed out of the water corporation's funds for their reasonable expenses incurred whilst carrying out functions and exercising powers under this Act.

Example

Reasonable expenses incurred when travelling to and from meetings, undertaking training or making site visits.

S. 119
substituted by
No. 85/2006
s. 54.

119 Employment of officers of water corporations

- (1) A water corporation may employ, on terms and conditions determined by the water corporation, such officers and employees as it considers necessary for the carrying out of its functions.

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- (2) An officer of a water corporation must not, without permission from the water corporation—
- (a) engage in any business; or
 - (b) engage in the private practice of any profession or trade; or
 - (c) hold any office in any corporation, other than a municipal council; or
 - (d) engage in any employment other than that connected with the duties of office.
- (3) An officer who has been employed by a water corporation for 10 years is entitled in accordance with the regulations to be granted by the water corporation 3 months' long service leave with pay in respect of that 10 years' service and 1½ months' long service leave with pay in respect of each additional 5 years of completed service.
- (4) The Governor in Council may, in accordance with section 324, make regulations for or with respect to long service leave, including but not limited to the following—
- (a) entitlements on retirement, death or termination of service;
 - (b) when long service leave may be taken;
 - (c) prohibiting an officer on long service leave from taking other employment for hire or reward;
 - (d) the nature of the service, and the computation of the period of the service, that entitles an officer to long service leave;
 - (e) the method of computing pay for long service leave;
 - (f) requiring water corporations to establish funds for the purpose of making payments in relation to long service leave;
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- (g) regulating the transfer of amounts from those funds;
 - (h) regulating agreements between water corporations;
 - (i) requiring the exchange of information between water corporations;
 - (j) regulating agreements between water corporations and other persons.
- (5) Any person who, in accordance with the regulations, enters into an agreement about long service leave with a water corporation is empowered to enter into that agreement and may do anything necessary or convenient for giving effect to the agreement.

S. 120
substituted by
No. 85/2006
s. 54.

120 Meetings and proceedings at meetings of the boards of directors

- (1) The board of directors of a water corporation must hold at least one ordinary meeting every 3 months.
- (2) Subject to this Act, the board of directors of a water corporation may regulate its own procedure.
- (3) The chairperson or, in his or her absence, the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, a member of the board of directors of a water corporation elected by the members present at the meeting, must preside at a meeting of the board.
- (4) The quorum for a meeting of the board of directors of a water corporation is a majority of the members for the time being.
- (5) A question arising at a meeting of the board of directors of a water corporation is determined by a majority of the votes of the members present and voting on the question.

- (6) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (7) The board of directors of a water corporation must ensure that minutes are kept of each meeting of the board.
- (8) The board of directors of a water corporation must record in the minutes—
 - (a) the names of the members present; and
 - (b) the names of the members voting on any question in relation to which a division is called.
- (9) The board of directors of a water corporation may permit its members to participate in a particular meeting by—
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of electronic or instantaneous communication.
- (10) A member of the board of directors of a water corporation who participates in a meeting under subsection (9) is deemed to be present at the meeting.

121 Validity of decisions of board of directors of water corporation

An act or decision of the board of directors of a water corporation is not invalid merely because of—

- (a) a defect or irregularity in, or in connection with, the appointment of a member of the board of directors; or

**S. 121
substituted by
No. 85/2006
s. 54.**

- (b) a vacancy in the membership of the board of directors, including a vacancy arising from the failure to appoint a member of the board of directors.

S. 122
substituted by
No. 85/2006
s. 54.

122 Special meetings

- (1) The chairperson of the board of directors of a water corporation may at any time (and must, if requested by 2 members) call a special meeting of the board.
- (2) Subject to subsection (3), a special meeting must not be held unless at least 2 days' notice has been given to each member of the board of directors of a water corporation.
- (3) If all members of the board of directors of a water corporation consent in writing, a special meeting may be held with less than 2 days' notice being provided to each member.
- (4) Notice of a special meeting must—
 - (a) be in writing; and
 - (b) be served on each member of the board of directors, by post or in person; and
 - (c) specify the time and place of the meeting and the reason for it.
- (5) A special meeting must deal only with business stated in the notice.

S. 122A
inserted by
No. 85/2006
s. 54.

122A Resolutions without meetings

- (1) If all of the members of the board of directors of a water corporation for the time being see a document setting out a resolution and a majority of those members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the board held on the day on which the

document is signed or, if the members do not sign it on the same day, on the day on which the last member to sign signs the document.

- (2) If a resolution is deemed under subsection (1) to have been passed at a meeting of the board of directors of a water corporation, each member of the board must be advised as soon as practicable and given a copy of the terms of the resolution.
- (3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the board of directors of a water corporation, are deemed to constitute one document.

Division 4—Other provisions relating to water corporations

122B Powers of delegation of water corporations

**S. 122B
inserted by
No. 85/2006
s. 54.**

A water corporation may, by instrument under its official seal, delegate to—

- (a) a member of the board of directors of the water corporation or any other officer of the water corporation, by name or to the holder of the office; or
- (b) to any committee established by the water corporation under this Act, the members of which are members of the board of directors or officers of the water corporation; or
- (c) with the consent of the Minister, to any other person or body, including any committee established by the water corporation under this Act, the members of which are not members of the board of directors or officers of the water corporation—

any function, power or duty of the water corporation other than—

s. 122C

- (d) this power of delegation; or
- (e) the power to make by-laws; or
- (f) any other power that is prescribed for the purposes of this section.

S. 122C
inserted by
No. 85/2006
s. 54.

122C Committees established by the board of directors of a water corporation

- (1) The board of directors of a water corporation—
 - (a) may establish a committee to advise the water corporation on any matter referred by the board of directors; and
 - (b) may establish a committee to exercise any power or perform any function, authority or discretion delegated to it by the board of directors.
- (2) The following provisions apply to committees—
 - (a) the board of directors may at any time remove from office a member of a committee and must provide in writing to the member the reasons for the removal;
 - (b) a committee may act despite any vacancy in its membership;
 - (c) subject to this Act and any rules made under paragraph (d), a committee may regulate its own proceedings;
 - (d) the board of directors of a water corporation may, by resolution, make rules, with which committees must comply, about—
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings;

- (e) the Minister by notice published in the Government Gazette may declare that a committee is a corporation, and may dissolve a corporation of that sort in the same way;
 - (f) a water corporation must obtain the Minister's consent before it delegates any of its powers, functions, authorities or discretions to a committee of which any members are not members or officers of the water corporation;
 - (g) the Minister may specify rules of procedure for the exercise of a delegated power by a committee referred to in paragraph (f) and any purported exercise of that delegated power by such a committee otherwise than in accordance with those rules is void.
- (3) A water corporation that has an irrigation district may, in accordance with section 160, make by-laws about the constitution, functions and duties of a committee established in relation to an irrigation district or part of an irrigation district.
 - (4) By-laws made under subsection (3) prevail, to the extent of any inconsistency, over the provisions of subsection (2).
 - (5) A member of a committee is entitled to be paid any fees and allowances fixed by the Minister.
 - (6) A committee established by the board of directors of a water corporation is subject to the requirements of Part 13 about annual reports and audits as if it were a part of the water corporation.

122D Incorporated committees

- (1) If the Minister declares a committee to be a corporation under section 122C(2)(e), then on the publication of the notice in the Government Gazette—

**S. 122D
inserted by
No. 85/2006
s. 54.**

s. 122D

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- (a) the committee specified in the notice is a body corporate by the name assigned to it in the notice, with perpetual succession and a common seal, and is by that name capable in law of suing and being sued and, subject to this Act, of holding, acquiring and disposing of personal property; and
 - (b) the powers, functions, discretions and authorities of that committee, whether conferred or imposed by this Act or otherwise, must be taken to be conferred or imposed on the corporation alone; and
 - (c) the duties, liabilities, responsibilities and obligations imposed on that committee are transferred to the corporation; and
 - (d) the corporation becomes the successor in law of that committee.
- (2) The common seal of a corporation constituted under section 122C(2)(e) must be kept in the custody that the corporation directs, and must not be used except as authorised by the corporation.
- (3) All courts must take judicial notice of the common seal of a corporation constituted under section 122C(2)(e) affixed to any document and, until the contrary is proved, must presume that it was duly affixed.
- (4) If the Minister declares a corporation to be dissolved under section 122C(2)(e), then on the publication of the notice in the Government Gazette—
- (a) the members who constituted the corporation specified in the notice constitute the committee; and
-

- (b) the powers, functions, discretions and authorities of the corporation specified in the notice must be taken to be conferred or imposed on that committee; and
 - (c) the duties, liabilities, responsibilities and obligations imposed on the corporation specified in the notice are transferred to that committee; and
 - (d) that committee becomes the successor in law of the corporation specified in the notice.
- (5) A committee declared to be a corporation under section 122C(2)(e)—
- (a) consists of the members who constituted the committee immediately before the publication in the Government Gazette of the notice declaring the committee to be a corporation; and
 - (b) is subject to all the provisions of this Act and the regulations relating to committees.

122E Regulation making powers

The Governor in Council may make regulations for or with respect to—

- (a) the qualifications required to be held by any person who holds a specific office or position in a water corporation; and
- (b) the accreditation of any person who holds a specific office or position in a water corporation; and
- (c) the establishment, membership and procedure of a body which may issue accreditations and hold any examinations and tests it considers necessary for that purpose; and

**S. 122E
inserted by
No. 85/2006
s. 54.**

- (d) prescribing fees to be paid for the issue or renewal of certificates of accreditation.

Division 5—Particular water corporations

S. 122F
inserted by
No. 85/2006
s. 54.

122F Additional function of Central Gippsland Region Water Corporation

- (1) In addition to any other functions conferred on the Central Gippsland Region Water Corporation, the Corporation has the function of receiving waste from any person, whether inside or outside the sewerage districts managed and controlled by the Corporation, for treatment or disposal by the Corporation.
- (2) In this section—
- waste* includes—
- (a) trade waste or any sewage, whether that waste or sewage is untreated, treated or partially treated; and
 - (b) any matter that is offensive or injurious to human life or health; and
 - (c) any ash, coal-dust or matter that may discolour or impart discolouration to water; and
 - (d) any other matter that the Corporation by by-law declares to be waste.
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PART 6A—DISTRICTS AND LAND MANAGEMENT AREAS

Pt 6A
(Heading and
ss 122G–
122ZF)
inserted by
No. 85/2006
s. 54.

Division 1—Continuation of districts

122G Continuation of districts

S. 122G
inserted by
No. 85/2006
s. 54.

- (1) Each Authority specified in an item in Column 1 of the Table in Schedule 1 (other than item 12) is deemed to have the irrigation district or districts, the water district or districts, the sewerage district or districts and the waterway management district or districts that the pre-dating Authority had immediately before the commencement of section 54 of the **Water (Governance) Act 2006**.
- (2) Each Catchment Management Authority that is deemed, by section 98(1) of the **Catchment and Land Protection Act 1994**, to continue in existence as if it were established under Division 3 of Part 2 of that Act, is deemed to have the waterway management district that the Catchment Management Authority had immediately before the commencement of section 151 of the **Water (Governance) Act 2006**.
- (3) In this section *pre-dating Authority* has the same meaning as in Schedule 16.

122H Waterway management district of Melbourne Water Corporation

S. 122H
inserted by
No. 85/2006
s. 54.

- (1) The waterway management district of Melbourne Water Corporation is the land shown delineated in red on the plan lodged in the central plan office and numbered LEGL./05-406.

s. 122I

- (2) The Minister may, by determination, published in the Government Gazette—
 - (a) add to the area of land that comprises the waterway management district of Melbourne Water Corporation; or
 - (b) diminish the area of land that comprises the waterway management district of Melbourne Water Corporation.
- (3) A determination under subsection (2) takes effect from the date specified in the determination, which must be no earlier than the date of publication of the determination.

S. 122I
inserted by
No. 85/2006
s. 54.

122I Transfer of assets on inclusion or diminution of land in waterway management district of Melbourne Water Corporation

- (1) In this section—

previous body means—

- (a) an Authority whose waterway management district has been diminished by determination under section 122H; or
- (b) any other body whose area of jurisdiction has been diminished by determination under section 122H;

new body means—

- (a) an Authority whose waterway management district has been increased by a determination under section 122H; or
- (b) any other body whose area of jurisdiction has been increased by a determination under section 122H.

-
- (2) On the making of a determination under section 122H—
- (a) any rights, property and assets that are specified in the determination are deemed to be vested in the new body; and
 - (b) any debts, liabilities and obligations of the previous body arising out of any vesting under paragraph (a) are deemed to be the debts, liabilities and obligations of the new body; and
 - (c) the new body is substituted as a party to any arrangement or contract entered into by or on behalf of the previous body arising out of any vesting under paragraph (a).
- (3) Where any right, property or asset is vested in a new body under this section, the new body is liable to pay the previous body in whom the right, property or asset was vested the amount that is agreed on by the new body and the previous body, or if there is no agreement, the amount determined by the Governor in Council.
- (4) The amount referred to in subsection (3), whether agreed on by the new body and the previous body or determined by the Governor in Council, must be an amount that is agreed or determined by taking any debts, liabilities and obligations that were vested in the previous body into account.

Division 2—New irrigation and waterway management districts

122J New irrigation districts

- (1) The Minister may, on application by an Authority, declare a new irrigation district and declare that the new irrigation district is an irrigation district of the Authority that made the application.

S. 122J
inserted by
No. 85/2006
s. 54.

s. 122K

- (2) A declaration under subsection (1) must be published in the Government Gazette.

S. 122K
inserted by
No. 85/2006
s. 54.

122K New waterway management districts

- (1) The Minister may declare a new waterway management district and specify, in the declaration, the Authority for the new waterway management district.
- (2) A declaration under subsection (1) must be published in the Government Gazette.

Division 3—New and extended water districts and sewerage districts and extended irrigation districts and waterway management districts

S. 122L
inserted by
No. 85/2006
s. 54.

122L Non-application of Division

This Division (other than sections 122U, 122V and 122W) does not apply to any extension or diminution of the waterway management district of Melbourne Water Corporation.

S. 122M
inserted by
No. 85/2006
s. 54.

122M Submission of proposal for establishment or extension of district

An Authority may, submit to the Minister a proposal—

- (a) to establish a new water district or sewerage district; or
- (b) to extend an existing water district, sewerage district, waterway management district or irrigation district.

122N Restrictions on areas for which proposals for new or extended districts may be made

S. 122N
inserted by
No. 85/2006
s. 54.

- (1) An Authority must not submit a proposal for—
- (a) a new water district or sewerage district; or
 - (b) an extended water district, sewerage district, waterway management district or irrigation district—
- if the whole or any part of the area to be covered by the proposal is within the area of interest of another Authority.
- (2) An Authority must not submit a proposal for—
- (a) a new or extended sewerage district unless the area to be covered by the district is within the Authority's water district; and
 - (b) an extended waterway management district, unless the area to be covered by the district is within the catchment for the Authority's water district—
- unless the Minister, in writing exempts the Authority's proposal from the operation of this subsection.

122O Form of proposal

S. 122O
inserted by
No. 85/2006
s. 54.

- (1) A proposal under section 122M must be in the form required by guidelines issued by the Minister.
- (2) The Minister may exempt a water corporation which submits a proposal for the extension of a district from complying with subsection (1).

s. 122P

S. 122P
inserted by
No. 85/2006
s. 54.

122P Advertising proposal

- (1) An Authority that has submitted a proposal under section 122M to the Minister must—
 - (a) give notice of the proposal to—
 - (i) all councils that are affected by the proposal; and
 - (ii) any person whom the Authority reasonably believes may be affected by the proposal and any person to whom the Minister has directed the Authority to so give notice; and
 - (b) make the proposal available for inspection free of charge at its office during its office hours; and
 - (c) publish a notice of the proposal—
 - (i) at least once every week for 3 consecutive weeks in a newspaper circulating generally in the area to which the proposal relates; and
 - (ii) in the Government Gazette, after all other notices under this subsection have been given or published.
- (2) A notice under subsection (1) must state that—
 - (a) the Authority invites submissions on the proposal to be made to it; and
 - (b) any submission made to the Authority should set out the grounds on which it is made; and
 - (c) the time within which any submission on the proposal must be received by the Authority.
- (3) The Minister may exempt an Authority which submits a proposal to extend a district from the requirement to comply with subsection (1) (other than subsection (1)(c)(ii)) or with subsection (2).

122Q Submissions

S. 122Q
inserted by
No. 85/2006
s. 54.

- (1) An Authority that has submitted a proposal under section 122M to the Minister must invite submissions to the proposal in a notice under section 122P.
- (2) Any person who is affected by the proposal of an Authority submitted under section 122M may make a written submission on the proposal to the Authority.
- (3) A submission under subsection (2) must be received by the Authority within one month of publication in the Government Gazette of notice of the proposal under section 122P.

122R Final determination of Authority

S. 122R
inserted by
No. 85/2006
s. 54.

- (1) An Authority that has submitted a proposal to the Minister under section 122M may finally determine whether to—
 - (a) proceed with the proposal as submitted to the Minister; or
 - (b) vary the proposal as a result of submissions received on the proposal; or
 - (c) not proceed with the proposal.
- (2) The Authority must not make a determination under subsection (1) unless the Authority has considered all submissions received by the Authority within the time for making submissions under section 122Q.
- (3) On making a determination under subsection (1), the Authority must notify the Minister of the determination and send to the Minister copies of all submissions that the Authority received within the required time.

s. 122S

S. 122S
inserted by
No. 85/2006
s. 54.

122S Ministerial determination

On receiving notice of the Authority's decision on a proposal it has submitted under section 122M, the Minister may—

- (a) approve the proposal, with or without changes; or
- (b) refuse the proposal.

S. 122T
inserted by
No. 85/2006
s. 54.

122T Ministerial declaration

The Minister, on approving a proposal under section 122S must give effect to the substance of the proposal by declaring, by notice published in the Government Gazette, the new or extended district that was the substance of the proposal.

S. 122U
inserted by
No. 85/2006
s. 54.

122U Areas of interest

The Minister may, at the request of an Authority, by instrument published in the Government Gazette declare an area of land outside a water, sewerage or waterway management district to be an area of interest for that Authority in relation to a water district, sewerage district or waterway management district of that Authority.

S. 122V
inserted by
No. 85/2006
s. 54.

122V Advertising proposal for declaration

The Minister must not make a declaration under section 122U unless—

- (a) the Authority requesting the declaration—
 - (i) has given notice of the proposed declaration at least 30 days before its making to any public statutory body which the Authority considers may be affected by it; and
 - (ii) has published notice of the proposed declaration in a newspaper circulating generally in the area to be affected by the declaration; and

- (b) the Minister is satisfied that all public statutory bodies which may be affected by the proposed declaration have been adequately consulted about it.

122W Powers of Authority in area of interest

S. 122W
inserted by
No. 85/2006
s. 54.

- (1) If an area of interest is declared under section 122U in respect of a water district, sewerage district or waterway management district of an Authority, the Authority may—
 - (a) in the case of a water district, carry out any water supply functions (other than irrigation functions) or exercise any water supply powers (other than irrigation powers) in relation to that area of interest; and
 - (b) in the case of a sewerage district, carry out any sewerage functions or exercise any sewerage powers in relation to that area of interest; or
 - (c) in the case of a waterway management district, carry out any waterway management functions or exercise any waterway management powers in relation to that area of interest.
- (2) If an area of interest in relation to a particular function has been granted to an Authority, another Authority may not be appointed under this Division to manage and control a district related to that function that is wholly or partly within that area of interest.
- (3) An area of interest of an Authority must be taken to be part of the Authority's district for the purposes of any referral under the **Planning and Environment Act 1987**.

Division 4—Changes to existing districts

S. 122X
inserted by
No. 85/2006
s. 54.

122X Non-application of Division

This Division does not apply to any extension or diminution of the waterway management district of Melbourne Water Corporation.

S. 122Y
inserted by
No. 85/2006
s. 54.

122Y Power of Authorities to change districts

- (1) An Authority may, by resolution published in the Government Gazette—
 - (a) unite any 2 or more—
 - (i) water districts; or
 - (ii) sewerage districts; or
 - (iii) waterway management districts; or
 - (iv) irrigation districts—
that are under the management and control of the Authority; or
 - (b) diminish the extent of a water district, sewerage district, waterway management district or irrigation district of the Authority; or
 - (c) abolish any water district, sewerage district, waterway management district or irrigation district of the Authority that is no longer operating; or
 - (d) divide a water district, sewerage district, waterway management district or irrigation district of the Authority into 2 or more districts.
- (2) An Authority must not make a resolution referred to in subsection (1) unless it has, once a week for 3 consecutive weeks before the resolution is made, published notice of the proposed resolution

in a newspaper circulating generally in the area to be affected by the resolution.

122Z Power of Minister to change districts

S. 122Z
inserted by
No. 85/2006
s. 54.

- (1) The Minister may, by determination—
 - (a) unite any 2 or more—
 - (i) water districts; or
 - (ii) sewerage districts; or
 - (iii) waterway management districts; or
 - (iv) irrigation districts—
of the same Authority; or
 - (b) diminish the extent of a water district, sewerage district, waterway management district or irrigation district of an Authority; or
 - (c) on the request of an Authority, abolish a water district, sewerage district or irrigation district of the Authority; or
 - (d) abolish a waterway management district; or
 - (e) divide a water district, sewerage district, waterway management district or irrigation district of an Authority into 2 or more districts.
- (2) On making a determination under subsection (1), the Minister may make any determination that the Minister considers desirable as to—
 - (a) providing for any adjustment to areas affected by the determination under subsection (1); and
 - (b) any other matter as a result of the determination under subsection (1).

s. 122ZA

- (3) The Minister must publish notice of any determination under this section in the Government Gazette.

Division 5—Environmental and recreational areas

S. 122ZA
inserted by
No. 85/2006
s. 54.

122ZA Environmental and recreational areas

- (1) The Minister may determine land—
- (a) which is owned or controlled by an Authority; or
 - (b) which is within the water district, sewerage district, waterway management district or irrigation district of an Authority, or which is significant to the exercise of a function of an Authority and which is owned or controlled by another public statutory body or which is Crown land—
- to be an environmental area or a recreational area under the management and control of the Authority specified by the Minister and for the period specified by the Minister in the determination.
- (2) The Minister must not make a determination under subsection (1)(b) unless the Minister has first obtained the consent of the public statutory body or the Minister responsible for the management of the land (as the case requires) to the making of that determination.

S. 122ZB
inserted by
No. 85/2006
s. 54.

122ZB Functions of Authority in area

- (1) An Authority that has the management and control of any environmental or recreational area has the following functions—
- (a) in accordance with the directions of the Minister, to prepare a management strategy as to recreational uses for the area;

- (b) to improve the area;
 - (c) to provide and arrange services and facilities in the area;
 - (d) to control land use in the area.
- (2) Subject to any determination under section 122ZA establishing an area, an Authority is under no duty to exercise its functions under subsection (1).

122ZC Contributions by public authorities

Despite anything in any other Act, if an environmental area or a recreational area is determined under section 122ZA, any public statutory body may make contributions out of any money legally available to that body, for or towards the cost of improving the area or providing or maintaining services in it.

S. 122ZC
inserted by
No. 85/2006
s. 54.

122ZD Revenue from land

Any revenue collected in relation to any environmental or recreational area forms part of the fund of the Authority that has the management and control of the area.

S. 122ZD
inserted by
No. 85/2006
s. 54.

122ZE Limitation of exercise of powers under this Division

- (1) An Authority must not exercise its functions or powers under this Division in a manner which is inconsistent with any provision of an Order granting a declared bulk water entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.
- (2) In subsection (1)—

declared bulk water entitlement means a bulk water entitlement in respect of which a declaration under section 185(3) has been made.

S. 122ZE
inserted by
No. 85/2006
s. 54.

S. 122ZF
inserted by
No. 85/2006
s. 54.

122ZF Regulation making powers as to areas

The Governor in Council may make regulations for or with respect to—

- (a) the granting of leases or licences for areas determined under this Division, and in particular as to the following matters—
 - (i) the Authority that may grant any such lease or licence, which must be the Authority that has the management and control of the area and that has a proprietary interest in the area;
 - (ii) the purposes for which any such lease or licence may be granted, which must be for activities carried on in, or things introduced into, the area; and
- (b) the charging of fees for leases or licences over areas determined under this Division; and
- (c) the powers of the Authority in relation to the removal of any unregistered or abandoned motor vehicle from an area determined under this Division and its subsequent sale, including provisions about—
 - (i) notice of removal; and
 - (ii) surrender of the motor vehicle to its owner or an agent of the owner; and
 - (iii) sale of the motor vehicle; and
 - (iv) the circumstances in which clear title to the motor vehicle passes on sale; and
 - (v) disposal of the proceeds of sale; and
 - (vi) protection of the Authority from liability in relation to payments of the proceeds of sale; and

(vii) any other necessary or convenient
matter.

Pt 6C
(Heading and
ss 122ZG–
122ZJ)
inserted by
No. 85/2006
s. 54.

PART 6B—DUTIES OF WATER CORPORATIONS

Division 1—Customer dispute resolution

S. 122ZG
inserted by
No. 85/2006
s. 54.

122ZG Customer dispute resolution

- (1) A water corporation must, on or before a date determined by the Minister administering the **Essential Services Commission Act 2001**, enter into a customer dispute resolution scheme approved by the Essential Services Commission established under the **Essential Services Commission Act 2001**.
- (2) A dispute resolution scheme provided for in accordance with this section is in addition to and not in derogation of any right of review a person may have under this Act.
- (3) In approving a dispute resolution scheme the Essential Services Commission must have regard to—
 - (a) the need to ensure that the scheme is accessible to, and that there are no cost barriers to persons using the scheme; and
 - (b) the need to ensure that the scheme is independent of the members of the scheme; and
 - (c) the need for the scheme to be fair and be seen to be fair; and
 - (d) the need to ensure that the scheme will publish decisions and information about complaints received by the scheme so as to be accountable to the members of the scheme and the persons using the scheme; and

- (e) the need for the scheme to undertake regular reviews of its performance to ensure that its operation is efficient and effective.
- (4) This section only applies to a water corporation that has a water district, a sewerage district or an irrigation district.

Division 2—Dividends

122ZH Dividends

Each water corporation must pay to the State such dividend, at such time and in such manner, as is determined by the Treasurer after consultation with the board of directors of the water corporation and the Minister.

S. 122ZH
inserted by
No. 85/2006
s. 54.

Division 3—Repayment of capital

122ZI Repayment of capital

- (1) The capital of a water corporation is repayable to the State at such times, and in such amounts, as the Treasurer directs in writing, after consultation with the Minister and the board of directors of the water corporation.
- (2) In giving a direction under this section, the Treasurer must have regard to any advice that the board of directors has given to the Treasurer in relation to the water corporation's affairs.

S. 122ZI
inserted by
No. 85/2006
s. 54.

Division 4—Annual report

122ZJ Information to be included in annual report

- (1) A water corporation, in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, must include the following information—

S. 122ZJ
inserted by
No. 85/2006
s. 54.

-
- (a) in relation to each person, who is not a natural person, who uses water supplied by the water corporation for purposes that are not farming, irrigation or domestic purposes, at a volume that is within a specified range—
- (i) the name of the person; and
 - (ii) the information (if any) as to the person's participation in any water conservation program; and
- (b) in relation to each specified range, the number of persons to whom paragraph (a) applies who are within the range.
- (2) For the purposes of this section the Minister may specify one or more range or ranges of volumes.
- (3) In this section ***specified range*** means a range of volumes specified by the Minister under subsection (2).
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PART 6C—STORAGE MANAGERS

Pt 6C
(Heading and
ss 122ZK–
122ZN)
inserted by
No. 85/2006
s. 54.

122ZK Appointment of storage managers

S. 122ZK
inserted by
No. 85/2006
s. 54.

- (1) The Minister may, by instrument, appoint an Authority to carry out any of the functions under this Part in relation to any water storage or land specified in the instrument.
- (2) In an instrument under subsection (1) the Minister—
 - (a) must describe the land, including any water storage, in respect of which the storage manager is to exercise functions under this Part; and
 - (b) may specify terms and conditions to which the appointment is subject; and
 - (c) must specify the term of the appointment.
- (3) Before making an appointment of an Authority under subsection (1), the Minister must consult with—
 - (a) any other Authority that is exercising any function to which the appointment would apply on the land to be specified in the instrument of appointment; and
 - (b) any other Authority that owns any land that is to be specified in the instrument of appointment or works on that land.

S. 122ZL
inserted by
No. 85/2006
s. 54.

122ZL Functions of storage managers

- (1) The functions of a storage manager appointed under this Part in respect of the land to which the appointment relates are—
 - (a) to control and manage any water storage on the land specified in the instrument of appointment and any water or works on the land so specified, in a manner that is consistent with this Act and that will maintain the water quality of any water storage on the land;
 - (b) to carry out any other functions that are conferred on the storage manager by or under this Act or any instrument made under this Act.
- (2) An Authority, in performing its functions under subsection (1) must have regard to—
 - (a) protecting the ecological values of the water systems relating to the land specified in the instrument of appointment; and
 - (b) protecting the reliability and quality of water supply; and
 - (c) subject to water supply needs, minimizing the impact on the environment of the carrying out of any such function and maximizing the benefit to the environment of the carrying out of any such function; and
 - (d) developing and implementing strategies to mitigate flooding, where possible.

122ZM Management agreements for water storages

**S. 122ZM
inserted by
No. 85/2006
s. 54.**

- (1) If an Authority that has been appointed as the storage manager of any land under this Part, does not hold a proprietary interest in the whole or part of the land described in the instrument appointing the storage manager, the Authority must enter into an agreement with the owner of the land as to the management of the land.
- (2) An agreement under subsection (1)—
 - (a) must be in writing; and
 - (b) must be consistent with this Act; and
 - (c) may be amended from time to time by further written agreement between the parties.
- (3) An agreement under subsection (1) must set out procedures to be followed to prevent or settle disputes concerning the management of the land specified in the instrument of appointment of the Authority that arise between the parties during the currency of the agreement, including the submission of any unresolved disputes to the Minister for a decision that is binding on the parties.

122ZN Powers for storage managers to charge fees

**S. 122ZN
inserted by
No. 85/2006
s. 54.**

A storage manager appointed under this Part may charge a fee for a service provided by the storage manager to another Authority in carrying out its functions under this Act.

PART 7—GENERAL POWERS

123 Powers of Authorities

- (1) An Authority has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions, including any function delegated to it.
- (2) No other provision of this Act that confers a power on an Authority limits subsection (1).

124 Particular powers of Authorities

- (1) The powers of an Authority that has a water supply district include the powers set out in Part 8.
- (2) The powers of an Authority that has a sewerage district include the powers set out in Part 9.
- (3) The powers of an Authority that has a waterway management district include any of the powers set out in any Division of Part 10 that applies to that Authority.
- (4) The powers of an Authority that has an irrigation district include the powers set out in Part 11.
- (5) An Authority is not obliged to perform any function conferred by this Act, unless this Act expressly provides otherwise.
- (6) It is a function of an Authority to construct, complete, operate and maintain any works of water supply, drainage or salinity mitigation for which funding is provided to it under any other Act or which, under any other Act, it is authorised or directed to construct, complete, operate or maintain.

S. 124(6)
amended by
Nos 50/1992
s. 10(Sch.
item 11.17),
49/1994
s. 5(1)(d),
65/1995
s. 22(f).

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|---|--|
| (7) It is a function of an Authority, subject to this Act, to supply water from its works to any person by agreement. | S. 124(7)
amended by
Nos 50/1992
s. 10(Sch.
item 11.18),
49/1994
s. 5(1)(e). |
| (8) In deciding whether to make an agreement to supply water, an Authority must have regard to the matters specified in section 40(1)(b) to (m), with any necessary modifications, and to any other matter that the Authority thinks fit to have regard to. | S. 124(8)
amended by
Nos 50/1992
s. 10(Sch.
item 11.19),
49/1994
s. 5(1)(f)(i)(ii),
5/2002 s. 48. |
| (9) The powers of an Authority include the power to require vessels to be licensed if they are used on any of its works. | S. 124(9)
inserted by
No. 65/1995
s. 18. |
| (10) The functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity incidental to its functions under this Act. | S. 124(10)
inserted by
No. 65/1995
s. 18. |
| (11) Without limiting subsection (10), the functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity that is capable of being conveniently carried on by the use of resources that are not immediately required in carrying out the Authority's functions under this Act. | S. 124(11)
inserted by
No. 65/1995
s. 18. |
| (12) In subsections (10) and (11) <i>business or activity</i> includes the provision of consultancy and project management services. | S. 124(12)
inserted by
No. 65/1995
s. 18. |

125 Accountability of Authorities

An Authority must perform its functions and exercise its powers subject to any direction given by the Minister under section 307.

126 Contracts and agreements

- (1) The power of an Authority to enter into contracts includes power to agree or contract with another Authority, a government department or any other public statutory body with respect to—
 - (a) the exercise by the Authority and the other party of their respective functions; or
 - (b) the carrying out or providing by either party for the other party of any works or services; or
 - (c) the use or joint use by the Authority and the other party of their respective facilities or the services of their respective staff.
- (2) An Authority may, at the request of any person and at the expense of that person—
 - (a) carry out, repair or alter any works; or
 - (b) carry out any survey or investigation; or
 - (c) do anything else—connected with or incidental to the functions of the Authority.
- (3) An Authority may, with the Minister's approval, contract to provide to any person any works or services that are not connected with or incidental to any function of the Authority.

127 Commercial ventures

- (1) An Authority may, with the approval of the Minister—
 - (a) form or participate in the formation of a corporation, trust, partnership or other body; or
 - (b) subscribe for or otherwise acquire, and hold and dispose of, shares in or debentures or other securities of a corporation; or

S. 127(1)(a)
amended by
No. 50/1992
s. 5(a).

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- (c) become a member of a company limited by guarantee; or
 - (d) subscribe for or otherwise acquire, and hold and dispose of, units in a trust; or
 - (e) acquire, and hold and dispose of, an interest in a partnership or other body; or
 - (f) carry on or engage in any business transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority; or
 - (g) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person carrying on or engaged in, or about to carry on or engage in, any business or transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority.
- (2) An Authority must include in its annual report a report of—
- (a) the activities of any body formed by or in the formation of which the Authority participates under subsection (1)(a); and
 - (b) any business transaction carried on or engaged in by the Authority under subsection (1)(f); and
 - (c) the activities carried out by any partnership or under any arrangement entered into by the Authority under subsection (1)(g).

S. 127(2)(a)
amended by
No. 50/1992
s. 5(b).

128 Accident insurance

S. 128(1)
amended by
No. 72/2001
s. 3(Sch.
item 12.6(a)).

(1) An Authority may enter into a contract to insure a member of the Authority or the spouse or domestic partner of a member of the Authority against accidents arising out of or in the course of—

S. 128(1)(b)
amended by
No. 72/2001
s. 3(Sch.
item 12.6(a)).

(a) in the case of a member, the performance of his or her functions as a member; or

(b) in the case of the spouse or domestic partner of a member, accompanying the member in the performance of his or her functions as a member; or

(c) in the case of a member, his or her travelling by a reasonably direct route between his or her home and any other place, if the travelling is undertaken solely for the purpose of his or her performing at that other place his or her functions as a member; or

S. 128(1)(d)
amended by
No. 72/2001
s. 3(Sch.
item 12.6(a)).

(d) in the case of the spouse or domestic partner of a member, travelling with the member in the circumstances described in paragraph (c).

S. 128(2)
amended by
No. 72/2001
s. 3(Sch.
item 12.6(a)
(b)).

(2) If an Authority enters into such a contract with respect to its members or the spouses or domestic partners of its members generally, each member for the time being or his or her spouse or domestic partner must individually be taken to be insured under the terms of the policy in all respects as if he or she had personally entered into a policy of accident insurance on those terms, to have effect for so long as the member concerned remains a member.

- (3) In this section, *member*, in relation to an Authority, includes member of a committee established by the Authority.

S. 128(3)
amended by
Nos 50/1992
s. 10(Sch.
item 11.20),
49/1994
s. 4(1)(j).

129 Intellectual property

- (1) An Authority may, with the approval of the Minister—
- (a) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights; or
 - (b) assign or grant licences in respect of those intellectual property rights, with or without charge; or
 - (c) enter into agreements and arrangements for the commercial exploitation of intellectual property rights.

S. 129(1)
amended by
Nos 50/1992
s. 10(Sch.
item 11.21),
65/1995
s. 22(g).

* * * * *

S. 129(2)
amended by
No. 50/1992
s. 10(Sch.
item 11.22),
repealed by
No. 65/1995
s. 22(h).

130 Acquisition of land

- (1) An Authority may purchase or compulsorily acquire any land which is or may be required by the Authority for or in connection with, or as incidental to, the performance of its functions or the achievement of its objects.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Water Act 1989** is the special Act; and
 - (b) the acquiring Authority is the Authority; and

- (c) **land** includes—
- (i) any land that—
 - (A) is actually comprised by measurement in the land described in the Crown grant of the land; and
 - (B) forms part of the bed and banks of a watercourse; and
 - (C) is declared to remain the property of the Crown by section 385 of the **Land Act 1958**; and
 - (ii) strata above or below the surface of land and easements and rights to use land or strata above or below the surface of land.
- (3) If an Authority acquires any right in the nature of an easement or purporting to be an easement, that right must be taken to be an easement even though there is no land vested in the Authority which is benefited or capable of being benefited by that right.
- (4) If any land to be acquired by an Authority is held by a licensee or lessee of the Crown, the Authority must notify the Department Head of its intention to acquire the land, and must include in the notice a description of the land.
- (5) If a Crown grant is issued to any person of the land out of which, in respect of which or over which any land or easement has been compulsorily acquired, the land or easement so acquired must be taken to be exempted from the grant, and remains vested in the Authority.

S. 130(4)
amended by
No. 76/1998
s. 29(e).

- (6) If any land acquired by an Authority is Crown land other than that referred to in subsection (4), the Authority must, as soon as practicable after the acquisition, notify the Department Head of the acquisition.

S. 130(6)
amended by
No. 76/1998
s. 29(e).

131 Management of Crown land

- (1) The Governor in Council may, on the recommendation of the Minister and the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**, by Order published in the Government Gazette, declare that the Crown land specified in the Order is, subject to any conditions specified in the Order, placed under the management and control of the Authority specified in the Order.
- (2) The Governor in Council may, at any time and without compensation, by Order published in the Government Gazette, resume any Crown land specified in the Order that was by an Order under subsection (1) placed under the management and control of an Authority and that is required for any public purpose or for any public highway.
- (3) An Authority may, at any time, subject to the approval of the Governor in Council, surrender to the Crown any Crown land that was, by an Order under subsection (1), placed under the management and control of the Authority.
- (4) Any Crown land that is surrendered under subsection (3) becomes, by virtue of that surrender, unalienated Crown land.

132 Other dealings with land

- (1) An Authority may, for or in connection with, or as incidental to, the performance of its functions—
- (a) obtain a lease or licence over land; or
 - (b) exchange any land for any other land; or

s. 133

S. 132(2)
amended by
Nos 50/1992
s. 10(Sch.
item 11.23),
65/1995
s. 22(i).

- (c) grant leases and licences; or
 - (d) grant easements over its land; or
 - (e) sell any land by public auction or public tender; or
 - (f) in accordance with any guidelines issued by the Minister, sell any land by private treaty.
- (2) If the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993** sells by private treaty or leases any land acquired by it at or near Lake Dartmouth for or in connection with the Dartmouth township or works for the construction of Dartmouth Reservoir, it must make any payments that the Minister determines to any public statutory body towards the cost of providing or maintaining services in the land.

133 Power to enter land

- (1) An officer of an Authority or an authorised person may, subject to subsection (4), enter any land for the purpose of—
- (a) reading a meter installed under section 142 or any corresponding previous enactment; or
 - (b) inspecting and measuring any septic tank system; or
 - (c) inspecting any works, or making any test, to find out whether this Act, the regulations and the by-laws of the Authority are being complied with; or
 - (d) carrying out any other function under this Act.

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- (2) An officer of an Authority or an authorised person may, subject to subsection (4) and after the Authority has given 7 days' notice in writing to the occupier, enter any land and carry out on that land any works that the Authority is empowered to carry out.
 - (3) An Authority need not give the notice required by subsection (2)—
 - (a) if the occupier consents to the entry and the carrying out of the works; or
 - (b) in an emergency.
 - (4) An officer or authorised person must not, despite subsections (1) and (2), enter land that is used primarily for residential purposes except between 7.30 a.m. and 6 p.m. unless—
 - (a) the Authority has reasonable grounds for believing that this Act, the regulations or the Authority's by-laws are not being complied with by the occupier; or
 - (b) the occupier consents.

134 Obligations in relation to entry of land

- (1) In exercising the powers given by section 133, an officer or authorised person must—
 - (a) cause as little harm and inconvenience as possible; and
 - (b) not stay on the land for any longer than is reasonably necessary; and
 - (c) remove from the land on completing the works all plant, machinery, equipment, goods or temporary buildings brought onto the land by the officer or authorised person, other than anything that the owner or occupier of the land agrees may be left there; and
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- (d) leave the land as nearly as possible in the condition in which he or she found it; and
 - (e) co-operate as much as possible with the owner and occupier of the land.
- (2) An Authority is not liable for nuisance or any other injury done, in exercising the powers given by section 133, to the land or residence of the person whose land is entered under that section.

135 Powers under Land Acquisition and Compensation Act 1986

The powers conferred by section 133 are in addition to powers conferred by the **Land Acquisition and Compensation Act 1986**.

136 Subdivisional easements and reserves

- (1) If a proposal for subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may require the creation of easements or reserves, or both, for the use of the Authority for any of the following purposes—
- (a) pipelines or ancillary purposes;
 - (b) channels;
 - (c) carriageways;
 - (d) waterway management;
 - (e) drainage.
- (2) The creation of an easement or a reserve for a purpose specified in subsection (1) gives the Authority for whose use it is created the rights prescribed in relation to an easement or reserve created for that purpose.

137 Works on a road

Subject to the **Road Management Act 2004**, an Authority may—

S. 137
substituted by
No. 12/2004
s. 175.

- (a) in relation to a road within the meaning of the **Road Management Act 2004**, enter upon any public or private land or road for the purpose of carrying out any works that the Authority is empowered to carry out; and
- (b) temporarily close to traffic the road or any part of it, if it is necessary to do so for the carrying out of works under paragraph (a).

137A Safety duties in relation to works on or in immediate vicinity of rail infrastructure or rolling stock

S. 137A
inserted by
No. 9/2006
s. 161.

- (1) An Authority must, when carrying out any works on or in the immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that it carries out those works safely.

Penalty: 9000 penalty units.

- (2) A works contractor must, when carrying out works on or in the immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that he, she or it carries out those works safely.

Penalty: In the case of a natural person,
1800 penalty units;
In the case of a body corporate,
9000 penalty units.

s. 137B

- (3) An offence against subsection (1) or (2) is an indictable offence.

Note to
s. 137A(3)
amended by
No. 68/2009
s. 97(Sch item
133.1)

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (4) In this section—

rail infrastructure has the same meaning as in the **Rail Safety Act 2006**;

rolling stock has the same meaning as in the **Rail Safety Act 2006**;

works contractor means a person engaged directly or indirectly by an Authority to carry out works on behalf of the Authority, and includes a sub-contractor.

S. 137B
inserted by
No. 9/2006
s. 161.

137B Notification of owners or occupiers of land on which there is rail infrastructure or rolling stock

- (1) An Authority must, before carrying out works on land on which there is rail infrastructure or rolling stock, notify the owner or occupier of that land of the Authority's intention to carry out those works if the carrying out of those works will threaten, or is likely to threaten, the safety of that rail infrastructure or rolling stock.

Penalty: 300 penalty units.

- (2) In this section—

rail infrastructure has the same meaning as in the **Rail Safety Act 2006**;

rolling stock has the same meaning as in the **Rail Safety Act 2006**.

137C Notification of Authorities before rail operations carried out

S. 137C
inserted by
No. 9/2006
s. 161.

- (1) A rail operator must, before carrying out rail operations that will threaten, or are likely to threaten, the safety of an Authority's works, notify the Authority of the rail operator's intention to carry out those operations.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) In this section—

rail operations has the same meaning as in the
Rail Safety Act 2006;

rail operator has the same meaning as in the **Rail
Safety Act 2006**.

138 Ownership of works

- (1) Unless subsection (2) applies, any works—

- (a) that were, immediately before the commencement of this section, owned by an Authority; or
- (b) that are, at that commencement, in the process of being constructed by an Authority; or
- (c) that are, after that commencement, acquired, constructed or in the process of being constructed by an Authority—

are owned by that Authority.

- (2) Works that are constructed by an Authority on behalf of another public body or of the owner or occupier of land are not owned by the Authority if this Act provides, or the parties agree, that the works are not owned by the Authority.

139 Abandonment of major works

S. 139(1)
amended by
No. 5/2002
s. 49.

(1) An Authority must not abandon or decommission any of its major works without the approval of the Minister.

(2) The Minister may issue guidelines as to what are "major works" for the purposes of subsection (1).

S. 139(3)
inserted by
No. 85/2006
s. 55.

(3) The Minister may impose conditions on any approval given under subsection (1).

S. 139(4)
inserted by
No. 85/2006
s. 55.

(4) In respect of each proposal submitted to the Minister under section 139A, the Minister must publish notice of whether he or she has approved or refused to approve the proposal under subsection (1)—

(a) in a newspaper circulating generally in the area to which the proposal relates; and

(b) in the Government Gazette.

S. 139A
inserted by
No. 85/2006
s. 56.

139A Submission of proposal for approval of the abandonment or decommissioning of major works

(1) An Authority which proposes to abandon or decommission any major works must submit the proposal to the Minister for approval under section 139.

(2) When making a submission under subsection (1), the Authority must give to the Minister copies of all submissions it is required to consider under section 139D.

**139B Notification of proposal to approve the
abandonment or decommissioning of major works**

S. 139B
inserted by
No. 85/2006
s. 56.

- (1) Before making a submission under section 139A, the Authority must cause notice of the proposal to be published—
 - (a) in a newspaper circulating generally in the area to which the proposal relates; and
 - (b) in the Government Gazette.
- (2) A notice under subsection (1) must state that—
 - (a) the Authority invites submissions on the proposal to be made to it; and
 - (b) any submission made to the Authority must set out the grounds on which it is made; and
 - (c) the time within which submissions on the proposal must be received by the Authority.

139C Submissions on proposal

S. 139C
inserted by
No. 85/2006
s. 56.

- (1) An Authority that has submitted a proposal for the approval of the Minister under section 139A must, in the notice under section 139B invite submissions on the proposal.
- (2) Any person who is affected by the proposal may make a written submission on the proposal to the Authority.
- (3) A submission under subsection (2) must be received by the Authority within one month of the publication of the notice of the proposal in the Government Gazette under section 139B.

139D Authority to consider submissions

S. 139D
inserted by
No. 85/2006
s. 56.

Before making a submission to the Minister under section 139A, an Authority must consider all submissions made to it on the proposal within the time specified in section 139C(3).

s. 139E

S. 139E
inserted by
No. 85/2006
s. 56.

139E Appointment of panel by Minister

- (1) Before making a decision under section 139, the Minister may appoint a panel of persons and refer to the panel for consideration the submission of an Authority under section 139A, and, in particular, any submissions on that submission given by the Authority to the Minister.
- (2) The panel appointed by the Minister must consider the submissions referred to it by the Minister and must report on that consideration to the Minister within the time specified by the Minister.

140 Preparation and inspection of plans

- (1) An Authority must make sure that plans of its districts are available for inspection at its offices.
- (2) Those plans—
 - (a) must be kept up to date; and
 - (b) must show the works of the Authority in the amount of detail that the Authority considers necessary.

S. 141
amended by
No. 52/1998
s. 311(Sch. 1
items 105.17,
105.18),
substituted by
No. 99/2005
s. 58 (as
amended by
No. 85/2006
s. 171).

141 Authority may reduce, restrict or discontinue water supply²²

- (1) An Authority may reduce or restrict the quantity of water supplied to any person, or discontinue the supply of water to any person, if—
 - (a) the Authority is, because of a shortage of water or for any other unavoidable cause, unable to supply the quantity of water which would otherwise be supplied to the person;
or
 - (b) the Authority reasonably believes that the reduction, restriction or discontinuance is necessary—

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- (i) to avoid future water shortages; or
 - (ii) because there is insufficient capacity in the distribution works of the Authority for the Authority to meet its obligations under the Act to supply and deliver water to the person; or
 - (c) the quality of water available for supply does not meet the standards for its intended authorised use; or
 - (d) any private works for the supply of water to the person—
 - (i) are, in the opinion of the Authority, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 150 and not complied with by the time specified or allowed under that section; or
 - (ii) do not, in the opinion of the Authority, comply with the regulations; or
 - (e) the person has contravened this Act, the regulations or the Authority's by-laws in relation to the misuse of water supplied to the person by the Authority; or
 - (f) the person has contravened this Act, the regulations or the Authority's by-laws in relation to the taking of water; or
 - (g) the person has refused entry to an authorised officer who intended to exercise powers conferred by or under this Act to investigate any suspected contravention referred to in paragraph (e) or (f); or
 - (h) the person has refused or failed to pay any money due to the Authority for the supply or delivery of water to the person.
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- (2) An Authority must reduce the supply of water under subsection (1)(a) or (b) to all persons in the same proportion unless the Minister is of the opinion that the circumstances are so extreme as to justify some other basis.
 - (3) An Authority that reduces, restricts or discontinues the supply of water to a person may reduce or waive any amount of money payable to it for the supply of water to the person.
 - (4) An Authority that restricts or discontinues the supply of water to a person under subsection (1)(d), (e), (f), (g) or (h) may charge a fee for removing the restriction or recommencing that supply.
 - (5) An Authority may reduce or restrict the quantity of water supplied to a person or discontinue the supply of water to a person under subsection (1)(d), (e), (f), (g) or (h) if it decides that the required circumstances exist, whether or not it has been proved to the satisfaction of a court that those circumstances do exist.
 - (6) A person may apply to the Tribunal for review of the Authority's decision to discontinue the supply of water to the person under subsection (1)(e) or (f).
 - (7) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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- (8) A person is not entitled to any compensation under section 155 for anything done by an Authority under this section.

141A Circumstances in which Melbourne Water Corporation to continue water supply

S. 141A
inserted by
No. 85/2006
s. 57.

- (1) Despite section 141, Melbourne Water Corporation must supply or continue to supply water to—
- (a) a retail licensee to the extent necessary to enable it to perform its functions or exercise its powers under its licence;
 - (b) the holder of a bulk entitlement to water in Melbourne Water Corporation's works granted in accordance with the provisions of Division 1 of Part 4;
 - (c) any other person or class of person prescribed for the purposes of this section by regulations made by the Governor in Council.
- (2) Despite any provision to the contrary made by or under this or any other Act, the terms and conditions on which water is supplied under subsection (1) are as agreed between Melbourne Water Corporation and the retail licensee, bulk entitlement holder or other person or, in default of agreement, as determined by the Essential Services Commission.

142 Water meters

- (1) An Authority may—
- (a) provide or install, and maintain, a meter on any land to measure the amount of water supplied by the Authority to any land; and
 - (b) position the meter on the land as it considers appropriate.

- (2) If an Authority believes that a meter on any land connected to its system is functioning inaccurately, the Authority may compute the quantity of water supplied to the land during a specific period—
 - (a) by having regard to the quantity of water delivered to the land in any previous or subsequent period or periods, or the quantity of water delivered to any similar property during the period concerned; or
 - (b) in any other way that is prescribed.
- (3) A meter provided or installed by an Authority remains the property of that Authority.

S. 143
amended by
No. 121/1994
s. 189(1)(a).

143 Waste and misuse of water supply²³

- (1) A person who receives a supply of water must not—
 - (a) after receiving a warning notice from an Authority, deliberately cause or negligently allow the water to be wasted, misused or excessively consumed; or
 - (b) if the water is supplied by agreement for a specific purpose, use the water for a different purpose; or
 - (c) if the water is supplied for domestic and stock purposes, use the water for a different purpose.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (d) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or
- (e) if no notice of contravention is served, after conviction of the person for the offence.
- (2) In this section *Authority* includes licensee.
- S. 143(1)(d) amended by No. 121/1994 s. 189(1)(b).
- S. 143(2) inserted by No. 121/1994 s. 189(1)(c).

144 Serviced properties

- (1) An Authority may, by notice in writing, declare any land to be a serviced property for the purposes of this Act if—
- (a) in the case of land within a water district, the Authority has made provision for water supply services to the land; or
- (b) in the case of land within a sewerage district, the Authority has made provision for sewerage services to the land; or
- (c) the land is within the Authority's irrigation district and the Authority has made provision for irrigation of the land or for drainage or salinity mitigation services; or
- (d) the land is within the Authority's waterway management district and the Authority has made provision for regional drainage or floodplain management services that are of direct benefit to that land;
- * * * * *
- S. 144(1)(c) amended by No. 50/1992 s. 7(j).
- S. 144(1)(d) amended by Nos 50/1992 s. 7(k)(i), 65/1999 s. 3(1).
- S. 144(1)(e) repealed by No. 50/1992 s. 7(k)(ii).

s. 144

S. 144(2)(a)
amended by
Nos 12/1996
s. 4(2),
65/1999
s. 3(2).

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- (2) A notice under subsection (1) must be—
- (a) served on the owner of the land; and
 - (b) published in a newspaper circulating generally in the area concerned; and
 - (c) sent to any council that is likely to be affected.
- (3) An Authority must make sure that a copy of the notice is available for inspection at its offices.
- (4) The notice must—
- (a) define the locality to which it applies; and
 - (b) in the case of land within a water district or a sewerage district, specify the services available; and
 - (c) generally identify the properties to which the services are available, or which are within the waterway management district and which are directly benefited by regional drainage or floodplain management services provided by the Authority, or which are within the irrigation district and for which the Authority has made provision for irrigation, drainage or salinity mitigation services; and
 - (d) fix a date on and from which the land must be taken to be a serviced property for the purposes of this Act.
- (5) This section does not apply to Melbourne Water Corporation.

S. 144(4)(c)
amended by
Nos 50/1992
s. 7(l), 65/1999
s. 3(3).

S. 144(5)
inserted by
No. 85/2006
s. 58.

144A Serviced property, Melbourne Water Corporation

S. 144A
inserted by
No. 85/2006
s. 59.

For the purposes of any function of Melbourne Water Corporation under Part 10, serviced property is any land in the waterway management district of Melbourne Water Corporation—

- (a) that is rateable land within the meaning of the **Local Government Act 1989**; or
- (b) that is, by the operation of section 258(4), deemed to be rateable for the purposes of section 258(1).

145 Control over connections^{24, 25}

- (1) A person must not, without an Authority's consent, cause or permit—
 - (a) any works to be connected to the works of the Authority; or
 - (b) the alteration or removal of any works that are connected to the works of the Authority; or
 - (c) anything to be discharged into the works of the Authority.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (d) after service of a notice of contravention on the person under section 151; or
- (e) if no notice of contravention is served, after conviction of the person for the offence.

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- (2) An application for the Authority's consent must be made in the manner determined by the Authority, and must be accompanied by any fee fixed by by-law and any plans and other information that the Authority requires.
- (3) The Authority may—
- (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions it thinks fit.
- (4) A person who causes or permits anything referred to in subsection (1) to be done must make sure that it is done in accordance with any terms and conditions subject to which the Authority gave its consent.
- Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.
- For a subsequent offence, 40 penalty units or imprisonment for 6 months.
- For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for that consent.

146 Diversion into works of an Authority

A person must not, without the consent of an Authority, divert any surface water from one catchment to another catchment from where it may drain, directly or indirectly, into any works of the Authority.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day for which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

147 Notice to connect

(1) An Authority may, by notice to the owner of a serviced property, require the owner—

- (a) to connect the property to the Authority's works; or
- (b) to remove any existing connection between that property and the Authority's works; or
- (c) to carry out any work that the Authority considers necessary for the provision of the service—

within the time specified in the notice, or any longer time allowed by the Authority.

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- (2) An Authority may, by notice to the owners of a group of properties, require the owners to connect the properties by a combined connection to the Authority's works within the time specified in the notice, or any longer time allowed by the Authority.
 - (3) A notice under subsection (1) or (2) must be served on the owner of each property required to be connected.
 - (4) The owner of a property to which a notice applies must comply with the notice within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

- (5) If an owner of a property to which a notice applies does not comply with the notice within the time specified, or any longer time allowed by the Authority, the Authority may—
 - (a) do the things the owner was required by the notice to do; and
 - (b) recover from the owner its reasonable costs of doing so, other than costs that are prescribed to be the responsibility of the Authority.
- (6) An Authority must not by notice under this section require an owner of property to connect the property to works of the Authority for the supply of recycled water.

S. 147(6)
inserted by
No. 99/2005
s. 35.

148 Structures over works

(1) Unless subsection (6) applies, a person must not, without an Authority's consent, cause or permit²⁶—

S. 148(1)
amended by
No. 12/2004
s. 176(1).

(a) any structure to be built, or any filling to be placed, on land over which—

(i) an easement exists in favour of the Authority; or

(ii) an easement exists for water supply, sewerage or drainage purposes; or

(b) any structure to be built, or any filling to be placed—

S. 148(1)(b)
substituted by
No. 85/2006
s. 60.

(i) in the case of Melbourne Water Corporation, within 5 metres laterally of any works of Melbourne Water Corporation; or

(ii) in the case of any other Authority, within 1 metre laterally of any of the works of the Authority; or

(c) any structure to be built above or below any area prohibited by paragraph (b); or

(d) any soil, rock or other matter that supports, protects or covers any works of the Authority to be removed.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (e) after service of a notice of contravention on the person under section 151; or
 - (f) if no notice of contravention is served, after conviction of the person for the offence.
- (2) An application for the Authority's consent must be made in the manner determined by the Authority, and must be accompanied by any plans and other information that the Authority requires.
- (3) The Authority may—
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions it thinks fit.
- (4) A person who, with the consent of an Authority, causes or permits anything referred to in subsection (1) to be done must make sure that the thing is done in accordance with any terms and conditions subject to which the Authority gave its consent.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

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- (5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for the consent.
- (6) Subsection (1) does not apply in respect of a road authority if it is necessary for the road authority to do anything referred to in that subsection for the purpose of constructing a road or conducting maintenance or repair works on a road. S. 148(6)
inserted by
No. 12/2004
s. 176(2).
- (7) For the purposes of subsection (6), the road authority is subject to any directions given to the road authority by an Authority which are reasonably necessary— S. 148(7)
inserted by
No. 12/2004
s. 176(2).
- (a) to ensure the safety of any works of the Authority; or
- (b) to prevent an interruption of the water supply.
- (8) Any dispute arising between a road authority and an Authority in relation to any directions given under subsection (7) is to be determined in accordance with section 125 of the **Road Management Act 2004**. S. 148(8)
inserted by
No. 12/2004
s. 176(2).
- (9) In this section— S. 148(9)
inserted by
No. 12/2004
s. 176(2).
- road authority* has the same meaning as it has in section 3(1) of the **Road Management Act 2004**.

149 Removal of trees²⁷

- (1) An Authority may, by notice in writing, require the owner of any property to remove any tree on that property if the Authority reasonably decides that the tree is obstructing or damaging the Authority's works or that it is likely to obstruct or damage them.

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- (2) If the tree required to be removed is not on land over which—
- (a) an easement exists in favour of the Authority; or
 - (b) an easement exists for water supply, sewerage or drainage purposes—
- the Authority must, subject to subsection (7), pay appropriate compensation to the owner of the property in accordance with Part 5 of the **Land Acquisition and Compensation Act 1986**.
- (3) The owner may, within 7 days after receiving a notice to remove a tree, object to the Authority.
- (4) An Authority must take into account any objection made to it.
- (5) If the owner refuses or fails to comply with the notice—
- (a) within the time specified in the notice; or
 - (b) if the owner has objected, within 7 days after he or she receives notice from the Authority that the objection is not upheld; or
 - (c) within any longer time allowed by the Authority—
- the Authority may, after giving 21 days' notice of its intention to do so, remove the tree and recover from the owner the reasonable costs of the removal.
- (6) The Authority may recover from the owner the cost of any repairs to the Authority's works that are necessary to repair the damage caused by a tree that is removed by the owner or the Authority after service of a notice under subsection (1).

- (7) An Authority is not liable to pay compensation for the removal of a tree that is planted after the completion of the works of the Authority that are obstructed, damaged or at risk.
- (8) An owner may apply to the Tribunal for review of a decision by an Authority not to uphold the owner's objection to a notice to remove a tree.
- (9) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 149(8)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.19).

S. 149(9)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.19).

150 Notice to repair²⁸

- (1) An Authority may, by notice in writing to the owner of land, require the owner to repair or carry out maintenance on, within the time specified in the notice or any longer time allowed by the Authority, any works on that land or that connect the land to the works of the Authority or that are necessary for any service provided to the land by the Authority.
- (1A) However, an Authority may not require an owner of land to do any repair or maintenance work that a plumbing inspector could, under Part 12A of the **Building Act 1993**, require a plumber to do under a rectification notice or the owner to do under a plumbing notice or order.

S. 150(1A)
inserted by
No. 39/1996
s. 11(2).

- (2) If land is connected to the works of the Authority by a combined connection, a notice to repair may be served on any or all of the owners of that land.
- (3) An owner on whom a notice to repair is served must comply with the notice within the time specified in it, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

- (4) If a notice to repair is not complied with within the time specified in it, or any longer time allowed by the Authority, the Authority may carry out the required repairs and recover its reasonable costs from each owner on whom the notice was served, other than costs that are prescribed to be the responsibility of the Authority.

151 Notice of contravention²⁹

- (1) An Authority may, by notice in writing to a person who contravenes—
 - (a) this Act, the regulations or the Authority's by-laws; or
 - (b) a requirement made by the Authority under this Act; or
 - (c) a condition of a licence issued under this Act; or
 - (d) a prescription of an approved management plan for a water supply protection area—

S. 151(1)(d)
amended by
No. 5/2002
s. 50.

require that person, or the owner of any property in relation to which the contravention occurs, to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Authority, to remedy the contravention.

- (2) A person on whom a notice of contravention is served must make sure that the notice is complied with within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

- (3) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Authority, the Authority may—
- (a) carry out any works and take any other action it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served; and
 - (b) remove or disconnect any service to the property in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served; and
 - (c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice.

152 Notice of intention to affect works

- (1) An Authority that intends to do anything that will affect the works of another Authority or a public statutory body must, except in an emergency or with the consent of that Authority or public statutory body to a shorter period, give 14 days' notice of its intention to that other Authority or public statutory body.
- (2) If the other Authority or public statutory body notifies the Minister of its objection to the proposal, the matter must be resolved in accordance with section 154.

s. 153

- (3) An Authority that, in an emergency, affects the works of another Authority or a public statutory body must, as soon as practicable after the works are affected, notify the other Authority or public statutory body.
- (4) This section does not apply to the closure of a road, or any part of it, under section 137.
- (5) In this section and in sections 153 and 154 *public statutory authority* includes—

S. 152(5)
inserted by
No. 85/2006
s. 61.

S. 152(5)(a)
amended by
No. 6/2010
s. 203(1)
(Sch. 6
item 51.1(a)).

- (a) a passenger transport company within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**;

S. 152(5)(b)
amended by
No. 6/2010
s. 203(1)
(Sch. 6
item 51.1(b)).

- (b) a rail corporation, a tram operator or a train operator within the meaning of the **Rail Management Act 1996**.

153 Notice to alter or remove works³⁰

- (1) An Authority that intends to do anything that affects the works of another Authority or a public statutory body may, by notice in writing, require the other Authority or public statutory body to alter or remove those works in the way, and within the time, specified in the notice.
- (2) If the other Authority or public statutory body notifies the Minister of its objection to the notice, the matter must be resolved in accordance with section 154.

154 Determination of disputes³¹

- (1) The Minister may determine any dispute that arises between Authorities over a notice under section 152 or 153 and that determination is binding on the parties and is final.

- (2) The Minister may refer to the Governor in Council any dispute that arises between an Authority and any other public statutory body (other than another Authority) over a notice under section 152 or 153, and that determination of the Governor in Council is binding on the parties and is final.
- (3) A determination under this section may include the allocation or apportionment of costs.

155 Compensation for damage

- (1) An Authority must cause as little damage and inconvenience as possible in the performance of its functions.
- (2) An Authority is liable, unless this Act specifically provides otherwise, to compensate any person who has—
 - (a) sustained any pecuniary loss; or
 - (b) incurred any expense—as a direct, natural and reasonable consequence of the performance of the Authority's functions.
- (3) An Authority is not liable to compensate a person for consequential loss.
- (4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.
- (5) This section does not apply to any injury, damage or loss to which section 157 applies.

155A Compensation for loss of services on declaration of cessation

- (1) An Authority is liable to compensate any person who is the owner of a property in the district of the Authority which has ceased to be a serviced property by the operation of a declaration made by

S. 155A
inserted by
No. 99/2005
s. 59.

the Authority under section 161J if the owner has—

- (a) sustained any pecuniary loss; or
- (b) incurred any expense—

as a direct, natural and reasonable consequence of the property ceasing to be a serviced property.

- (2) For the purposes of subsection (1) a "direct natural and reasonable consequence of the property ceasing to be a serviced property" does not include the lost opportunity of the transfer of the service to another property.
- (3) An Authority is not liable to compensate the owner of a property under subsection (1) for consequential loss.
- (4) Any claim for compensation under this section must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986**, as if it were a claim under Part 5 of that Act.

156 Authority may send water into waterway etc.

- (1) An Authority may send water into any waterway, works or natural channel which crosses any land.
- (2) An Authority with functions under Part 8 and Part 11 which exercises its powers under subsection (1) must—
 - (a) construct and maintain any bridge or other crossing made necessary by the introduction of the water; or
 - (b) if alternative access is available to the land, pay compensation to the owner of the land.
- (3) The obligation of the Authority to maintain any crossing under subsection (2)(a) ceases if any area of land connected by the crossing to any other land ceases at any time to be owned by the person who, at that time, owns that other land.

- (4) The owner of the land may apply to the Tribunal for review of the decision of the Authority as to—
- (a) the number, type and position of any crossings to be constructed; or
 - (b) the amount of compensation to be paid.
- (5) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 156(4)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.20).

S. 156(5)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.21).

157 Liability of Authorities arising out of flow of water³²

- (1) If—
- (a) as a result of intentional or negligent conduct on the part of an Authority in the exercise of a function under Part 8, Division 2, 3 or 5 of Part 10, or Part 11 or any corresponding previous enactment, a flow of water occurs from its works onto any land; and
 - (b) the water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

the Authority is liable to pay damages to that other person in respect of that injury, damage or loss.

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- (2) If it is proved in a proceeding brought under subsection (1) that water has flowed from the works of an Authority onto any land, it must be presumed that the flow occurred as a result of intentional or negligent conduct on the part of the Authority unless the Authority proves on the balance of probabilities that it did not so occur.
- (3) For the purposes of a proceeding brought under subsection (1)—
- (a) a flow of water is to be taken to have occurred as a result of intentional conduct on the part of an Authority if the flow—
 - (i) was designed or intended by the Authority; or
 - (ii) inevitably and without intervening cause resulted from the exercise of a power by the Authority; and
 - (b) in determining whether or not a flow of water occurred as a result of negligent conduct on the part of an Authority, account must be taken of all the circumstances including any omission or failure, in the planning, design, construction, maintenance or operation of the works, to provide reasonable standards of capacity or efficiency or exercise reasonable care or skill having regard to the following matters—
 - (i) the state of scientific knowledge and knowledge of local conditions at any relevant time;
 - (ii) the nature and situation of the works;
 - (iii) the service to be provided by the works;
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- (iv) the circumstances and cost of—
 - (A) the works; and
 - (B) the maintenance and operation of the works; and
 - (C) works which it would have been necessary to construct to avoid the occurrence of any relevant injury, damage or loss.
- (4) The following provisions apply with respect to a proceeding brought under subsection (1)—

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S. 157(4)(a)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.22).

- (b) the proportion (if any) of the responsibility of the Authority for the injury, damage or loss must be assessed and only that proportion of the assessed damages must be awarded against the Authority;
- (c) in assessing damages in respect of damage to property or economic loss the measure of damages is the direct pecuniary injury to the person bringing the proceeding by the loss of something of substantial benefit accrued or accruing and does not include remote, indirect or speculative damage;
- (d) if damages are assessed in the proceeding in respect of any continuing cause of action, they may, in addition to being assessed down to the time of assessment, be assessed in respect of all future injury, damage or loss and, if so, the Authority is not liable to pay any further damages in respect of that injury, damage or loss;

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S. 157(4)
(e)–(g)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.22).

* * * *

- (h) a person, not being a party, in whose favour a determination is made may enforce the determination by the same means as if the person were a party.

158 Information statements

S. 158(2)(c)
amended by
No. 110/1997
s. 18.

- (1) Any person may apply to an Authority for an information statement in relation to any land that is within a district of the Authority or its area of interest.
- (2) An application must—
 - (a) be in writing; and
 - (b) be in a form approved by the Authority; and
 - (c) be accompanied by the fee fixed by the Authority for applications under this section; and
 - (d) state the name and address of the applicant; and
 - (e) contain a description sufficient to identify the land in relation to which the information statement is required.
- (3) An Authority to which an application is made must issue to the applicant a statement that gives details of the following things in relation to the described land arising from the performance of any of the Authority's functions under this or any other Act—

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- (a) any encumbrance affecting the land, other than—
 - (i) an encumbrance that would be disclosed by search at the Office of Titles or the Office of the Registrar-General; and
 - (ii) a matter required to be included in any other statement or certificate under this Act;
 - (b) any works that are required to be carried out (whether deferred by the Authority or not) or any matters that are outstanding and in respect of which the Authority has served any notice, made any resolution, exercised any discretion or entered into any agreement under this Act;
 - (c) any relevant tariff or other charge, including any amounts outstanding.
 - (4) The Authority may also include in the statement any other information concerning the land that the Authority in its absolute discretion considers relevant.
 - (5) The statement must be signed by a person who is authorised by the Authority to do so.
 - (6) The Authority does not incur any liability in respect of any information that it provides in good faith under subsection (4).

159 Notice of disposition of land

A prescribed person must, in relation to the disposition of any land, give notice—

- (a) in a prescribed form containing prescribed particulars; and

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- (b) to each prescribed person; and
- (c) within a prescribed period.

Penalty: 10 penalty units.

160 By-laws

S. 160(1)
amended by
No. 85/2006
s. 62(1).

- (1) An Authority may make by-laws for or with respect to—

S. 160(1)(b)
amended by
No. 85/2006
s. 62(2) (as
amended by
No. 28/2007
s. 3(Sch.
item 76)).

- (a) the management, protection and use of all lands, waterways and works under the Authority's management and control; and
- (b) the management, protection and use of environmental and recreational areas under the Authority's management and control including, but not limited to—

S. 160(1)(b)(i)
inserted by
No. 85/2006
s. 62(2).

- (i) the control, management and use of the land, services and facilities in the area, including fees for the provision or use of any such services or facilities or for entry to land on which such services or facilities are situated;

S. 160(1)(b)(ii)
inserted by
No. 85/2006
s. 62(2).

- (ii) the protection of the land, services and facilities;

S. 160(1)(b)(iii)
inserted by
No. 85/2006
s. 62(2).

- (iii) the protection of people in the area from injury or nuisance;

S. 160(1)(b)(iv)
inserted by
No. 85/2006
s. 62(2).

- (iv) the conservation and preservation of flora, fauna and habitat in the area;

S. 160(1)(b)(v)
inserted by
No. 85/2006
s. 62(2).

- (v) the control of the introduction of any new flora or fauna to the area;

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- (vi) the control of the numbers of any flora or fauna in the area; and
- (c) sanitary drainage plans held by water authorities, including—
- (i) the lodging of plans of sanitary drains as they appear after they have been installed or altered; and
 - (ii) specifying the details that the plans must contain; and
 - (iii) the providing of the copies of the plans; and
 - (iv) fixing fees for the lodging, copying and viewing of the plans;
- (d) (in the case of an Authority authorised by the Minister to do so) prescribing standards for any saline matter (whether in liquid form or not) that may be discharged—
- (i) into works under its control; or
 - (ii) into any waterway; or
 - (iii) onto any place from which it may enter into—
 - (A) any works under the control of the Authority; or
 - (B) any waterway; or
 - (C) any aquifer; or
 - (D) any bore; and
- (e) (in the case of an Authority authorised by the Minister to do so) regulating or prohibiting the clearing of land within 20 metres of a channel which is under the control of the Authority; and
- S. 160(1)(b)(vi) inserted by No. 85/2006 s. 62(2).**
- S. 160(1)(c) substituted by No. 39/1996 s. 12(1).**

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- (f) generally prescribing anything that is authorised or required to be prescribed by by-laws or that is necessary or convenient for performing the functions of the Authority under this Act.
- (2) A power conferred by this Act to make by-laws may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) By-laws made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
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- (b) so as to require a matter affected by the by-laws to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to adopt any model by-law issued by the Minister; or
 - (d) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the by-laws; or
 - (ii) as formulated, issued, prescribed or published at the time the by-laws are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (e) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
 - (f) so as to provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the by-laws, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
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(g) so as to impose a penalty for a contravention of the by-laws, not exceeding 20 penalty units and, in the case of a continuing offence, an additional penalty not exceeding 5 penalty units for each day on which the offence continues—

(i) after service of a notice of contravention on the person under section 151; or

(ii) if no notice of contravention is served, after conviction of the person for the offence.

(4) By-laws made under this Act may prescribe a fee by reference to a number (whether whole or fractional) of charge units and that fee may be determined by multiplying the number of charge units by a number of dollars fixed by resolution of the Authority.

(5) For the purposes of subsection (1) land acquired for the purposes of the **Murray-Darling Basin Act 1982** or for the purposes of works carried out or to be carried out under that Act or under the Murray-Darling Basin Agreement must be taken to be under the management and control of the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993**.

(6) References in subsection (5) to the **Murray-Darling Basin Act 1982** include references to any corresponding previous enactment and any references to the Murray-Darling Basin Agreement include references to any corresponding previous agreement.

S. 160(5)
amended by
Nos 50/1992
s. 10(Sch.
item 11.24),
65/1995
s. 22(j),
75/2008
s. 23(1).

S. 160(6)
amended by
No. 75/2008
s. 23(2).

S. 161
repealed by
No. 85/2006
s. 63.

* * * * *

161A Limitation of exercise of powers under this Part

S. 161A
inserted by
No. 79/1995
s. 36.

- (1) An Authority must not exercise its functions or powers under this Part in a manner which is inconsistent with any provision of an Order granting a declared bulk water entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

- (2) In subsection (1)—

declared bulk water entitlement means a bulk water entitlement in respect of which a declaration under section 185(3) has been made;

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S. 161A(2)
def. of
generation company
amended by
No. 69/2000
s. 65(5),
repealed by
No. 11/2002
s. 3(Sch. 1
item 66.2).

Pt 7A
(Heading and
ss 161B–
161K)
inserted by
No. 99/2005
s. 60.

PART 7A—RECONFIGURATION PLANS

S. 161B
inserted by
No. 99/2005
s. 60.

161B Definitions

In this Part—

directions means directions issued under
section 161E;

panel means a panel appointed under
section 161H;

reconfiguration plan is a reference to a plan for
the future capacity for an Authority to
provide services to properties within the
whole or a part of the district of the
Authority.

S. 161C
inserted by
No. 99/2005
s. 60.

161C Contents of reconfiguration plans

A reconfiguration plan may include—

- (a) arrangements for the upgrading,
downgrading or discontinuation of works
that provide irrigation or other rural water
services to properties within the relevant
district of the Authority and any associated
drainage works; and
- (b) arrangements as to pricing and management
of services provided to properties within the
relevant district of the Authority or works of
the Authority.

161D Draft plans for reconfiguration of infrastructure

An Authority with an irrigation district or a water district may (either on its own behalf, or in conjunction with another Authority or Council) prepare a draft reconfiguration plan.

S. 161D
inserted by
No. 99/2005
s. 60,
amended by
No. 85/2006
s. 64.

161E Directions of Minister as to reconfiguration plans

- (1) The Minister may issue directions that apply to reconfiguration plans.
- (2) Directions issued under subsection (1) may include all or any of the following—
 - (a) the circumstances in which an Authority will be required to prepare a reconfiguration plan; and
 - (b) the circumstances in which compensation will be payable by an Authority for reducing services under a reconfiguration plan; and
 - (c) any processes for the initiation of the preparation of reconfiguration plans; and
 - (d) any processes an Authority preparing a reconfiguration plan must implement before the plan is adopted, including processes as to the identification and discussion of funding and charging options; and
 - (e) whether or not a draft reconfiguration plan, on adoption under section 161F, must be approved under section 161G; and
 - (f) any matters that must be taken into account by an Authority in preparing a reconfiguration plan; and
 - (g) any persons to whom reconfiguration plans or classes of reconfiguration plans must be referred for consideration; and

S. 161E
inserted by
No. 99/2005
s. 60.

- (h) any requirements for advertising or consultation for reconfiguration plans or classes of reconfiguration plans.
- (3) The Minister must cause directions issued under this section to be published in the Government Gazette.

S. 161F
inserted by
No. 99/2005
s. 60.

161F Adoption of reconfiguration plans by Authority

- (1) An Authority may adopt a reconfiguration plan on completing preparation and consideration of a draft reconfiguration plan in accordance with this Part and after complying with any directions.
- (2) An Authority must not adopt a reconfiguration plan under subsection (1) that proposes termination of the whole or a part of the services provided by the Authority, unless the Authority has—
 - (a) notified the owner of each serviced property to which the services that are proposed to be terminated are provided; and
 - (b) allowed the owner of each such property an opportunity to make written submissions to the Authority about the plan; and
 - (c) given consideration to arrangements to meet any ongoing domestic and stock use requirements for each property.
- (3) In the case of a reconfiguration plan that, under the directions, does not require the approval of the Minister, on adoption of the plan under this section, the Authority must cause notice of the adoption to be published in the Government Gazette.

161G Approval of reconfiguration plans by the Minister

**S. 161G
inserted by
No. 99/2005
s. 60.**

- (1) In the case of a reconfiguration plan that, under the directions, on adoption by the Authority, also requires approval of the Minister, the Minister may approve the plan—
 - (a) on being satisfied that the Authority has adopted the plan under section 161F; and
 - (b) on being satisfied that the Authority has complied with the directions; and
 - (c) after considering the report of any panel the Minister has appointed to consider the plan.
- (2) Before approving a plan under subsection (1), the Minister may refer the plan to a panel for advice.

161H Appointment of Panel

**S. 161H
inserted by
No. 99/2005
s. 60.**

- (1) The Minister may, by instrument, appoint a panel of persons to give advice under section 161G(2) on an adopted reconfiguration plan, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to give advice on.
- (2) Subject to anything specified by the Minister in the instrument of appointment of the panel, a panel may regulate its own proceedings.
- (3) After considering the plan, the panel must report its findings to the Minister within the period specified by him or her.
- (4) The panel may include in its report any recommendations that it thinks fit.
- (5) A member of the panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

s. 161I

- (6) The Minister is not bound by the report of the panel under this section.
- (7) The Minister must make a copy of any report of the panel available for inspection by the public within one month after it is received by the Minister.

S. 161I
inserted by
No. 99/2005
s. 60.

161I Approval and notification of plan

On approving a reconfiguration plan under section 161G, the Minister must cause notice of the adoption and approval of the plan to be published in the Government Gazette.

S. 161J
inserted by
No. 99/2005
s. 60.

161J Termination of services to properties consequent on plans for reconfiguration

- (1) An Authority may, by notice in writing, declare serviced properties on any land in any part of its district to cease to be serviced properties for the purposes of this Act.
- (2) An Authority must not make a declaration under subsection (1) unless a plan adopted under section 161F and (where the case so requires) approved under section 161G includes a proposal to make such a declaration.
- (3) On making a declaration under this section the Authority must serve notice on the owner of each serviced property in the part of the district to which the declaration relates of the making of the declaration and of the day on which the declaration comes into effect.
- (4) A notice under subsection (3) must set out the date on which it takes effect, which must be more than 12 months after the day on which the Authority makes the declaration.

161K Plans by agreement

Nothing in this Part prevents an Authority from reconfiguring infrastructure of the Authority that enables the provision of services to serviced properties with the agreement of the owner of those properties.

**S. 161K
inserted by
No. 99/2005
s. 60.**

PART 8—WATER SUPPLY

Pt 8 Div. 1
(Heading)
inserted by
No. 85/2006
s. 65.

Division 1—Authorities with a water district

S. 162
(Heading)
inserted by
No. 85/2006
s. 66(1).

162 Application of this Division

S. 162
amended by
No. 85/2006
s. 66(2).

This Division applies to an Authority that has a water district.

163 Functions of Authorities

S. 163(1)
amended by
No. 85/2006
s. 67(1).

- (1) An Authority that has a water district has the following functions (to the extent that the functions are not storage management functions that have been conferred on an Authority under Part 6C)—
- (a) to provide, manage, operate and protect water supply systems, including the collection, storage, treatment, transfer and distribution of water;
 - (b) to identify community needs relating to water supply and to plan for the future needs of the community relating to water supply;
 - (c) to develop and implement programs for the conservation and efficient use of water;
 - (d) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to water supply;

(e) to educate the public about any aspect of water supply.

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S. 163(2)
repealed by
No. 85/2006
s. 67(2).

164 Exercise of functions of Authority outside its district

- (1) An Authority may, subject to subsection (2), exercise its functions outside its district, including outside the State.
- (2) An Authority must not provide a service outside its district without the approval of the Minister.

165 Fire plugs and free water

- (1) A council may require an Authority that has a water district situated wholly or partly within the council's municipal district to fix fire plugs to any of the works of the Authority within the water district in suitable locations for the supply of water for fire-fighting purposes.
- (2) A council must meet the costs of providing, installing, marking and maintaining all fire plugs that the council requires under subsection (1) to be installed in its municipal district.
- (3) An Authority may provide, install, mark and maintain any extra fire plugs that it thinks necessary or that are requested by a landowner, either at its own cost or at the cost of the landowners benefited by them.
- (4) An Authority must—
 - (a) keep all fire plugs in its water district in working order; and
 - (b) provide conspicuous markers for fire plugs supplied by it; and

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- (c) make sure that at all times water is available without charge from fire plugs in its water district for cleaning sewers and drains, unless the water is unavailable due to a shortage of water or another unavoidable cause, or due to repairs.
- (5) Subsection (4)(a) does not require an Authority to make sure that water pressure is adequate for fire fighting.

S. 166
amended by
Nos 50/1992
s. 10(Sch.
item 11.25),
49/1994
s. 4(1)(k),
repealed by
No. 46/2003
s. 59(1).³³

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167 Power to enter land for water supply protection

- (1) An officer of an Authority or an authorised person may enter any land for the purposes of water supply protection.
- (2) Sections 133 and 134 apply in relation to the entry of land under subsection (1) as if that entry were made under section 133(1).

168 Immediate action for water supply protection

An Authority may, immediately and without notice, remove from—

- (a) any land that is adjacent to any waterway or works forming part of the Authority's water supply system; or
- (b) any water in or adjacent to any such waterway or works—

any substance or thing that is, in the Authority's opinion, likely to affect the purity of the Authority's water supply system.

169 Notice of contravention for water supply protection

- (1) Subject to subsection (2), an Authority may, by notice in writing to any person, require—
- (a) that an activity carried out on any land owned or occupied by that person be discontinued; or
 - (b) the removal of any substance or thing—
- if the carrying out of the activity, or the presence of the substance or thing, is, in the opinion of the Authority, likely to affect the purity of the Authority's water supply system.
- (2) A notice under subsection (1) may not require the discontinuance of any activity or the removal of any substance or thing if the carrying out of the activity or the presence of the substance or thing is specifically authorised by or under this or any other Act.
- (3) Section 151 applies to a notice under subsection (1) as if it were a notice of contravention under section 151(1).

170 Liability of owners corporation for water supplied to subdivision

S. 170
(Heading)
inserted by
No. 69/2006
s. 224(Sch. 3
item 12.1).

- (1) An owners corporation of a subdivision to which water is supplied under this Part is liable to pay any fees imposed under a tariff—
- (a) fixed according to the extent of use of water supply service, in respect of the land affected by the owners corporation; and

S. 170(1)
substituted by
No. 48/1991
s. 74(1),
amended by
No. 69/2006
s. 224(Sch. 1
item 12.2(a)).

S. 170(1)(a)
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(b)).

s. 170

S. 170(1)(b)
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(b)).

(b) in respect of the common property, or any part of the common property, affected by the owners corporation.

S. 170(1A)
inserted by
No. 48/1991
s. 74(2),
amended by
No. 69/2006
s. 224(Sch. 3
items 12.2(b)
(c)).

(1A) Instead of requiring an owners corporation to pay any fees imposed under a tariff referred to in subsection (1), an Authority may apportion the amount for which the owners corporation would otherwise be liable between the lots affected by it, on the basis of—

(a) the number of lots affected by it; or

(b) the lot liability of each lot affected by it—

and the owners of each lot to which an amount is apportioned are liable to pay it accordingly.

S. 170(1B)
inserted by
No. 48/1991
s. 74(2),
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(a)).

(1B) An owners corporation may request an Authority to use lot liability when apportioning amounts under subsection (1A).

S. 170(1C)
inserted by
No. 48/1991
s. 74(2).

(1C) The request must—

(a) be in writing;

S. 170(1C)(b)
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(b)).

(b) give details of lot liability for each lot affected by the owners corporation.

S. 170(1D)
inserted by
No. 48/1991
s. 74(2),
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(a)).

(1D) An owners corporation that makes a request under subsection (1B) must give written notice to an Authority of any change in lot liability of any lot affected by it as soon as possible after the change occurs.

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|--|---|
| (1E) If requested to do so in accordance with this section, an Authority must use the lot liability method in apportioning an amount to which an owners corporation would otherwise be liable in respect of amounts payable for the year following the year in which the request is made and each subsequent year, and may base the apportionment on information given to it by the owners corporation under this section. | S. 170(1E)
inserted by
No. 48/1991
s. 74(2),
amended by
No. 69/2006
s. 224(Sch. 3
items 12.2
(b)(c)). |
| (1F) If a subdivision has more than one owners corporation and the Authority considers it impracticable to determine how much water is supplied to the land affected by each owners corporation it may— | S. 170(1F)
inserted by
No. 48/1991
s. 74(2),
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2
(d)(i)). |
| (a) under subsection (1), treat one of those owners corporations as being the only owners corporation for the subdivision; and | S. 170(1F)(a)
amended by
No. 69/2006
s. 224(Sch. 3
items 12.2
(d)(i)(ii)). |
| (b) under subsection (1A), apportion the amount for which that owners corporation would otherwise be liable between all the lots in the subdivision. | S. 170(1F)(b)
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2
(d)(i)). |
| (2) Any fees imposed under a tariff on the owner of a lot affected by an owners corporation (other than a lot used primarily for residential purposes) must be offset against the amount for which the owners corporation is liable under subsection (1). | S. 170(2)
amended by
Nos 48/1991
s. 74(3)(a)(b),
69/2006
s. 224(Sch. 3
items 12.2
(b)(c)). |
| (2A) Any amount for which an owner of a lot is liable under subsection (1A) must be offset against the amount for which the owners corporation affecting that lot is liable under subsection (1). | S. 170(2A)
inserted by
No. 48/1991
s. 74(4),
amended by
No. 69/2006
s. 224(Sch. 3
item 12.2(b)). |
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- (3) The liability imposed by subsection (1) does not relieve any other person from liability to pay the fees imposed under a tariff on, and the charges payable by, that person.
- (4) Terms used in this section have the same meaning as in the **Subdivision Act 1988**.

S. 170A
inserted by
No. 90/2003
s. 6.

170A Preparation and adoption of permanent water saving plan

- (1) An Authority must prepare a permanent water saving plan and submit that plan to the Minister for approval on or before the date specified by the Minister.
- (2) The Minister may, by notice served on the Authority, give directions or issue guidelines concerning the form of, and the information to be contained in, such a plan.
- (3) In preparing a plan, an Authority must—
 - (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
given or issued by the Minister under subsection (2).
- (4) Without limiting subsection (2), a plan must contain a Schedule setting out restrictions or prohibitions on the use of water in any area, or a specified part of any area, in respect of which the Authority has the function of providing a water supply system.
- (5) Without limiting subsection (4), a restriction may require a use of water to be approved by a specified person or a specified class of person.
- (6) Before submitting a plan to the Minister under subsection (1), an Authority must ensure that a notice in accordance with subsection (7) is published in the Government Gazette and a

newspaper circulating generally in any area capable of being affected by the plan.

- (7) A notice must—
- (a) summarise the restrictions and prohibitions proposed by the plan;
 - (b) specify where a copy of the proposed plan can be obtained;
 - (c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under subsection (6)) as is specified in the notice.
- (8) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any variations to the proposed plan that the Authority thinks fit are made, before the proposed plan is submitted to the Minister under subsection (1).
- (9) An Authority must adopt a plan as approved by the Minister under subsection (1).

170B Variation of plan

**S. 170B
inserted by
No. 90/2003
s. 6.**

- (1) An Authority may at any time, in accordance with this section, make any variations to an adopted permanent water saving plan that it thinks fit.
- (2) Before making any variation to an adopted plan, an Authority must submit the proposed variation to the Minister for approval.
- (3) The Minister may at any time, by notice served on the Authority, require an Authority to review a permanent water saving plan and submit a revised plan to the Minister for approval on or before the date specified by the Minister.

s. 170B

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- (4) In preparing a variation to an adopted plan or a revised plan, an Authority must—
- (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
given or issued by the Minister under section 170A(2) concerning the form of, and the information to be contained in, a permanent water saving plan.
- (5) Except with the approval of the Minister, before submitting a proposed variation or revised plan to the Minister under subsection (2) or (3), an Authority must ensure that a notice in accordance with subsection (6) is published in the Government Gazette and a newspaper circulating generally in any area capable of being affected by the proposed variation or revised plan.
- (6) A notice must—
- (a) summarise the proposed variation or revised plan;
 - (b) specify where a copy of the proposed variation or revised plan can be obtained;
 - (c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under subsection (5)) as is specified in the notice.
- (7) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any changes to the proposed variation or changes to the proposed revised plan that the licensee thinks fit are made, before the proposed variation or revised plan is submitted to the Minister under subsection (2) or (3).
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- (8) An Authority must vary a permanent water saving plan, or adopt a revised permanent water saving plan, as approved by the Minister under subsection (2) or (3).

170C Major deviations from plan

S. 170C
inserted by
No. 90/2003
s. 6.

- (1) An Authority must not make a major deviation from a permanent water saving plan.
- (2) The Minister may issue guidelines as to what are major deviations for the purposes of subsection (1).

170CA Requirement to publish permanent water saving plan

S. 170CA
inserted by
No. 85/2006
s. 68.

An Authority must publish in the Government Gazette the following—

- (a) on the adoption of a permanent water saving plan by the Authority under section 170A(9), the plan as so adopted;
- (b) on the variation of a permanent water saving plan by the Authority under section 170B(8), the plan as so varied;
- (c) on the adoption of a revised permanent water saving plan by the Authority under section 170B(8), the revised plan as so adopted.

170D Copy of plan

S. 170D
inserted by
No. 90/2003
s. 6.

- (1) The permanent water saving plan of an Authority at any time is that plan adopted in accordance with section 170A or 170B(8), as varied under section 170B at that time.
- (2) An Authority must ensure that an up to date copy of its permanent water saving plan is available at its offices during business hours for inspection on request.

s. 170E

S. 170D(3)
inserted by
No. 29/2007
s. 15,
amended by
No. 32/2010
s. 77(Sch.).

- (3) An Authority must ensure that a copy of its permanent water saving plan is published electronically at the electronic address of the Authority.

S. 170E
inserted by
No. 90/2003
s. 6.

170E Implementation of plan

- (1) An Authority must implement immediately—
- (a) a permanent water saving plan adopted by the Authority in accordance with section 170A or 170B(8);
 - (b) a variation to an adopted permanent water saving plan referred to in paragraph (a).
- (2) Implementation involving the imposition or removal of restrictions or prohibitions on the use of water in an area may be effected by the Authority publishing a notice in the Government Gazette and a newspaper circulating generally in the area specifying—
- (a) the restrictions or prohibitions imposed or being substituted or removed; and
 - (b) the area to which they apply or applied; and
 - (c) the time from which they apply or cease to apply, not being earlier than the latest day on which the notice is published.
- (3) A person cannot be convicted of an offence against section 170F in respect of a contravention of a restriction or prohibition on the use of water contained in a permanent water saving plan if prior to the relevant time notice of the particular restriction or prohibition had not been published in accordance with subsection (2).

170F Contravention of plan

**S. 170F
inserted by
No. 90/2003
s. 6.**

- (1) A person who receives a supply of water from an Authority must not contravene a restriction or prohibition on the use of that water contained in a permanent water saving plan of the Authority.

**S. 170F(1)
amended by
No. 29/2007
s. 16.**

Penalty: For a first offence, 10 penalty units;
For a subsequent offence, 20 penalty units.

- (2) A person who is guilty of an offence under subsection (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 2 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.

Note

Section 296(1) sets out who may prosecute an offence under subsection (1).

170G Inconsistency

**S. 170G
inserted by
No. 90/2003
s. 6.**

- (1) If there is an inconsistency between a restriction or prohibition in a by-law and a permanent water saving plan applying to a person who receives a supply of water from an Authority, the person must comply with the restriction or prohibition in the by-law.

s. 171

- (2) A restriction or prohibition in a permanent water saving plan is of no effect to the extent of that inconsistency.

S. 171
amended by
No. 90/2003
s. 5 (ILA
s. 39B(1)).

171 By-laws

S. 171(1)
amended by
No. 85/2006
s. 69(1).

- (1) An Authority may, in accordance with section 160, make by-laws for or with respect to—

- (a) regulating, restricting or prohibiting the use of water, either generally or for any specific purpose; and
- (b) providing for the publication of notices announcing any restrictions or prohibitions; and

S. 171(1)(ba)
inserted by
No. 85/2006
s. 69(2).

- (ba) prescribing offences, in respect of contravention of restrictions or prohibitions, set out in 4 stages, on the use of water in the whole or any part of the district of the Authority, for which an infringement notice may be served; and

S. 171(1)(bb)
inserted by
No. 85/2006
s. 69(2).

- (bb) the infringement penalties for any offence for which an infringement notice may be served; and

S. 171(1)(bc)
inserted by
No. 85/2006
s. 69(2).

- (bc) prescribing persons or classes of persons for the purposes of serving infringement notices; and
- (c) prescribing ways of measuring water supply by meter or other measuring device, including ways of calculating water use by reading a meter after the ending of the charging period; and

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- (d) prescribing ways of determining the quantity of water supplied to land, other than by a meter or other measuring device; and
 - (e) prohibiting any act which could cause wastage of water; and
 - (f) regulating or prohibiting any activity that—
 - (i) is carried out within 40 metres of works or waterways forming part of the Authority's water supply system; and
 - (ii) may affect that system; and
 - (g) prohibiting people who are not entitled to water supply from using water from the Authority's works; and
 - (h) regulating or prohibiting the access to or use of land and works under the management and control of the Authority; and
 - (i) regulating the use of water for fire-fighting purposes; and
 - (j) any other matter or thing for which it is necessary or convenient for the Authority to make by-laws.
- (2) A penalty imposed for a contravention of a by-law made under subsection (1)(a) must not exceed—
- (a) for a first offence, 40 penalty units or imprisonment for 3 months; and
 - (b) for a subsequent offence, 80 penalty units or imprisonment for 6 months—

S. 171(2)
inserted by
No. 90/2003
s. 5.

and, in the case of a continuing contravention, an additional penalty not exceeding 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units)—

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S. 171(3)
inserted by
No. 85/2006
s. 69(3).

- (c) after service of a notice of contravention on the person under section 151; or
 - (d) if no notice of contravention is served, after conviction of the person for the offence.
- (3) An infringement penalty imposed for a contravention of an offence for which an infringement notice may be served under a by-law made under subsection (1)(ba) must not exceed—
- (a) for an offence in respect of a stage 1 restriction or prohibition on the use of water, 2 penalty units;
 - (b) for an offence in respect of a stage 2 restriction or prohibition on the use of water, 3 penalty units;
 - (c) for an offence in respect of a stage 3 restriction or prohibition on the use of water, 4 penalty units;
 - (d) for an offence in respect of a stage 4 restriction or prohibition on the use of water, 5 penalty units.

S. 171(4)
inserted by
No. 29/2007
s. 17.

- (4) An offence referred to in subsection (1)(ba), for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 171A
inserted by
Nos 48/2002
s. 75,
amended by
No. 85/2006
s. 70,
repealed by
No. 1/2010
s. 93.

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Division 2—Melbourne Water Corporation

Pt 8 Div. 2
(Heading and
ss 171B–171I)
inserted by
No. 85/2006
s. 71.

171B Water supply function of Melbourne Water Corporation

S. 171B
inserted by
No. 85/2006
s. 71.

Melbourne Water Corporation has the following functions—

- (a) to provide, manage, operate, maintain and protect water supply systems for the supply of water to all or any of the following—
 - (i) the holder of a water licence under the **Water Industry Act 1994**;
 - (ii) the holder of a water and sewerage licence under the **Water Industry Act 1994**;
 - (iii) the holder of a bulk entitlement to water in the works of Melbourne Water Corporation granted under Division 1 of Part 4;
 - (iv) an Authority that has a water district or an irrigation district;
 - (v) any other person or class of person prescribed for the purposes of this section;
 - (vi) any person with whom Melbourne Water Corporation has an agreement to supply water that is in force immediately before the commencement of section 162 of the **Water (Governance) Act 2006**;

s. 171C

- (b) to identify community needs relating to water supply and to plan for the future needs of the community relating to water supply;
- (c) to supply water to all or any of the persons referred to in paragraph (a)(i) to (vi);
- (d) to develop and implement programs for the conservation and efficient use of water;
- (e) to manage, operate, maintain and protect water storages for the collection, harvesting, storage, treatment and distribution of water;
- (f) to carry out the operational, environmental, financial and reporting obligations in any bulk entitlement to water in any works of Melbourne Water Corporation;
- (g) to provide and maintain facilities for the recreational use of water storages and surrounding areas, where this use is compatible with the protection of a water storage and the other uses to which the water in the water storage may be put;
- (h) to protect the ecological values of water storages, and to develop and implement programs related to the ecological values of water storages.

S. 171C
inserted by
No. 85/2006
s. 71.

171C System access

- (1) Melbourne Water Corporation must allow its works to be used to the extent necessary to enable water—
 - (a) to which a person has a right under a bulk entitlement under Division 1 of Part 4; or
 - (b) to which a licence granted to a person under section 51 of the **Water Act 1989** relates; or

- (c) required to be supplied to a person by the holder of a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994** or by another Authority within the meaning of Division 1 of Part 4 of the **Water Act 1989**—

to be supplied to that person by means of those works.

- (2) Subsection (1)—

- (a) does not apply if the works of Melbourne Water Corporation do not have sufficient capacity to enable the water to be supplied by means of those works;
- (b) does not limit or affect any other duty or obligation imposed on Melbourne Water Corporation by or under this or any other Act.
- (3) Subject to any determination made by the Essential Services Commission under Part 3 of the **Essential Services Commission Act 2001**, the terms and conditions on which a person is allowed to use the works of Melbourne Water Corporation as mentioned in subsection (1) are as agreed between the Corporation and that person.

171D Fire plugs and free water—Melbourne Water Corporation

S. 171D
inserted by
No. 85/2006
s. 71.

- (1) A council may require Melbourne Water Corporation to fix fire plugs to any of the works of Melbourne Water Corporation in locations that are determined by Melbourne Water Corporation as being suitable for the supply of water for fire-fighting purposes.
- (2) A council must meet the costs of providing, installing, marking and maintaining all fire plugs that the council requires under subsection (1) to be installed in its municipal district.

s. 171E

- (3) Melbourne Water Corporation may provide, install, mark and maintain any extra fire plugs that it thinks necessary or that are requested by a landowner, either at its own cost or at the cost of the landowners benefited by them.
- (4) Melbourne Water Corporation must—
 - (a) keep all fire plugs that are fixed to its works in working order; and
 - (b) provide conspicuous markers for fire plugs supplied by it; and
 - (c) make sure that at all times water is available without charge from fire plugs attached to its works for cleaning sewers and drains, unless the water is unavailable due to a shortage of water or another unavoidable cause, or due to repairs.
- (5) Subsection (4)(a) does not require Melbourne Water Corporation to make sure that water pressure is adequate for fire fighting.

S. 171E
inserted by
No. 85/2006
s. 71.

171E Power to enter land for water supply protection

- (1) An officer of Melbourne Water Corporation or an authorised person may enter any land for the purposes of water supply protection.
- (2) Sections 133 and 134 apply in relation to the entry of land under subsection (1) as if that entry were made under section 133(1).

S. 171F
inserted by
No. 85/2006
s. 71.

171F Notice of contravention for water supply protection

- (1) Subject to subsection (2), Melbourne Water Corporation may, by notice in writing to any person, require—
 - (a) that an activity carried out on any land owned or occupied by that person be discontinued; or

- (b) the removal of any substance or thing—
if the carrying out of the activity, or the presence of the substance or thing, is, in the opinion of Melbourne Water Corporation, likely to affect the purity of Melbourne Water Corporation's water supply system.
- (2) A notice under subsection (1) may not require the discontinuance of any activity or the removal of any substance or thing if the carrying out of the activity or the presence of the substance or thing is specifically authorised by or under this or any other Act.
- (3) Section 151 applies to a notice under subsection (1) as if it were a notice of contravention under section 151(1).

171G Immediate action for water supply protection

Melbourne Water Corporation may, immediately and without notice, remove from—

- (a) any land that is adjacent to any waterway or works forming part of Melbourne Water Corporation's water supply system; or
- (b) any water in or adjacent to any such waterway or works—

any substance or thing that is, in Melbourne Water Corporation's opinion, likely to affect the purity of Melbourne Water Corporation's water supply system.

S. 171G
inserted by
No. 85/2006
s. 71.

171H By-laws

- (1) Melbourne Water Corporation may, in accordance with section 160, make by-laws for or with respect to—
- (a) regulating, restricting or prohibiting the use of water, either generally or for any specific purpose; and

S. 171H
inserted by
No. 85/2006
s. 71.

-
- (b) providing for the publication of notices announcing any restrictions or prohibitions; and
 - (c) prescribing ways of measuring water supply by meter or other measuring device, including ways of calculating water use by reading a meter after the ending of the charging period; and
 - (d) prescribing ways of determining the quantity of water supplied to land, other than by a meter or other measuring device; and
 - (e) prohibiting any act which could cause wastage of water; and
 - (f) regulating or prohibiting any activity that—
 - (i) is carried out within 40 metres of works or waterways forming part of Melbourne Water Corporation's water supply system; and
 - (ii) may affect that system; and
 - (g) prohibiting people who are not entitled to water supply from using water from Melbourne Water Corporation's works; and
 - (h) regulating or prohibiting the access to or use of land and works under the management and control of Melbourne Water Corporation; and
 - (i) regulating the use of water for fire-fighting purposes; and
 - (j) any other matter or thing for which it is necessary or convenient for Melbourne Water Corporation to make by-laws.
-

(2) A penalty imposed for a contravention of a by-law made under subsection (1)(a) must not exceed—

- (a) for a first offence, 40 penalty units or imprisonment for 3 months; and
- (b) for a subsequent offence, 80 penalty units or imprisonment for 6 months—

and, in the case of a continuing contravention, an additional penalty not exceeding 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units)—

- (c) after service of a notice of contravention on the person under section 171F; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

* * * * *

**S. 171I
inserted by
No. 85/2006
s. 71,
repealed by
No. 1/2010
s. 93.**

PART 9—SEWERAGE

Pt 9 Div. 1
(Heading)
inserted by
No. 85/2006
s. 72.

Division 1—Authorities other than Melbourne Water Corporation

S. 172
substituted by
No. 85/2006
s. 73.

172 Definitions

In—

- (a) section 179, **Authority** means a water corporation within the meaning of Part 6 other than Melbourne Water Corporation;
- (b) the remaining provisions of this Division, **Authority** means a water corporation within the meaning of Part 6 that has a sewerage district.

173 Functions of Authorities

- (1) An Authority that has a sewerage district has the following functions—
 - (a) to provide, manage and operate systems for the conveyance, treatment and disposal of sewage and, if the Authority so decides, of trade waste;
 - (b) to identify community needs relating to sewerage services and to plan for the future needs of the community relating to sewerage services;
 - (c) to develop and implement programs for the recycling and reuse of treated waste water;
 - (d) to investigate, promote and conduct research into any matter which relates to its functions, powers and duties in relation to sewerage services;

- (e) to educate the public about any aspect of sewerage.

* * * * *

S. 173(2)
repealed by
No. 85/2006
s. 74.

174 Exercise of functions of Authority outside its district

- (1) An Authority may, subject to subsection (2), exercise its functions outside its district, including outside the State.
- (2) An Authority must not provide a service outside its district without the approval of the Minister.

175 New works

- (1) Subject to subsection (4), at least 14 days before starting construction of any sewer an Authority must—
 - (a) serve a notice on each owner or occupier of land which will be affected by the proposed construction; and
 - (b) publish a notice in a newspaper circulating generally in the area concerned—which contains a statement of the Authority's intention to construct the sewer, information about where and when a copy of the plan of the works for the sewer may be inspected, and notice that submissions are invited within 14 days after publication.
- (2) A person who objects to the proposed construction may, within 14 days after the date of publication of the notice, make a submission to the Authority, and the Authority must, before starting construction, consider any submissions received.

- (3) The Authority may construct the sewer—
 - (a) after considering any submissions; or
 - (b) if no submissions are received, 14 days after the date of publication of the notice.
- (4) If the Authority has the consent in writing of each owner or occupier who would be affected by the construction of a sewer, it may construct the sewer without following the procedure specified in subsections (1) to (3).

176 Compensation not payable in certain cases

- (1) Despite any other provision, an Authority is not liable to pay compensation for damage caused in the course of works to provide a sewer that the Authority decides is necessary for the proper sewerage of allotments of land, unless that damage is to buildings and is not repaired by the Authority.
- (2) Subsection (1) applies only to land—
 - (a) that is subdivided in such a way that the allotments abut each other, back to back or side to back, without any right of way between them; and
 - (b) in relation to which the sewer is underground and close to the boundary of an allotment.

177 Testing etc. of waste

- (1) A person authorised by an Authority to do so may—
 - (a) at any reasonable time, but in an emergency at any time, enter land and—
 - (i) measure flows of trade waste; or
 - (ii) take samples of any trade waste that is to be received by the Authority or of any matter used or produced in a

process involving trade waste, and
analyse those samples; or

- (iii) inspect any fittings, private works and
works ancillary to them that are used or
provided for conveying trade waste to
the Authority's sewerage system; and
- (b) require any person to supply any information
relating to any trade waste that is to be
received by the Authority or any matter used
or produced in a process involving trade
waste.
- (2) Powers conferred by subsection (1) are in addition
to any other powers of an Authority.
- (3) A person must not disclose any information
supplied to the person as required under
subsection (1)(b) unless that disclosure is made—
 - (a) to the Authority; or
 - (b) for the purposes of legal proceedings; or
 - (c) with the consent of the person who supplied
the information.

Penalty: 20 penalty units.

178 Protection of sewers³⁴

- (1) A person must not cause or permit anything other
than—
 - (a) sewage; or
 - (b) trade waste discharged in accordance with a
trade waste agreement—

to be discharged into the sewerage system of an
Authority.

Penalty: 200 penalty units and, for a continuing
offence, an additional penalty of
80 penalty units for each day on which
the offence continues—

- (c) after service of a notice of contravention on the person under section 151; or
 - (d) if no notice of contravention is served, after conviction of the person for the offence.
- (2) Subsection (1) does not apply to or in relation to a discharge that occurs in circumstances that constitute an offence against the **Environment Protection Act 1970**.

179 Special sewerage services

- (1) Despite section 96(1) and (2), an Authority or a council may submit a proposal to the Minister for the declaration of a sewerage district within which the Authority or council has not constructed or maintained any works and does not, at the time the proposal is submitted, intend to do so.
- (2) Section 96(3) to (8) applies to a proposal under subsection (1) as if it were a proposal under section 96(1).
- (3) The Authority with the management and control of a sewerage district declared following the submission of a proposal under subsection (1) may, by notice in writing, declare any land within that district to be a serviced property for the purposes of this Act.
- (4) Section 144(2) and (3) apply to a notice under subsection (3) as if it were a notice under section 144(1).
- (5) An Authority may impose a fee under a tariff on a property that is a serviced property by virtue of a notice under subsection (3), in relation to any service provided by the Authority under section 180, 183 or 184.

180 Septic tank permit applications

- (1) A council that receives an application for a permit for a septic tank system in respect of land within an Authority's sewerage district or area of interest must forward a copy of the application to the Authority, if the Authority has lodged with the council a standing written request for referral of those applications.
 - (2) The Environment Protection Authority must forward any applications it receives for a permit for a septic tank system in respect of land within an Authority's sewerage district or area of interest if the Authority has lodged with the Environment Protection Authority a standing written request for referral of those applications.
 - (3) The Authority must, within 21 days after the copy of the application is forwarded to it, notify the council or the Environment Protection Authority (as appropriate) of—
 - (a) the location of the sewer nearest to the land;
and
 - (b) the availability of works to service the land;
and
 - (c) any requirements with which the council or the Environment Protection Authority must comply.
 - (4) The council and the Environment Protection Authority must comply with any requirement of the Authority in relation to the application that is notified to the council or the Environment Protection Authority within 21 days after the application is forwarded to the Authority.
 - (5) The council or the Environment Protection Authority must not make a decision in relation to an application within 21 days after the copy is forwarded to the Authority.
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181 By-laws about trade waste

S. 181(1)
amended by
No. 85/2006
s. 75.

- (1) An Authority may, in accordance with section 160, make by-laws for or with respect to any of the following—
 - (a) regulating or prohibiting the discharge of any trade waste into its sewers;
 - (b) prescribing the terms and conditions to be included in agreements for the receipt and disposal of trade waste by the Authority, including the grounds on which the Authority may disconnect the service;
 - (c) prescribing the method of charging and the charges for the Authority's costs of inspecting, measuring, monitoring and testing any trade waste and other matter under an agreement under this Part for the receipt of trade waste;
 - (d) prescribing any waste as trade waste for the purposes of this Part;
 - (e) prescribing the information to be provided to the Authority by any person whose trade waste an Authority agrees to receive;
 - (f) imposing penalties for the contravention by a person of any terms or conditions of a trade waste agreement.
- (2) A penalty imposed under subsection (1)(f) must not exceed 200 penalty units and, in the case of a continuing contravention, an additional penalty of 80 penalty units for each day on which the offence continues—
 - (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.

- (3) Nothing in this section requires an Authority to accept the discharge of trade waste into its sewers otherwise than in accordance with an agreement under this Part for the receipt of trade waste.

182 Enforcement of agreement

Whether or not proceedings are instituted for the contravention of any terms or conditions of a trade waste agreement, an Authority may apply to a court for an order with respect to the enforcement of the agreement.

183 Powers in relation to septic tanks

- (1) An Authority may inspect and measure existing septic tank systems within its sewerage district.
- (2) An Authority may, by notice in writing served on the owner of land which is within its sewerage district and on which there is a septic tank system, require the owner to carry out in relation to that septic tank system any repairs or maintenance specified in the notice.
- (3) The carrying out of any repairs or maintenance required by an Authority under subsection (2) does not relieve the owner from the duty to comply with the **Environment Protection Act 1970** and the **Public Health and Wellbeing Act 2008**.
- (4) If a septic tank system is on land owned by more than one person, a notice under subsection (2) may be served on any or all of the owners of that land.
- (5) Section 150(3) and (4) apply to a notice under subsection (2) as if it were a notice under section 150(1).

S. 183(3)
amended by
No. 46/2008
s. 292.

184 By-laws about private works and septic tank systems

S. 184(1)
amended by
No. 85/2006
s. 76.

- (1) An Authority may, in accordance with section 160, make by-laws for or with respect to any of the following—
 - (a) regulating works or apparatus within its district that are part of any private works or of a septic tank system;
 - (b) requiring—
 - (i) the regular maintenance and cleaning of those works or apparatus; and
 - (ii) the payment of a fee for any maintenance or cleaning of those works or apparatus that is carried out by or on behalf of the Authority;
 - (c) prohibiting septic tank discharge within its district without the consent of the Authority;
 - (d) imposing penalties for contravention of the by-laws.
- (2) A penalty imposed for a contravention of a by-law made under subsection (1)(c) must not exceed—
 - (a) for a first offence, 20 penalty units or imprisonment for 3 months; and
 - (b) for a subsequent offence, 40 penalty units or imprisonment for 6 months—and, in the case of a continuing contravention, an additional penalty of 5 penalty units for each day on which the offence continues—
 - (c) after service of a notice of contravention on the person under section 151; or
 - (d) if no notice of contravention is served, after conviction of the person for the offence.

Division 2—Melbourne Water Corporation

Pt 9 Div. 2
(Heading and
ss 184A, 184B)
inserted by
No. 85/2006
s. 77.

184A Sewerage functions of Melbourne Water Corporation

S. 184A
inserted by
No. 85/2006
s. 77.

Melbourne Water Corporation has the following functions—

- (a) to provide, manage, operate, maintain, and protect systems for the collection, in bulk, of sewage from all or any of the following—
 - (i) the holder of a water and sewerage licence under the **Water Industry Act 1994**;
 - (ii) an Authority with a sewerage district;
 - (iii) any other person or class of person prescribed for the purposes of this section;
- (b) to provide, manage, operate, maintain, and protect systems for the conveyance, treatment and disposal of any sewage collected under paragraph (a);
- (c) by agreement or consent, to provide, manage, operate, maintain, and protect systems for the collection in bulk, conveyance, treatment and disposal of trade waste;
- (d) to develop and implement programs and provide, manage and operate systems for the recycling, re-use and supply of treated waste and water by-products of sewage treatment and trade waste treatment;
- (e) the acceptance, storage, treatment and disposal of biosolids and other waste;

s. 184B

- (f) to identify community needs relating to sewage treatment services and to plan for the future needs to the community relating to those services.

S. 184B
inserted by
No. 85/2006
s. 77.

184B Application of certain provisions of Division 1 of Part 9

Sections 176, 177, 178, 181 and 182 of Division 1 apply to Melbourne Water Corporation when it is exercising a function under section 184A, as if a reference to "Authority" in those sections were a reference to "Melbourne Water Corporation".

PART 10—WATERWAY MANAGEMENT

Division 1—Preliminary

185 Application of this Part

(1) This Part applies to—

- (a) an Authority that has a waterway management district (in respect of Division 2, and in respect of Divisions 3, 4 and 5 to the extent provided in those Divisions); and
- (b) an Authority appointed by the Minister (in respect of Division 6); and

S. 185(1)(b)
amended by
No. 121/1994
s. 190(1).

* * * * *

S. 185(1)(c)
inserted by
No. 121/1994
s. 190(1),
repealed by
No. 66/2000
s. 25.

(2) For the purposes of this Part, *water management* means the management of waterways, drainage or floodplains.

(3) The Governor in Council may, by Order published in the Government Gazette, declare a bulk entitlement to water in a designated waterway held by a generation company within the meaning of the **Electricity Industry Act 2000** to be a declared bulk entitlement for the purposes of this Part.

S. 185(3)
inserted by
No. 56/1995
s. 66(1),
amended by
No. 69/2000
s. 65(6).

s. 186

S. 186
amended by
No. 121/1994
s. 190(2)(a).

S. 186(1A)
inserted by
No. 56/1995
s. 66(2).

S. 186(2)(3)
inserted by
No. 121/1994
s. 190(2)(b),
repealed by
No. 66/2000
s. 26.

S. 186A
inserted by
No. 99/2005
s. 36.

186 Exercise of functions of Authorities

(1) An Authority must not exercise its functions under Divisions 2, 3 and 4 outside its district, unless the Minister approves otherwise.

(1A) An Authority must not exercise its functions or powers under this Part (including its powers to make by-laws under section 219) in a manner which is inconsistent with any provision of an Order granting a declared bulk entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

* * * * *

186A Statements of obligations of Authorities with waterway management functions

- (1) The Minister may—
- (a) issue a statement of obligations to an Authority specifying obligations that the Authority has in performing its functions under this Part or exercising powers it has under this Act as an Authority to which this Part applies; or
 - (b) amend, vary or revoke a statement of obligations after complying with subsection (5).
- (2) The Minister must not issue, amend, vary or revoke a statement under subsection (1), unless the Minister has first consulted with the Minister administering Part 4 of the **Catchment and Land Protection Act 1994**.

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- (3) A statement of obligations may include provision relating to—
- (a) standards as to the performance of any such functions;
 - (b) requirements as to community consultation in performing any such functions;
 - (c) the management of the environmental water reserve.
- (4) An Authority must comply with a statement of obligations that applies to that Authority.
- (5) The Minister must not amend or vary a statement of obligations unless—
- (a) the Authority has agreed to the proposed amendment or variation; or
 - (b) the Minister has—
 - (i) given the Authority notice in writing of the proposed amendment or variation; and
 - (ii) considered any written submission made by the Authority in response to the notice.
- (6) The Minister must cause a notice of—
- (a) the making and issue of a statement of obligations to an Authority; or
 - (b) the amendment, variation or revocation of a statement of obligations—
- to be published in the Government Gazette.

Division 2—Waterway management

S. 187
amended by
No. 121/1994
s. 190(3)(a).

187 Application of Division

- (1) This Division applies to an Authority that has a waterway management district.

S. 187(1)
amended by
Nos 121/1994
s. 190(3)(b),
66/2000
s. 27(1).

S. 187(2)
inserted by
No. 121/1994
s. 190(3)(c),
repealed by
No. 66/2000
s. 27(2).

* * * *

188 Designated waterways and designated land or works

S. 188(1)
amended by
No. 85/2006
s. 78.

- (1) An Authority, other than Melbourne Water Corporation, may—
- (a) declare a waterway within its district or any part of a waterway within its district to be a designated waterway; or
 - (b) declare any of the following within its district to be designated land or works—
 - (i) any works or part of any works in or over which water occasionally flows, whether in a defined, naturally occurring channel or not;
 - (ii) any land which—
 - (A) abuts a waterway; or
 - (B) is within 20 metres of a waterway—

and which is significant, whether because of its use or otherwise, for the stability, conservation or functioning of the waterway.

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- (2) A declaration under subsection (1) must be made by notice in writing which—
- (a) is published in the Government Gazette; and
 - (b) is published in a newspaper circulating generally in the area in which the designated waterway or the designated land or works is or are located; and
 - (c) adequately describes the designated waterway or the designated land or works; and
 - (d) specifies the Authority having the management and control of the designated waterway or the designated land or works; and
 - (e) specifies the waterway management district of that Authority.
- (3) The Authority making a declaration must send a copy of the notice to every public statutory body that may have an interest in the waterway declared to be a designated waterway or in the designated land or works.
- (4) A person whose interests are affected by a decision of an Authority to make a declaration under subsection (1)(b) may apply to the Tribunal for review of the decision.
- (4A) An application for review must be made within 28 days after the later of—
- (a) the day on which the declaration is published in the Government Gazette;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the declaration, the day on which the statement of reasons is given to the person or the person is informed under
- S. 188(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.23).

S. 188(4A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.23).
-

s. 188A

section 46(5) of that Act that a statement of reasons will not be given.

- (5) The Authority may, if a declaration is revoked, specify in the notice of the revoking declaration any Authority to which the management and control of the designated waterway or the designated land or works is transferred.

S. 188A
inserted by
No. 65/1995
s. 19,
repealed by
No. 66/2000
s. 28, new
s. 188A
inserted by
No. 85/2006
s. 79.

188A Designated waterways, land or works—Melbourne Water Corporation

- (1) Any—

- (a) waterway that is within the waterway management district of Melbourne Water Corporation is a designated waterway of Melbourne Water Corporation, except—
- (i) any waterway to the extent that it is within the port waters of the port of Melbourne or the port of Hastings under the **Port Management Act 1995**; and
 - (ii) that section of the Yarra River from its mouth up to the downstream side of the Bolte Bridge; and
 - (iii) that section of the Maribyrnong River from its mouth up to the downstream side of Shepherds Bridge; and
 - (iv) that section of the Moonee Ponds Creek from its mouth up to the downstream side of the Footscray Bridge; and
 - (v) that section of the Stony Creek in Yarraville from its mouth up to the downstream side of the Hyde Street Bridge; and

S. 188A(1)(a)(i)
amended by
No. 45/2010
s. 58.

-
- (b) land which abuts a waterway that is a designated waterway of Melbourne Water Corporation under paragraph (a), or is within 20 metres of such a waterway is designated land of Melbourne Water Corporation.
- (2) Any land or works that are within the waterway management district of Melbourne Water Corporation are designated land or works of Melbourne Water Corporation—
- (a) if they are works—
- (i) owned by Melbourne Water Corporation under section 138 for the purpose of the exercise of functions under this Part; or
- (ii) declared to be designated works of Melbourne Water Corporation under subsection (3); and
- (b) in the case of land or works situated on land that has been added to the waterway management district of Melbourne Water Corporation, if immediately before that addition, they were land or works of the Authority in whose waterway management district they were situated.
- (3) Melbourne Water Corporation may, by declaration, published in the Government Gazette, declare—
- (a) any drain vested in Melbourne Water Corporation (that was vested in the pre-dating corporation immediately before the commencement of section 163 of the **Water (Governance) Act 2006**) to be designated works; and
- (b) any drain in the waterway management district of Melbourne Water Corporation to be designated works.
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- (4) The requirements for a declaration that are specified in section 188(2) apply to a declaration under subsection (3).
- (5) In this section, *pre-dating corporation* has the same meaning as in Schedule 16.

S. 189
amended by
No. 99/2005
s. 37(2) (ILA
s. 39B(1)).

189 Functions of Authorities

- (1) An Authority that has a waterway management district has the following functions in relation to designated waterways and designated land or works within that district—
 - (a) to identify and plan for State and local community needs relating to the use and to the economic, social and environmental values of land and waterways;
 - (b) to develop and to implement effectively schemes for the use, protection and enhancement of land and waterways;
- (ba) to—
 - (i) develop and implement plans and programs; and
 - (ii) carry out works and activities—
to maintain the environmental water reserve in accordance with the environmental water reserve objective;
- (bb) to—
 - (i) develop and implement plans and programs; and
 - (ii) carry out works and activities—
to improve the environmental values and health of water ecosystems, including their biodiversity, ecological functions, quality of water and other uses that depend on environmental condition;

S. 189(ba)
inserted by
No. 99/2005
s. 37(1).

S. 189(bb)
inserted by
No. 99/2005
s. 37(1).

- | | |
|---|---|
| <p>(c) to investigate, promote and research any matter related to its functions, powers and duties in relation to waterway management;</p> <p>(d) to educate the public about any aspect of waterway management.</p> <p>(2) In performing its functions under this Act, an Authority that has a waterway management district must have regard to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective.</p> | <p>S. 189(2) inserted by No. 99/2005 s. 37(2).</p> |
| <p>* * * *</p> | <p>Ss 190, 191 repealed by No. 85/2006 s. 80.</p> |
| <p>* * * *</p> | <p>S. 192 amended by No. 121/1994 s. 190(4), repealed by No. 85/2006 s. 80.</p> |

193 Closing of access by Authorities

- | | |
|--|---|
| <p>(1) Subject to this section, an Authority may close, permanently or for a specified period, the access of people, animals or vehicles to the whole or any part of a designated waterway or designated land or works.</p> <p>(2) The Authority must not close any access to—</p> <p style="padding-left: 20px;">(a) any Authority, licensee or public statutory body that needs access in order to carry out its functions; or</p> <p style="padding-left: 20px;">(b) any person who needs access in order to exercise rights under a licence under Part 4 or 5; or</p> <p style="padding-left: 20px;">(c) any person who holds a declared bulk entitlement.</p> | <p>S. 193(2)(a) amended by No. 121/1994 s. 190(5).</p> <p>S. 193(2)(b) amended by No. 56/1995 s. 66(3).</p> <p>S. 193(2)(c) inserted by No. 56/1995 s. 66(3).</p> |
|--|---|

s. 193

S. 193(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.24).

- (3) The Authority must not close the access of the owner to any land referred to in section 188(1)(b)(ii) unless the owner has consented to the closure or the Tribunal has, on the application of the Authority, dispensed with the need to obtain the owner's consent.

S. 193(4)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.24).

- (4) The Authority must not apply to the Tribunal under subsection (3) unless the Authority has made reasonable attempts to obtain the owner's consent and that consent has been refused or withheld.

S. 193(5)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.24).

- (5) The Tribunal must not under subsection (3) make an order dispensing with the need to obtain an owner's consent unless it is satisfied that the closure of access to the owner is necessary to ensure the stability, conservation or functioning of the waterway.

- (6) The Authority must—

- (a) publish, 1 month before closing any access, a notice of its intention in a newspaper circulating generally in the area; and
- (b) consider any submissions received as a result of that notice.

S. 193(7)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.25).

- (7) A person whose interests are affected by a decision of an Authority to close access under this section may apply to the Tribunal for review of the decision.

S. 193(7A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.25).

- (7A) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is

informed under section 46(5) of that Act that a statement of reasons will not be given.

- (8) This section does not apply to the closure of roads under section 137 of this Act or section 62 of the **Water Industry Act 1994**.

S. 193(8)
amended by
No. 121/1994
s. 190(6).

194 Works that interfere with designated land or works³⁵

- (1) A person other than a licensee, the holder of a declared bulk entitlement or a public statutory body must not, without the Authority's consent or any other authorisation under this Act, cause or permit works to be undertaken which interfere, or are likely to interfere, with designated land or works or the quality, quantity or flow of water in designated land or works within an Authority's waterway management district.

S. 194(1)
amended by
Nos 121/1994
s. 190(7),
56/1995
s. 66(4).

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.
- (2) A licensee, holder of a declared bulk entitlement or public statutory body that intends to undertake works of a kind referred to in subsection (1) must, before undertaking the works, notify the Authority of its intention and take into account any comments made by the Authority.

S. 194(2)
amended by
Nos 121/1994
s. 190(8),
56/1995
s. 66(5).

s. 195

S. 194(3)
amended by
Nos 121/1994
s. 190(9),
56/1995
s. 66(5).

- (3) Section 154 applies to any dispute that arises between a licensee, holder of a declared bulk entitlement or public statutory body and an Authority over the undertaking of works of a kind referred to in subsection (1) as if that dispute were over a notice under section 152 or 153.

S. 194(4)
inserted by
No. 121/1994
s. 190(10),
repealed by
No. 66/2000
s. 29(1).

* * * * *

195 Control over connections and discharges³⁶

S. 195(1)
amended by
No. 121/1994
s. 190(11).

- (1) A person other than a licensee or a public statutory body must not, without an Authority's consent, cause or permit—
- (a) any drainage works to be connected to or discharge (whether directly or indirectly) into a designated waterway or designated land or works; or
 - (b) the alteration or removal of any drainage works that are connected to or that discharge into a designated waterway or designated land or works—

within the Authority's waterway management district.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or

(b) if no notice of contravention is served, after conviction of the person for the offence.

(2) A licensee or public statutory body that intends to do anything specified in subsection (1) must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority.

S. 195(2)
amended by
No. 121/1994
s. 190(12).

(3) Section 154 applies to any dispute that arises between a licensee or public statutory body and an Authority over the doing of anything specified in subsection (1) as if that dispute were over a notice under section 152 or 153.

S. 195(3)
amended by
No. 121/1994
s. 190(13).

* * * * *

S. 195(4)
inserted by
No. 121/1994
s. 190(14),
repealed by
No. 66/2000
s. 29(2).

196 Owner finance

(1) An Authority may require the owner of any property in its waterway management district to meet or contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions under this Part for that district.

S. 196(1)
amended by
No. 85/2006
s. 81.

(2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under subsection (1) as if it were a requirement under section 268(1).

* * * * *

S. 196(3)
inserted by
No. 121/1994
s. 190(15),
repealed by
No. 66/2000
s. 29(3).

197 Finance for increased use of services

S. 197(1)
amended by
No. 85/2006
s. 82.

- (1) An Authority may require the owner of a property in its waterway management district to contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions under this Part for that district if the use of those works increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.
- (2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under subsection (1) as if it were a requirement under section 269(1).

S. 197(3)
inserted by
No. 121/1994
s. 190(16),
repealed by
No. 66/2000
s. 29(4).

* * * * *

Division 3—Regional drainage

198 Application of Division

S. 198
amended by
No. 121/1994
s. 190(17)(a).

S. 198(1)
amended by
Nos 54/1992
s. 56(f),
121/1994
s. 190(17)(b),
66/2000
s. 30(1),
substituted by
No. 85/2006
s. 83.

- (1) This Division applies to—
 - (a) Melbourne Water Corporation, in relation to Melbourne Water Corporation's waterway management district; and
 - (b) any other Authority to the extent that that Authority has a waterway management district to which the Minister declares that this Division applies.

- (2) A declaration under this section must be in writing and published in the Government Gazette.

S. 198(2) inserted by No. 121/1994 s. 190(17)(c), repealed by No. 66/2000 s. 30(2), new s. 198(2) inserted by No. 85/2006 s. 83.

- (3) Any declaration made by the Minister under this section as in force before the commencement of section 83 of the **Water (Governance) Act 2006**, being a declaration in force immediately before that commencement, is deemed, on and from that commencement, to be a declaration made by the Minister under this section as amended by section 83 of that Act.

S. 198(3) inserted by No. 85/2006 s. 83.

199 Functions of Authorities

- (1) An Authority other than Melbourne Water Corporation has the following functions—

S. 199(1) amended by No. 85/2006 s. 84(1)(a).

- (a) to provide, operate and protect drainage systems, including the drainage of water into all designated waterways and all designated land or works within its district;
- (b) to develop and implement programs for the protection and enhancement of instream uses;
- (c) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to drainage;
- (d) to educate the public about any aspect of drainage.

S. 199(1)(a) amended by No. 85/2006 s. 84(1)(b).

S. 199(1A)
inserted by
No. 85/2006
s. 84(2).

- (1A) Melbourne Water Corporation has the following functions—
- (a) to provide, manage, operate, protect and maintain drainage systems into all designated waterways and all designated land and works within its waterway management district;
 - (b) to develop and implement plans or schemes, and to take any action necessary—
 - (i) to bring into operation new drainage systems; and
 - (ii) to improve stormwater quality of water in drainage systems;
 - (c) the functions set out in subsection (1) (c) and (d).
- (2) An Authority must perform its functions in an environmentally sound way.

200 Control over diversion of drainage water³⁷

- (1) A person must not, without an Authority's consent, cause or permit the diversion of drainage waters into the Authority's district from outside that district.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of notice of contravention on the person under section 151; or

- (b) if no notice of contravention is served, after conviction of the person for the offence.
- (2) A licensee or public statutory body that intends to do anything specified in subsection (1) must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority. **S. 200(2) amended by No. 121/1994 s. 190(18).**
- (3) Section 154 applies to any dispute that arises between a licensee or public statutory body and an Authority over the doing of anything specified in subsection (1) as if that dispute were over a notice under section 152 or 153. **S. 200(3) amended by No. 121/1994 s. 190(19).**
- * * * * *
- S. 200(4) inserted by No. 121/1994 s. 190(20), repealed by No. 66/2000 s. 31.**

Division 4—Floodplain management

201 Application of Division

S. 201 amended by No. 49/1994 s. 6(a).

(1) This Division applies to—

- (a) Melbourne Water Corporation, in relation to Melbourne Water Corporation's waterway management district; and **S. 201(1)(a) repealed by No. 54/1992 s. 56(g), new s. 201(1)(a) inserted by No. 85/2006 s. 85(1)(a).**
- (b) any other Authority— **S. 201(1)(b) amended by No. 85/2006 s. 85(1)(b).**
- (i) that has a waterway management district; and

s. 202

S. 201(1)(b)(ii)
substituted by
No. 12/1996
s. 8(1).

(ii) that the Minister, by Order, declares to have the functions, or any specified functions, of an Authority under this Division—

in relation to the Authority's waterway management district; and

S. 201(1)(c)
amended by
Nos 50/1992
s. 10(Sch.
item 11.26),
49/1994
s. 6(b),
121/1994
s. 193.

(c) the Minister, in relation to any other area.

S. 201(2)
inserted by
No. 49/1994
s. 6(c),
substituted by
No. 85/2006
s. 85(2).

(2) A declaration under subsection (1) must be in writing and published in the Government Gazette.

S. 201(3)
inserted by
No. 85/2006
s. 85(2).

(3) In this Division, a reference to *Authority* includes—

(a) in relation to the waterway management district of Melbourne Water Corporation, Melbourne Water Corporation; and

(b) in relation to any area to which subsection (1)(c) applies, the Minister.

S. 202
amended by
Nos 12/1996
s. 8(2),
85/2006
s. 86(1)(a)(b).

202 Floodplain management functions

(1) An Authority (other than Melbourne Water Corporation) has the following functions or such of those functions as are specified in the Order under section 201(1)(b)(ii), as the case requires—

(a) to find out how far floodwaters are likely to extend and how high they are likely to rise;

- (b) to declare flood levels and flood fringe areas;
 - (c) to declare building lines;
 - (d) to control developments that have occurred or that may be proposed for land adjoining waterways;
 - (e) to develop and implement plans and to take any action necessary to minimise flooding and flood damage;
 - (f) to provide advice about flooding and controls on development to local councils, the Secretary to the Department and the community.
- (2) Melbourne Water Corporation has the following functions in relation to its waterway management district—
- (a) to find out how far floodwaters are likely to extend and how far they are likely to rise;
 - (b) to declare flood levels and flood fringe levels;
 - (c) to declare building lines;
 - (d) to develop and implement plans and to take any action necessary to minimise flooding and flood damage;
 - (e) to control developments that have occurred or that may be proposed for land adjoining waterways;
 - (f) to provide advice about flooding and controls on development to local councils, the Secretary to the Department and the community.

S. 202(1)(f)
amended by
Nos 46/1998
s. 7(Sch. 1),
85/2006
s. 86(1)(c).

S. 202(2)
inserted by
No. 85/2006
s. 86(2).

S. 203(1)
amended by
Nos 12/1996
s. 8(3),
85/2006 s. 87,
32/2010
s. 77(Sch.).

203 Declarations by Authorities

- (1) An Authority that has the functions referred to in section 202(1)(b) and (c) or section 202(2)(b) and (c) may declare—
 - (a) a flood level in relation to a specified area; or
 - (b) a flood fringe area; or
 - (c) a building line in relation to either side of a designated waterway or of designated land or works.
- (2) Notice of intention to make a declaration under subsection (1) must—
 - (a) be published in the Government Gazette; and
 - (b) be published in a newspaper circulating generally in the area concerned; and
 - (c) state that any person may, within 6 weeks after the date of notice, make a submission to the Authority.
- (3) An Authority must, before making a declaration, consider any submissions received under subsection (2).
- (4) The Authority may revoke or vary a declaration and must publish notice of any revocation or variation in the same way as the original declaration was published.

204 Adoption of flood level

- (1) In making a declaration under section 203(1), an Authority may adopt a flood level, a flood fringe area or a building line which, in its opinion, is the best estimate, based on the available evidence, of a flood event which has a probability of occurrence of 1 per cent in any one year.

- (2) Despite any other provision, an Authority may designate a flood level that allows a risk of flooding to exist in the use of lands.

205 Declarations by the Minister

- (1) The Minister may, by Order published in the Government Gazette, declare any area to be an area of land liable to flooding or to be a floodway area.

S. 205(1)
amended by
No. 12/1996
s. 9(1).

- (2) A declaration may only be made—

- (a) at the request of an Authority that has the functions referred to in section 202(1)(a), (b) and (c) or that has the functions referred to in section 202(2)(a), (b) and (c);

S. 205(2)(a)
amended by
No. 12/1996
s. 8(4),
substituted by
No. 85/2006
s. 88.

- (b) in the case of a declaration of an area to be an area of land liable to flooding, on the basis of flood levels declared by the Authority under section 203 or, where flood levels have not been declared, on the basis of the Authority's best estimate of the area liable to flooding from a flood event which has a probability of occurrence of 1 per cent in any one year; and

S. 205(2)(b)
amended by
No. 12/1996
s. 9(2)(3).

- (c) in the case of a declaration of an area to be a floodway area, on the basis of the Authority's best estimate of the area constituting the high hazard area of the floodplain comprising active flow paths or storage areas or both.

S. 205(2)(c)
inserted by
No. 12/1996
s. 9(3).

- (3) Before requesting a declaration, an Authority must—
 - (a) notify any council or public statutory body that functions in the area of its intention; and
 - (b) notify the owners of land within the area of its intention, and advise them that they may, within 6 weeks after the date of the notice, make a submission to the Authority.
- (4) An Authority must, before requesting a declaration, consider any submissions received under subsection (3).

206 Notice of declarations

- (1) As soon as practicable after an Order is published in the Government Gazette under section 205, the Authority that requested the making of the Order must—
 - (a) publish notice of the Order in a newspaper circulating generally in the area affected; and
 - (b) notify any council or public statutory body that functions in the area; and
 - (c) notify the Secretary to the Department and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration; and
 - (d) notify the owners of land in the area.
- (2) A responsible authority referred to in subsection (1)(c) must, in relation to any planning scheme, have regard to the particulars of the declaration.
- (3) A council or other public statutory body that has power to do so must prevent land uses that are inconsistent with any identified flood hazards.

S. 206(1)(c)
amended by
Nos 46/1998
s. 7(Sch. 1),
85/2006 s. 89.

207 Review of declarations

- (1) A person who is aggrieved by a declaration, revocation or variation under section 203 or a declaration under section 205 may apply, within 1 month after publication of the declaration, revocation or variation, to the Minister for review.
- (2) The Minister must notify the applicant of his or her decision on the application.
- (3) Subsection (1) does not apply if the person is aggrieved by a variation that was made at the direction of the Minister as a result of an earlier application by that person.

208 Control of works and structures³⁸

- (1) A person other than a public statutory body must not, without the Authority's consent (being an Authority to which this Division applies and that has the function referred to in section 202(1)(d) or (e) or referred to in section 202(2)(d) or (e))—
 - (a) cause or permit the undertaking or erection, within an area of land declared to be liable to flooding or declared to be a floodway area, of works or structures that may have the effect of—
 - (i) controlling or mitigating floodwaters; or
 - (ii) discharging stormwater; or
 - (iii) excluding tidal water; or
 - (iv) concentrating or diverting floodwater or stormwater; or

S. 208(1)
amended by
Nos 12/1996
s. 8(5),
85/2006
s. 90(1),
32/2010
s. 77(Sch.).

S. 208(1)(a)
amended by
No. 12/1996
s. 9(4).

- (b) cause or permit the undertaking or erection of works or structures between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (c) after service of a notice of contravention on the person under section 151; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

S. 208(2)
amended by
Nos 12/1996
s. 8(6),
85/2006
s. 90(2).

- (2) A public statutory body that intends to undertake works or erect structures of a kind referred to in subsection (1)(a) or in a place referred to in subsection (1)(b) must, before undertaking the works or erecting the structures, notify the Authority (being an Authority to which this Division applies and that has the function referred to in section 202(d) or (e) or referred to in section 202(2)(d) or (e)) of its intention and take into account any comments made by the Authority.
- (3) Sections 153 and 154 apply to the determination of a dispute between a public statutory body and an Authority as if a notification under subsection (2) were a notice under section 153(2).
- (4) If works or structures are undertaken or erected in contravention of this section, the Authority may, by notice in writing to the owner of the affected land, require the owner to demolish or modify the works or structures as specified in the notice.

- (5) An owner must comply with the notice within 14 days after service.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (6) If an owner fails to comply with the notice within 14 days, or if there is an emergency, the Authority may—
- (a) enter the land and carry out the demolition or modification specified in the notice; and
 - (b) recover its costs of doing so as a debt due to it from the owner of the land.

209 Removal of existing works and structures

- (1) An Authority to which this Division applies and that has the function referred to in section 202(1)(d) or (e) or referred to in section 202(2)(d) or (e) may, by notice in writing to the owner of the affected land, require the owner to allow the Authority to enter the land and demolish or modify any works or structures that—

S. 209(1)
amended by
Nos 12/1996
s. 8(7),
85/2006 s. 91,
32/2010
s. 77(Sch.).

s. 210

S. 209(1)(a)
amended by
No. 12/1996
s. 9(5).

(a) are within an area liable to flooding or a floodway area, or between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared; and

S. 209(1)(b)
amended by
No. 12/1996
s. 9(6).

(b) existed at the time of the declaration of the area liable to flooding or of the floodway area or of the building line.

S. 209(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.26).

(2) An owner on whom a notice under subsection (1) is served may, within 60 days after service, apply to the Tribunal for review of the decision of the Authority to demolish or modify the works or structures.

(3) The Authority may—

(a) if no application is made under subsection (2), after 60 days after the service of the notice; and

(b) if an application is made, after determination of the application in favour of the Authority—

carry out the demolition or modification.

S. 210
amended by
No. 52/1998
s. 311(Sch. 1
item 105.26).

210 Compensation

In determining an application under section 209(2), the Tribunal may make any order for the payment of compensation that it thinks appropriate.

211 Indemnities

An Authority is not liable for any loss or damage sustained, directly or indirectly, as a result of a declaration under section 203 or an Order under section 205.

212 Availability of information

- (1) An Authority must make sure that information about any flood levels, flood fringe areas, building lines and areas of land declared to be liable to flooding or to be floodway areas is readily available for inspection by the public, free of charge, during business hours.
- (2) Despite subsection (1), Melbourne Water Corporation may impose a charge under section 264 for any information given under subsection (1).

S. 212
amended by
Nos 12/1996
s. 9(7),
85/2006 s. 92
(ILA s. 39B(1)).

S. 212(2)
inserted by
No. 85/2006
s. 92.

Division 5—Water management schemes

213 Functions of the Minister

The Minister has the following functions in relation to water management schemes throughout the State—

- (a) to cause assessment and investigations connected with water resources and the environment in connection with waterways to be undertaken;
- (b) to cause schemes for the improved management of waterways, drainage and floodplains to be prepared and implemented;
- (c) to develop public education programs for promoting broad community awareness of the role of waterway management authorities in the overall resource conservation and development in Victoria.

214 Investigations

- (1) The Minister may, if he or she decides that an investigation in relation to water management should be carried out, publish in the Government Gazette and in a newspaper circulating generally in the affected area a notice which—

-
- (a) states the intention of the Minister to appoint a community-based committee to carry out the investigation; and
 - (b) briefly describes the proposal to be investigated; and
 - (c) describes the general area affected by the proposal.
 - (2) The following provisions apply with respect to the membership of a committee appointed under this section—
 - (a) more than one half of the membership must consist of persons who are owners or occupiers of land in the affected area;
 - (b) any council whose municipal district is wholly or partly within the affected area must be represented on the committee;
 - (c) any public statutory body which the Minister considers to be directly affected by the proposal must be represented on the committee;
 - (d) the Minister must make sure that, so far as possible, all relevant interests (including environmental interests) are fairly represented on the committee.
 - (3) The Minister must give the committee sufficient resources to enable it to carry out the investigation.
 - (4) Subsections (2) to (6) of section 318 apply to a committee appointed under this section.
 - (5) The committee must carry out an investigation in accordance with the terms of the notice.
-

- (6) In carrying out an investigation, the committee must consult with all public statutory bodies that function in the area affected by the proposal.
- (7) A committee performing functions under this section, section 215 or section 216 performs those functions as the delegate of the Minister.

215 Water management schemes

- (1) When it has completed an investigation into a proposal the committee may prepare a water management scheme for the area affected by the proposal.
- (2) When it has prepared a water management scheme the committee must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice which—
 - (a) states that the scheme has been prepared; and
 - (b) states where the scheme is available for inspection; and
 - (c) states the nature of the scheme and a description of it; and
 - (d) if the scheme provides for the execution of works, calls for all people affected by the proposed works to make submissions to the committee within 6 weeks after the date of publication in the Government Gazette.
- (3) The committee may modify the scheme as a result of any submission made in response to the notice.
- (3A) The committee may submit the scheme to the Minister for his or her acceptance.

S. 215(2)(d)
amended by
No. 12/1996
s. 10(1).

S. 215(3)
amended by
No. 12/1996
s. 10(2).

S. 215(3A)
inserted by
No. 12/1996
s. 10(3).

s. 215

S. 215(3B)
inserted by
No. 12/1996
s. 10(3).

(3B) The Minister may—

- (a) accept the scheme as submitted by the committee; or
- (b) reject the scheme; or
- (c) modify the scheme and accept the scheme as so modified.

S. 215(4)
amended by
No. 12/1996
s. 10(4)(a).

(4) The Minister must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice—

S. 215(4)(aa)
inserted by
No. 12/1996
s. 10(4)(b).

(aa) that states whether the scheme has been accepted or rejected;

S. 215(4)(a)
amended by
No. 12/1996
s. 10(4)(c).

- (a) if the scheme has been accepted, that states that no modifications have been made to the scheme; or
- (b) if modifications have been made, that gives details of the modifications.

S. 215(5)
amended by
No. 12/1996
s. 10(5),
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.27).

(5) A person whose interests are affected by a decision of the Minister under subsection (3B) may apply to the Tribunal for review of the decision.

S. 215(6)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.27).

(6) An application for review must be made within 28 days after the later of—

- (a) the day on which the relevant notice is published under subsection (4);
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

216 Approval of schemes

- (1) At least 6 weeks after the notice required by section 215(2) is published, and after any applications to the Tribunal have been determined, the Minister may by Order published in the Government Gazette and in a newspaper circulating generally in the area affected—
 - (a) declare the scheme to be an approved scheme; and
 - (b) nominate the Authorities or, with its or their agreement, the council or councils responsible for implementing the scheme.
- (2) After an Order has been published, an Authority or council nominated in the Order must notify the Secretary to the Department of Infrastructure and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the scheme.
- (3) A responsible authority referred to in subsection (2) must, in relation to any planning scheme, have regard to the provisions of the approved scheme.
- (4) Any area that benefits from or is affected by the scheme may be identified in the Order as an area for which the Authority may, in accordance with Part 13, impose fees under a tariff or require contributions from other Authorities or councils under Part 13 to fund the scheme.
- (5) The period (if limited) for which the tariff may be imposed must be specified in the Order.

S. 216(1)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.28).

S. 216(1)(b)
amended by
No. 12/1996
s. 11(1).

S. 216(2)
amended by
Nos 12/1996
s. 11(2),
46/1998
s. 7(Sch. 1).

217 Removal or modification of works

The Authority or council responsible for implementing a water management scheme approved under section 216 may apply to the Tribunal under Division 2 of Part 2 for an Order

S. 217
amended by
Nos 12/1996
s. 11(3),
52/1998
s. 311(Sch. 1
item 105.28).

with respect to the removal or modification of any works that—

(a) cause a flow of water which is not reasonable, or interfere with a reasonable flow; and

(b) are identified in that scheme—

whether or not the Authority or council owns the land on which those works are situated.

Division 6—Drainage courses

218 Drainage courses³⁹

S. 218(1)
amended by
No. 62/1995
s. 36(1).

(1) Subject to subsection (2), the Minister may declare any area of land along which water flows (whether continuously, intermittently or occasionally) or any designated works referred to in section 188(1) to be a drainage course.

(2) The Minister must not make a declaration unless—

(a) an application has been made to the Minister by—

(i) any Authority or public statutory body that is responsible for any drainage or related functions in that vicinity; or

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S. 218(2)(a)(ii)
amended by
No. 50/1992
s. 10(Sch.
item 11.27),
repealed by
No. 65/1995
s. 22(k).

(b) the applicant has—

(i) published, in the Government Gazette and in a newspaper circulating generally in the area concerned, a notice stating the terms of the application and advising that

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- submissions are invited within 6 weeks after the publication of the notice; and
- (ii) sent a copy of the notice to any relevant council, to the owner or occupier of any land in the vicinity and to the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**; and
- (c) the Minister has considered any submissions received within 6 weeks after publication of the notice.
- (3) A declaration under subsection (1) must be made by notice in writing which—
- (a) is published in the Government Gazette; and
- (b) is published in a newspaper circulating generally in the area in which the drainage course is located; and
- (c) adequately describes the drainage course; and
- (d) specifies the Authority or public statutory body having the management and control of the drainage course.
- (4) The Minister must—
- (a) send a copy of the notice to every Authority or public statutory body that may have an interest in the land or works declared to be a drainage course; and
- (b) notify the Secretary to the Department and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration.
- (5) The Minister may, by notice in writing in accordance with subsection (3), revoke a declaration, wholly or in part—
- S. 218(4)(a) amended by No. 62/1995 s. 36(2).
- S. 218(4)(b) amended by Nos 46/1998 s. 7(Sch. 1), 85/2006 s. 93.
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- (a) on application by any person or body referred to in subsection (2)(a); and
 - (b) if the Minister is satisfied that the whole or any part of the area subject to the declaration should no longer be subject to it.
- (6) Section 207 applies to a declaration under subsection (1) or a revocation under subsection (5) as if it were a declaration under section 203.
- (7) The Authority or public statutory body must act in accordance with a management plan for the drainage course that is approved by the Minister, and a responsible authority referred to in subsection (4) must, in relation to any planning scheme, have regard to the particulars of the declaration.
- (8) The Authority or public statutory body having the management and control of the drainage course may at any time by notice in writing to the owner or occupier of any land in the drainage course (or, with the consent of the Minister, to any other public statutory body) require the owner or occupier or the other public statutory body—
 - (a) to remove anything obstructing or interfering with the flow of water in the drainage course; or
 - (b) to carry out any works that are reasonably necessary to control that flow; or
 - (c) to maintain any structure or works in the drainage course in such a condition so as not to obstruct or interfere with that flow.
- (9) A person whose interests are affected by a decision of the Authority or public statutory body to make a requirement under subsection (8) may apply to the Tribunal for review of the decision.

S. 218(9)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.29).

- (9A) An application for review must be made within 28 days after the later of—
- (a) the day on which the requirement is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the requirement, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (10) A public statutory body must—
- (a) comply with a requirement of the kind referred to in subsection (8)(a) or (b) within 1 month after the making of the requirement, or any longer period that the Authority or public statutory body making the requirement allows; and
 - (b) comply with a requirement of the kind referred to in subsection (8)(c).

S. 218(9A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.29).

Penalty: 20 penalty units.

- (11) An owner or occupier of land in a drainage course must—
- (a) comply with a requirement of the kind referred to in subsection (8)(a) or (b)—
 - (i) if there has been no application for review under subsection (9)—within one month after the expiry of the time during which the person is entitled to apply, or any further period that the Authority or public statutory body allows; and

- (ii) if there has been an unsuccessful application—within one month after the disallowance of the application, or any further period that the Authority or public statutory body allows; and
- (b) comply with a requirement of the kind referred to in subsection (8)(c)—
 - (i) if there has been no application for review under subsection (9)—as from the expiry of the time during which the person is entitled to apply; and
 - (ii) if there has been an unsuccessful application—as from the disallowance of the application.

Penalty: 20 penalty units.

- (12) A person must not, except in accordance with a requirement made under subsection (8) or with the consent of the Authority or public statutory body in any manner interfere with or obstruct the flow of water in a drainage course.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

- (13) If an Authority or a public statutory body has refused to consent to an interference with or obstruction of the flow of water in a drainage course, the person seeking the consent may, within 60 days after being notified of the refusal, apply to the Tribunal for review.
- (14) An Authority or a public statutory body may, subject to the expiry of any relevant period referred to in subsection (10) or subsection (11), enter into and remain on the drainage course for the purpose of doing anything that an owner or occupier of land in the drainage course or a public statutory body has failed to do in compliance with a notice under subsection (8).
- (15) Any costs or expenses incurred by an Authority or a public statutory body in exercising the powers conferred on it by subsection (14) are a civil debt recoverable summarily from the owner or occupier of the land on which the powers are exercised, or the other public statutory body concerned, in any court of competent jurisdiction.

S. 218(13)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.30).

Division 7—By-laws

219 By-laws

S. 219
amended by
No. 121/1994
s. 190(21)(a).

- (1) An Authority that has functions under Division 2 of this Part may, in accordance with section 160, make by-laws for or with respect to—
- (a) preventing or minimising interference with or obstruction of the flow of water;
 - (b) preventing or minimising the silting up of a designated waterway or designated land or works or any injury to or pollution of it or

S. 219(1)
amended by
No. 85/2006
s. 94(1).

s. 219

them, including prohibiting the deposit of any material in or near it or them;

(c) prohibiting or regulating the removal of any material from land forming part of a designated waterway or designated land or works;

S. 219(1)(d)
amended by
No. 85/2006
s. 94(2).

(d) regulating activities carried out on land forming part of a designated waterway or designated land or works;

(e) the general management and control of any designated waterway or designated land or works.

S. 219(1A)
inserted by
No. 65/1995
s. 20,
repealed by
No. 66/2000
s. 32.

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S. 219(2)
inserted by
No. 121/1994
s. 190(21)(b),
repealed by
No. 66/2000
s. 32.

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PART 11—IRRIGATION

Pt 11
(Heading and
ss 220–232)
amended by
Nos 49/1994
s. 7, 121/1994
s. 194, 62/1995
ss 20–22, 24–
27, 110/1997
ss 15(4)(5), 19,
20, 35/1998
s. 21(3),
52/1998
s. 311(Sch. 1
items 105.31–
105.35),
85/1998
s. 24(Sch.
items 66.3–
66.5), 22/1999
ss 3(6), 4,
48/2003
s. 12(3),
substituted as
Pt 11
(Heading and
ss 220–231)
by No.
99/2005 s. 61.

Division 1—General

220 Definitions and application

S. 220
substituted by
No. 99/2005
s. 61.

(1) In this Part—

conditions determination means a determination
of an Authority under section 227;

delivery determination means a determination of
an Authority under section 223;

serviced property means a property in respect of
which a declaration under section 144(1)(c)
of the Act has been made by the Authority in
whose irrigation district the property is
situated.

(2) This Part applies to an Authority that has an
irrigation district.

Division 2—Functions, powers and duties of Authorities

S. 221
substituted by
No. 99/2005
s. 61.

221 Functions of Authorities under this Part

An Authority has the following functions in relation to the irrigation district of the Authority—

- (a) to provide, manage and operate systems for the delivery of water to lands and appropriate drainage and protection of those lands;
- (b) to identify community needs relating to irrigation, drainage and salinity mitigation, and plan for the future needs of the community relating to irrigation, drainage and salinity mitigation;
- (c) to develop and implement programs for improved irrigation practices, improved drainage practices and improved salinity mitigation practices;
- (d) to investigate any matter related to its functions, powers and duties in relation to irrigation, drainage and salinity mitigation.

S. 222
substituted by
No. 99/2005
s. 61.

222 General powers and duties of Authorities under this Part

- (1) An Authority, subject to the provisions of this Part—

S. 222(1)(a)
amended by
No. 85/2006
s. 95.

- (a) must provide the service of delivering water to the owner or occupier (where the occupier is not the owner) of each serviced property in its irrigation district—

S. 222(1)(a)(i)
substituted by
No. 85/2006
s. 95.

- (i) for the purpose of irrigation; and

(ii) for stock and domestic use—

S. 222(1)(a)(ii)
substituted by
No. 85/2006
s. 95.

at the volumes and for the periods that are determined by the Authority in accordance with this Part; and

- (b) may provide the service of delivering water to the owner or occupier of any property in its irrigation district; and
 - (c) may sell water the Authority owns or is authorised to take and use under a bulk entitlement to the owner or occupier of any land, whether within or outside its irrigation district.
- (2) A service provided by an irrigation Authority under subsection (1) may be provided on any terms and conditions that are set out in a determination of the Authority.
- (3) An Authority is not required to provide the service of delivering water to the owner or occupier of land under subsection (1), if—
- (a) the owner is not the holder of a water-use licence or water-use registration (as the case requires); or
 - (b) neither the owner nor the occupier of the land has a water allocation.
- (4) Nothing in this Act entitles any person to a service under subsection (1) other than during an irrigation period.

Division 3—Specific provisions as to volume and period of delivery

S. 223
substituted by
No. 99/2005
s. 61.

223 Authority to determine volumes and periods of delivery

- (1) An Authority, when commencing the service of delivering water for irrigation or for domestic and stock use to a serviced property under section 222(1), must determine the volumes at which and the periods for which the water is to be delivered for irrigation or stock and domestic use to that property.
- (2) A determination under subsection (1) may apply to more than one serviced property in a declared water system in an irrigation district of the Authority.
- (3) A determination under subsection (1) must be in writing and must be made in the manner set out in a conditions determination of the Authority.

S. 224
substituted by
No. 99/2005
s. 61.

224 Variation of delivery determinations on application

- (1) An Authority may, on receiving an application to do so by the owner of a serviced property within the irrigation district of the Authority, vary a delivery determination that applies to that property by varying either or both the volumes at which and periods for which water is to be delivered to that property.
- (2) On the making of a determination under subsection (1), the determination is deemed to have effect as so varied.
- (3) In making a determination under subsection (1), the Authority must have regard to any matters set out in any conditions determination of the Authority.

- (4) An owner of a serviced property may apply to an Authority for variation of a determination under subsection (1) in relation to that property.
- (5) An Authority may refuse to make a determination under this section that reduces the level of service to the owner of a property unless the owner pays to the Authority an amount that the Authority reasonably believes represents the present value of fees that would otherwise be payable, under a tariff under section 259(1), by the owner of the property in respect of the irrigation service provided by the Authority before the variation.

225 Variation of delivery determination on motion of Authority

S. 225
substituted by
No. 99/2005
s. 61.

- (1) An Authority may, on its own motion, vary a delivery determination it has made by varying either or both the volumes at which and the periods for which water is to be delivered to a property or any of the properties to which the delivery determination relates.
- (2) On the making of a determination under subsection (1), the delivery determination is deemed to have effect as so varied.
- (3) A determination under this section that applies to more than one property, must apply the variation to all such properties equally.
- (4) In making a determination under subsection (1), the Authority—
 - (a) must have regard to the matters (if any) set out in any conditions determination of the Authority; and
 - (b) must make the determination in the form and manner and in accordance with the process (if any) set out in any conditions determination of the Authority.

S. 226
substituted by
No. 99/2005
s. 61.

226 Determination to transfer volume or periods

- (1) An Authority may, on receiving an application to do so from the owners of two parcels of land in an irrigation district of the Authority, determine to transfer to one of the parcels of land specified in the application the whole or a part of—
 - (a) either or both the volumes at which and the periods for which water is to be delivered to the other parcel of land specified in the application; or
 - (b) either or both the volumes at which and the periods for which water is to be delivered to the other parcel of land specified in the application, for the limited period of time that is specified in the application.
- (2) An Authority must refuse an application under subsection (1)(a) if consent has not been obtained to the application to transfer a volume or period from any one of the mortgagees of any parcel of land from which the volume or period is being transferred.
- (3) If the Authority refuses an application under subsection (1), the Authority must give the applicants reasons for that refusal.
- (4) On making of a determination under subsection (1), any delivery determination that relates to either parcel of land is deemed to have effect in accordance with the transfer of the volumes and periods.
- (5) For the purposes of a transfer under subsection (1), the Authority may—
 - (a) where a delivery determination ceases to apply to a parcel of land, declare that the land ceases to be a serviced property, or where the case so requires, that the land is a serviced property; or

S. 226(2)
substituted by
No. 85/2006
s. 96.

- (b) where a delivery determination commences to apply to a parcel of land, declare the land to be a serviced property.
- (6) In making a determination under subsection (1), the Authority must have regard to any matters set out in any conditions determination of the Authority.
- (7) The owners of parcels of land in the irrigation district of an Authority may apply to the Authority for a determination under subsection (1).

Division 4—Conditions and Ministerial directions as to delivery

227 Authority to fix terms and conditions for the service of delivering water

S. 227
substituted by
No. 99/2005
s. 61.

- (1) An Authority may determine—
 - (a) in addition to any power to make determinations under Division 3, the terms and conditions on which it provides a service under section 222(1); and
 - (b) any conditions required to be determined for the purposes of Division 3.
- (2) A determination under subsection (1) must be—
 - (a) published by the Authority; or
 - (b) made available at the offices of the Authority.
- (3) A determination under subsection (1)—
 - (a) may be amended or revoked by the Authority in the same manner as that in which it is made; and
 - (b) remains in force until such time as it is so revoked.

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- (4) The conditions specified in the determination may deal with all or any of the following matters—
- (a) the circumstances in which an approval to a variation under section 224 is conditional on the payment of an amount under section 224(5); and
 - (b) rules for restricting delivery as a result of insufficient capacity in the works of the Authority; and
 - (c) the circumstances in which the Authority will agree with an owner to provide a different level of service to a serviced property; and
 - (d) the circumstances in which the Authority will make a determination under section 224, 225 or 226; and
 - (e) the circumstances in which a declaration that a property is no longer a serviced property is conditional on the payment of an amount under section 229(6); and
 - (f) matters to be taken into account in determining the amount to be payable under sections 224(5) and 229(6); and
 - (g) methods by which disputes as to the interpretation or operation of the determination may be settled; and
 - (h) any other matter or thing that is, in the opinion of the Authority, necessary for the service to be delivered.

228 Ministerial directions

S. 228
substituted by
No. 99/2005
s. 61.

- (1) The Minister may, from time to time, by notice in writing, give directions to Authorities on any matter about which a condition may be specified under section 227(4).
- (2) The Minister must cause a notice under subsection (1) to be published in the Government Gazette.

Division 5—Miscellaneous

229 Declaration that property not to be serviced property

S. 229
substituted by
No. 99/2005
s. 61.

- (1) An owner of a serviced property in an irrigation district may apply to the Authority for that district for a declaration under subsection (2).
- (2) On receiving an application under subsection (1), the Authority may, by notice in writing, declare the serviced property to which the application relates to cease to be a serviced property.
- (3) An Authority must refuse an application under subsection (1) if the consent of any one of the recorded mortgagees of the serviced property has not been obtained to the application.
- (4) A notice under subsection (2) must be given to the owner of the property.
- (5) The notice must—
 - (a) specify the serviced property to which it applies; and
 - (b) fix a date on and from which the land must be taken to not to be a serviced property for the purposes of this Act.

s. 230

- (6) An Authority may refuse to make a declaration under this section unless the owner of the property pays to the Authority an amount that the Authority reasonably believes represents the present value of fees that would otherwise be payable by the owner of the property in respect of the irrigation service provided by the Authority under a tariff under section 259(1).
- (7) This section does not affect the power of an Authority to make a declaration under section 144.

S. 230
substituted by
No. 99/2005
s. 61.

230 Form of applications under this Part

An application under section 224, 226 or 229 must—

- (a) be in a form approved by the Authority; and
- (b) contain any prescribed particulars; and
- (c) be accompanied by any documents or information required by the Authority; and
- (d) be accompanied by the fee fixed by the Authority.

S. 230(c)
amended by
No. 85/2006
s. 97.

Division 6—Powers to reduce etc. delivery service

S. 231
substituted by
No. 99/2005
s. 61.

231 Authority may reduce, restrict or discontinue delivery of water

- (1) An Authority may reduce or restrict the period over which water is to be delivered to any serviced property, or discontinue the delivery of water to any serviced property, if—
 - (a) the Authority is, because of insufficient capacity unable to deliver water to the property; or

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- (b) any private works for the delivery of water to the property—
- (i) are, in the opinion of the Authority, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 150 and not complied with by the time specified or allowed under that section; or
 - (ii) do not, in the opinion of the Authority, comply with the regulations; or
- (c) the owner of the serviced property has contravened this Act, the regulations or the Authority's by-laws in relation to the taking of water; or
- (d) the owner of the serviced property has refused entry to an authorised officer who intended to exercise powers conferred by or under this Act to investigate any suspected contravention of this Act, the regulations or the Authority's by-laws in relation to the taking of water; or
- (e) the owner of the serviced property has refused or failed to pay any money due to the Authority for the delivery of water to the serviced property.
- (2) An Authority must reduce the delivery of water under subsection (1)(a) to all serviced properties in the same proportion.
- (3) An Authority that reduces, restricts or discontinues the delivery of water to a serviced property may reduce or waive any amount of money payable to it for the delivery of water to the serviced property.
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- (4) An Authority may reduce or restrict the quantity of water delivered to a serviced property or discontinue the supply of water to a serviced property under subsection (1)(b), (c), (d) or (e) if it decides that the required circumstances exist, whether or not it has been proved to the satisfaction of a court that those circumstances do exist.
- (5) A person may apply to the Tribunal for review of the Authority's decision to discontinue the delivery of water to the serviced property under subsection (1)(c).
- (6) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 232
repealed by
No. 99/2005
s. 61.

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PART 12—ACCESS OVER LANDS

233 Definitions and application

- (1) In this Part, a reference to the owner of land includes a reference to—
 - (a) a person who acts with the consent of the owner; and
 - (b) a committee as defined in section 244; and
 - (c) a person who holds the land as executor or administrator or trustee.
- (2) An agreement entered into under this Part by a person acting with the consent of the owner of land must be taken to have been entered into by that owner.
- (3) An agreement entered into by a committee must be taken to have been entered into by each participating landowner.
- (4) Nothing in this Part empowers an Authority to seek or obtain a right of access in favour of land, whether or not that land is owned by the Authority.
- (5) In this Part, a reference to an agreement under section 234 includes a reference to a declaration under section 234(5).

S. 233(1)(b)
amended by
No. 62/1995
s. 33(1).

S. 233(1)(c)
inserted by
No. 62/1995
s. 33(1).

S. 233(5)
inserted by
No. 62/1995
s. 33(2).

234 Access by agreement

- (1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person may give notice to—

s. 235

- (a) the other owner; and
 - (b) to the occupier of the land over which access is sought, if the owner is not the occupier.
- (2) Once notice has been given, the owner giving notice must try to arrange that access by agreement with the other owner.
- (3) An agreement must—
 - (a) specify any compensation agreed to; and
 - (b) clearly describe the access agreed to; and
 - (c) be accompanied by a map of the land which shows the location and measurements of the proposed works.
- (4) An agreement made between the owner of one or more parcels of land and another owner must specify each parcel of land over, or in favour of, which the right of access is created.
- (5) An owner of more than one parcel of land who wishes to create a right of access over one parcel in favour of another parcel may declare in writing in the form approved by the Minister that such right of access has been created.

S. 234(4)
inserted by
No. 62/1995
s. 33(3).

S. 234(5)
inserted by
No. 62/1995
s. 33(3).

235 Access without agreement

- (1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person and who gives notice under section 234(1) may, if agreement has not been reached with the other owner about access within one month after service of the notice on the other owner, apply to the Minister for the appointment of an Authority to decide the issue.

S. 235(1)
amended by
No. 85/2006
s. 98.

S. 235(1)(a)
repealed by
No. 85/2006
s. 98.

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S. 235(1)(b)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.36),
repealed by
No. 85/2006
s. 98.

- (2) The Minister must make an appointment if an application is made.
- (3) In deciding whether a right of access should be created over land, the appointed body must have regard to the following—
 - (a) whether any damage will be caused to the property of the owner of the land;
 - (b) whether that owner may be fully compensated for that damage by money or otherwise.
- (4) If the appointed body decides that a right of access should be created over land, that body must decide the nature and extent of that right and of the works that may be constructed on that land.
- (5) A decision of the appointed body is, subject to subsection (6), binding on the parties and may include any order that the body thinks fit for the payment of compensation.
- (6) A person whose interests are affected by the decision of the appointed body under subsection (1) may apply to the Tribunal for review of the decision.
- (6A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the

S. 235(6)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.37).

S. 235(6A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.37).

decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 235(7)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.38).

- (7) On an application for review under subsection (6) the Tribunal may make any order that it thinks fit for the payment of compensation.

236 Registration of right of access

S. 236(1)
substituted by
No. 85/1998
s. 24(Sch
item 66.6).

- (1) An agreement under section 234, or a decision under section 235, by virtue of which a right of access is created over, or in favour of, land has no effect until it is recorded in the Register under the **Transfer of Land Act 1958**.
- (2) An agreement or a decision referred to in subsection (1) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

S. 236(3)(4)
repealed by
No. 85/1998
s. 24(Sch
item 66.7).

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S. 236(5)
amended by
Nos 62/1995
s. 34(1),
85/1998
s. 24(Sch
item 66.8).

- (5) The owner of the land in favour of which the right of access is created must lodge the agreement or decision for registration within one month after the agreement or decision is made.

S. 236(6)
amended by
No. 85/1998
s. 24(Sch
item 66.8).

- (6) If the person referred to in subsection (5) does not comply with that subsection, the owner of the land over which the right of access is created may register the agreement or decision and recover the reasonable costs of doing so from that person.

- (7) If requested to do so by a party referred to in section 237(1), the Registrar of Titles must, in registering the agreement or decision, do both or either of the following—

S. 236(7)
inserted by
No. 50/1992
s. 8(1).

- (a) dispense with the submission of any certificate of title or other document;
- (b) register the agreement or decision by recordings in the relevant folio of the Register only.

- (8) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of an agreement or decision registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 236(8)
inserted by
No. 85/1998
s. 24(Sch
item 66.9).

237 Revocation or variation of right of access

- (1) The parties or the successors in title of the parties—
- (a) to an agreement under section 234; or
 - (b) to a dispute decided by a body appointed by the Minister under section 235; or
 - (c) to an agreement made or altered as a result of an order of the Tribunal—

S. 237(1)
amended by
No. 62/1995
s. 33(4).

S. 237(1)(c)
amended by
No. 52/1998
s. 311(Sch. 1
item
105.39(a)).

may, by agreement, revoke or vary the terms of the original agreement or decision.

- (2) If the parties referred to in subsection (1) do not agree on any proposed revocation or variation within 1 month after the party proposing it notifies the other parties, any party may apply to the Minister for the appointment of an Authority to decide the issue.

S. 237(2)
amended by
No. 85/2006
s. 99.

Water Act 1989
No. 80 of 1989
Part 12—Access Over Lands

s. 238

S. 237(2)(a)
repealed by
No. 85/2006
s. 99.

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S. 237(2)(b)
substituted by
No. 52/1998
s. 311(Sch. 1
item
105.39(b)),
repealed by
No. 85/2006
s. 99.

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S. 237(3)
amended by
No. 52/1998
s. 311(Sch. 1
item
105.39(c)).

- (3) Section 235(5), (6), (6A) and (7) applies in relation to a decision under subsection (2) as if it were a decision under section 235(1).
- (4) Section 236 applies to an agreement under subsection (1) and a decision under subsection (2) as if they were an agreement under section 234 and a decision under section 235 respectively.

238 Maintenance of works

- (1) The owner of land in favour of which a right of access is created may enter the land over which the right of access is created to instal, remove, alter or maintain any works on the land over which the right of access is created that are necessary for the use of the right of access.
- (2) If that owner fails to maintain those works, the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of his or her intention to carry out the maintenance and recover from the other owner the reasonable costs of that maintenance, maintain the works and recover those costs.

- (3) If a dispute arises over the maintenance or the costs of it, either owner may apply to the Minister for the appointment of an Authority to decide the issue.

S. 238(3)
amended by
No. 85/2006
s. 100.

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S. 238(3)(a)
repealed by
No. 85/2006
s. 100.

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S. 238(3)(b)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.40),
repealed by
No. 85/2006
s. 100.

- (4) Section 235(5), (6) and (7) applies in relation to a decision under subsection (3) as if it were a decision under section 235(1).

239 Breaking up roads in maintaining etc. works

- (1) The owner of land in favour of which a right of access is created may, subject to this Part, do any thing necessary to construct, maintain and alter works in the land over which the right of access is created, including breaking up the surface of any road.
- (2) Before breaking up the surface of a road, the owner must give 14 days' notice to the person responsible for maintaining the road.
- Penalty: 10 penalty units.
- (3) The person responsible for maintaining the road may, if that person thinks fit, supervise the work.
- (4) The owner must do as little damage as possible in exercising powers under subsection (1), and must, after exercising those powers, return the site, so far as possible, to the state it was in before the work was started.

Penalty: 10 penalty units.

- (5) If the owner fails to comply with subsection (4), the person responsible for maintaining the road may, after giving the owner 14 days' notice of that person's intention to carry out the necessary works and recover from the owner the reasonable costs of those works, carry out the works and recover those costs.
- (6) If the owner of land in favour of which a right of access is created—
 - (a) does not do as little damage as possible in exercising powers under subsection (1); and
 - (b) after exercising those powers, does not return the site, so far as possible, to the state it was in before the work was started—

the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of its intention to carry out the necessary works and recover from the other owner the reasonable costs of those works, carry out the works and recover those costs.

240 Penalty for obstructing works

A person must not—

- (a) wilfully obstruct any person carrying out any works under this Part; or
- (b) wilfully damage or obstruct any such works.

Penalty: 20 penalty units.

241 Notice that right of access is sought over public land

- (1) If land in respect of which a right of access is sought is owned by the Crown, the notice required under section 234(1) must be served on the Minister administering the **Conservation, Forests and Lands Act 1987**, and the Minister may enter into an agreement under section 234 with the person seeking the right of access.

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- (2) If land in respect of which a right of access is sought is owned by the Public Transport Corporation, the notice required under section 234(1) must be served on that Corporation, and the Corporation may enter into an agreement under section 234 with the person seeking the right of access.
- (2A) If land in respect of which a right of access is sought is owned by Victorian Rail Track within the meaning of section 3 of the **Transport Integration Act 2010**, the notice required under section 234(1) must be served on Victorian Rail Track, and Victorian Rail Track may enter into an agreement under section 234 with the person seeking the right of access.
- (3) If the Minister or Victorian Rail Track publishes, within 8 weeks after service of the notice, a notice of dissent in the Government Gazette, the right of access is denied, despite any other provision in this Part.
- (4) If the Minister or Victorian Rail Track publishes a notice in the Government Gazette stating that an agreement under this section—
- (a) is revoked; or
- (b) is varied as specified in the notice—
- the agreement is, on the date of publication of the notice, revoked or varied as specified in the notice.
- (5) The owner of land in favour of which a right of access is created by an agreement under this section has the rights and obligations that are specified in the agreement in relation to the construction, maintenance and alteration of works in the land over which the right of access is created.
- S. 241(2A) inserted by No. 104/1997 s. 58(1), amended by No. 6/2010 s. 203(1) (Sch. 6 item 51.2).
- S. 241(3) amended by Nos 104/1997 s. 58(2), 30/2000 s. 41(1).
- S. 241(4) amended by Nos 104/1997 s. 58(2), 30/2000 s. 41(2).

- (6) Sections 236, 238 and 239 do not apply in relation to a right of access granted by an agreement under this section.

242 Joint rights of access

If a right of access over any land is sought by more than one person, those people may together—

- (a) give notice under section 234 to the owner of the land over which access is sought; and
- (b) if agreement has not been reached with that owner within one month after service of the notice, apply to the Minister for the appointment of an Authority to decide the issue.

S. 242(b)
amended by
No. 85/2006
s. 101.

S. 242(b)(i)
repealed by
No. 85/2006
s. 101.

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S. 242(b)(ii)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.41),
repealed by
No. 85/2006
s. 101.

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243 Costs of investigations

S. 243(1)
amended by
Nos 52/1998
s. 311(Sch. 1
item 105.42),
85/2006
s. 102(1).

- (1) An Authority may recover, as a debt due to it from the person who applied for its appointment, the reasonable costs of any investigations it undertakes in making a decision under this Part.

S. 243(2)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.43),
amended by
No. 85/2006
s. 102(2).

- (2) A person whose interests are affected by a decision of the Authority as to the amount of costs may apply to the Tribunal for review of the decision.

- (3) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 243(3)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.43).

244 Community drainage and salinity schemes

- (1) In this section and sections 245 and 246—

committee means a committee set up under a community agreement to act on behalf of participating landowners;

community agreement means an agreement by which a group of landowners voluntarily establishes—

S. 244(1)
def. of
community agreement
substituted by
No. 62/1995
s. 35(1).

- (a) a community drainage or salinity mitigation scheme to combat drainage or salinity problems in their area; or
 - (b) a community water supply scheme whose primary purpose is to supply water to farms.
- (2) A community agreement must—
- (a) describe in detail the works to be constructed, altered or maintained and their location; and
 - (b) clearly identify the land affected by the scheme; and
 - (c) provide for the establishment of a committee.

s. 244

S. 244(3)
substituted by
No. 85/1998
s. 24(Sch.
item 66.10).

(3) A community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

(4) A community agreement referred to in subsection (3) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

S. 244(4A)
inserted by
No. 50/1992
s. 8(2).

(4A) If requested to do so by a party to a community agreement referred to in subsection (3), the Registrar of Titles must, in registering the agreement, do both or either of the following—

(a) dispense with the submission of any certificate of title or other document;

(b) register the agreement by recordings in the relevant folio of the Register only.

S. 244(5)(6)
repealed by
No. 85/1998
s. 24(Sch.
item 66.11).

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S. 244(7)
amended by
Nos 50/1992
s. 10(Sch.
item 11.28),
49/1994
s. 5(1)(g)(i),
62/1995
ss 34(2), 35(2),
85/1998
s. 24(Sch.
item 66.12).

(7) The committee set up under a community agreement must, within 30 days after the agreement is lodged for registration under subsection (3), lodge a copy of that agreement with any Authority in whose district (being a district described in a column of item 102 of Schedule 12) and any council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated.

(8) If the scheme involves—

S. 244(8)
amended by
No. 85/1998
s. 24(Sch.
item 66.13).

(a) the outfall of the scheme's drain to works of
an Authority, the consent of that Authority
must be obtained; and

S. 244(8)(a)
amended by
Nos 50/1992
s. 10(Sch.
item 11.29),
49/1994
s. 5(1)(g)(ii).

(b) the construction of a drain across a road
reserve, the consent of the municipal council
in whose municipal district the road reserve
is situated must be obtained—

before the agreement is registered.

(9) The amendment of this section by section 24 of
the **Transfer of Land (Single Register) Act 1998**
does not affect the operation, effect or
enforcement of a community agreement registered
under the **Property Law Act 1958** before the
commencement of that section 24 and existing
immediately before that commencement.

S. 244(9)
inserted by
No. 85/1998
s. 24(Sch.
item 66.14).

245 Powers of committee

- (1) A committee may collect levies, in accordance
with the community agreement, from participating
landowners.
- (2) A committee may, if authorised by the
participating landowners, act as the agent of the
participating landowners—
 - (a) to seek access over land owned by others;
and
 - (b) to negotiate variation or revocation of the
community agreement.

Water Act 1989
No. 80 of 1989
Part 12—Access Over Lands

s. 245

S. 245(2A)
inserted by
No. 62/1995
s. 35(3).

(2A) An agreement which varies a community agreement includes an agreement which adds to or removes from the community agreement—

- (a) a participating landowner; or
- (b) land affected by the scheme established by the community agreement.

S. 245(3)
substituted by
No. 85/1998
s. 24(Sch
item 66.15).

(3) An agreement which varies or revokes a community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

S. 245(4)
repealed by
No. 85/1998
s. 24(Sch
item 66.15).

* * * * *

S. 245(4A)
inserted by
No. 50/1992
s. 8(3).

(4A) If requested to do so by a party to an agreement which varies or revokes a community agreement that affects land under the operation of the **Transfer of Land Act 1958**, the Registrar of Titles must, in registering the agreement, do both or either of the following—

- (a) dispense with the submission of any certificate of title or other document;
- (b) register the agreement by recordings in the relevant folio of the Register only.

S. 245(5)
amended by
No. 62/1995
s. 35(4).

(5) A committee may take out insurance for damage resulting from the community drainage or salinity mitigation or community water supply scheme, and for that purpose the committee must be taken to have an insurable interest.

246 Powers of Corporation and councils for community schemes

- (1) An Authority or a council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated may, if requested by the committee to do so, exercise the powers and perform the functions of the committee.
- (2) Despite anything to the contrary in any other Act, a council may, if requested under subsection (1), exercise powers and perform functions under this section where part of the affected land is situated outside the municipal district of the council.

S. 246
amended by
Nos 50/1992
s. 10(Sch.
item 11.30),
49/1994
s. 5(1)(h),
62/1995
s. 35(5)(a)(b).

S. 246(2)
inserted by
No. 62/1995
s. 35(5)(c).

PART 13—FINANCE AND ACCOUNTABILITY

Division 1—Corporate plans

Pt 13 Div. 1
(Heading and
ss 247, 248)
substituted as
Pt 13 Div. 1
(Heading
and ss 247–
249) by
No. 110/1997
s. 21.

247 Corporate plans

S. 247
substituted by
No. 110/1997
s. 21.

S. 247(1)
substituted by
No. 85/2006
s. 103(1),
amended by
No. 32/2010
s. 64.

- (1) A water corporation must prepare a corporate plan and must submit it to—
 - (a) the Minister on or before the date specified by the Minister, or, if no such date is specified, at least 2 months before it intends to implement the plan or any part of it; and
 - (b) the Treasurer, at the same time as it submits the plan to the Minister.
- (2) A corporate plan must be in or to the effect of a form approved by the Minister and must include—
 - (a) a statement of corporate intent in accordance with section 248;
 - (b) a business plan and financial statements containing the information that the Minister requires;

S. 247(2)(c)
repealed by
No. 48/2003
s. 9.

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|---|---|
| (2A) The Treasurer may make any comments on the plan that he or she thinks fit to the water corporation, and the water corporation must have regard to any comments made by the Treasurer under this subsection. | S. 247(2A)
inserted by
No. 85/2006
s. 103(2),
amended by
No. 32/2010
s. 77(Sch.). |
| (3) A water corporation may implement a corporate plan 2 months (or any shorter time allowed by the Minister) after its submission to the Minister, unless the Minister, within that time, directs in writing any variations that the Minister thinks fit to be made in any corporate plan submitted in accordance with this section. | S. 247(3)
amended by
No. 32/2010
s. 77(Sch.). |
| (4) The Minister must publish in the Government Gazette any direction made under subsection (3). | |
| (5) The Minister must not give a direction under subsection (3) without first having consulted the water corporation about the direction. | S. 247(5)
amended by
No. 32/2010
s. 77(Sch.). |
| (6) A water corporation must not make a major deviation from its corporate plan unless it has, at least 2 months (or any shorter time allowed by the Minister) before it intends to make the deviation, submitted to the Minister details of the proposed deviation. | S. 247(6)
amended by
No. 32/2010
s. 77(Sch.). |
| (7) The Minister may issue guidelines as to what are major deviations for the purposes of subsection (6). | |
| (8) The corporate plan of a water corporation at any time is that plan as varied under subsection (3), or as revised by any deviation under subsection (6), at that time. | S. 247(8)
amended by
No. 32/2010
s. 77(Sch.). |
| * * * * | S. 247(9)
repealed by
No. 48/2003
s. 9. |
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s. 248

S. 248
substituted by
No. 110/1997
s. 21,
amended by
No. 32/2010
s. 77(Sch.).

248 Statement of corporate intent: contents

Each statement of corporate intent must specify for the water corporation, in respect of the financial year to which it relates and each of the 4 following financial years, the following information—

S. 248(a)
amended by
No. 32/2010
s. 77(Sch.).

(a) the business objectives of the water corporation;

S. 248(b)
amended by
No. 32/2010
s. 77(Sch.).

(b) the main business undertakings of the water corporation;

S. 248(c)
amended by
No. 32/2010
s. 77(Sch.).

(c) the nature and scope of the activities to be undertaken by the water corporation;

S. 248(d)
amended by
No. 32/2010
s. 77(Sch.).

(d) the performance targets and other measures by which the water corporation may be judged in relation to its business objectives;

S. 248(e)
amended by
No. 32/2010
s. 77(Sch.).

(e) the kind of information to be provided to the Minister by the water corporation during the course of those financial years;

S. 248(f)
amended by
No. 32/2010
s. 77(Sch.).

(f) any other matters that may be agreed on by the Minister and the water corporation from time to time.

New s. 249
inserted by
No. 110/1997
s. 21,
amended by
No. 32/2010
s. 77(Sch.).

249 Inspection of corporate plans

A water corporation must make sure that an up to date copy of its corporate plan is available at its office during its business hours for inspection on request.

250 Board to notify Minister and Treasurer of significant affecting events etc.

If the board of directors of a water corporation forms the opinion that matters have arisen—

New s. 250 inserted by No. 85/2006 s. 104, amended by No. 32/2010 s. 77(Sch.).

- (a) that may prevent, or significantly affect, achievement of the objectives of the water corporation under the corporate plan; or
- (b) that may prevent, or significantly affect, achievement of the financial targets under the plan—

S. 250(a) amended by No. 32/2010 s. 77(Sch.).

the board of directors must immediately notify the Minister and the Treasurer of its opinion and the reasons for the opinion.

251 Report on achievement of corporate plan

New s. 251 inserted by No. 85/2006 s. 104.

- (1) The Minister or the Treasurer may, from time to time, require a water corporation to provide a report on the progress the water corporation is making in achieving any targets or objectives in its corporate plan.
- (2) A report under subsection (1) must—
 - (a) be given in the form and manner; and
 - (b) address the issues; and
 - (c) relate to the period—

S. 251(1) amended by No. 32/2010 s. 77(Sch.).

specified by the person to whom the report is to be given.

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Pt 13 Div. 2 (Heading and ss 249–251) repealed by No. 31/1994 s. 4(Sch. 2 item 106).

Division 3—Funds of Authorities

252 Use of income

Subject to this Act, an Authority may, for or in connection with, or incidental to, the performance of its functions and the achievement of its objects, use any income received by it.

253 Investment

S. 253(1)
amended by
No. 99/1993
s. 23(1).

- (1) An Authority other than a declared Authority within the meaning of Division 4, may invest its money—

S. 253(1)(a)
amended by
No. 104/1995
s. 6(Sch. 1
item 31).

- (a) in any manner in which money may be invested under the **Trustee Act 1958**; or

- (b) in any other manner that the Minister approves.

- (2) Section 4(2) of the **Trustee Act 1958** does not apply in relation to investments made under subsection (1)(a) of this section.

S. 253(3)
inserted by
No. 99/1993
s. 23(2).

- (3) A declared Authority within the meaning of Division 4 may invest its money in accordance with powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

S. 253A
inserted by
No. 110/1997
s. 23.

253A Payments by Treasurer in 1997/98

- (1) The Treasurer may, during the financial year commencing on 1 July 1997, pay out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) to an Authority that has a water supply district and a sewerage district an amount determined by the Treasurer in respect of that Authority.
- (2) The aggregate amount that may be paid to Authorities under subsection (1) shall not exceed the sum of \$410 000 000.
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Division 4—Borrowing⁴⁰

254 Borrowing powers of Authorities

(1) In this Division—

financial accommodation includes, but is not limited to—

S. 254(1)
amended by
No. 99/1993
s. 23(3)(a).

(a) a loan; and

(b) an overdraft; and

(c) non-conventional forms of financial funding;

Authority does not include a declared Authority;

S. 254(1)
def. of
Authority
amended by
Nos 50/1992
s. 10(Sch.
item 11.31),
99/1993
s. 23(3)(b),
65/1995
s. 22(l).

declared Authority means an Authority declared under section 17A of the **Borrowing and Investment Powers Act 1987** to be a Water Authority to which Schedule 1 of that Act applies or Melbourne Water Corporation.

S. 254(1)
def. of
declared Authority
inserted by
No. 99/1993
s. 23(3)(c),
amended by
No. 85/2006
s. 105.

(2) An Authority may obtain financial accommodation, subject to subsection (3), at a rate of interest approved by the Treasurer and on any terms and conditions imposed by the Minister.

(3) The total financial accommodation obtained by an Authority in any financial year must not exceed the limit set by the Minister for that Authority for that year, or any higher limit allowed, or lower limit imposed, by the Minister.

S. 254(3)
amended by
No. 69/1993
s. 6(a).

s. 255

S. 254(4)
substituted by
No. 69/1993
s. 6(b).

- (4) A contract for financial accommodation entered into by an Authority is void if, as a result of the contract, the financial accommodation obtained by the Authority would exceed any limit applying to the Authority, at the time of entering into the contract, under subsection (3).

S. 254(5)
inserted by
No. 99/1993
s. 23(4).

- (5) A declared Authority may obtain financial accommodation subject to and in accordance with the **Borrowing and Investment Powers Act 1987**.

S. 254(6)
inserted by
No. 99/1993
s. 23(4).

- (6) The payment of amounts payable as a result of or in connection with financial accommodation obtained by a declared Authority (including the payment of expenses of enforcement) in accordance with powers conferred on the declared Authority by the **Borrowing and Investment Powers Act 1987** may be secured in such manner as the Treasurer approves.

255 Securities and guarantees

- (1) In borrowing in accordance with this Division an Authority may—
- (a) issue bonds that are secured on its revenue; or
 - (b) issue notes or any other securities that are approved by the Treasurer; or
 - (c) mortgage its revenue.

S. 255(2)
amended by
No. 99/1993
s. 23(5).

- (2) In borrowing in accordance with this Division the Geelong and District Water Board, unless it is a declared Authority, may issue inscribed stock.
- (3) The due repayment of any money borrowed by the issue of inscribed stock in accordance with subsection (2), and the payment of any interest on that money, is guaranteed by the Government of Victoria⁴¹.

256 Investment by public bodies

The providing of financial accommodation in accordance with section 254 is a lawful investment for any money that any company, or any body that is incorporated by or under this or any other Act, is authorised or directed to invest.

Division 5—Payment for services

257 Definitions

(1) In this Division—

development tariff means a scale of charges by reference to which a fee is imposed by an Authority on the owner of a property for the development of a service by that Authority;

tariff means a scale of charges by reference to which a fee is imposed by an Authority on the owner or occupier of a property for works or services provided by that Authority;

valuation equalisation factor means a factor determined by the Valuer-General which, when applied to valuations returned at different dates, allows the calculation of different tariffs so that the amounts payable in respect of properties of equal value are adjusted to compensate for the variations caused by different valuation dates.

(2) In this Division a reference to "Authority"—

- (a) in section 264 includes a reference to Melbourne Water Corporation, when exercising any function under this Act; and

S. 257
amended by
No. 85/2006
s. 106 (ILA
s. 39B(1)).

S. 257 def. of
tariff
amended by
No. 49/1994
s. 8(c).

S. 257(2)
inserted by
No. 85/2006
s. 106.

- (b) in any other provision of this Division does not include a reference to Melbourne Water Corporation, except where Melbourne Water Corporation is exercising a function under Part 10.

258 Properties subject to tariff

- (1) A tariff that is based on the valuation of a property may only be set in relation to land that is rateable under section 154 of the **Local Government Act 1989**.

S. 258(1A)
inserted by
No. 110/1997
s. 24(1).

- (1A) A tariff that is not based on the valuation of a property may only be set in relation to land that is not rateable under section 154 of the **Local Government Act 1989** and that is within a water district or a sewerage district of an Authority if the land is connected to the Authority's works.
- (2) For the purpose of applying section 154(2)(a) of the **Local Government Act 1989**, land which is the property of the Crown must be taken to be occupied if any housing on that land is in a habitable condition.

S. 258(3)
inserted by
No. 85/2006
s. 107.

- (3) Subsection (1A) does not apply to Melbourne Water Corporation.

S. 258(4)
inserted by
No. 85/2006
s. 107.

- (4) In relation to any tariff that may be set by Melbourne Water Corporation under this Division, land that is owned by a declared public statutory authority that is not used exclusively as public open space or as a park is deemed to be land that is rateable for the purposes of subsection (1).

S. 258(5)
inserted by
No. 85/2006
s. 107.

- (5) For the purposes of subsection (4), the Governor in Council, by Order published in the Government Gazette, may declare a public statutory authority constituted under the laws of Victoria to be a declared public statutory authority.

- (6) Despite anything to the contrary in any other provision of this Act, the Treasurer, after consultation with the Minister responsible for a declared public statutory authority, may give his or her approval to Melbourne Water Corporation levying an amount in lieu of a fee under a tariff in respect of a financial year on land owned by the public statutory authority that, by operation of subsection (4), is deemed to be land that is rateable for the purposes of subsection (1). **S. 258(6) inserted by No. 85/2006 s. 107.**
- (7) The amount to be levied in lieu of a fee under a tariff in accordance with subsection (6) is the amount agreed between the public statutory authority and Melbourne Water Corporation or, in the absence of agreement, determined by the Treasurer. **S. 258(7) inserted by No. 85/2006 s. 107.**
- (8) An approval may only be given by the Treasurer under subsection (6) on the application of Melbourne Water Corporation. **S. 258(8) inserted by No. 85/2006 s. 107.**
- (9) For the purposes of section 281A an amount to be levied in lieu of fee under a tariff under this section is to be taken to be such a fee. **S. 258(9) inserted by No. 85/2006 s. 107.**

259 Tariffs

- (1) An Authority may impose fees under—
- (a) a tariff on serviced properties within its district; and
 - (b) a development tariff on unserved properties within its district; and
 - (c) a tariff for drainage or salinity mitigation purposes on any properties within its district; and
- S. 259(1)(c) amended by Nos 62/1995 s. 41(1), 110/1997 s. 24(2), 99/2005 s. 62 28/2007 s. 3(Sch. item 75.4).**

s. 259

S. 259(1)(d)
inserted by
No. 110/1997
s. 24(2).

(d) a tariff on any properties for the purposes of a management plan for a groundwater supply protection area.

(2) A fee imposed under a tariff or development tariff on a property may be—

(a) a fixed amount; or

(b) an amount fixed according to the value or size of the property; or

S. 259(2)(c)
amended by
No. 62/1995
s. 41(2).

(c) an amount fixed according to the extent of use of or benefit from the service; or

S. 259(2)(ca)
inserted by
No. 85/2006
s. 108(1)(a).

(ca) in the case of a fee imposed under a tariff set by Melbourne Water Corporation—

(i) an amount fixed according to the use of the property; or

(ii) an amount fixed according to how the use or development of the property is controlled under a planning scheme; or

S. 259(2)(d)
amended by
No. 85/2006
s. 108(1)(b).

(d) any combination of amounts referred to in paragraphs (a), (b) and (c) and in the case of Melbourne Water Corporation, amounts referred to in paragraph (ca).

(3) In fixing the fees imposed under a tariff that is based on the valuation of a property an Authority may use a valuation equalisation factor.

S. 259(4)
amended by
No. 85/2006
s. 108(2).

(4) An Authority that imposes fees under a tariff or development tariff (other than fees of a fixed amount) may, by resolution, fix a minimum amount or no amount payable under the tariff for any property or class of property in respect of which a fee is imposed.

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- (5) An Authority that imposes fees under a tariff or development tariff may, by resolution, fix different fees payable for different properties or for different periods on the basis of any criteria specified in the resolution.
- (6) A resolution under subsection (4) or (5) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (7) An Authority may impose fees under a tariff or development tariff for any particular purpose specified in the Authority's by-laws.
- (8) An Authority may, in respect of a property that becomes liable during a financial year to a fee imposed under a tariff, impose a proportion of—
- (a) the fee imposed under the tariff for that part of the year during which the property is liable to a fee under the tariff; and
 - (b) the fee imposed under a development tariff for that part of the year during which the property was liable to a fee under a development tariff.
- (9) An Authority may, in respect of a property, separately impose fees under a tariff or development tariff in respect of each separate occupancy on that property. S. 259(9)
inserted by
No. 78/1991
s. 20.
- (10) In determining what constitutes a separate occupancy, the Authority must use the relevant principles set out in the **Valuation of Land Act 1960**. S. 259(10)
inserted by
No. 78/1991
s. 20.
- (11) Any fee imposed under this Act as in force before the amendment made by section 20 of the **Local Government (Rating) Act 1991** is as valid as if it had been imposed under this Act as amended by that section. S. 259(11)
inserted by
No. 78/1991
s. 20 (as
amended by
No. 22/1992
s. 21(2)).
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260 Setting a tariff

- (1) An Authority that sets a tariff must do so by resolution.
- (2) A resolution under subsection (1) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (3) An Authority that sets a tariff must specify in the notice under subsection (2)—
 - (a) the district to which the tariff applies; and
 - (b) the method of calculating fees imposed under the tariff; and
 - (c) the period for which the tariff is set; and

S. 260(3)(d)
repealed by
No. 85/2006
s. 109.

* * * * *

S. 260A
inserted by
No. 65/1999
s. 4.

260A Limits on power of certain Authorities to set tariffs

- (1) A Catchment Management Authority must not set a tariff in respect of a function the Authority has under Part 10 other than any function the Authority has under Division 3 or Division 4 of that Part.

S. 260A(2)
repealed by
No. 85/2006
s. 110.

* * * * *

261 Valuation equalisation factor

An Authority whose district includes parts of more than one municipal district may, if the most recent valuations of properties within those municipal districts were not made in the same year, request the Valuer-General to determine a valuation equalisation factor for each of those municipal districts.

262 Valuations

(1) An Authority that sets a tariff may—

(a) use the most recent municipal valuation; or

(b) cause its own valuation to be made by a valuer; or

(c) in the case of Melbourne Water Corporation, use the relevant valuation for the price determination applying at the time of the setting of the tariff—

for the purposes of fixing the amount of any fee imposed in relation to that property under the tariff.

(2) In this section—

Essential Services Commission has the same meaning as *Commission* has in the **Essential Services Commission Act 2001**;

price determination means a price determination made by the Essential Services Commission under section 4D of the **Water Industry Act 1994** and section 33 of the **Essential Services Commission Act 2001**;

relevant valuation, in relation to a price determination, means the valuation which forms the basis of the tariffs submitted by Melbourne Water Corporation to the Essential Services Commission and which is approved in the price determination.

S. 262
amended by
No. 85/2006
s. 111(2) (ILA
s. 39B(1)).

S. 262(b)
amended by
Nos 91/1994
s. 36(12),
85/2006
s. 111(1)(a).

S. 262(c)
inserted by
No. 85/2006
s. 111(1)(b).

S. 262(2)
inserted by
No. 85/2006
s. 111(2).

263 Supplementary valuations

- (1) An Authority may alter the amount of a fee imposed under a tariff in respect of a property if a supplementary valuation of the property is made in accordance with section 13DF of the **Valuation of Land Act 1960**.
- (2) An Authority may request a municipal council to arrange for a supplementary valuation to be made at the Authority's expense.
- (3) The **Valuation of Land Act 1960** applies, with any necessary modifications, to a supplementary valuation made at the request of an Authority as if it were a supplementary valuation made in accordance with section 13DF of that Act.
- (4) If a supplementary valuation is made because of an event that happens during a financial year, a proportion of the amount of the fee imposed under the tariff, as altered, is payable for the part of the financial year after the supplementary valuation, and a proportion of the original amount of the fee imposed under the tariff is payable for the part of the financial year before the supplementary valuation.

264 Power to charge

- (1) An Authority may, by by-law or otherwise, set charges for anything it does in the performance of its functions, including any function delegated to it.
- (1A) An Authority that is acting as a delegate of the Minister in performing a function under this Act may, despite section 9(2) of the **Financial Management Act 1994** or any other provision of any Act or rule of law to the contrary—
 - (a) collect any fee or charge that is authorised by or under this Act to be imposed for the performance of the function; and

S. 264(1A)
inserted by
No. 99/2005
s. 63.

(b) retain the fee or charge so collected—
as if the Authority were performing the function
in its own right and not as delegate of the
Minister.

- (2) A by-law made under subsection (1) may
prescribe a charge by reference to a number
(whether whole or fractional) of charge units and
that charge may be determined by multiplying the
number of charge units by a number of dollars
fixed by resolution of the Authority.
- (3) The power in subsection (1) is in addition to any
other powers of an Authority under this Division.

**264A Authority may charge for securing bulk
entitlements**

S. 264A
(Heading)
inserted by
No. 85/2006
s. 112(1).

S. 264A
inserted by
No. 69/1993
s. 7.

- (1) An Authority (*the first Authority*) may, by notice
in writing to another Authority (*the other
Authority*) that has a bulk entitlement to take
water from any waterway (including the River
Murray) or from any works of the first Authority,
charge the other Authority—

S. 264A(1)
substituted by
No. 49/1994
s. 5(2).

(a) for operating and maintaining any works that
are associated with; or

(b) in respect of any other costs incurred by the
first Authority in connection with—

supplying, or securing the supply of, water for that
bulk entitlement.

- (1A) Subsection (1) has effect despite any provision to
the contrary made before the commencement of
Division 1 of Part 4 by or under an Act granting
the relevant Authority an entitlement to take
water.

S. 264A(1A)
inserted by
No. 49/1994
s. 5(2).

s. 265

- (2) A charge imposed under subsection (1)—
- (a) is for the period specified in the notice to the Authority;
 - (b) must be paid by the date specified in the notice to the Authority, being a date at least 28 days after the date of issue of the notice.
- (3) This section does not apply to Melbourne Water Corporation except where Melbourne Water Corporation is *the first Authority*, within the meaning of subsection (1).

S. 264A(3)
inserted by
No. 85/2006
s. 112(2).

S. 265
amended by
No. 25/1993
s. 14(a).

265 Charges for property that is not rateable⁴²

Subject to section 273A, the owner of any property (including land owned by a council) that is not rateable under section 154 of the **Local Government Act 1989** must pay any fee or charge imposed for services provided to the property, and any interest imposed for late payment.

266 Application for review

- (1) A person who is aggrieved by the setting of a tariff, or the imposing of a fee under a tariff, by an Authority may, within 1 month after receipt of the demand for payment, object in writing to the Authority on any of the following grounds—
- (a) where the fee imposed under the tariff is based on valuation of the land, that the land is not rateable;
 - (b) that the person is not liable for the tariff;
 - (c) that the tariff was not set in accordance with an Order under section 4D(1)(a) of the **Water Industry Act 1994** or in accordance with the **Essential Services Commission Act 2001**;

S. 266(1)(c)
amended by
No. 110/1997
s. 22(2),
substituted by
No. 85/2006
s. 113.

-
- (d) that the Authority did not give the required notice that the property is a serviced property;
 - (e) that the fee imposed by the Authority is not a correct application of the tariff as set.
- (2) An Authority must, within 2 months after receipt of an objection from a person, notify the person of its decision on the objection.
 - (3) If an Authority has not notified the person of its decision within 2 months after the objection was made, the Authority must be taken to have notified the person of its decision to overrule the objection at the expiry of the 2 month period.
 - (4) A person who has objected may apply to the Tribunal for review of the Authority's decision on the objection on any of the grounds specified in subsection (1).
 - (4A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
 - (5) An objection does not prevent the recovery of any fee or interest due under a tariff.

S. 266(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.44).

S. 266(4A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.44).

s. 266A

S. 266(6)
amended by
Nos 91/1994
s. 31, 52/1998
s. 311
(Sch. 1 item
105.45) (as
amended by
No. 101/1998
s. 22(1)(q)).

- (6) A person who objects to—
- (a) the calculation or application of a valuation equalisation factor; or
 - (b) the fixing of different fees imposed under a tariff under section 259(5) that are based on valuation—

may apply to the Tribunal for review in accordance with Part III of the **Valuation of Land Act 1960**.

S. 266(6A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.46).

- (6A) The provisions of Division 4 of Part III of the **Valuation of Land Act 1960**, with such modifications as are necessary, apply to an application under subsection (6).

S. 266(7)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.47).

- (7) If a tariff is quashed by the Tribunal under this section, the Authority may—
- (a) set a new tariff for the particular year, even if the year has ended; and
 - (b) retain any amount paid to it by a person in respect of that tariff on account of any amount payable by that person in respect of the next effective tariff set.

Division 6—Owner finance

S. 266A
inserted by
No. 85/2006
s. 114.

266A Definition

In this Division a reference to *Authority* does not include a reference to Melbourne Water Corporation, except where Melbourne Water Corporation is acting under section 196 or 197.

267 Operation of Division

The provisions of this Division are in addition to any provisions empowering an Authority to enter agreements and provide works in the exercise of its functions.

268 Authority may require payment⁴³

- (1) An Authority that intends to provide services which will benefit a property may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of those services, and any fireplugs attached to those works.
- (2) If a proposal for the subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services that will benefit the property, and any fireplugs attached to those works.
- (3) The amount of payment required from an owner must be assessed by the Authority to be fair and reasonable, taking into account the benefit to that property relative to the benefit to other properties.
- (4) The notice must specify—
 - (a) the amount of the payment required; and
 - (b) the reason why the payment is required; and
 - (c) any works or services that have been or will be provided; and
 - (d) the property in relation to which payment is required; and
 - (e) if payments are required in relation to a group of properties, the amounts required in relation to each property; and
 - (f) the right of the owner to object and apply for a review under section 271; and

- (g) in the case of a notice under subsection (1), that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.
- (5) In the case of a notice under subsection (1), the Authority must make sure that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.
- (6) An Authority must bear any cost that would otherwise, under this section, be borne by the Crown in respect of land that—
 - (a) is used or reserved for a public purpose which specifically benefits the area; and
 - (b) does not require the service which is being provided.

269 Contributions for increased services⁴⁴

- (1) An Authority that provides services to a property may, by notice in writing, require the owner of the property to contribute to the present day cost of any works referred to in section 268(1) if the use of any service for which those things are used increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.
- (2) The amount of the payment required from an owner must—
 - (a) be assessed by the Authority to be fair and reasonable in all the circumstances; and
 - (b) take into account any payment that the owner has made or is liable to make under section 268 or 270 in relation to that property.
- (3) The notice must specify the things set out in section 268(4)(a) to (f).

- (4) An owner of land who changes, or proposes to change, the use of the land in such a way that the use of any service provided by an Authority increases, or will increase, must notify the Authority of the change, or the proposed change.

Penalty: 10 penalty units.

- (5) Failure of an owner to give notice as required by subsection (4) does not prevent an Authority from requiring a payment under this section.

270 Payments on connection⁴⁵

- (1) An Authority may, by notice in writing, require the owner of a property which becomes a serviced property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services to that property.
- (2) The amount of the payment must—
- (a) be assessed by the Authority to be fair and reasonable in all the circumstances; and
 - (b) take into account any payment that the owner has made or is liable to make under section 268 in relation to that property.
- (3) The notice must specify the things set out in section 268(4)(a) to (f).

271 Review of required payments

- (1) An owner who is required to make a payment under section 268, 269 or 270 may, within 1 month after receipt of the notice (or any longer time allowed by the Authority and specified in the notice), object in writing to the Authority on any of the following grounds—
- (a) in the case of a notice under section 268, that the property of the owner will not benefit from the provision of the services;

S. 271(1)(ea)
inserted by
No. 85/2006
s. 115.

S. 271(3)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.48).

S. 271(4)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.48).

- (b) if there are several properties that will benefit, that the basis of distribution of the cost between the owners of those properties is unreasonable;
 - (c) that the amount is excessive;
 - (d) if there are several properties that will benefit, that any owner who has been required to pay should not be required to do so, or that any owner who has not been required to pay should be required to do so;
 - (e) in the case of a notice under section 269, that the use of the services has not increased, or will not increase, as the case requires;
 - (ea) that the payment was not set in accordance with an Order under section 4D(1)(a) of the **Water Industry Act 1994** or in accordance with the **Essential Services Commission Act 2001**;
 - (f) in the case of a notice under section 268(1), any other grounds.
- (2) An Authority must, within 2 months after receipt of an objection, notify the person of its decision on the objection.
- (3) An owner may apply to the Tribunal for review of the Authority's decision on the owner's objection on any of the grounds specified in subsection (1)(a) to (e).
- (4) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is

informed under section 46(5) of that Act that a statement of reasons will not be given.

272 Authority may require further payment

- (1) An Authority that has required payments under section 268, 269 or 270 from the owners of any properties may—
 - (a) if the total amount collected is not enough to meet the costs in respect of which the payments were required, require further payments from the owners of those properties; and
 - (b) if the total amount collected is more than enough to meet those costs, refund the excess to the owners of those properties.
- (2) The provisions of sections 268(4), 268(5), 271 and 273 apply in relation to any further payments required, as if they were payments originally required under section 268, 269 or 270, except that in the case of payments required by a notice under section 268(1)—
 - (a) the Authority may require further payments of not more than 20 per cent of the amount specified in that notice, if those further payments are necessary to meet the cost of the works; and
 - (b) the cost of those further payments must be fairly distributed over the group of properties that is to receive the service, if there is such a group.

273 When payment is due

- (1) The date by which payment must be made is—
- (a) if there have been no objections, any date that is set by the Authority and that is after the expiry of 1 month after the receipt of the notice, or of any longer time allowed by the Authority and specified in the notice; or
 - (b) if each person to whom a notice was issued agrees in writing not to object, any date that is set by the Authority and that is after the date of the last of those agreements; or
 - (c) if there are objections, or if any person to whom a notice was issued does not agree in writing not to object, any date that is set by the Authority and that is after each person who objected, or who did not agree in writing not to object, has been notified by the Authority of its decision on any objections made.
- (2) The due date for payment of any further payments required under section 272(1)(a) is the date (not earlier than 14 days after the date of the notice) that is specified in the notice requiring the further payment.

Division 7—Payment and recovery of money

S. 273AA
inserted by
No. 85/2006
s. 116.

273AA Application of Division

This Division does not apply to Melbourne Water Corporation.

273A Occupiers liable for costs based on water supplied

S. 273A
inserted by
No. 25/1993
s. 13.

S. 273A(1)(a)
amended by
No. 109/1997
s. 533(Sch. 2
item 12.1).

- (1) This section applies if a property to which water is supplied by an Authority—
- (a) is occupied by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1997** applies (whether wholly or partly); or
 - (b) is a site in a caravan park occupied by a resident of the caravan park—

and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity.

- (2) The occupier of the property is liable for the cost of all water supplied to the property during the time the occupier occupies the property if that cost is based solely on the amount of water that is supplied to the property.
- (3) If the cost of the water supplied to a property during the time the occupier occupies the property is only partly based on the amount of water supplied to the property, the occupier of the property is liable for that part of the cost that is based on the amount of water supplied to the property.
- (4) The owner of a property is not liable for any amount that an occupier of the property is liable for under this section and any such amount cannot be made a charge on the land of the owner.
- (5) This section overrides anything to the contrary in section 170 but is subject to anything to the contrary in section 273B.
- (6) In this section and section 273B, if an occupier of a property only occupies a part of the property, then a reference to the property is to be read as a

s. 273B

reference to the part of the property occupied by the occupier.

S. 273A(7)
substituted by
No. 109/1997
s. 533(Sch. 2
item 12.2).

(7) In this section—

- (a) *caravan* and *site* have the meanings they have in the **Residential Tenancies Act 1997**; and
- (b) *resident* in relation to a caravan park, means a person who is a resident within the meaning of the **Residential Tenancies Act 1997**.

S. 273B
inserted by
No. 25/1993
s. 13.

273B Authority must read meter when tenant arrives and departs

(1) This section applies if a property to which water is supplied by an Authority—

- (a) is occupied, or to be occupied, by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1997** applies (whether wholly or partly); or
- (b) is a site in a caravan park occupied, or to be occupied, by a resident of the caravan park—

and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity.

- (2) The tenant or resident must notify the Authority that he or she will occupy or vacate, or has occupied or vacated, the property.
- (3) The Authority must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded on the day the tenant or resident occupies or vacates the property or as soon as is practicable after that day.
- (4) Subsection (3) does not apply unless the Authority is given at least 48 hours notice of the day of occupation or vacation.

S. 273B(1)(a)
amended by
No. 109/1997
s. 533(Sch. 2
item 12.3).

-
- (5) If the Authority is not given at least 48 hours notice of the occupation or vacation of a property, it must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded within 48 hours of it being given notice that a property has been occupied or vacated by a tenant or resident or as soon as is practicable after it is given notice.
- (6) If a tenant or resident occupies a property, the landlord or caravan park owner is liable for the cost of all water supplied to the property until the Authority records the reading on the meter on or after the date of occupation.
- (7) If a tenant or resident fails to notify the Authority that he or she has occupied a premises within 48 hours of occupying the property—
- (a) he or she is liable for the cost of all water supplied to the property since the meter was last read on behalf of the Authority; and
 - (b) subsection (6) does not apply.
- (8) If a tenant or resident fails to notify the Authority that he or she has vacated a property within 48 hours of vacating the property, he or she is liable for the cost of all water supplied to the property until—
- (a) the Authority next records the reading on the meter; or
 - (b) the end of the billing period in which the vacation occurred—
- whichever happens first.
- (9) No time falling on a Saturday, Sunday or holiday is to be included in calculating any period of time for the purposes of this section.
-

(10) In this section—

S. 273B(10)(a)
substituted by
No. 109/1997
s. 533(Sch. 2
item 12.4).

(a) *caravan* and *site* have the meanings they have in the **Residential Tenancies Act 1997**; and

S. 273B
(10)(aa)
inserted by
No. 109/1997
s. 533(Sch. 2
item 12.4).

(aa) *resident* in relation to a caravan park, means a person who is a resident within the meaning of the **Residential Tenancies Act 1997**;

S. 273B(10)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) *holiday*, in relation to an area, means any public holiday appointed or observed in a municipal council referred to in the Schedule to the **Public Holidays Act 1993**.

274 Payment to Authorities

S. 274(1)
amended by
Nos 25/1993
s. 14(b)(i)(A)
(B), 69/1993
s. 8(a).

(1) A fee imposed under a tariff is due and must be paid by the date specified in the notice requiring payment, being a date—

(a) after the date on which notice of the resolution that sets the tariff was published under section 260(2); and

(b) in the case of—

(i) fees that are payable on an annual basis, at least 28 days after the date of issue of the notice; or

(ii) in the case of fees that are payable on a basis that is less than an annual basis, at least 14 days after the date of issue of the notice—

unless payment by instalments is available in accordance with a resolution under subsection (1A) and the person liable to pay the amount chooses to pay by instalments in accordance with subsections (2) and (3).

(1A) An Authority—

- (a) must by resolution determine that any fee imposed on an annual basis under a tariff is payable to it by instalments as specified in the resolution; and
- (b) may by resolution determine that any other fee payable to it under a tariff is payable by instalments as specified in the resolution.

S. 274(1A)
inserted by
No. 69/1993
s. 8(b).

(1B) A resolution under subsection (1A) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.

S. 274(1B)
inserted by
No. 69/1993
s. 8(b).

(1C) An Authority must ensure that a resolution under subsection (1A)(a) is in force at all times from the beginning of the ninetieth day after the commencement of section 8 of the **Water (Amendment) Act 1993**.

S. 274(1C)
inserted by
No. 69/1993
s. 8(b).

(1D) Despite any resolution in force under subsection (1A)(a) and anything to the contrary in this section, an Authority is not required to accept payment by instalments of a fee imposed on an annual basis under a tariff if the Minister, at the written request of the Authority, has approved it not being required to do so.

S. 274(1D)
inserted by
No. 69/1993
s. 8(b).

(2) A person who is liable to pay to an Authority—

- (a) an amount under Division 6, other than an amount required under section 268(2) or 269; or
- (b) a fee imposed under a tariff that, in accordance with a resolution under subsection (1A), is payable by instalments; or

S. 274(2)
amended by
No. 121/1994
s. 195(1).

S. 274(2)(b)
amended by
No. 69/1993
s. 8(c).

(c) with the consent of the Authority, any other fee or amount—

may, by notice in writing to the Authority within 14 days after receipt of the notice setting the due date for payment, choose to pay by instalments, and must make each payment, and any payment of interest due in respect of it, by the date specified by the Authority.

(3) The date specified for the payment of the first instalment must be at least 14 days after the date of issue of the notice to the person that payment is required.

S. 274(3A)
inserted by
No. 121/1994
s. 195(2).

(3A) A person who is liable to pay to an Authority an amount under Division 6 which under subsection (1) the person has, on or after the commencement of section 195(2) of the **Water Industry Act 1994**, chosen to pay by instalments, is liable to pay interest in accordance with section 281 on any part of that amount that is unpaid from the due date for payment despite the arrangement for payment of that amount by instalments.

S. 274(4)
amended by
Nos 25/1993
s. 14(b)(ii),
99/2005 s. 64.

(4) Any amount due to an Authority in relation to a property (including interest and including any amount in respect of a licence under Part 4, 4B or 5) is a debt due to the Authority by the person liable to pay the amount.

S. 274(4A)
inserted by
No. 25/1993
s. 14(b)(iii).

(4A) If the person liable to pay an amount to an Authority in relation to a property owns the property, the amount due is a charge on the property, whether or not the Authority has agreed to defer the payment of the whole or any part of that amount.

S. 274(5)
amended by
No. 25/1993
s. 14(b)(iv).

(5) In subsections (4) and (4A), **Authority** includes the Minister.

- (6) At the written request of the person liable to make a payment to an Authority, the Authority may send the notice requiring the payment to a person specified in the request.

S. 274(6)
inserted by
No. 78/1991
s. 21.

275 Person who acquires property is liable

- (1) A person who becomes the owner of a property must pay to the Authority at the time the person becomes the owner of the property any amount that is, under section 274(4A), a charge on that property.
- (2) In subsection (1), *Authority* includes the Minister.

S. 275(1)
amended by
No. 25/1993
s. 14(c).

276 Authority may require occupier to pay rent to it

- (1) An Authority may, by notice in writing to the occupier of a property in respect of which any payment or fee, or any amount in respect of a licence under Part 4 or 5, is due by the owner of the property and has not been paid, require the occupier to pay rent to the Authority instead of to the lessor until the amount outstanding (including any interest) has been paid.
- (2) The Authority must give to the lessor 7 days' notice of its intention to act under subsection (1).
- (3) An occupier who pays rent to the Authority as required by a notice under subsection (1)—
- (a) is entitled to deduct from the rent due to the lessor any amount so paid; and
 - (b) must for the purposes of any tenancy law, be treated as paying that amount as rent to the lessor.
- (4) Subsection (3) does not apply if the occupier has, independently of the Authority, agreed with the lessor to pay to the Authority the payments or fees due in relation to the property.

S. 276(1)
amended by
No. 25/1993
s. 14(d).

- (5) The Authority must not require to be paid to it any amount that exceeds the amount of rent due to the lessor.
- (6) If an occupier fails to pay any amount due to the Authority under this section, the Authority may recover the unpaid amount as a debt due to it by the occupier.
- (7) In this section, *Authority* includes the Minister.

277 Recovery as between owner and occupier

- (1) If an Authority recovers any contribution or fee, or any amount in respect of a licence under Part 4 or 5, from an owner, and the owner had an agreement with the occupier that the occupier would pay the fee, contribution or amount, the owner may recover from the occupier, as a debt due to the owner, the amount paid to the Authority by the owner.
- (2) For the purposes of subsection (1)—
 - (a) the owner has the burden of proving that the occupier had agreed to pay the fee, contribution or amount; and
 - (b) *Authority* includes the Minister.

278 Disposal of property for unpaid contributions, fees and other amounts

- (1) An Authority may sell, or cause to be transferred to itself, any property in relation to which—
 - (a) any fee imposed under a tariff; or
 - (b) any payment under Division 6; or
 - (c) any payment under an agreement to service or supply the property; or

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- (d) any payment in respect of a licence under Part 4 or 5—
has been due to the Authority and unpaid for at least 3 years.
- (2) Subsection (1) does not apply if—
- (a) the contribution, fee or amount has been waived; or
 - (b) the contribution, fee or amount has been deferred for the period for which it is unpaid; or
 - (c) the person liable to pay has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid; or
 - (d) the person liable to pay is not the owner of the property.
- (3) An Authority must not sell the property or cause it to be transferred, unless it has at least once in the 3 years tried, under section 274, 275, 276(1) or 276(6), to recover the money due to it.
- (4) An Authority must pay, for a transfer of property under subsection (1), an amount equal to or greater than a valuation of the property that is made by a valuer not more than 6 months before the date of the proposed transfer.
- (5) An Authority must in selling property under subsection (1)—
- (a) sell the property by auction; or
 - (b) sell the property for an amount equal to or greater than a valuation of the property that is made by a valuer not more than 6 months before the date of the proposed sale.
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S. 278(2)(c)
amended by
No. 25/1993
s. 14(e).

S. 278(2)(d)
inserted by
No. 25/1993
s. 14(e).

S. 278(4)
amended by
No. 91/1994
s. 36(12).

S. 278(5)(b)
amended by
No. 91/1994
s. 36(12).

- (6) At least 4 weeks before selling any property, or causing it to be transferred, under subsection (1), the Authority must—
- (a) give public notice of its intention to do so; and
 - (b) serve, on any person who appears from the register or from any document registered in the office of the Registrar-General to have an estate or interest in the property, a notice requiring payment of any outstanding amounts referred to in subsection (1).
- (6A) The Registrar of Titles may register a transfer of property by an Authority under this section if the transfer is in a form approved by the Registrar of Titles.
- (6B) The Registrar of Titles may dispense with the production of the certificate of title for the purpose of registering the transfer.
- (7) In this section, *Authority* includes the Minister.

S. 278(6A)
inserted by
No. 62/1995
s. 38.

S. 278(6B)
inserted by
No. 62/1995
s. 38.

279 Application of proceeds

- (1) An Authority that sells property, or causes it to be transferred, under section 278 must apply the proceeds of the sale, or the amount for which the land was transferred, as follows—
- (a) first, in payment of all expenses incurred in connection with the sale or transfer;
 - (b) secondly, in payment of the outstanding contributions, fees and other amounts, including interest;

- (c) thirdly, in discharging any mortgages or charges, registered or not—
 - (i) of which the Authority has notice; and
 - (ii) over which the Authority's charge has priority—according to the priority of those mortgages or charges.
- (2) The Authority must, if the owner of the property can be traced, refund to the owner any surplus after the payments required by subsection (1)(a) to (c) have been made.
- (3) If the owner cannot be traced, the Authority may, subject to subsection (5), retain and use any surplus after the payments required by subsection (1)(a) to (c) have been made.
- (4) A person who claims an estate or interest in the property may apply to the Authority for payment of the value of that estate or interest from any surplus retained by the Authority.
- (5) If the Authority is satisfied that an applicant is entitled to any payment it must make that payment.
- (6) In this section, *Authority* includes the Minister.

280 Sale or transfer cancels encumbrances

When an Authority sells property, or causes it to be transferred, under section 278—

- (a) the sale or transfer is free from all estates and interests over which the Authority's charge has priority; and
- (b) the Registrar of Titles must, when registering the transfer, cancel any mortgages or charges registered as encumbrances on the land.

S. 280(b)
amended by
No. 85/1998
s. 24(Sch
item 66.16).

281 Interest on unpaid money⁴⁶

S. 281(1)
amended by
No. 78/1991
s. 22(1).

- (1) Any money due to an Authority under this Act, including an agreement which does not provide otherwise, bears interest at the rate set from time to time for the purposes of this section by the Authority from the date that the money becomes due to the date that it is paid.

S. 281(1A)
inserted by
No. 78/1991
s. 22(2).

- (1A) The rate set by the Authority must not be more than the rate fixed from time to time for the purposes of subsection (1) by the Governor in Council by Order.

S. 281(1B)
inserted by
No. 78/1991
s. 22(2).

- (1B) The Governor in Council may fix a maximum rate—

- (a) by expressing it as a percentage; or
- (b) by tying it to a specific floating institutional rate charged for loans or paid for borrowings by a public or commercial institution.

S. 281(1C)
inserted by
No. 78/1991
s. 22(2).

- (1C) If the Authority sets a new rate, the new rate takes effect on the date set by the Authority, and applies from that date to all money (other than interest) owing to the Authority on that date.

- (2) No interest is payable—

S. 281(2)(a)
substituted by
No. 69/1993
s. 9(a).

- (a) in respect of a fee imposed under a tariff if the amount due is paid within the period after it becomes due fixed by the Authority by resolution; or

S. 281(2)(b)
amended by
No. 121/1994
s. 195(3).

- (b) except in the case of an amount under Division 6, if the person liable to pay the amount has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid.

- (2A) A resolution under subsection (2)(a) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (3) An Authority may exempt any person from paying the whole or part of any interest either generally or specifically.
- (4) In this section, *Authority* includes the Minister.

S. 281(2A)
inserted by
No. 69/1993
s. 9(b).

**Division 7A—Payment and recovery of money owed to
Melbourne Water Corporation**

Pt 13 Div 7A
(Heading and
ss 281A–281C)
inserted by
No. 85/2006
s. 118.

**281A Agreements with respect to collection of fees under
tariffs**

S. 281A
inserted by
No. 85/2006
s. 118.

- (1) Melbourne Water Corporation may enter into an agreement with—
- (a) a licensee; or
 - (b) a Council; or
 - (c) any other person—
- with respect to the collection by that licensee, Council or any other person (as the case requires), on behalf of Melbourne Water Corporation, of any fees under tariffs, charges, interest or other money due to Melbourne Water Corporation under this Act.
- (2) A licensee must collect, on behalf of Melbourne Water Corporation, fees under tariffs, charges, interest and other money referred to in subsection (1) that relate to the area or areas specified in the licence of the licensee on the terms and conditions agreed with Melbourne Water Corporation or, in default of agreement, determined by the Essential Services Commission.

s. 281B

- (3) A Council must collect, on behalf of Melbourne Water Corporation, fees under tariffs, charges, interest and other money referred to in subsection (1) that relate to the municipal district of the Council on the terms and conditions agreed with Melbourne Water Corporation or, in default of agreement, determined by the Essential Services Commission.
- (4) A person who receives a notice from a licensee, a Council or any other person under subsection (1) must pay the amount set out in the notice to the licensee, Council or person (as the case requires).

S. 281B
inserted by
No. 85/2006
s. 118.

281B Recovery of fees under tariffs

- (1) Fees imposed under a tariff set by Melbourne Water Corporation under this Part are payable by, and recoverable from, the owner for the time being of the property in respect of which the fee is imposed.
- (2) A fee imposed under a tariff set by Melbourne Water Corporation under this Part is due and must be paid by the date specified in a notice issued by Melbourne Water Corporation requiring payment, being a date at least 14 days after the date of issue of the notice.
- (3) Any amount due to Melbourne Water Corporation under a tariff is a debt due to Melbourne Water Corporation by the owner for the time being of the property in respect of which the amount is due.
- (4) If a person liable to pay an amount due to Melbourne Water Corporation under subsection (3) in relation to a property owns the property, the amount due is a charge on the property, whether or not Melbourne Water Corporation has agreed to defer the payment of the whole or any part of that amount.

281C Inspection of rate records

**S. 281C
inserted by
No. 85/2006
s. 118.**

- (1) A person authorised by Melbourne Water Corporation may, at any reasonable time and without charge, inspect, and take a copy of an entry in or make an extract from, any valuation or rate records of any Council the municipal district of which is wholly or partly within the waterway management district of Melbourne Water Corporation.
- (2) A person having custody of the valuation or rate records of a Council must not, when required to do so by an authorised person exercising a power under subsection (1), fail to produce those records for inspection or fail to allow the authorised person to take a copy of or make an extract from those records.

Penalty: 1 penalty unit.

Division 8—Concessions and exemptions

282 Deferred payment

- (1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, defer payment of the whole or a specified part of that amount, for the time, and subject to any conditions, specified in the notice.
- (2) A person who receives a notice and complies with any conditions specified in it is not liable to pay the amount until—
 - (a) the time specified in the notice; or
 - (b) the time specified in a notice given to the person under subsection (3)—whichever is sooner.

s. 283

S. 282(4)(a)
amended by
No. 25/1993
s. 14(f).

- (3) An Authority may, by notice to a person, require the person to pay, by a specified date, all or a specified part of any deferred amount, together with any specified interest (at the appropriate rate referred to in section 281(1)) on the outstanding amount from the date of the notice.
- (4) An Authority must not issue a notice under subsection (3) unless—
 - (a) the person never owned or no longer owns the property in respect of which the amount was payable; or
 - (b) it considers that the circumstances because of which payment was deferred have changed.
- (5) A person must not—
 - (a) give false or misleading information to an Authority in or in relation to an application under subsection (1); or
 - (b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

283 Waiver

S. 283(3)
substituted by
No. 25/1991
s. 4(1).

- (1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, waive the whole or a specified part of the amount, together with any interest for late payment.
- (2) An Authority may require an applicant to give more details, or to verify any matter, in relation to the application.
- (3) An Authority must, in accordance with the regulations, waive all or part of any amount or interest due to it—

- (a) from a prescribed person; or
- (b) from an owner if—
 - (i) the occupier is liable to pay the amount, whether under an agreement with the owner or for any other reason; and
 - (ii) the occupier is a prescribed person; or
- (c) from the owner of retirement village land if—
 - (i) the owner has an agreement with the holder of a residence right in the village that the holder is to pay—
 - (A) the amount; or
 - (B) a maintenance charge which includes a proportion of the amount; and
 - (ii) the holder of the residence right is a prescribed person—on application by the prescribed person in accordance with the regulations.

(3A) Terms used in subsection (3)(c) that are defined in the **Retirement Villages Act 1986** have the same meanings as in that Act.

S. 283(3A)
inserted by
No. 25/1991
s. 4(1).

(3B) The Minister after consultation with the Treasurer may, by Order published in the Government Gazette, make provision for or with respect to specifying circumstances in which, the manner in which and the extent to which an Authority that has a water supply district or a sewerage district must waive all or part of any amount due to it.

S. 283(3B)
inserted by
No. 110/1997
s. 25(1).

(3C) An Authority must, on the application in the form approved by the Authority of a person entitled by an Order under subsection (3B) to so apply, in accordance with that Order, waive all or part of any amount due to it.

S. 283(3C)
inserted by
No. 110/1997
s. 25(1).

s. 283

S. 283(3D)
inserted by
No. 110/1997
s. 25(1).

S. 283(3E)
inserted by
No. 82/2004
s. 13(Sch.
item 7.1).

S. 283(3F)
inserted by
No. 82/2004
s. 13(Sch.
item 7.1).

S. 283(4)(a)
amended by
Nos 110/1997
s. 25(2),
82/2004
s. 13(Sch.
item 7.2).

(3D) An Order under subsection (3B) must not be inconsistent with any regulations made for or with respect to waivers under subsection (3).

(3E) An Authority, on the application of a person entitled to so apply under a concession order within the meaning of the **State Concessions Act 2004** in relation to any amount due to it under this Act, must, in accordance with that concession order, waive all or part of that amount.

(3F) If a concession order within the meaning of the **State Concessions Act 2004** is made, a regulation made for or with respect to waivers under subsection (3) or an Order made under subsection (3B) must not—

- (a) be inconsistent with the concession order; or
- (b) be applied to provide a less advantageous waiver to a person than that to which the person is entitled under the concession order.

(4) A person must not—

- (a) give false or misleading information to an Authority in or in relation to an application under subsection (1), (3), (3C) or (3E); or

- (b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

(5) The Governor in Council may make regulations for or with respect to waivers under subsection (3), including but not limited to regulations for or with respect to—

- (a) the person or class of person to which a waiver or class of waivers applies;
S. 283(5)(a) amended by No. 25/1991 s. 4(2)(a).
- (b) the extent of a waiver applying to any person or class of persons;
S. 283(5)(b) substituted by No. 25/1991 s. 4(2)(b).
- (c) the making of applications for waivers;
- (d) limitations and restrictions on applications for, or the granting of, any waiver;
- (e) any other matter or thing necessary or convenient to be prescribed for the purposes of this section.

284 Reimbursement by State

- (1) The Minister must ensure that an Authority is reimbursed by the State any amount waived by the Authority in accordance with section 283(3) or (3C).
S. 284(1) substituted by No. 110/1997 s. 25(3).
- (2) An Authority must provide any information that the Minister or the Minister administering Part 7 of the **Financial Management Act 1994** may require for the purposes of subsection (1).
S. 284(2) amended by Nos 110/1997 s. 25(4)(a)(b), 46/1998 s. 7(Sch. 1).

Division 9—Contributions from councils and other Authorities

285 Pre-requisites for requirement of contribution

- (1) An Authority that intends to require a contribution under section 286(1) or a special contribution under section 287(1) must publish notice of its intention in a newspaper circulating in the area affected.
- (2) The notice must state that submissions may be made within 60 days after the publication of the notice.

- (3) Any submission that is received within 60 days after the publication of the notice must be considered by the Authority.
- (4) If the Authority decides to require the contribution it must notify the Minister and send to the Minister all submissions received by it.
- (5) If the Minister approves the proposed requirement, the Authority may proceed under section 286 or 287.
- (6) The Minister must not approve a requirement for a contribution to be made by a council unless he or she has first consulted with the Minister for the time being administering the **Local Government Act 1989**.
- (7) This section only applies to a contribution required from another Authority or a council under section 286 if the Authority has not previously required a contribution for that purpose from the other Authority or the council under that section.

286 Authorities may require contributions from councils and other Authorities

- (1) An Authority (the *first Authority*) that is responsible for a water management scheme or that has a waterway management district may, subject to section 285, by notice in writing require—
 - (a) any council whose municipal district is wholly or partly within—
 - (i) an area covered by that water management scheme; or
 - (ii) that waterway management district; or

- (b) any Authority whose district is wholly or partly within—
- (i) an area covered by that water management scheme; or
 - (ii) that waterway management district—
- to contribute to the revenue of the first Authority.
- (2) The contribution payable by a council or an Authority is, subject to subsection (3), calculated as follows—

$$C = \frac{X}{Y} \times Z$$

where—

C is the amount of the contribution;

X is the value of all rateable land under section 154 of the **Local Government Act 1989** that is common to—

- (a) the municipal district and the area covered by the scheme or waterway management district; or
- (b) the district and the area covered by the scheme; or
- (c) the two districts—

as appropriate;

Y is the total value of all rateable land under section 154 of the **Local Government Act 1989** that is within—

- (a) the area covered by the scheme; or
- (b) the waterway management district of the first Authority;

Z is the estimated revenue of the first Authority for that year in relation to that area or district.

- (3) The contribution payable by a council or an Authority must not be more than 2% of X.
- (4) A council or an Authority that receives a notice under subsection (1)—
 - (a) may rate the properties that are common to both districts or the district and the area, or set a tariff for them (as the case requires); and
 - (b) must pay to the first Authority the contribution required, less a charge of not more than 5% for collecting the money.
- (5) The first Authority may charge the council or Authority interest (at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**) if the contribution is not paid by the date specified in the notice to be the due date.
- (6) The provisions of the **Local Government Act 1989** about rates apply to a rate made under subsection (4)(a), and the council is authorised to make the payment required under subsection (4)(b).
- (7) A council may prepare a separate budget to allow for contributions under this section.
- (8) In this section, *water management scheme* means a scheme approved under section 216.

287 Authorities may require special contributions

- (1) An Authority (the *first Authority*) that has a waterway management district may, subject to section 285, by notice in writing require—
 - (a) any council whose municipal district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies; or

- (b) any other Authority whose district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies—

to make a special contribution to the first Authority's revenue for the purposes, related to that area, specified in the notice.

- (2) The special contribution payable by a council or an Authority is calculated as follows—

$$S = \frac{X}{Y} \times A$$

where—

S is the amount of the special contribution;

X and Y have the same meanings as in section 286(2);

A is the amount to be spent by the first Authority in the area of the first Authority's waterway management district to which the special contribution applies.

- (3) Section 286(4), (5), (6) and (7) applies to a special contribution with any necessary changes.
- (4) An Authority must not spend the money received under this section for any purposes other than those specified in the notice.

Division 10—Impact minimisation works charges

Pt 13 Div. 10
(Heading and
s. 287A)
inserted by
No. 99/2005
s. 65.

287A Minister may require payment of charge

S. 287A
inserted by
No. 99/2005
s. 65.

- (1) The Minister may require the owner of any land to make a payment or a number of payments to meet or contribute to the cost of any works or measures where—

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- (a) the owner is using water on the land for the purposes of irrigation and—
 - (i) the annual use limit for the water-use licence under which the water is being used has been increased; or
 - (ii) the water-use licence has been varied to permit water to be used on the land at a different place; or
 - (iii) a new water-use licence has been issued to the owner of the land authorising the use of water on the land for the purposes of irrigation; and
 - (b) the works or measures are to off-set the effect of the impact of the change in use, as specified in paragraph (a), on the environment.
- (2) A payment that is required to be made under subsection (1), may be made by the payment of the full amount in one lump sum or, where so agreed by the Minister and the owner of the land, by way of instalments.
- (3) The Minister must give notice in writing of a requirement made under this section.
- (4) A notice under this section must specify—
- (a) the amount of the payment or payments that are required; and
 - (b) the date on which the payment, or each payment (as the case requires) falls due, including (where the payments are to be made by instalments) the date on which each instalment falls due; and
 - (c) the reason why the payment or payments are required; and
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- (d) the works or measures that are being or are to be carried out; and
 - (e) the property in relation to which the payment or payments are required; and
 - (f) if the payment or payments are required in relation to a group of properties, the amounts required in relation to each property.
- (5) The amount of any payment due to the Minister under this section is a debt due to the Crown by the person liable to pay the amount and may be recovered in any court of competent jurisdiction.

Division 11—Recovery of fees etc. under Part 3A

Pt 13 Div. 11
(Heading and
ss 287B–
287D)
inserted by
No. 99/2005
s. 65.

287B Disposal of water shares for unpaid contributions, fees and other amounts

S. 287B
inserted by
No. 99/2005
s. 65.

- (1) An Authority may sell, or cause to be transferred to itself, any water share in relation to which any fee imposed under Division 9 of Part 3A has been due to the Authority and unpaid for at least 3 years.
- (2) Subsection (1) does not apply if—
- (a) the fee has been waived; or
 - (b) the fee has been deferred for the period for which it is unpaid; or
 - (c) the person liable to pay has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid; or
 - (d) the person liable to pay is not the owner of the water share.

s. 287C

- (3) An Authority must not sell the water share or cause it to be transferred unless it has, at least once in the 3 years, tried to recover the money due to it.
- (4) An Authority must pay, for a transfer of a water share under subsection (1), an amount equal to or greater than a valuation of the water share that is made by a valuer not more than 6 months before the date of the proposed transfer.
- (5) An Authority must in selling a water share under subsection (1) sell the share for an amount equal to or greater than a valuation of the share that is made by a valuer not more than 6 months before the date of the proposed sale.
- (6) At least 4 weeks before selling any share, or causing it to be transferred, under subsection (1), the Authority must—
 - (a) give public notice of its intention to do so; and
 - (b) serve, on any person who appears from the water register to be the share owner or a mortgagee or a holder of a limited term transfer recorded on the water share, a notice requiring payment of any outstanding amounts referred to in subsection (1).
- (7) The Registrar may register a transfer of a water share by an Authority under this section if the transfer is in a form approved by the Registrar.

S. 287B(6)(b)
amended by
No. 32/2010
s. 77(Sch.).

S. 287C
inserted by
No. 99/2005
s. 65.

287C Application of proceeds

- (1) An Authority that sells a water share, or causes it to be transferred, under section 287B must apply the proceeds of the sale, or the amount for which the share was transferred, as follows—
 - (a) first, in payment of all expenses incurred in connection with the sale or transfer;

- (b) secondly, in payment of the outstanding fees, including interest;
 - (c) thirdly, in discharging any recorded mortgages of which the Authority has notice, according to the priority of those mortgages.
- (2) The Authority must, if the owner of the water share can be traced, refund to the owner any surplus after all payments have been made that subsections (1)(a), (b) and (c) apply to.
- (3) If the owner cannot be traced, the Authority may, subject to subsection (5), retain and use any surplus after all payments have been made that subsections (1)(a), (b) and (c) apply to.
- (4) A person who claims to be the mortgagee of a recorded mortgage over a water share may apply to the Authority for payment of the value of that mortgage from any surplus retained by the Authority.
- (5) If the Authority is satisfied that an applicant is entitled to any payment it must make that payment.

S. 287C(1)(c)
substituted by
No. 32/2010
s. 65.

S. 287C(4)
substituted by
No. 85/2006
s. 119.

287D Sale or transfer cancels encumbrances

- (1) When an Authority sells a water share, or causes it to be transferred, under section 287B—
- (a) the sale or transfer is free from all rights of the owner of the water share or any mortgagee over the water share; and
 - (b) the Registrar must, when registering the transfer, cancel any recorded mortgages on the water share.

S. 287D
inserted by
No. 99/2005
s. 65,
amended by
No. 32/2010
s. 66(2) (ILA
s. 39B(1)).

S. 287D(a)
amended by
No. 32/2010
s. 66(1).

Water Act 1989
No. 80 of 1989
Part 13—Finance and Accountability

s. 287D

S. 287D(2)
inserted by
No. 32/2010
s. 66(2).

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- (2) The application of this section to the sale or transfer of water share is not to be taken to affect the rights of any holder of a limited term transfer under the water share.
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**PART 13A—PROCESS FOR TRANSFER OF PROPERTY ETC.
OF AUTHORITIES**

Pt 13A
(Heading and
ss 287E–287U)
inserted by
No. 85/2006
s. 120.

287E Definitions

S. 287E
inserted by
No. 85/2006
s. 120.

(1) In this Part—

allocation statement means an allocation
statement under section 287F;

former transferor instrument means an
instrument (including a legislative
instrument other than this Act) or an oral
agreement subsisting immediately before the
relevant date—

- (a) to which the transferor was a party; or
- (b) that was given to, or in favour of, the
transferor; or
- (c) that refers to the transferor; or
- (d) under which—
 - (i) money is, or may become, payable
to the transferor; or
 - (ii) other property is to be, or may
become liable to be, transferred to
or by the transferor;

former transferor property means property, rights
or liabilities of the transferor that, under this
Part, have vested in, or become liabilities of,
a licensee;

instrument includes a document and an oral
agreement;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

relevant date, in relation to an allocation statement or property, rights or liabilities allocated under such a statement, means the date fixed by the Minister under subsection (2) for the purposes of that statement;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

transferee means a person to whom property is, or rights or liabilities are, allocated under an allocation statement;

transferor means a person from whom property is, or rights or liabilities are, transferred under an allocation statement.

- (2) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of an allocation statement.

S. 287F
inserted by
No. 85/2006
s. 120.

287F Application to Minister for approval of transfer proposal

- (1) If an Authority and a licensee jointly propose that property, rights or liabilities of a specified kind be transferred from the Authority to the licensee, the Authority and the licensee may submit the proposal to the Minister for his or her approval.
- (2) A proposal must be in the form required by any guidelines issued by the Minister and be accompanied by a statement containing the

information required by the guidelines relating to the property, rights or liabilities to be transferred.

- (3) A statement under this section—
 - (a) must give the value of the property, rights or liabilities of the transferor that are to be transferred, to the extent to which it is practicable to determine that value; and
 - (b) must allocate to the transferee the property, rights or liabilities of the transferor shown in the statement; and
 - (c) must be signed by the chief executive officer (however described) of the transferee and the transferor.
- (4) The Minister may refuse the proposal or approve it, with or without any changes.
- (5) If a proposal is approved by the Minister—
 - (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.

287G Amendment of allocation statement

- (1) An allocation statement under section 287F may be amended by a document in writing signed by the Minister and the managing director of the transferee and the transferor.
- (2) An amendment under subsection (1) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement but must not otherwise be so made.

**S. 287G
inserted by
No. 85/2006
s. 120.**

s. 287H

- (3) In this Part, a reference to an *allocation statement* includes (where the case so requires) a reference to such a statement as amended under this section.

S. 287H
inserted by
No. 85/2006
s. 120.

287H Property transferred in accordance with allocation statement

On the relevant date for an allocation statement—

- (a) all property and rights of the transferor, wherever located, that are allocated under the allocation statement, vest in the transferee in accordance with the statement;
- (b) all liabilities of the transferor, wherever located, that are allocated under the allocation statement, become liabilities of the transferee in accordance with the statement.

S. 287I
inserted by
No. 85/2006
s. 120.

287I Staff transferred in accordance with allocation statement

- (1) On the relevant day for an allocation statement, all specified officers of the transferor become officers of the transferee, and each such officer—
- (a) holds an office that is equivalent to that previously held by the person in the transferor; and
 - (b) holds the office on terms and conditions no less favourable than those of the office held in the transferor and with the benefit of all rights accrued in respect of the office so held.
- (2) In this section *specified officer* means a person who holds an office that is specified in the allocation statement, or is of a class of offices that is specified in the allocation statement.

287J Allocation of property etc. subject to encumbrances

**S. 287J
inserted by
No. 85/2006
s. 120.**

Unless an allocation statement otherwise provides, where, under this Part—

- (a) property or rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with an allocation statement—

- (c) the property or rights so vested are subject to the encumbrances (if any) to which the property or rights were subject immediately before so vesting; and
- (d) the rights to which the transferor was entitled in respect of those liabilities, immediately before they ceased to be liabilities of the transferor, vest in the transferee.

287K Certificate of managing director

**S. 287K
inserted by
No. 85/2006
s. 120.**

- (1) A certificate signed by the managing director of the transferor certifying that property, rights or liabilities of the transferor specified in the certificate have been allocated under an allocation statement is, unless revoked under subsection (2), admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof—
 - (a) that the property, rights or liabilities so specified are the property, rights and liabilities to which the allocation statement applies; and
 - (b) that the allocation statement is an allocation statement for the purposes of this Part.
- (2) The managing director may revoke a certificate given under subsection (1) by issuing another certificate in place of the first certificate.

s. 287L

(3) The managing director of a transferor—

- (a) must keep a register of allocation statements and of certificates relating to them that are issued under this section; and
- (b) must make the register reasonably available for inspection by a transferee or other interested person.

S. 287L
inserted by
No. 85/2006
s. 120.

287L Value of transferred property

If the relevant allocation statement gives the value of property, rights or liabilities of the transferor that are allocated to the transferee, the value to the transferee of the property, rights or liabilities is the value so given.

S. 287M
inserted by
No. 85/2006
s. 120.

287M Substitution of party to agreement

Where, under an allocation statement, the rights and liabilities of a transferor under an agreement are allocated to a transferee—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and
- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement in place of the transferor.

S. 287N
inserted by
No. 85/2006
s. 120.

287N Former transferor instruments

Each former transferor instrument relating to former transferor property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the transferor were a reference to the transferee.

287O Proceedings

Unless an allocation statement otherwise provides, if, immediately before the relevant date, proceedings relating to former transferor property (including arbitration proceedings) to which a transferor was a party were pending or existing in any court or tribunal (including an arbitral tribunal), then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights and liabilities in the proceedings as the transferor had.

S. 287O
inserted by
No. 85/2006
s. 120.

287P Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former transferor property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the transferor had.

S. 287P
inserted by
No. 85/2006
s. 120.

287Q Easements

If a licensee acquires any right in the nature of an easement, or purporting to be an easement, as a result of an allocation under this Part, that right must be taken to be an easement even though there is no land vested in the transferee which is benefited or capable of being benefited by that right.

S. 287Q
inserted by
No. 85/2006
s. 120.

s. 287R

S. 287R
inserted by
No. 85/2006
s. 120.

287R Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the managing director of the transferor of former transferor property, must make any amendments in the Register that are necessary because of the operation of this Part.
- (2) Despite subsection (1), it is not necessary to produce a certificate of title in the case of a request for amendment to the Register in relation to transferred property that is an easement registered under the **Transfer of Land Act 1958**.

S. 287S
inserted by
No. 85/2006
s. 120.

287S Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with, the transfer of property, rights or liabilities of a transferor.

S. 287T
inserted by
No. 85/2006
s. 120.

287T Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to a former transferor instrument or former transferor property if this Part had not been enacted is admissible for or against the interests of the transferee.
- (2) The **Evidence Act 2008** applies with respect to the books of account of a transferor and to entries made in those books of account before the relevant date, whether or not they relate to a former transferor instrument or former transferor

S. 287T(2)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 62.1).

property, as if those books of account and entries were business records.

287U Validity of things done under this Part

S. 287U
inserted by
No. 85/2006
s. 120.

Nothing effected or to be effected by this Part or done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of, or to terminate, any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or

Water Act 1989

No. 80 of 1989

Part 13A—Process for Transfer of Property etc. of Authorities

s. 287U

(g) releases any surety or other obligor wholly or
in part from any obligation.

PART 13B—PROCEDURES FOR MAKING BY-LAWS

Pt 13B
(Heading and
ss 287V–
287ZL)
inserted by
No. 85/2006
s. 120.

Division 1—Preliminary

287V Definitions

S. 287V
inserted by
No. 85/2006
s. 120.

In this Part—

electronic communication has the same meaning
as in the **Electronic Transactions (Victoria)
Act 2000**;

model by-laws means model by-laws issued by the
Minister under section 287ZB;

**287W Authorities required to use certain procedures when
making by-laws**

S. 287W
inserted by
No. 85/2006
s. 120.

An Authority must use either the procedure set out
in Division 2 or the procedure set out in
Division 3 when making a by-law under this Act.

**Division 2—Procedure for making by-laws using model
by-laws**

**287X Requirements for Minister when issuing model
by-laws**

S. 287X
inserted by
No. 85/2006
s. 120.

In issuing a model by-law to be used by
Authorities in an exercise of a by-law making
power under this Act, the Minister must comply
with the procedure set out in this Division.

s. 287Y

S. 287Y
inserted by
No. 85/2006
s. 120.

287Y Minister to give notice of proposed model by-law

- (1) Before issuing a model by-law, the Minister must give notice of the proposal to issue the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the proposed model by-law will apply.
- (2) A notice under subsection (1) must state—
 - (a) the title of the proposed model by-law; and
 - (b) the purpose and general purport of the proposed model by-law; and
 - (c) that a copy of the proposed model by-law may be inspected, free of charge, and the places at which and the means by which any such copy may be inspected under section 287Z; and
 - (d) that submissions are invited on the proposed model by-law; and
 - (e) the time within which any such submissions must be received by the Minister under section 287ZA(3); and
 - (f) the means by which any such submissions may be made to the Minister under section 287ZA(2).

S. 287Z
inserted by
No. 85/2006
s. 120.

287Z Inspection of proposed model by-law

The Minister must ensure that the proposed model by-law—

- (a) is available for inspection, free of charge, at the offices of the Department during ordinary business hours; and
- (b) is able to be inspected, free of charge, by means of electronic communication at the electronic address of the Department.

287ZA Submissions on model by-laws

S. 287ZA
inserted by
No. 85/2006
s. 120.

- (1) The Minister must invite submissions on the proposed model by-law in the notice under section 287Y.
- (2) Any person who is affected by the proposed model by-law may make a submission on the by-law to the Minister in writing, whether by means of electronic communication or otherwise.
- (3) A submission under subsection (2) must be received by the Minister within one month of the publication of the notice under section 287Y(1).

287ZB Issuing of model by-laws

S. 287ZB
inserted by
No. 85/2006
s. 120.

After considering all submissions made on the proposed model by-laws, the Minister may issue, as model by-laws, the proposed model by-laws, either with or without amendment.

287ZC Making and giving of notice of making of by-law using model by-law

S. 287ZC
inserted by
No. 85/2006
s. 120.

- (1) An Authority may make a by-law by using a model by-law.
 - (2) In making a by-law by using a model by-law, the Authority may make any necessary minor or technical changes to the by-law.
 - (3) An Authority that is making a by-law using a model by-law must give notice of the making of the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area in which the by-law will apply.
 - (4) A notice under subsection (3) must set out—
 - (a) the title of the by-law; and
 - (b) the purpose and general purport of the by-law; and
-

s. 287ZD

- (c) that the by-law is being made by using a model by-law issued by the Minister; and
- (d) that a copy of the by-law may be inspected, free of charge, and the places and times at which and the means by which a copy of the by-law may be inspected under section 287ZK; and
- (e) the address of the Authority (including any electronic address) and the site of any electronic publication of information by the Authority about its operations.

Division 3—Procedure for making by-laws not using model by-laws

S. 287ZD
inserted by
No. 85/2006
s. 120.

287ZD Obligation of Authorities when exercising by-law making power

In exercising a by-law making power under this Act, without using a model by-law issued by the Minister under Division 2, the Authority must comply with the procedure set out in this Division.

S. 287ZE
inserted by
No. 85/2006
s. 120.

287ZE Authority to give notice of proposed by-law

- (1) Before making a by-law, the Authority that proposes to make the by-law, must give notice of the proposal—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the proposed by-law will apply.
- (2) A notice under subsection (1) must state—
 - (a) the title of the proposed by-law; and
 - (b) the purpose and general purport of the proposed by-law; and

- (c) that a copy of the proposed by-law may be inspected, free of charge, and the places at which and the means by which any such copy may be inspected under section 287ZF; and
- (d) that submissions are invited on the proposed by-law; and
- (e) the time within which any such submissions must be received by the Authority under section 287ZG(3); and
- (f) the means by which any such submissions may be made to the Authority under section 287ZG(2).

287ZF Inspection of proposed by-law

S. 287ZF
inserted by
No. 85/2006
s. 120.

The Authority must ensure that the proposed by-law—

- (a) is available for inspection, free of charge, at the offices of the Authority during ordinary business hours; and
- (b) is able to be inspected by means of electronic communication at the electronic address of the Authority.

287ZG Submissions on by-laws

S. 287ZG
inserted by
No. 85/2006
s. 120.

- (1) The Authority must invite submissions on the proposed by-law in the notice under section 287ZE.
- (2) Any person who is affected by the proposed by-law may make a submission on the by-law to the Authority in writing, whether by means of electronic communication or otherwise.
- (3) A submission under subsection (2) must be received by the Authority within one month of the publication of the notice under section 287ZE(1).

s. 287ZH

S. 287ZH
inserted by
No. 85/2006
s. 120.

287ZH Consideration and Ministerial approval

- (1) Before making the proposed by-law, the Authority must consider all submissions made on the proposed by-law within the time set out in section 287ZG(3) for the making of submissions.
- (2) After considering any such submissions, the Authority may make any amendments it considers necessary to the proposed by-law.
- (3) After consideration and any amendment under this section, the Authority may forward the proposed by-law to the Minister for approval for making.
- (4) The Minister, on receiving a proposed by-law forwarded under subsection (3), may approve the proposed by-law for making.

S. 287ZI
inserted by
No. 85/2006
s. 120.

287ZI Making and giving of notice of making

- (1) On the Minister approving a proposed by-law for making under section 287ZH(4), the Authority may make the by-law.
- (2) The Authority must give notice of the making of the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area in which the by-law will apply.
- (3) A notice under subsection (2) must set out—
 - (a) the title of the by-law; and
 - (b) the purpose and general purport of the by-law; and
 - (c) that a copy of the by-law may be inspected, free of charge, and the places and times at which and the means by which a copy of the by-law may be inspected under section 287ZK; and

- (d) the address of the Authority (including any electronic address) and the site of any electronic publication of information by the Authority about its operations.

Division 4—General

287ZJ Effect of by-laws

S. 287ZJ
inserted by
No. 85/2006
s. 120.

- (1) A by-law made under Division 2 has no effect until notice of its making under section 287ZC is published in the Government Gazette.
- (2) A by-law made under Division 3 has no effect until it is approved by the Minister and notice of its making under section 287ZI is published in the Government Gazette.

287ZK Inspection of by-laws

S. 287ZK
inserted by
No. 85/2006
s. 120.

- (1) An Authority must ensure that a copy of any by-law made by it—
 - (a) is available for inspection, free of charge, at the offices of the Authority during ordinary business hours; and
 - (b) is able to be inspected, free of charge, by means of electronic communication at the electronic address of the Authority.
- (2) An Authority must ensure that any by-law made by it is able to be purchased, on demand, at the offices of the Authority during ordinary business hours.

287ZL Automatic revocation of by-laws

S. 287ZL
inserted by
No. 85/2006
s. 120.

- (1) Unless sooner revoked, a by-law is by virtue of this section, revoked on the day which is 10 years after the making of the by-law.
- (2) In the case of any particular by-law, the Minister may certify that the operation of the by-law that would otherwise be revoked should be extended

beyond the day of revocation, if the Minister is satisfied that there are particular circumstances that make that certification reasonable.

- (3) The Authority that has made a by-law to which subsection (2) applies may on the certification of the Minister under subsection (2), make a by-law under this Act extending the operation of the by-law that is the subject of the certification for a period of no more than 12 months.
 - (4) The Minister must not make more than one certification under subsection (2) in relation to any particular by-law.
-

PART 14—ENFORCEMENT

Division 1—General offences

Pt 14 Div. 1
(Heading)
inserted by
No. 29/2007
s. 18.

288 Interference etc. with Authority's property⁴⁷

- (1) A person must not, without the consent of the Authority or without any other lawful authority, destroy, damage, remove, alter or in any way interfere with any works or other property (whether real or personal) belonging to or under the control and management of an Authority.

S. 288(1)
amended by
Nos 12/1996
s. 12(1),
90/2003
s. 4(1).

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

- (2) A person who is guilty of an offence under subsection (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—

S. 288(2)
amended by
No. 90/2003
s. 4(2).

- (a) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or

S. 288(2)(a)
amended by
No. 121/1994
s. 189(2)(a).

- (b) if no notice of contravention is served, after conviction.

- (3) If in a proceeding for an offence under subsection (1) it is proved that works—

S. 288(3)
amended by
No. 12/1996
s. 12(2)(a)(b).

- (a) situated on land owned or occupied by a person; or

s. 289

- (b) that service only land owned or occupied by a person; or
- (c) that record only the amount of water delivered to land owned or occupied by a person—

have been destroyed, damaged, removed, altered or in any way interfered with, the destruction, damage, removal, alteration or interference must be presumed, in the absence of evidence to the contrary, to have been done by that person.

S. 288(4)
inserted by
No. 121/1994
s. 189(2)(b).

- (4) In this section *Authority* includes licensee.

289 Wrongful taking etc. of water⁴⁸

S. 289(1)
amended by
No. 90/2003
s. 4(1).

- (1) A person must not, without the consent of the Authority or without any other lawful authority—
 - (a) take, use or divert water—
 - (i) that is under the control and management of an Authority; or
 - (ii) that is supplied by an Authority for the use of another person; or
 - (b) interfere with the flow of water in any waterway, aquifer or works under the control and management of an Authority.

S. 289(1)(b)
amended by
No. 5/2002
s. 51.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

S. 289(2)
amended by
No. 90/2003
s. 4(2).

- (2) A person who is guilty of an offence under subsection (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the

offence continues (up to a maximum of 20 additional penalty units)—

- (a) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or
 - (b) if no notice of contravention is served, after conviction.
- (3) If in a proceeding for an offence under subsection (1) it is proved that water that is under the control and management of an Authority was used on, or taken or diverted to, land owned or occupied by a person, the using, taking or diversion must be presumed, in the absence of evidence to the contrary, to have been done by that person.
- (4) In this section *Authority* includes licensee.

S. 289(2)(a)
amended by
No. 121/1994
s. 189(3)(a).

S. 289(4)
inserted by
No. 121/1994
s. 189(3)(b).

290 Uncovering or exposing works⁴⁹

S. 290
amended by
No. 121/1994
s. 189(4)(a).

- (1) Except in an emergency, a person must not open any ground and thereby uncover or expose any works belonging to or under the control and management of an Authority without—
- (a) the permission of the Authority; or
 - (b) having given to the Authority at least 5 days' written notice.

Penalty: 10 penalty units.

- (2) In this section *Authority* includes licensee.

S. 290(2)
inserted by
No. 121/1994
s. 189(4)(b).

291 Trespass

A person must not wilfully trespass on the land or premises of an Authority.

Penalty: 10 penalty units.

Pt 14 Div. 2
(Heading and
ss 291A–
291C)
inserted by
No. 29/2007
s. 19.

Division 2—Enforcement of water restrictions

S. 291A
inserted by
No. 29/2007
s. 19.

291A Appointment of authorised water officers

- (1) An Authority with a water district may appoint a person as an authorised water officer.
- (2) An appointment under subsection (1)—
 - (a) must be in writing; and
 - (b) must specify the district or districts in which the person may exercise the powers, functions or duties under this Act.
- (3) An Authority may require a person appointed under this section to undertake specified training before exercising any powers, functions or duties under this Act.

S. 291B
inserted by
No. 29/2007
s. 19.

291B Identification of authorised water officers

- (1) An Authority must issue to each person appointed as an authorised water officer an identity card that—
 - (a) contains a photograph of the person; and
 - (b) states the full name of the person to whom it is issued; and
 - (c) states that the person is an authorised water officer for the purposes of this Act.

- (2) An authorised water officer must produce his or her identity card for inspection at any time during the exercise of a power under this Act if asked to do so.

291C Offence to impersonate authorised water officer

A person must not impersonate an authorised water officer.

Penalty: 60 penalty units.

S. 291C
inserted by
No. 29/2007
s. 19.

Division 3—Powers of authorised water officers

Pt 14 Div. 3
(Heading and
s. 291D)
inserted by
No. 29/2007
s. 19.

291D Authorised water officer may require person to state name and address

S. 291D
inserted by
No. 29/2007
s. 19.

- (1) An authorised water officer may require a person to state his or her name and address if that authorised water officer has reasonable grounds for believing that the person has contravened, or is contravening—
- (a) an offence set out in section 170F in relation to a permanent water saving plan of the Authority that appointed the authorised water officer;
 - (b) an offence set out in a by-law made under section 171(1)(ba) by the Authority that appointed the authorised water officer.
- (2) Subject to subsections (3) and (4), a person who is required under this section to state his or her name and address must not—
- (a) refuse to state that name or address; or
 - (b) state a false name or address.

Penalty: 10 penalty units.

- (3) An authorised water officer must produce his or her identity card for inspection before exercising a power under subsection (1).
- (4) It is not an offence for a person to fail to comply with subsection (2) if the authorised water officer did not comply with subsection (3).

Pt 14 Div. 4
(Heading)
inserted by
No. 29/2007
s. 19.

Division 4—Further enforcement provisions

292 Offence of obstructing etc. officers

A person must not obstruct, threaten, abuse, insult or intimidate—

- (a) an officer of an Authority in the execution of his or her duty under this Act; or
- (b) any person lawfully performing duties under this Act, whether or not for or on behalf of an Authority; or
- (c) any person lawfully assisting an officer of an Authority in the execution of his or her duty under this Act.

Penalty: 20 penalty units.

293 Power to require person to state name and address

S. 293(1)
amended by
No. 29/2007
s. 20(1).

- (1) An officer of an Authority or a member of the police force may require a person to state his or her name and address if that officer or member has reasonable grounds for believing that he or she has committed or is committing an offence against—

S. 293(1)(a)
inserted by
No. 29/2007
s. 20(1).

- (a) this Act, except section 170F of this Act; or

(b) regulations made under this Act; or

S. 293(1)(b)
inserted by
No. 29/2007
s. 20(1).

(c) by-laws made under this Act, except by-laws
made under section 171(1)(ba) of this Act.

S. 293(1)(c)
inserted by
No. 29/2007
s. 20(1).

(2) A person who is required under this section to
state his or her name and address must not—

(a) refuse to state that name or address; or

(b) state a false name or address.

Penalty: 10 penalty units.

Note

See section 291D for powers of authorised water officers to
request the name and address of persons.

Note to
s. 293(2)
inserted by
No. 29/2007
s. 20(2).

**294 Occupier or manager required to state owner's etc.
name and address**

(1) An officer of an Authority may require the
occupier of any land or premises or any person
who is employed in the management of any land
or premises to state the name and address of the
owner of that land or those premises or of any
person who has an interest in that land or those
premises or who is employed in the management
of that land or those premises.

(2) A person who is required under this section to
state the name and address of a person must not, if
he or she knows that name or address—

(a) refuse to state that name or address; or

(b) state a false name or address.

Penalty: 10 penalty units.

295 Higher penalty for certain offences in certain circumstances

(1) This section applies to offences under—

- (a) section 63(1);
- (b) section 75;
- (c) section 76(6);
- (d) section 78(5);
- (e) section 79(3);
- (f) section 80(3);

* * * *

S. 295(1)(g)
repealed by
No. 90/2003
s. 12.

- (h) section 92(4);
- (i) section 145(1);
- (j) section 145(4);
- (k) by-laws made under section 160(1)(d);
- (l) section 151(2) in relation to a notice under section 169(1);
- (m) section 194(1);
- (n) section 195(1);
- (o) section 208(1);
- (p) section 208(5);
- (q) section 288(1);
- (r) section 289(1).

- (2) Despite anything to the contrary in this Act, if—
- (a) a person is convicted of an offence to which this section applies; and
 - (b) the convicting court is satisfied that as a result of the offence—
 - (i) land, works or water has or have been seriously damaged; or
 - (ii) a person has suffered substantial economic loss—

the person is liable, instead of the penalty otherwise prescribed under this Act, to a penalty of not more than 200 penalty units or to imprisonment for not more than 10 years or to both.

295A Power to issue infringement notices

S. 295A
inserted by
No. 85/2006
s. 121.

- (1) An authorised water officer appointed by an Authority may serve an infringement notice on another person in respect of an offence against section 170F in respect of a relevant plan of the Authority, if the authorised water officer reasonably believes that the person has committed the offence.
- (2) An offence referred to in subsection (1), for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in subsection (1) is 1 penalty unit.
- (4) In this section **relevant plan**, in relation to an Authority, means a permanent water saving plan that the Authority is responsible for implementing.

S. 295A(1)
substituted by
No. 29/2007
s. 21(1).

S. 295A(3)
substituted by
No. 29/2007
s. 21(2).

S. 295A(4)
inserted by
No. 29/2007
s. 21(2).

296 Prosecutions

- (1) Proceedings for an offence against a provision of this Act or of regulations or by-laws made under this Act may only be brought by—
 - (a) a member of the police force; or
 - (b) a person authorised to do so, either generally or in any particular case, by the Authority which has responsibility for the enforcement of the provision; or
 - (ba) in the case of an offence against section 288(1), 289(1) or 290(1), an employee of the licensee authorised to do so, either generally or in a specific case, by the licensee; or
 - (bb) in the case of an offence against section 170F or 291D, in relation to a permanent water saving plan of an Authority, an authorised water officer appointed by the Authority responsible for implementing the plan; or
 - (bc) in the case of a by-law made by an Authority under section 171(1)(ba), an authorised water officer appointed by the Authority; or
 - (c) a prescribed person or a prescribed class of persons.
- (2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.
- (3) An employee of a licensee may only be authorised by the licensee under subsection (1)(ba) if the licensee is satisfied that the employee is appropriately qualified and trained.

S. 296(1)(ba)
inserted by
No. 90/2003
s. 7(1),
substituted by
No. 29/2007
s. 22.

S. 296(1)(bb)
inserted by
No. 29/2007
s. 22.

S. 296(1)(bc)
inserted by
No. 29/2007
s. 22.

S. 296(3)
inserted by
No. 90/2003
s. 7(2).

297 Offences by corporations and partnerships etc.

- (1) In this section, *officer*—
- (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—
- but does not include an employee of the corporation.
- (2) If a corporation is guilty of an offence against this Act or against any regulation or by-law made under this Act, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (3) If in a proceeding for an offence against this Act or against any regulation or by-law made under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or against any regulation or by-law made under this Act.
- (5) If this Act or a regulation or by-law made under this Act provides that a person is guilty of an offence, that reference to a person must—
- (a) if the person is a partnership, be read as a reference to each member of the partnership; and

S. 297(1)
substituted by
No. 44/2001
s. 3(Sch.
item 127.1).

- (b) if the person is an unincorporated association, be read as a reference to each member of the committee of management of the association.

298 Application of penalties

All penalties imposed on a person in a proceeding for an offence against this Act or against any regulation or by-law made under this Act must, when recovered, be paid to and applied to the purposes of the Authority by or on behalf of whom the proceeding was brought.

S. 299
amended by
No. 121/1994
s. 189(5)(a).

299 Civil remedies not affected by bringing of proceeding

The bringing of a proceeding or the imposition of a penalty for, or the entering of a conviction in respect of, an offence under this Act or the regulations or by-laws made under this Act does not take away from the right of an Authority, a licensee or any other person to recover from any person—

S. 299(a)
amended by
No. 121/1994
s. 189(5)(b).

- (a) any sum for loss or damage suffered by the Authority, licensee or person due to the contravention, including the value of any water wrongfully taken, used or diverted; or

S. 299(b)
amended by
No. 121/1994
s. 189(5)(b).

- (b) the costs and expenses incurred by the Authority, licensee or person in remedying that loss or damage.

S. 300
amended by
No. 50/1992
s. 10(Sch.
item 11.32(a)).

300 Proof of certain matters not required

- (1) In any proceeding under this or any other Act or the regulations or by-laws made under this or any other Act until evidence is given to the contrary proof is not required as to any of the following—
 - (a) the constitution of an Authority;
 - (b) the due election or appointment of the members of an Authority;

- (c) the appointment of any officer of an Authority;
- (d) the appointment of an officer of an Authority to do an act or for a particular purpose;
- (e) the size, location or boundaries of a district of an Authority or of an area of interest declared under section 106 in relation to a district of an Authority or of an environmental or recreational area declared under section 107;
- (f) the fact that a particular property is located within a particular district of an Authority;
- (g) the authority of any person to bring or defend any proceeding on behalf of an Authority;
- (h) the presence of a quorum at any meeting of an Authority;
- (i) that a document purporting to be made or issued by an Authority was made or issued by that Authority;
- (j) the setting of any tariff;
- (k) the validity of the contents of any records or minutes of an Authority.

* * * * *

S. 300(2)
inserted by
No. 50/1992
s. 10(Sch.
item 11.32(b)),
repealed by
No. 49/1994
s. 4(1)(l).

301 General evidentiary provisions

- (1) If in any proceeding under this Act or the regulations or by-laws made under this Act the amount of water delivered to a property during any period is relevant, evidence of the amount of water recorded by a water meter as having passed

through the meter to the property during that period is, in the absence of evidence to the contrary, proof that that amount of water was delivered to that property during that period.

(2) If—

- (a) in any proceeding under this Act or the regulations or by-laws made under this Act the amount of water delivered to a property during any period is relevant; and
- (b) as a result of a water meter having malfunctioned or having been destroyed, damaged, altered or in any way interfered with, an Authority is of the opinion that it did not accurately record the amount of water delivered to that property during that period—

evidence may be given of the amount of water computed by the Authority in accordance with subsection (3) as having been delivered to that property during that period and that evidence is, in the absence of evidence to the contrary, proof that that amount of water was delivered to that property during that period.

(3) A computation for the purposes of subsection (2) may be made—

- (a) by having regard to the quantity of water delivered to the property concerned in any previous or subsequent period or periods or the quantity of water delivered to any similar property during the period concerned; or
 - (b) in any other way that is prescribed.
- (4) A document purporting to contain a copy of any by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this subsection) and purporting to be signed by an authorised person is admissible

in evidence in any proceeding under this Act or the regulations or by-laws made under this Act and, in the absence of evidence to the contrary, is proof that a by-law, regulation, order or notice in the words written in that document was duly made or issued by the Authority.

- (5) In any proceeding under this Act or the regulations or by-laws made under this Act the production of a copy of the Government Gazette purporting to contain a by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this subsection) is, in the absence of evidence to the contrary, proof that a by-law, regulation, order or notice in the words appearing in the Government Gazette was duly made or issued by the Authority.
- (6) The provisions of subsection (5) are additional to and do not take away from the provisions of section 153 of the **Evidence Act 2008**.

S. 301(6)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 62.2).

- (7) A document purporting—
- (a) to be a map or plan made or issued by an Authority (whether before or after the commencement of this subsection); and
 - (b) to show the location of any land or works or other thing or the physical features of any area; and
 - (c) to be verified by an authorised person—
- is admissible in evidence in any proceeding under this Act or the regulations or by-laws made under this Act and, in the absence of evidence to the contrary, is proof of the matters shown in the map or plan.

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- (8) In any proceeding under this Act or the regulations or by-laws made under this Act—
- (a) evidence that a person is subject to a fee imposed under a tariff set under this Act in respect of any land; or
 - (b) evidence that a person's name appears in any records kept by an Authority as the owner or occupier of any land; or
 - (c) evidence by the certificate of the Registrar of Titles or any Deputy Registrar of Titles or Assistant Registrar of Titles and authenticated by the seal of the Office of Titles that a person's name appears in the Register kept under the **Transfer of Land Act 1958** as the proprietor of an estate in fee simple or of a leasehold estate held of the Crown in any land; or
 - (d) evidence by the certificate of the Registrar-General or any Deputy Registrar-General that a person appears from a memorial of registration of any deed, conveyance or other instrument to be the owner of any land—
- is, in the absence of evidence to the contrary, proof that that person is the owner or occupier (as the case requires) of that land.
- (9) In any proceeding for the recovery of a fee imposed under a tariff by an Authority, the entry in the rate records of a council or a copy of that entry verified by the statutory declaration of the person making it is admissible in evidence in the proceeding and, in the absence of evidence to the contrary, is proof of the ownership or occupation of the property rated by the person named in the entry or copy of the entry.
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- (10) In any proceeding under this Act or the regulations or by-laws made under this Act, the statement of any person that on a particular date he or she was an officer of a corporation is admissible in evidence and, in the absence of evidence to the contrary, is proof that on that date he or she was an officer of that corporation.

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S. 301(11)
inserted by
No. 50/1992
s. 10(Sch.
item 11.33),
repealed by
No. 49/1994
s. 4(1)(m).

302 Use of analyst's certificate in prosecutions

- (1) If in respect of a proceeding for an offence against this Act or against any regulation or by-law made under this Act a copy of an analyst's certificate is obtained on behalf of the informant and served with the summons to answer to the charge, the analyst's certificate is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it and of the facts on which they are based unless the accused has at least 7 days before the contest mention date given written notice to the informant requiring the analyst to be called as a witness.
- (2) Service of a copy of an analyst's certificate with a summons to answer to a charge may be proved in any manner in which service of the summons may be proved and the evidence of service must state that a copy of the certificate was served with the summons.

S. 302(1)
amended by
No. 68/2009
s. 97(Sch.
item 133.2).

303 Authentication of documents

Despite anything to the contrary in any other Act, a document requiring authentication by an Authority may be sufficiently authenticated without the seal of the Authority if signed by the secretary of the Authority or by any other person authorised in writing by the Authority either generally or particularly to authenticate that document.

304 Service of documents on an Authority

S. 304(1)
substituted by
No. 85/2006
s. 122.

- (1) Any document required or permitted to be served on an Authority may be served—
 - (a) by being left at its principal office with a person authorised in writing by the Authority to accept service of documents on behalf of the Authority; or
 - (b) by sending it by certified mail addressed to the managing director at the principal office of the Authority.
- (2) The provisions of this section are additional to and do not take away from the provisions of any rules of court concerning service of documents.

S. 305
amended by
No. 25/1991
s. 5(1).

305 Service of documents by an Authority

- (1) If by or under this Act a document is required or permitted to be served by an Authority on a person then, unless otherwise expressly provided by this Act, the document may be served—
 - (a) by delivering it personally to the person to be served; or
 - (b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there; or

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- (c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or
 - (d) in the case of service on an owner of any land or premises whose name and address are not known to the Authority, by delivering it personally to the occupier of the land or premises concerned or leaving it at the land or premises with a person apparently over the age of 16 years and apparently residing there or, if there is no occupier, by putting it up on a conspicuous part of the land or premises; or
 - (e) in the case of service on an occupier of any land or premises whose name and address are not known to the Authority, by putting it up on a conspicuous part of the land or premises.
- (2) A document that is to be served on the owner or occupier of any land or premises may be addressed by the description of "the owner" or "the occupier" of the land or premises concerned (naming it or them), without further name or description.
 - (3) An occupier of any land or premises to whom under subsection (1)(d) there is personally delivered a document that is intended to be served on the owner of that land or those premises must immediately send that document by registered post addressed to the owner at the owner's usual place of residence (if known to the occupier) or the owner's place of residence last known to the occupier.

Penalty: 10 penalty units.

s. 305

S. 305(4)
amended by
No. 44/2001
s. 3(Sch.
item 127.2).

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- (4) The provisions of this section are additional to and do not take away from the provisions of sections 109X and 601CX of the Corporations Act.
- (5) If a document is properly served on the owner or occupier of any land or premises, that service is binding on every subsequent owner or occupier to the same extent as if it had been served on that subsequent owner or occupier.
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**PART 14A—VICTORIAN WATER TRUST ADVISORY
COUNCIL**

Pt 14A
(Heading and
ss 305AA–
305HH)
inserted by
No. 35/2003
s. 3.

305AA Definition

In this Part, ***Council*** means the Victorian Water Trust Advisory Council established in accordance with this Part.

S. 305AA
inserted by
No. 35/2003
s. 3.

305BB Establishment of Victorian Water Trust Advisory Council

There is established an advisory council to be called the Victorian Water Trust Advisory Council.

S. 305BB
inserted by
No. 35/2003
s. 3.

305CC Functions of the Council

The functions of the Council are—

- (a) to advise the Minister on the allocation of funds (from money appropriated by the Parliament for the purpose) for initiatives—
 - (i) to enhance the health and sustainability of the water resources of Victoria, including rivers;
 - (ii) to provide greater security for meeting the future water needs of Victorians;
 - (iii) to encourage the increased re-use and recycling of water in Victoria;
 - (iv) to improve efficiencies in the use of water across Victoria;
- (b) to advise the Minister on additional sources of funding for initiatives referred to in paragraph (a);
- (c) to advise the Minister on any other related matter that the Minister may request;

S. 305CC
inserted by
No. 35/2003
s. 3.

s. 305DD

- (d) to provide information to the public on procedures for applying for funding for initiatives referred to in paragraph (a);
- (e) to promote public awareness of the activities of the Council.

S. 305DD
inserted by
No. 35/2003
s. 3.

305DD Powers of the Council

The Council has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

S. 305EE
inserted by
No. 35/2003
s. 3.

305EE Constitution of the Council

- (1) The Council shall consist of not more than 5 members and not fewer than 3 members appointed by the Minister.
- (2) In making an appointment under subsection (1), the Minister must ensure that the members are chosen from persons who, in the opinion of the Minister, are experienced in the environment, sustainability, finance, water infrastructure, community service or another field appropriate to the functions of the Council.
- (3) The Minister must appoint a member of the Council to be Chairperson of the Council.

S. 305FF
inserted by
No. 35/2003
s. 3.

305FF Terms and conditions of appointment of members

- (1) Each member must be appointed for the term, not exceeding 3 years, that is fixed by the Minister in the instrument of appointment but is eligible for re-appointment.
- (2) The Minister may in the instrument of appointment of a member specify the terms and conditions of appointment.
- (3) The Minister may at any time remove a member from office.

- (4) The office of a member becomes vacant—
- (a) if the member resigns his or her office by writing addressed and delivered to the Minister;
 - (b) if the member is removed from office in accordance with subsection (3);
 - (c) if the member becomes an insolvent under administration;
 - (d) if the member becomes incapable of performing his or her duties;
 - (e) if the member is absent from 3 consecutive meetings of the Council without permission of the Chairperson;
 - (f) if the member is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.
- (5) A member is entitled to be paid any remuneration and allowances fixed from time to time by the Minister.
- (6) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Council in respect of the office of member.

S. 305FF(4)(c)
amended by
No. 4/2008
s. 32(Sch.
item 37.2).

S. 305FF(6)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 232.6),
80/2006
s. 26(Sch.
item 116.2).

305GG Temporary vacancies

- (1) If the office of a member of the Council is vacant or a member of the Council is unable, whether because of illness or otherwise, to perform the duties of office of member, the Minister may appoint a person to act as a member while the office is vacant or during that period of inability.

S. 305GG
inserted by
No. 35/2003
s. 3.

s. 305HH

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- (2) A person appointed to act as a member of the Council has, while so acting, the rights, powers and duties of the member for whom he or she acts.
 - (3) A person appointed to act as a member is entitled to receive any remuneration and allowances fixed for that member by the Minister.

S. 305HH
inserted by
No. 35/2003
s. 3.

305HH Meetings

- (1) A majority of the members of the Council for the time being constitute a quorum of the Council.
 - (2) The Minister may make guidelines about the proceedings of the Council.
 - (3) Subject to this Act and any guidelines made under subsection (2), the Council may regulate its own proceedings.
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PART 15—GENERAL

305A Application to Tribunal for declaration

S. 305A
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.49).

- (1) A person may apply to the Tribunal for a declaration concerning any matter that could form the subject of an application for review to the Tribunal under this Act (other than an application for review under section 266(6)).
- (2) On an application under subsection (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.
- (3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

305B Matters Tribunal must take into account in review proceedings

S. 305B
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.49).

In determining an application under this Act for review of a decision (other than an application for review under section 266(6)) the Victorian Civil and Administrative Tribunal must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister or the planning authority; and

S. 305B(b)
amended by
No. 81/2004
s. 52.

take account of and give effect to any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**.

s. 305C

S. 305C
inserted by
No. 48/2005
s. 15.

305C Incorporation of documents in certain orders or other instruments

(1) An order or other instrument made under a section specified in subsection (2) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

(a) wholly or partially or as amended by the order or other instrument; or

S. 305C(1)(b)
amended by
No. 85/2006
s. 123(1)(a).

(b) as formulated, issued, prescribed or published at the time the order or other instrument is made or at any time before then.

S. 305C(1)(c)
repealed by
No. 85/2006
s. 123(1)(b).

* * * * *

(2) Subsection (1) applies in respect of the following sections—

(a) section 3(2);

(b) section 4;

S. 305C(2)(ba)
inserted by
No. 85/2006
s. 123(2).

(ba) section 6A;

S. 305C(2)(c)
repealed by
No. 85/2006
s. 123(3).

* * * * *

(d) section 22A;

(e) section 27;

(f) section 28;

(g) section 32A;

(h) section 32E;

(ha) section 33AAA;	S. 305C(2)(ha) inserted by No. 85/2006 s. 123(4).
(i) section 35;	S. 305C(2)(i) inserted by No. 32/2010 s. 67(a).
(j) section 44;	S. 305C(2)(j) inserted by No. 32/2010 s. 67(a).
(k) section 48B;	S. 305C(2)(k) inserted by No. 32/2010 s. 67(a).
(l) section 48K;	S. 305C(2)(l) inserted by No. 32/2010 s. 67(a).
* * *	S. 305C (2)(i)–(m) repealed by No. 85/2006 s. 123(5).
* * *	S. 305C(2)(n) repealed by No. 32/2010 s. 67(b).
(na) section 122H;	S. 305C(2)(na) inserted by No. 85/2006 s. 123(6).
(nb) section 122I;	S. 305C(2)(nb) inserted by No. 85/2006 s. 123(6).

s. 305C

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| S. 305C(2)(nc)
inserted by
No. 85/2006
s. 123(6). | (nc) section 122J; |
| S. 305C(2)(nd)
inserted by
No. 85/2006
s. 123(6). | (nd) section 122K; |
| S. 305C(2)(ne)
inserted by
No. 85/2006
s. 123(6). | (ne) section 122T; |
| S. 305C(2)(nf)
inserted by
No. 85/2006
s. 123(6). | (nf) section 122U; |
| S. 305C(2)(ng)
inserted by
No. 85/2006
s. 123(6). | (ng) section 122Y; |
| S. 305C(2)(nh)
inserted by
No. 85/2006
s. 123(6). | (nh) section 122Z; |
| S. 305C(2)(ni)
inserted by
No. 85/2006
s. 123(6). | (ni) section 122ZA; |
| S. 305C(2)(nj)
inserted by
No. 85/2006
s. 123(6). | (nj) section 122ZK; |
| | (o) section 131; |
| | (p) section 160; |
| | (q) section 188; |
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(qa) section 188A(3);

S. 305C(2)(qa)
inserted by
No. 85/2006
s. 123(7).

(r) section 201;

S. 305C(2)(r)
amended by
No. 32/2010
s. 67(c).

(s) section 203;

(t) section 205;

(u) section 214;

(v) section 215;

(w) section 216;

(x) section 218.

305D Validation of certain orders or other instruments

S. 305D
inserted by
No. 48/2005
s. 15.

An order or other instrument made or purported to be made under section 3(2), 4, 13, 27, 28, 32A, 32E, 64A, 64B, 96(11), 97, 98, 104, 106, 107, 131, 160, 188, 202, 203, 205, 214, 215, 216 or 218 on or after 1 July 1984 and in force, or purportedly in force, immediately before the commencement of Part 5 of the **Environment and Water Legislation (Miscellaneous Amendments) Act 2005** that would have been validly made if section 305C had been in operation at the time the relevant order or other instrument was made or purported to be made has, and is deemed always to have had, the same force and effect as it would have had—

(a) if section 305C had been in operation at that time; and

s. 306

(b) despite any failure or purported failure to comply with the requirements of section 32 of the **Interpretation of Legislation Act 1984** in respect of that order or other instrument.

306 Power of Minister to delegate

S. 306
amended by
No. 12/1996
s. 8(8)(a).

S. 306(1)
amended by
No. 32/2010
s. 68(a).

(1) The Minister may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Minister under this or any other Act or under any subordinate instrument made under this Act, other than—

S. 306(1)(a)
amended by
No. 12/1996
s. 8(8)(b).

(a) subject to subsection (2), this power of delegation; and

S. 306(1)(b)
amended by
Nos 62/1995
s. 23(5),
110/1997
s. 25(5),
5/2002
s. 52(a)–(c),
99/2005 s. 66,
85/2006 s. 124
28/2007
s. 3(Sch.
item 75.5),
32/2010
s. 68(b).

(b) the Minister's powers under sections 4, 22A, 27 to 32A, 32E to 32G, 33AAB(1), 33AD, 47DA, 48MA, 62A, 283(3B) and 307.

S. 306(2)
inserted by
No. 12/1996
s. 8(9).

(2) If any power, discretion, function, authority or duty of the Minister as an Authority to which Division 4 of Part 10 applies is delegated under this section, the Minister may also delegate to the delegate the power of delegation conferred by this section in relation to the power, discretion, function, authority or duty so delegated.

- (3) A delegate to whom a power of delegation is delegated under this section may, subject to the terms of the instrument of delegation, sub-delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty delegated to the delegate under this section, other than the power of sub-delegation.
- (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply in relation to a sub-delegation in the same manner as they apply in relation to a delegation.

S. 306(3)
inserted by
No. 12/1996
s. 8(9).

S. 306(4)
inserted by
No. 12/1996
s. 8(9).

307 Power of Minister to give directions

- (1) The Minister, after consulting with the Treasurer, may give a written direction to an Authority in relation to the performance of any of its functions or the exercise of any of its powers.
- (1AA) Without limiting subsection (1), a direction may be given in relation to—
- (a) compliance with the specifications of or the conditions in a bulk entitlement; or
 - (b) compliance with—
 - (i) any conditions in; or
 - (ii) any duties imposed by the Minister on imposing—
- a qualification on the holder of a bulk entitlement under Division 4 of Part 3.
- (1A) An Authority to which a direction has been given under subsection (1) must comply with the direction.
- (2) The Minister must give an Authority 14 days' notice of his or her intention to give a direction under subsection (1).

S. 307(1)
amended by
Nos 62/1995
s. 17, 85/2006
s. 125(1),
substituted by
No. 32/2010
s. 69.

S. 307(1AA)
inserted by
No. 32/2010
s. 69.

S. 307(1A)
inserted by
No. 85/2006
s. 125(2).

s. 307A

- (3) If the Minister gives a direction to an Authority, the Minister must make sure that notice of the giving of the direction, and a statement or summary of the contents of the direction, is published in the Government Gazette.
- (4) An Authority to which the Minister gives a direction must make sure that a statement or summary of the contents of the direction is included in the annual report of the Authority.
- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the direction.

S. 307A
inserted by
No. 85/2006
s. 126.

307A Reimbursement of cost of complying with directions

- (1) If the Minister is satisfied that an Authority has suffered financial detriment as a result of complying with a direction of the Minister under section 307, the Minister may direct that an Authority be reimbursed the amount determined by the Minister to be the amount of the financial detriment.
- (2) The Minister must not make a determination under subsection (1) unless the Minister has first—
 - (a) obtained the approval of the Minister administering the **Financial Management Act 1994**; and
 - (b) consulted with the board of directors of the Authority.
- (3) On making a determination under subsection (1), the Authority becomes entitled to the payment of the amount so determined.

- (4) A reference in subsection (1) to suffering financial detriment includes a reference to—
- (a) incurring costs that are greater than would otherwise have been incurred; or
 - (b) foregoing revenue that would otherwise have been received.
- (5) A determination under subsection (1) must be made in writing.

308 Power of Minister to exempt

The Minister may by Order published in the Government Gazette exempt—

- (a) any person or class of persons; or
- (b) any works or class of works—

S. 308(b)
amended by
No. 5/2002
s. 53(a).

* * * * *

S. 308(c)
repealed by
No. 5/2002
s. 53(b).

from any of the provisions of Parts 3, 4 or 5, either unconditionally or on specified conditions or in specified circumstances.

309 Powers of the Minister in enforcing certain Parts of this Act

S. 309
(Heading)
inserted by
No. 32/2010
s. 77(Sch.).

- (1) For the purposes of ensuring that Parts 3A, 4, 4B and 5 are complied with, the Minister has the powers given by section 133 to an officer of an Authority.
- (2) Section 134 applies to the Minister in the exercise of those powers as if he or she were an officer of an Authority.

S. 309(1)
amended by
No. 99/2005
s. 67.

s. 310

- (3) For the purposes of ensuring that Parts 4 and 5 are complied with, the Minister has the powers given by section 151 to an Authority.
- (4) This Act applies to a notice of contravention issued by the Minister as if it were issued by an Authority under section 151.

310 Establishment of Drillers' Licensing Board

- (1) There is established a Board called the Drillers' Licensing Board.
- (2) The Board consists of 3 members appointed by the Minister, of whom—

S. 310(2)(a)
amended by
No. 76/1998
s. 29(f).

- (a) one is nominated by the Department Head;
and

S. 310(2)(b)
substituted by
No. 62/1995
s. 39,
amended by
No. 76/1998
s. 29(f).

- (b) one is a person with specialist knowledge in areas relevant to the functions of the Board nominated by the Department Head; and

- (c) one is appointed from a panel of 3 names submitted by the Victorian Branch of the Australian Drilling Industry Association.

- (3) The person appointed under subsection (2)(a) is the chairperson of the Board.
- (4) If the body referred to in subsection (2)(c) fails to submit a panel of 3 names on or before the date specified by the Minister when requesting a panel, the Minister may appoint as a member of the Board another person as representing well-drillers.

311 Application for licence

- (1) A person may apply to the Drillers' Licensing Board in writing for a driller's licence.
- (2) An application must be accompanied by the prescribed fee.

312 Board may grant licence

- (1) Subject to the regulations, the Drillers' Licensing Board may grant a driller's licence to an applicant entitling the applicant to use the method of drilling or bore construction endorsed on the licence.
- (2) The Board must advise each applicant in writing of the outcome of the application and, if the application has been refused, must give the applicant the reasons for the refusal.

313 Licences may be revoked or suspended

- (1) If in the opinion of the Drillers' Licensing Board the licensee has—
 - (a) contravened any provision of Part 5 or the regulations made for the purposes of that Part; or
 - (b) used a method of drilling or bore construction not endorsed on the licence; or
 - (c) contravened a condition of a licence issued under section 67—

S. 313(1)(b)
amended by
No. 5/2002
s. 54(a).

S. 313(1)(c)
inserted by
No. 5/2002
s. 54(b).

the Board may, by written notice served on the licensee, revoke the driller's licence or suspend it for the period specified in the notice.

- (2) A notice served under subsection (1) must specify the reasons for the revocation or suspension.

314 Register of licences

The Drillers' Licensing Board must keep a register of licences granted under section 312 and must record in the register any revocation or suspension of those licences.

S. 315
amended by
No. 62/1995
s. 40.

315 Term of licence

Unless sooner revoked, a driller's licence remains in force for 10 years and, subject to the regulations, may be renewed from time to time on application to the Drillers' Licensing Board and on payment of the prescribed fee.

316 Requirement that licensed driller carry out work

- (1) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, a person must not carry out that work unless he or she is—

- (a) a licensed driller; or
- (b) an employee or agent of a licensed driller and the work is carried out under the direct supervision of a licensed driller.

Penalty: 20 penalty units.

- (2) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out using a specified method of drilling or bore construction, then subsection (1) applies as if the references to a licensed driller were references to a licensed driller whose licence is endorsed so as to entitle him or her to use the specified method of drilling or bore construction.

- (3) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, the licensed driller must ensure that the work, or that part of the work, carried out by, or under the direction of, the licensed driller complies with the conditions of the licence.

S. 316(3)
inserted by
No. 5/2002
s. 55.

Penalty: 20 penalty units.

317 Appeals

- (1) Any person who is aggrieved by the refusal of the Drillers' Licensing Board to grant him or her a driller's licence or to endorse the licence with respect to a particular method of drilling or bore construction or by any revocation or suspension of his or her licence or by any endorsement on his or her licence may within 30 days after the refusal, revocation or suspension appeal to the Minister.
- (2) The Minister must hear and determine the appeal and his or her decision is final and must be given effect to by the Board.
- (3) The Minister may in writing designate any person (other than an officer or employee of the public service or of any public statutory body) to—
- (a) hear the whole or any part of an appeal under this section; and
 - (b) report to him or her on that hearing; and
 - (c) make any recommendation on the appeal.
- (4) A hearing by a person designated by the Minister under subsection (3) is for the purposes of this section to be taken to be a hearing by the Minister but in every case the final determination of the matter must be made by the Minister himself or herself.

318 Advisory committees established by Minister

- (1) The Minister may establish advisory committees to advise the Minister on any matter referred by the Minister.
- (2) The Minister may at any time remove from office a member of a committee.
- (3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a committee in respect of the office of member.
- (4) Subject to this Act and any rules made under subsection (5), a committee may regulate its own procedure.
- (5) The Minister may make rules, with which committees must comply, about—
 - (a) their quorums; and
 - (b) voting powers of their members; and
 - (c) their proceedings.
- (6) A member is entitled to be paid any fees and allowances fixed by the Governor in Council.

S. 318(3)
substituted by
No. 62/1995
s. 44(3),
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 232.7),
80/2006
s. 26(Sch.
item 116.3).

319 Department Head

- (1) If an Authority requests the Department Head to carry out an investigation into any aspect of water services or resources or related areas, the Department Head may carry out the investigation at the Authority's cost.

S. 319(1)
amended by
No. 76/1998
s. 29(g).

- (2) The Department Head may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Department Head under this or any other Act, other than this power of delegation.

S. 319(2)
amended by
No. 76/1998
s. 29(g).

320 Authorities as at the passing of this Act

- (1) Column 1 of Schedule 12 lists the Authorities that continue in existence as at the date on which this Act receives the Royal Assent under the corporate names specified in that column.
- (2) An entry in column 2 of Schedule 12 in relation to an Authority indicates that the Authority has an irrigation district as described in that column.
- (3) An entry in column 3 of Schedule 12 in relation to an Authority indicates that the Authority has a sewerage district as described in that column.
- (4) An entry in column 4 of Schedule 12 in relation to an Authority indicates that the Authority has a waterway management district as described in that column.
- (5) An entry in column 5 of Schedule 12 in relation to an Authority indicates that the Authority has a water district as described in that column.
- (6) Nothing in this section prevents the exercise of a power under this Act to—
- (a) proclaim a new district; or
 - (b) unite any two or more districts; or
 - (c) increase or diminish the extent of a district;
or
 - (d) divide a district into two or more districts; or
 - (e) abolish a district; or
 - (f) change the corporate name of an Authority.

S. 321(1)
amended by
No. 50/1992
s. 10(Sch.
item 11.34).

321 Officers appointed or transferred to Authorities

- (1) In this section, a reference to an appointment includes a reference to a transfer as a result of an Order under section 98(1) or by virtue of clause 20(2)(e) of Schedule 3.
- (2) A person appointed as an officer of an Authority who, immediately before that appointment, was—
 - (a) an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment; or
 - (b) a permanent employee within the meaning of the **State Employees Retirement Benefits Act 1979**—may, subject to those Acts, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue to be an officer or permanent employee for the purposes of the appropriate Act for the period of his or her appointment.
- (3) A person appointed as an officer of an Authority (other than a person referred to in subsection (2)) who, immediately before that appointment, was a member of or contributor to a scheme of superannuation may, subject to the rules governing that scheme, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue as a member of or contributor to that scheme for the period of his or her appointment.
- (4) A person referred to in subsection (2) or (3) who has not, 6 months after commencing duties as an officer of the Authority, made an election under subsection (2) or (3) must, on and after the end of that period, be taken to be an employee within the meaning of the **Local Authorities Superannuation Act 1988** and, despite anything

to the contrary in that Act, must be taken to have become such an employee as from the end of that period.

- (5) A person appointed as an officer of an Authority who makes an election under subsection (2) or (3) must be taken not to be an employee within the meaning of the **Local Authorities Superannuation Act 1988**.
- (6) Until an officer referred to in subsection (2) or (3) makes an election under those subsections, or 6 months after the date on which he or she commences duties as an officer of the Authority (whichever is earlier) the officer must—
 - (a) in the case of an officer referred to in subsection (2), be taken to continue to be an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment, or a permanent employee within the meaning of the **State Employees Retirement Benefits Act 1979**, as the case requires; and
 - (b) in the case of an officer referred to in subsection (3), continue as a member of or contributor to the scheme of superannuation.

322 Guidelines as to terms and conditions of employment

- (1) This section applies to—
 - (a) officers of an Authority other than a Catchment Management Authority; and
 - (b) officers or employees of a council that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the council of any powers, functions or duties conferred on it by or under this Act; and

S. 322(1)(a)
amended by
No. 85/2006
s. 127.

s. 322

S. 322(1)(ba)
inserted by
No. 25/2001
s. 12(1)(a).

(ba) officers or employees of a Catchment Management Authority that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act; and

S. 322(1)(c)
amended by
No. 25/2001
s. 12(1)(b).

(c) officers or employees of a council or Catchment Management Authority who carried out duties for or on behalf of an abolished Authority immediately before its abolition—

if the Minister has made an Order under section 98(1) in respect of that Authority.

- (2) The Minister may determine guidelines as to—
- (a) the salaries, wages or other remuneration of people to whom this section applies; and
 - (b) the terms and conditions of service or employment of people to whom this section applies; and
 - (c) the payments to be made, or benefits to be provided, to people to whom this section applies who are dismissed from their employment because of redundancy.
- (3) Any guidelines determined by the Minister under subsection (2) may be determined so as to apply—
- (a) generally or in specified cases or in a specified class of case or specified classes of cases; and
 - (b) to all people to whom this section applies or to specified people or people included in a specified class of people; and
 - (c) at all times or at a specified time or specified times.

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- (4) Before determining any guidelines under subsection (2), the Minister must consult any persons that appear to the Minister to represent the interests of Authorities, councils and Catchment Management Authorities and people employed by them respectively. **S. 322(4) substituted by No. 25/2001 s. 12(2).**
- (4A) Before determining any guidelines under subsection (2) with respect to any officer or employee referred to in subsection (1)(c), the Minister must consult with— **S. 322(4A) inserted by No. 25/2001 s. 12(2).**
- (a) in the case of an officer or employee of a council, the Minister administering the **Local Government Act 1989**; and
- (b) in the case of an officer or employee of a Catchment Management Authority, the Minister administering the **Catchment and Land Protection Act 1994**.
- (5) The Minister must serve a copy of all guidelines determined under subsection (2) on every Authority and— **S. 322(5) substituted by No. 25/2001 s. 12(3).**
- (a) if the guidelines relate to an officer or employee of a council referred to in subsection (1)(c), the council; or
- (b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in subsection (1)(c), the Catchment Management Authority.
- (6) The Minister may at any time amend guidelines determined under subsection (2), and must serve a copy of every amendment on every Authority and— **S. 322(6) substituted by No. 25/2001 s. 12(3).**
- (a) if the guidelines relate to an officer or employee of a council referred to in subsection (1)(c), the council; or
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(b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in subsection (1)(c), the Catchment Management Authority.

S. 322(7)
amended by
No. 25/2001
s. 12(4)(a)(b).

(7) Despite anything in this or any other Act to the contrary, every Authority and every council and Catchment Management Authority in respect of which an Order under section 98(1) is made and which has an officer or employee referred to in subsection (1)(c) must comply with any guidelines determined by the Minister under subsection (2), as amended from time to time under subsection (6), and those guidelines are in all respects binding on the Authority, the council or the Catchment Management Authority (as the case requires) and on all other persons affected by them.

323 Saving of rights of public servants appointed to Authorities

S. 323(1)
amended by
Nos 42/1995
s. 224(Sch. 2
item 48),
62/1995
s. 44(4)(a)(b),
substituted by
No. 46/1998
s. 7(Sch. 1).

- (1) If a person ceases to be an officer of an Authority and that person—
- (a) was immediately before his or her appointment as an officer of the Authority an employee in the public service; and
 - (b) has continuously been an officer of the Authority since he or she ceased to be an employee in the public service—

the person is entitled to be employed in the public service with a classification and emolument corresponding with or higher than those which he or she last held or received in the public service immediately before his or her appointment as an officer of an Authority as if the period of service as an officer of an Authority had been service in the public service and, for the purpose of long service leave, that person must be taken to have

been an employee in the public service during the period of his or her service as an officer of an Authority.

- (1A) In subsection (1) a reference to an appointment includes a reference to a transfer as a result of an Order made under section 98(1) or by virtue of clause 20(2)(e) of Schedule 3.

S. 323(1A)
inserted by
No. 50/1992
s. 10(Sch.
item 11.35).

- (2) Subsection (1) applies, with any necessary modifications, with respect to an officer or employee of a council or Catchment Management Authority that is an Authority who is employed solely, mainly or partly to perform duties for or in connection with the exercise by the council or Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act in the same manner as it applies to an officer of an Authority.

S. 323(2)
amended by
No. 25/2001
s. 13.

323A Supreme Court—limitation of jurisdiction

S. 323A
inserted by
No. 22/1999
s. 5.

It is the intention of section 222(1C) to alter or vary section 85 of the **Constitution Act 1975**.

324 Regulations

- (1) The Governor in Council may make regulations for or with respect to—

- (a) prescribing standards for houseboats (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to—

S. 324(1)(a)
amended by
No. 39/1996
s. 11(3)(a).

- (i) sewerage and water supply; and

- (ii) services, installations and ancillary equipment, including those for the provision of water supply services, for sanitary purposes and for sewerage; and

S. 324(1)(a)(ii)
amended by
No. 39/1996
s. 11(3)(b).

s. 324

S. 324(1)(ab)
inserted by
No. 99/2005
s. 68(1),
amended by
No. 32/2010
s. 70(1).

(ab) prescribing fees that may differ according to the class or nature of the application, licence, registration, variation, renewal, transfer or assignment; and

S. 324(1)(ac)
inserted by
No. 99/2005
s. 68(1).

(ac) prescribing the form and manner in which the water register is to be established and maintained, including, but not limited to, the establishment, maintenance and alteration of the system of the water register; and

S. 324(1)(ad)
inserted by
No. 99/2005
s. 68(1).

(ad) prescribing fees for—

- (i) making recordings in the part of the water register for which the Registrar or the Minister is responsible; or
- (ii) searching for or obtaining information or records in the part of the water register for which the Registrar or the Minister is responsible; or
- (iii) any other matters related to the water register in relation to water shares; or
- (iv) any other matters in relation to the water register, including, but not limited to, services provided by the Registrar or the Minister as a recording body under Part 5A; and

S. 324(1)(ae)
inserted by
No. 99/2005
s. 68(1).

(ae) prescribing, in respect of the water register—

- (i) persons or classes of person who may search for or obtain information or records in the water register; and
- (ii) information or records or classes of information or records which may be searched or obtained by those persons; and

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- (iii) information or records or classes of information or records which are not available to the public; and
- (af) regulating places at which water may be taken and times and rates at which water may be taken; and
- (ag) prescribing matters, in addition to those set out in section 33G, that the Minister must determine when issuing a water share; and
- (b) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (1A) Regulations fixing fees under subsection (1)(ad), Part 3A or Part 4B may provide for the waiver, in whole or in part of the fees.
- (1B) A power conferred under this Act to make regulations fixing fees may be exercised by fixing one fee for two or more matters in respect of which fees are required to be paid under this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
- (b) so as to make, as respects the cases in relation to which the power is exercised—
- (i) the same provision for all cases in relation to which the power is exercised, or different provisions for
- S. 324(1)(af) inserted by No. 99/2005 s. 68(1).
- S. 324(1)(ag) inserted by No. 99/2005 s. 68(1).
- S. 324(1A) inserted by No. 99/2005 s. 68(2), substituted by No. 32/2010 s. 70(2).
- S. 324(1B) inserted by No. 32/2010 s. 70(2).

different cases or classes of case, or
different provisions for the same case
or class of case for different purposes;
or

- (ii) any such provision either
unconditionally or subject to any
specified condition.

(3) Regulations made under this Act may be made—

(a) so as to apply—

- (i) at all times or at a specified time; or
- (ii) throughout the whole of the State or in
a specified part of the State; or
- (iii) as specified in both subparagraphs (i)
and (ii); and

(b) so as to require a matter affected by the
regulations to be—

- (i) in accordance with a specified standard
or specified requirement; or
- (ii) approved by or to the satisfaction of a
specified person or a specified class of
persons; or
- (iii) as specified in both subparagraphs (i)
and (ii); and

(c) so as to apply, adopt or incorporate any
matter contained in any document, code,
standard, rule, specification or method
formulated, issued, prescribed or published
by any person whether—

- (i) wholly or partially or as amended by
the regulations; or
- (ii) as formulated, issued, prescribed or
published at the time the regulations are
made or at any time before then; or

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- (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations and, in the case of a contravention of a continuing nature, a further penalty not exceeding 5 penalty units for each day during which the contravention continues—
 - (i) after service of a notice of contravention on the person under section 151; or
 - (ii) if no notice of contravention is served, after conviction.
- (4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the regulation to be taken to have not been so amended until notice of the amendment is published in the Government Gazette.
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- (5) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (6) Disallowance under subsection (5) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

S. 324A
inserted by
No. 85/2006
s. 128.

324A Powers to make regulations as to elections

- (1) The Governor in Council may make regulations for or with respect to the holding of elections for the filling of vacancies in the membership of the board of directors of First Mildura Irrigation Trust, including but not limited to, regulations for or with respect to—
 - (a) enrolment for and voting at elections;
 - (b) the compilation of voters' rolls;
 - (c) the provision by an Authority of a copy of a voters' roll on payment of a fee of a specified amount;
 - (d) the date on which ordinary elections are to be held;
 - (e) the calling of nominations;
 - (f) requiring a refundable nomination fee of a specified amount to be paid by candidates;
 - (g) providing for pre-poll voting in person;
 - (h) providing for postal voting;
 - (i) providing for the registration of how-to-vote cards with the returning officer;
 - (j) prohibiting the printing, publishing, handing out, distribution or otherwise making available of a how-to-vote card that was

- required to be registered with the returning officer but was not;
- (k) the maintenance of order at polling places and the removal of persons from them;
 - (l) providing for preferential voting at elections;
 - (m) the counting of votes;
 - (n) the method of determining the result of an election;
 - (o) the holding of an inquiry into an election at the request of any person or persons who dispute its validity or are dissatisfied with its conduct;
 - (p) requiring a fee of a specified amount to be paid by any person or persons who request the holding of an inquiry into an election;
 - (q) generally, all matters necessary for the proper conduct of elections.
- (2) Without limiting section 324, regulations made under this section may include regulations based on the **Electoral Act 2002** and on regulations made under that Act with any alterations and adaptations that, in the opinion of the Governor in Council, are necessary.
- (3) Regulations made under this section must not provide for election by the quota-preferential or any other method of proportional representation.

* * * * *

S. 325
repealed by
No. 32/2010
s. 71(1).

325A Effect of Schedule 15

Schedule 15 has effect.

S. 325A
inserted by
No. 85/2006
s. 129(1).

s. 326

326 Savings and transitionals

S. 326(1) repealed by No. 32/2010 s. 72(1).	*	*	*	*	*
S. 326(2) repealed by No. 32/2010 s. 72(1).	*	*	*	*	*
S. 326(3) inserted by No. 22/1999 s. 3(7).	(3) The amendments of section 47 made by section 3(1) and (2) of the Water Acts (Amendment) Act 1999 apply only with respect to applications made under section 47 after the commencement of section 3 of that Act.				
S. 326(4) inserted by No. 22/1999 s. 3(7).	(4) The amendments of section 47B made by section 3(3), (4) and (5) of the Water Acts (Amendment) Act 1999 apply only with respect to requests made under section 47B(1) after the commencement of section 3 of that Act.				
S. 326(5) inserted by No. 22/1999 s. 3(7).	(5) The amendments of this Act made by section 3(6) of the Water Acts (Amendment) Act 1999 apply with respect to applications under section 44 or 47 or requests under section 47B(1), whether made before or after the commencement of section 3 of that Act.				
Ss 327, 328 repealed by No. 62/1995 s. 44(5).	*	*	*	*	*

329 Repeal of Victorian Water and Sewerage Authorities Association Act

- (1) In this section—
- (a) *former body* means the Victorian Water and Sewerage Authorities Association established under the **Victorian Water and Sewerage Authorities Association Act 1981**;

(b) *new body* means the Water Authorities Association of Victoria Inc. incorporated under the **Associations Incorporation Act 1981**.

(2) On the commencement of this section—

- (a) the **Victorian Water and Sewerage Authorities Association Act 1981** shall be repealed; and
- (b) the former body shall be abolished and its members shall go out of office; and
- (c) all rights, property and assets that immediately before that commencement were vested in the former body shall, by force of this subsection, be vested in the new body; and
- (d) all debts, liabilities and obligations of the former body existing immediately before that commencement shall become, by force of this subsection, debts, liabilities and obligations of the new body; and
- (e) the new body shall, by force of this subsection, be substituted as a party to any proceedings pending in any court to which the former body was a party immediately before the commencement; and
- (f) the new body shall, by force of this subsection, be substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that commencement; and
- (g) any reference to the former body in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever shall, so far as it relates to any

period after that commencement and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.

S. 330
inserted by
No. 65/1999
s. 5.

330 Transitional provisions for removal of power to set fees under tariffs

- (1) Subject to this section, any notice by a Catchment Management Authority declaring any land to be a serviced property for the purposes of this Act ceases to have effect on the commencement of the **Water (Waterway Management Tariffs) Act 1999**.
- (2) The commencement of the **Water (Waterway Management Tariffs) Act 1999** does not affect any right a Catchment Management Authority had before that commencement to set a tariff and impose a fee under Division 5 of Part 13 for any period before 1 July 1999, and the Authority may continue to collect any unpaid fee under a tariff which has been imposed in respect of a property before that commencement for any such period.
- (3) If a Catchment Management Authority has, before the commencement of the **Water (Waterway Management Tariffs) Act 1999**, set a tariff and imposed a fee under Division 5 of Part 13 for the period beginning on 1 July 1999 and ending on 30 June 2000, then—
 - (a) if that fee or any part of that fee has been paid to the Authority, the Authority must repay the amount so paid to the person who paid it; and
 - (b) if that fee or any part of that fee has not been paid to the Authority, the Authority is not entitled to collect it.

- (4) Any amount required to be repaid to a person under subsection (3)(a) is a debt due to the person by the Authority and may be recovered in a court of competent jurisdiction.
- (5) In this section *Catchment Management Authority* has the same meaning as in section 260A.

330A Effect of Schedule 16

Schedule 16 has effect.

S. 330A
inserted by
No. 85/2006
s. 129(2).

331 Transitional provisions—Water (Irrigation Farm Dams) Act 2002

- (1) A groundwater supply protection area declared by Order under section 27(1) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be a water supply protection area for the protection of the groundwater resources in the area concerned and may be abolished, or its boundaries amended, in accordance with Division 3 of Part 3 accordingly.
- (2) A management plan approved by the Minister under section 30(4) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be an approved management plan for groundwater resources for the relevant water supply protection area and may be amended or revoked in accordance with Division 3 of Part 3 accordingly.

S. 331
inserted by
No. 5/2002
s. 56 (as
amended by
No. 6/2002
s. 4(4)).

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- (3) A notice of an application for the declaration of an area to be a groundwater supply protection area—
- (a) that was published under section 27(3)(b)(i) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) in relation to which an Order declaring the area to be a groundwater supply protection area had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 27(4)(a)(i).

- (4) A notice to amend the boundaries of, or abolish, a groundwater supply protection area—
- (a) that was published in accordance with section 28(2) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) in relation to which an Order amending the boundaries of, or abolishing, the groundwater supply protection area (as the case requires) had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 28(2) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

- (5) A consultative committee appointed under section 29(1), as in force before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, and existing immediately before that commencement is deemed, on that commencement, to be a consultative committee appointed under

section 29(1) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

- (6) A draft management plan that—
- (a) had been prepared under Division 3 of Part 3 at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) had not been approved by the Minister under section 30(5) before that commencement—
- is deemed, on that commencement, to be a draft management plan prepared under Division 3 of Part 3 (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).
- (7) An Authority that immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** had the duty of administering and enforcing an approved management plan under section 30 as in force immediately before that commencement must—
- (a) prepare a report in respect of its activities in carrying out its duties for the period beginning on that commencement and ending on 30 June next; and
 - (b) give a copy of that report to the Minister and any relevant Catchment Management Authority in accordance with section 32C(2); and
 - (c) release and make available the report in accordance with section 32D.
- (8) A person who—
- (a) at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from a spring or soak or water from a dam
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(other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; and

- (b) before 1 July 2003 applies for a licence under section 51(1)(ba) in relation to the spring or soak or dam—

is not liable to pay an application fee in respect of the application.

- (9) A licence issued under section 67 to abandon any works, private dam or a bore that is in force immediately before the commencement of section 35 of the **Water (Irrigation Farm Dams) Act 2002** is, on and from that commencement, deemed to be a licence to decommission those works, or that private dam or bore.

S. 332
inserted by
No. 85/2006
s. 130.

332 Transitional and validation provision—Longwarry Drainage Trust

- (1) In this section—

Dandenong Valley and Westernport Authority
means the Authority established under the **Dandenong Valley Authority Act 1963**, whether when known as the Dandenong Valley Authority or when known as the Dandenong Valley and Westernport Authority;

former body means the body known as the Longwarry Drainage Trust;

new body means Melbourne Water Corporation under the **Melbourne Water Corporation Act 1992**.

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- (2) On the commencement of this section—
- (a) the former body is abolished and its members go out of office; and
 - (b) all rights, property and assets that immediately before that commencement were vested in the former body vest in the new body; and
 - (c) all debts, liabilities and obligations of the former body existing immediately before that commencement become debts, liabilities and obligations of the new body; and
 - (d) the new body is substituted as a party to any proceedings pending in any court to which the former body was a party immediately before the commencement; and
 - (e) the new body is substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that commencement; and
 - (f) any reference to the former body in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to the new body.
- (3) Anything done or purported to have been done by Melbourne Water Corporation as successor in law of the Dandenong Valley and Westernport Authority (to the extent that that body was purporting to act as successor in law of the Longwarry Drainage Trust) that would have been validly done had the Dandenong Valley and
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Westernport Authority been validly appointed as successor in law of the Longwarry Drainage Trust has, and is deemed always to have had, the same force and effect as it would have had if the Dandenong Valley and Westernport Authority had been validly appointed as successor in law of the Longwarry Drainage Trust.

- (4) Anything done or purported to have been done by the Dandenong Valley and Westernport Authority, to the extent that that body was purporting to act as successor in law of the Longwarry Drainage Trust, that would have been validly done had the Dandenong Valley and Westernport Authority been validly appointed as successor in law of the Longwarry Drainage Trust has, and is deemed always to have had, the same force and effect as it would have had if the Dandenong Valley and Westernport Authority had been validly appointed as successor in law of the Longwarry Drainage Trust.

S. 333
inserted by
No. 85/2006
s. 130.

333 Amendment of Register

The Registrar of Titles must make any recordings in or amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of section 332.

S. 334
inserted by
No. 32/2010
s. 73.

334 Certificate as to land taken over by another body

- (1) If a body—
- (a) has taken over land under an Order under section 98 (as in force before the commencement of section 54 of the **Water (Governance) Act 2006**); or
 - (b) is the successor in law of a body that has so taken over land—

the chief executive officer (however described) of the body may apply to the Registrar of Titles to have the Register amended.

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- (2) An application under subsection (1) must be accompanied by—
- (a) a certificate, signed by the chief executive officer, certifying that the land specified in the certificate is land that has been taken over by that body under any such Order with effect from the coming into operation of the Order; and
 - (b) any relevant certificate of title.
- (3) On receiving a certificate under subsection (2) and any relevant certificate of title, the Registrar of Titles must make any amendments in the Register that are necessary because of the operation of the Order specified in the certificate.
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SCHEDULES

SCHEDULE 1

WATER CORPORATIONS AND FORMER WATER AUTHORITIES

TABLE

<i>Item</i>	<i>Column 1 Water Corporations</i>	<i>Column 2 Former Water Authorities</i>
1.	Barwon Region Water Corporation	Barwon Region Water Authority
2.	Central Gippsland Region Water Corporation	Central Gippsland Region Water Authority
3.	Central Highlands Region Water Corporation	Central Highlands Region Water Authority
4.	Coliban Region Water Corporation	Coliban Region Water Authority
5.	East Gippsland Region Water Corporation	East Gippsland Region Water Authority
6.	First Mildura Irrigation Trust	First Mildura Irrigation Trust
7.	Gippsland and Southern Rural Water Corporation	Gippsland and Southern Rural Water Authority
8.	Goulburn—Murray Rural Water Corporation	Goulburn-Murray Rural Water Authority
9.	Goulburn Valley Region Water Corporation	Goulburn Valley Region Water Authority
10.	Grampians Wimmera Mallee Water Corporation	Grampians Wimmera Mallee Water Authority
11.	Lower Murray Urban and Rural Water Corporation	Lower Murray Urban and Rural Water Authority
12.	Melbourne Water Corporation	Melbourne Water Corporation
13.	North East Region Water Corporation	North East Region Water Authority

Sch. 1
amended by
Nos 12/1992
ss 6(a)(b),
7(1)(2),
62/1995
s. 44(6),
65/1995 s. 21,
46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 232.8),
80/2006
s. 26(Sch.
item 116.4),
substituted by
No. 85/2006
s. 131.

Water Act 1989
No. 80 of 1989

Sch. 1

<i>Item</i>	<i>Column 1</i> <i>Water Corporations</i>	<i>Column 2</i> <i>Former Water Authorities</i>
14.	South Gippsland Region Water Corporation	South Gippsland Region Water Authority
15.	Wannon Region Water Corporation	Wannon Region Water Authority
16.	Western Region Water Corporation	Western Region Water Authority
17.	Westernport Region Water Corporation	Westernport Region Water Authority

Sch. 2
amended by
Nos 121/1994
s. 192(2)(3),
62/1995 s. 43,
substituted by
No. 85/2006
s. 132.

SCHEDULE 2

TRANSITIONAL PROVISIONS APPLYING ON RESTRUCTURING OR ABOLITION OF WATER CORPORATIONS

1 Definitions

In this Schedule—

old corporation means a water corporation from whom powers, duties or functions are being transferred under a determination of the Minister under section 87 or 88;

new corporation means a water corporation to whom powers, duties or functions are being transferred under a determination of the Minister under section 87 or 88.

2 Membership of board of directors on restructuring or abolition

- (1) The Minister may, in the case of an old corporation or a new corporation, specify, in the determination under section 87 or 88 (as the case requires), an alteration to the membership of the board of directors of the corporation either by—
 - (a) the appointment of additional members to the board of directors; or
 - (b) the removal of members from the board of directors.
- (2) Division 3 of Part 6 applies to an appointment of a member to a board of directors under subclause (1) as if it were an appointment under that Division.

3 Transfer of assets on restructuring or abolition

On the making of a determination under section 87 or 88—

- (a) any rights, property and assets of the old corporation that are specified in the determination are deemed to be vested in the new corporation; and
- (b) any debts, liabilities and obligations of the old corporation arising out of any vesting under paragraph (a) are deemed to be the debts, liabilities and obligations of the new corporation; and
- (c) the new corporation is substituted as a party to any arrangement or contract entered into by or on behalf of the old corporation arising out of any vesting under paragraph (a).

4 Transfer of staff

- (1) On the making of a determination under section 87 or 88, all specified officers of the old corporation become officers of the new corporation and each such officer—
 - (a) holds an office that is equivalent to that previously held by the person in the old corporation; and
 - (b) holds the office on terms and conditions no less favourable than those of the office in the old corporation and with the benefit of all rights accrued in respect of the office so held.
- (2) In this section ***specified officer*** means a person who holds an office that is specified in the determination, or is of a class of offices that is specified in the determination.

5 Amendment of Register

The Registrar of Titles must make any recordings in or amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this Schedule.

6 Continuation of by-laws on restructuring or abolition

Any by-law made by an old corporation, being a by-law that—

(a) relates to property, rights or liabilities that are transferred under clause 3 to a new corporation; and

(b) is in force immediately before that transfer—

is deemed, on the happening of the transfer to be a by-law made by the new corporation and may be amended or revoked accordingly.

SCHEDULE 3

PARTICULAR POWERS OF MELBOURNE WATER
CORPORATION

Corporation to maintain certain roads in Corio and
Werribee

- (1) The **Road Management Act 2004** applies to any road or portion of a road—
- (a) that is within the municipal district of the City of Wyndham; and
 - (b) that is abutted on both sides by land owned by Melbourne Water Corporation; and
 - (c) that is not a freeway or arterial road, within the meaning of the **Road Management Act 2004**—

as if the road or the part of the road is a road within the meaning of that Act.

- (2) For the purposes of the Road Management Act **2004**, the relevant road authority for the land to which subsection (1) applies is Melbourne Water Corporation, subject to any regulations for the purposes of section 37(1)(c) of that Act.

Sch. 3
substituted by
No. 50/1992
s. 4,
amended by
No. 49/1994
ss 4(1)(n)–(p),
10(c)(i)(ii),
repealed by
No. 65/1995
s. 16(8)^{50, 51},
new Sch. 3
inserted by
No. 39/1998
s. 13(Sch. 3),
substituted by
No. 85/2006
s. 133.

* * * *

Sch. 4
repealed by
No. 110/1997
s. 16(2).

* * * *

Sch. 5
repealed by
No. 54/1992
s. 56(h).

SCHEDULE 6

Section 118(1)

FIRST MILDURA IRRIGATION TRUST

Sch. 6 cl. 1
repealed by
No. 85/2006
s. 134(1).

* * * *

Sch. 6 cl. 2
amended by
No. 22/1999
s. 6(3) (ILA
s. 39B(3))

2 Definitions

(1) In this Schedule—

Sch. 6 cl. 2(1)
def. of
election
inserted by
No. 85/2006
s. 134(2).

election includes an election to fill an
extraordinary vacancy;

Sch. 6 cl. 2(1)
def. of
indenture
inserted by
No. 22/1999
s. 6(1).

indenture has the same meaning as it had in the
**Mildura Irrigation Trusts and Sunraysia
Water Board Act 1958** immediately before
the repeal of that Act;

Sch. 6 cl. 2(1)
def. of
irrigable land
amended by
No. 22/1999
s. 6(2).

irrigable land means any land—

- (a) that is suitable for cultivation and
irrigation; and
- (b) that—
 - (i) received water from the Trust for
irrigation purposes for the last
irrigation period before the
commencement of this Schedule;
or
 - (ii) received water from the Trust for
irrigation purposes for any
subsequent irrigation period up to
the last irrigation period before the

commencement of section 6(3) of
the **Water Acts (Amendment)**
Act 1999;

irrigation area has the same meaning as it had in
the **Mildura Irrigation Trusts and**
Sunraysia Water Board Act 1958
immediately before the repeal of that Act;

Sch. 6 cl. 2(1)
def. of
irrigation area
inserted by
No. 22/1999
s. 6(1).

irrigation district means the irrigation district of
the Trust;

rateable land means all irrigable land within the
district, including township allotments,
except land that is not rateable land within
the meaning of the **Local Government Act**
1989;

township allotments means land laid out as
township allotments of which a subdivision
plan has been lodged in the Office of Titles
under the **Transfer of Land Act 1958** or any
corresponding previous enactment.

Trust means the First Mildura Irrigation Trust.

- (2) For the avoidance of doubt it is declared that the
mere delivery by the Trust to land of water bought
by the owner or occupier of that land from a
person other than the Trust is not the receipt of
water from the Trust for the purposes of
paragraph (b) of the definition of *irrigable land* in
subclause (1).

Sch. 6 cl. 2(2)
inserted by
No. 22/1999
s. 6(3).

3 Enrolment to vote

A person whose name appears in the register of
the First Mildura Irrigation Trust as an owner or
occupier of not less than 1 hectare of rateable land
that is not a township allotment is entitled, without
application, to be enrolled on the voter's roll.

Sch. 6 cl. 3
substituted by
No. 85/2006
s. 134(3).

Sch. 6

Sch. 6 cl. 3A
inserted by
No. 85/2006
s. 134(3).

3A Entitlement to vote

- (1) A person who is not enrolled on the voter's roll is not entitled to vote at an election of members of the board of directors of First Mildura Irrigation Trust.
- (2) At an election of members of the board of directors of First Mildura Irrigation Trust, a person who is enrolled on the voter's roll of the First Mildura Irrigation Trust is entitled to one vote.
- (3) Subclause (2) does not require an owner or occupier of property whose principal place of residence is outside the irrigation district of First Mildura Irrigation Trust, to vote at an election.

Sch. 6 cl. 3B
inserted by
No. 85/2006
s. 134(3).

3B Eligibility to stand for election

A person is eligible to stand for election as a member of the board of directors of the First Mildura Irrigation Trust if that person is an occupier or owner of rateable land in the irrigation district of the First Mildura Irrigation Trust and that person's name appears on the register of the Trust in respect of that land and that person is not disqualified from voting under this Schedule or under regulations made under section 324A.

Sch. 6 cl. 4
repealed by
No. 85/2006
s. 134(4).

* * * *

Sch. 6 cl. 4A
inserted by
No. 22/1999
s. 6(4),
repealed by
No. 85/2006
s. 134(4).

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Sch. 6 cl. 4B
inserted by
No. 22/1999
s. 6(4),
repealed by
No. 99/2005
s. 69(1).

4C Register to show water rights

Sch. 6 cl. 4C
inserted by
No. 22/1999
s. 6(4).

- (1) The total volume of water rights to be shown in the register as attached to a holding that is irrigable land within the irrigation district is—
 - (a) 9–144 megalitres per hectare each year or the other amount fixed in relation to that holding by the Governor in Council by Order under clause 5; and
 - (b) any water rights that are for the time being attached to the holding under section 226 or 226A or apportioned or sold to the owner or occupier of land comprised in the holding under section 229.
- (2) Within 12 months after the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999** the Trust must make a determination under section 230(2)(c) in relation to each holding that is consistent with subclause (1).

4D Abolition of other water rights in irrigation district

Sch. 6 cl. 4D
inserted by
No. 22/1999
s. 6(4).

- (1) On and from the first anniversary of the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999**, the only water rights attached to a holding in the irrigation district are those specified in the register in relation to that holding and any other water rights attached to that holding immediately before that anniversary (whether arising by force of an Act or at common law or in accordance with the indenture) are abolished.

Sch. 6

- (2) Subclause (1) is subject to any revision of the register made in accordance with section 230.
- (3) Subclause (1) does not limit—
- (a) clause 4A; or
- (b) the application of subsection (7) of section 8 to rights described in that subsection.

Sch. 6
cls 4E, 4F
inserted by
No. 22/1999
s. 6(4),
repealed by
No. 99/2005
s. 69(2).

* * * *

Sch. 6 cl. 5
amended by
No. 22/1999
s. 6(5) (ILA
s. 39B(3)),
repealed by
No. 22/1999
s. 6(6).

* * * *

Sch. 6 cl. 6
repealed by
No. 22/1999
s. 6(7).

* * * *

7 Conditions of subdivision of land

- (1) Where a proposed subdivision of land is referred to the Authority under the **Planning and Environment Act 1987**, the Authority must refer the proposal to the Sunraysia Water Board if the subdivision creates lots for residential or commercial purposes.
- (2) When a plan of subdivision has been certified by the council of the municipal district in which the land in the plan is located, the Authority must, if the land is to be included within the districts administered by the Sunraysia Water Board, hold any amounts received for costs of construction and net capital depreciation until the land is included, then pay those amounts to that Board.

- (3) When land is included in the districts administered by the Sunraysia Water Board and that Board has received any amounts under subclause (2), the Board must construct the required works.

* * * * *

Sch. 6 cl. 8
repealed by
No. 85/2006
s. 134(5).

9 Meetings of persons to whom the Authority provides services

- (1) A meeting of persons to whom the Authority provides services may be called by the Authority at any time the members consider it desirable.
- (2) A meeting of persons to whom the Authority provides services must be called by the chairperson of the Authority within 2 weeks after notice in writing is received at the office of the Authority from 20 of those persons, and the meeting must be held within 5 weeks after that notice is received.
- (3) The quorum for a meeting referred to in subclause (1) or (2) is 20.
- (4) At any such meeting, a poll must only be taken if demanded in writing by a majority of the persons present who are entitled to vote.

Water Act 1989
No. 80 of 1989

Sch. 7

Sch. 7
amended
No. 76/1998
s. 29(h),
repealed by
No. 85/2006
s. 135.

* * * *

Sch. 8
amended by
S.G. (No. 26)
16.5.91 p. 2,
Nos 130/1993
s. 122(Sch. 4
item 17.3),
110/1994
s. 41(Sch. 1
item 11.4),
repealed by
No. 110/1997
s. 16(5),
new Sch. 8
inserted by
No. 48/2003
s. 10,
repealed by
No. 85/2006
s. 135.

* * * *

Sch. 9
repealed by
No. 54/1992
s. 56(i).

* * * *

Sch. 10
amended by
S.G. (No. 27)
31.3.95
pp 1, 2,
repealed by
No. 110/1997
s. 16(6).

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Water Act 1989
No. 80 of 1989

Sch. 11

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Sch. 11
repealed by
No. 85/2006
s. 136.

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Sch. 12
amended by
No. 13/1990
s. 46(a)(b),
repealed by
No. 85/2006
s. 136.

Sch. 12A
inserted by
No. 99/2005
s. 70.

SCHEDULE 12A

RECORDING MORTGAGES OF WATER SHARES

1 Recording of mortgages

- (1) If the owner of a water share mortgages it, a person may lodge with the Registrar a document for the recording of the mortgage to be made in the water register in respect of that share.
- (2) The owner of a water share must not mortgage an undivided portion of the water share.

Sch. 12A
cl. 1(2)
substituted by
No. 85/2006
s. 137.

Sch. 12A
cl. 1(2A)
inserted by
No. 85/2006
s. 137.

- (2A) The holder of a limited term transfer of a water share must not mortgage the limited term transfer of the water share.
- (3) A document lodged for the recording in the water register of a mortgage under subclause (1) must be in the approved form.
- (4) When the Registrar records a mortgage in the water register under this clause, that mortgage—
 - (a) has effect as a security;
 - (b) does not operate as a transfer of the water share to which it applies.

2 Variation of recorded mortgage of water share

- (1) The parties to a recorded mortgage of a water share may agree, in writing, to vary—
 - (a) the terms of the mortgage; or
 - (b) the principal sum or interest secured by the mortgage.

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- (2) If the water share is subject to any subsequent recorded mortgage of a water share, the agreement in writing to the variation referred to in subclause (1) must be obtained from that subsequent mortgagee.
 - (3) If a recorded mortgage of a water share is varied under this clause, the mortgagee may lodge with the Registrar a document for the recording of the variation to be made in the water register.
 - (4) A document for the recording of a variation under subclause (3) must be in the approved form.
 - (5) When the Registrar records a variation of a recorded mortgage of a water share under this clause in the water register, that mortgage has effect as varied from the time the document for the recording of the variation is lodged with the Registrar.

3 Variation of priority of recorded mortgages

- (1) The priority between or amongst themselves of the recorded mortgages of a water share may be varied from time to time, if each of those mortgages affects that water share only.
- (2) A variation under subclause (1) must—
 - (a) be in the approved form; and
 - (b) set out in the order in which the recorded mortgages of a water share affecting the water share concerned are to rank in priority; and
 - (c) subject to this Act, be executed by the holder of each mortgage to be postponed to a mortgage over which it previously had priority.

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- (3) On the recording of a variation referred to in subclause (1), the recorded mortgages of a water share—
- (a) have priority between or amongst themselves in the order set out in the approved form of variation; and
 - (b) are deemed to have been recorded in that order.

4 Transfer of recorded mortgage

- (1) If a mortgagee of a water share transfers it to another person, the person transferring the mortgage may lodge with the Registrar a document for the recording of the transfer of the mortgage to be made in the water register in respect of that share.
- (2) A transfer of mortgage lodged under subclause (1) must be in the approved form.

5 Procedure in case of default in payment of money secured or covenant

- (1) If—
 - (a) default is made in the payment of the principal sum or the interest secured by a recorded mortgage of a water share or in the performance of any express or implied covenant in that mortgage; and
 - (b) that default continues for one month or any other period expressly fixed in the instrument of mortgage—

the mortgagee may serve notice in writing to pay the money owing or perform and observe the covenant (as the case requires) on—

- (c) the mortgagor; and

- (d) any other person who has a recorded mortgage of that water share; and
 - (e) any person who is recorded in the water register as having a limited term transfer.
- (2) If money secured by a recorded mortgage of a water share is made payable on demand, a demand in writing under the mortgage is, for the purposes of this Act, equivalent to serving a notice under subclause (1).

6 Power of sale under a recorded mortgage

- (1) The mortgagee of a recorded mortgage of a water share, in good faith and having regard to the interests of the mortgagor or other persons specified in clause 5(1)(d) and (e), may sell the water share that is subject to the mortgage if the mortgagor or those other persons do not comply with that notice or demand—
- (a) within one month after the service of a notice or demand under clause 5; or
 - (b) any other period fixed in the instrument of mortgage.
- (2) A mortgagee who exercises a power of sale under this clause may, in accordance with this Act—
- (a) sell the water share subject to any terms and conditions that the mortgagee thinks fit; and
 - (b) make and sign any transfers; and
 - (c) do any acts or things necessary for effectuating a sale.
- (3) In the case of a mortgage to which clause 26 of Schedule 15 applies, where the mortgage is over one or more persons' undivided portion in a share—

- (a) the mortgagee can exercise a power of sale under this clause in relation to that part of the share; and
- (b) the exercise of that power of sale does not divide the water share.

7 Notifying the Registrar

- (1) Subject to this Schedule, if a mortgagee of a recorded mortgage of a water share exercises a power of sale under clause 6, a person may lodge with the Registrar a transfer for the recording of that sale in the water register.
- (2) A transfer under subclause (1) must be in the approved form.
- (3) If transfer under this clause is in the approved form and is expressed to be in exercise of a power of sale under clause 6, the Registrar may accept that transfer as sufficient evidence that the power has been duly exercised.

8 Application of purchase money

The purchase money received arising from a sale under clause 6 must be applied as follows—

- (a) firstly, in payment of all costs, charges and expenses properly incurred in relation to the sale;
- (b) secondly, in payment of the money due or owing on the mortgage;
- (c) thirdly, in payment of the money owing under or in respect of subsequent recorded mortgages of the water share in the order of their respective priorities;
- (d) fourthly, in payment of the residue (if any) to the mortgagor.

9 Vesting of water share in purchaser

- (1) On the recording in the water register of a transfer under clause 7 pursuant to the exercise of a power of sale under clause 6, the interest of the mortgagor in the water share vests in the purchaser as owner by transfer, freed and discharged from all liability on account of—
 - (a) the mortgage; and
 - (b) except where the mortgagor is the purchaser, of any subsequent recorded mortgage of a water share; and
 - (c) any subsequent recorded limited term transfer, except for a transfer to which the mortgagee gave consent.
- (2) Subclause (1) does not apply to a mortgage that is for any reason binding on the mortgagee.
- (3) The title of a purchaser of a water share is not impeachable on the ground that no case had arisen to authorise the sale under clause 6 or that due notice was not given or that the power of sale under clause 6 was otherwise improperly or irregularly exercised but any person affected by that sale may seek a remedy in damages in a court of competent jurisdiction against the person exercising the power.

10 Recording of discharge of recorded mortgage

- (1) A person may lodge with the Registrar a discharge of mortgage signed by the mortgagee, for the Registrar to record in the water register the discharge of the recorded mortgage from the water share.
- (1A) On a discharge being lodged under subsection (1), the Registrar—
 - (a) may make a recording in the water register discharging the mortgage; and

Sch. 12A
cl. 10(1)
substituted by
No. 32/2010
s. 74.

Sch. 12A
cl. 10(1A)
inserted by
No. 32/2010
s. 74.

Sch. 12A

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- (b) on the making of that recording, the water share ceases to be subject to, or liable for, the money secured by the mortgage.
 - (2) A discharge of mortgage under subclause (1) must be in the approved form.
 - (3) The Registrar may record in the water register that a recorded mortgage of a water share is discharged despite no discharge of mortgage being produced if—
 - (a) a mortgagor submits to the Registrar evidence of that person's ownership of the water share; and
 - (b) proof to the satisfaction of the Registrar that—
 - (i) all the principal and interest due in respect of the mortgage have been paid to the person entitled to receive them; and
 - (ii) that the person entitled to receive the amounts referred to in subparagraph (i) is dead, cannot be found or in the case of a body corporate, has ceased to exist.
 - (4) On the recording of a discharge of a recorded mortgage of a water share by the Registrar under subclause (3), the water share ceases to be subject to, or liable for, that mortgage or any money due in respect of it.
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SCHEDULE 12B

Sch. 12B
inserted by
No. 99/2005
s. 70.

ELECTRONIC TRANSACTIONS IN THE WATER REGISTER

1 Registrar may provide electronic lodgement network

- (1) The Registrar may provide or cause to be provided an electronic lodgement network for the purpose of lodging electronic documents for recordings to be made in the water register in respect of water shares.
- (2) The Registrar, from time to time, may determine requirements for the electronic lodgement network which may include—
 - (a) conditions of access to the electronic lodgement network;
 - (b) requirements for the retention of documents supporting or authenticating electronic documents, including periods for retention;
 - (c) insurance requirements;
 - (d) any other prescribed matter.
- (3) The Registrar must publish notice in the Government Gazette of any requirements determined under this clause.

2 Restriction on lodgement of electronic instruments

- (1) The Registrar is not required to accept an electronic document for recording in the water register in respect of a water share unless—
 - (a) the electronic document contains the information required by the Registrar and is in the form (if any) approved by the Registrar; and

- (b) the electronic document complies with the prescribed requirements (if any); and
 - (c) the electronic document is lodged in the electronic lodgement network established under clause 1 in the manner required by the Registrar; and
 - (d) any relevant certificate required under clause 9 is lodged in the electronic lodgement network; and
 - (e) the parties to the electronic document have specified the person who is to be the responsible party under this Schedule (the ***responsible party***) for the recording of the electronic document.
- (2) If the Registrar refuses to register an electronic document and the parties to the electronic document wish to proceed with the relevant recording in the water register, the Registrar may require the relevant documents to be executed and lodged for recording in a form other than an electronic communication.
- (3) The Registrar must publish notice in the Government Gazette of any information, form or manner of lodgement required by the Registrar under this clause.

3 Agents for lodging electronic documents must be eligible persons

- (1) A person (the ***agent***) must not lodge an electronic document for recordings to be made in the water register on behalf of any person (the ***principal***) unless—
- (a) the agent is an eligible person; and

(b) the principal has authorised the agent in writing signed by the principal to execute the electronic document and lodge it with the Registrar for a recording to be made in the water register on the principal's behalf.

(2) For the purposes of this clause *eligible person* means—

(a) an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**; or

(b) a person who holds insurance of a kind and amount acceptable to the Registrar; or

(c) a person who complies with any other eligibility requirements determined by the Registrar.

(3) The Registrar may at any time require evidence of a person's eligibility or authority to act as agent under subclause (1).

(4) The Registrar may from time to time publish details of—

(a) the kinds and amounts of insurance that are acceptable for the purposes of this clause;

(b) the criteria for a person to be an eligible person under subclause (2)(c).

4 Registrar may deal exclusively with responsible party

If an electronic document is lodged in the electronic lodgement network for recording in the water register, the Registrar is only required to deal with the person nominated under clause 2(1)(e) as the responsible party for the purposes of—

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- (a) requiring the person to submit any documents or provide any information in relation to the electronic document and the relevant water share;
 - (b) returning any documents lodged with the Registrar in respect of the relevant water share or the electronic document;
 - (c) Part 5A or this Schedule in relation to the electronic document.

5 Notification of recording

If the Registrar makes a recording in relation to a water share in the water register pursuant to an electronic document under this Schedule, the Registrar must cause a notification of that recording to be given to—

- (a) the owner of the water share or that person's agent (if any); or
- (b) the person nominated under clause 2(1)(e) as the responsible party in respect of the electronic document or a person nominated by that responsible party.

6 Evidence of recording of electronic document

- (1) On the application of any person, the Registrar must produce a document in writing recording information that was recorded in the water register as a result of an electronic document.
- (2) A document produced under subclause (1) must be certified by the Registrar as a true representation of the record or information in the water register.
- (3) A document produced under this clause is evidence of the matters contained in the document.

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- (4) An application under this clause must be in the approved form.

7 Electronic lodgement network malfunction

- (1) The Registrar may amend the water register to correct errors in the water register and supply entries or recordings omitted to be made in the water register if the error or omission resulted from a malfunction of the electronic lodgement network.
- (2) The Registrar must keep a record of every correction under subclause (1).
- (3) Every correction under subclause (1) is to have the same validity and effect as if the error or omission had not occurred.

8 Registrar may require production of documents

- (1) For the purposes of Part 5A and this Schedule, the Registrar, by notice in writing, may require any person who has lodged, or proposes to lodge, an electronic document in the electronic lodgement network to produce any document supporting or authenticating an electronic document that is required to be retained under any requirement determined by the Registrar under clause 1(2)(b).
- (2) A person who has received a notice under subclause (1) must comply with a requirement in that notice within the period specified in the notice, being not less than 14 days.
- (3) If a person fails to comply with a notice under subclause (1), the Registrar may terminate that person's access to the electronic lodgement network.

9 Registrar may specify matters to be certified

The Registrar, by notice published in the Government Gazette, may specify—

- (a) any matters relating to an electronic document that must be certified under this Schedule; and
- (b) the method of electronic certification required for those matters; and
- (c) the class or classes of person who may certify those matters.

10 Evidence of electronic documents

- (1) On the application of any person, the Registrar must produce a document in writing recording information contained in an electronic document that has been lodged for recording in the water register.
- (2) A document produced under subclause (1) must be certified by the Registrar as a true representation of the information in the electronic document.
- (3) A document certified under subclause (2) is evidence of the matters contained in the document.
- (4) An application under this clause must be in the approved form and be accompanied by the prescribed fee (if any).

11 Electronic certification of electronic documents

- (1) The Registrar may produce in an electronic form a representation of any electronic document lodged in the electronic lodgement network.
- (2) The Registrar may certify the electronic representation in any manner determined by the Registrar.

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- (3) A representation of an electronic document certified in accordance with this clause is evidence of the contents and nature of the electronic document.

*	*	*	*	*	Sch. 13 amended by Nos 13/1990 s. 46(c), 12/1992 s. 7(3), 62/1995 s. 44(7), repealed by No. 32/2010 s. 71(2).
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*	*	*	*	*	Sch. 14 amended by No. 52/1998 s. 311(Sch. 1 item 105.50), repealed by No. 32/2010 s. 72(2).
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Sch. 15
inserted by
No. 99/2005
s. 71.

SCHEDULE 15

TRANSITIONAL ARRANGEMENTS—WATER (RESOURCE MANAGEMENT) ACT 2005

PART 1—GENERAL

1 Definitions

(1) In this Schedule—

appointed day, in relation to a water system
means the day on which a water system
becomes a declared water system under a
declaration under section 6A;

combined parcel in relation to land, means more
than one parcel of land, each of which is, in
accordance with the conversion rules,
contiguous with the others;

conversion rules, in relation to a water system,
mean the rules determined for that water
system by the Minister under Part 8;

entitled person, in relation to a holding in a water
system, means any person who is—

- (a) an owner of; or
- (b) the holder of a mortgage over; or
- (c) a person who is entitled to a limited
term transfer of—

the land that comprised the holding,
immediately before the appointed day for the
water system;

holder, in relation to—

- (a) a prior domestic and stock right, prior joint right or prior water right; or
- (b) a prior 222(1)(c) sales water agreement or 222(1)(d) sales water agreement—

in a declared water system, means the owner of the holding to which the right applied or in respect of which the agreement was in force (as the case requires) immediately before the appointed day for the water system;

holding means the lands shown in any single entry in the prior holdings register immediately before the appointed day;

owner—

- (a) in the case of land that is under the **Transfer of Land Act 1958** means the registered proprietor of an estate in fee simple in the land, or, if the registered proprietor is a life tenant, the holder of the remainder interest;
- (b) in the case of land that is not under the **Transfer of Land Act 1958**, means—
 - (i) where there is a mortgage over an estate in fee simple in the land under which the mortgagee is the owner of the legal estate, the holder of the equity of redemption; or
 - (ii) in the case of any other estate in fee simple, the owner of the legal estate;

Sch. 15 cl. 1(1)
def. of
owner
amended by
No. 85/2006
s. 138.

parcel, in relation to—

- (a) land under the **Transfer of Land Act 1958**, means land that comprises an individual folio of the Register under the **Transfer of Land Act 1958**; and
- (b) land not under the **Transfer of Land Act 1958**, means land that, under section 8A of the **Sale of Land Act 1962**, can be disposed of separately, without subdivision;

prior domestic and stock right means an obligation owed by an Authority under section 222(1)(a) to make quantities of water available for supply in an irrigation district of the Authority from a water system to a holding in that district, being an obligation that was in force immediately before the appointed day for that water system;

prior holdings register means the register kept under section 230, as in force in the relevant declared water system, immediately before the appointed day for the water system;

prior joint right means a prior water right and a prior domestic and stock right, where each right applies to the same holding;

prior water right means an obligation owed by an Authority under section 222(1)(b) to make an amount of water available for supply in an irrigation district of the Authority from a water system to a holding in that district, being an obligation that was in force immediately before the appointed day for that water system;

prior 222(1)(c) sales water agreement means an agreement under section 222(1)(c) for the sale of water by an Authority from a water system that supplies an irrigation district with water to the owner or occupier of a holding within that irrigation district being an agreement that was in force immediately before the appointed day for the water system;

prior 222(1)(d) sales water agreement means an agreement under section 222(1)(d) between an Authority and the owner or occupier of land, for the supply of water by the Authority from a water system, being an agreement that was in force immediately before the appointed day;

purchaser has the same meaning as in the **Sale of Land Act 1962**;

Registrar of Titles has the same meaning as *Registrar* has in the **Transfer of Land Act 1958**;

take and use licence means a licence to take and use water issued under section 51(1);

terms contract has the same meaning as in the **Sale of Land Act 1962**;

unconfirmed water share means a water share in respect of which there is in force a qualification under clause 31;

vendor has the same meaning as in the **Sale of Land Act 1962**.

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- (2) In this Schedule (unless otherwise specified in the Schedule) a reference—
- (a) to section 222(1)(a), in relation to a declared water system, is a reference to section 222(1)(a) as in force immediately before the appointed day for that water system; and
 - (b) to section 222(1)(b), in relation to a declared water system, is a reference to section 222(1)(b) as in force immediately before the appointed day for that water system; and
 - (c) to section 222(1)(c), in relation to a declared water system, is a reference to section 222(1)(c) as in force immediately before the appointed day for that water system; and
 - (d) to section 222(1)(d), in relation to a declared water system, is a reference to section 222(1)(d) as in force immediately before the appointed day for that water system.
- (3) For the purposes of Part 3, where the holder of a take and use licence is recorded to be—
- (a) a partnership, each partner in the partnership is deemed to be a holder of the licence; or
 - (b) an unincorporated body (however described), each member of the body is deemed to be a holder of the licence.

2 Non-application of certain provisions to non-declared water systems

The amendment of this Act by sections 38(2), 61 and 62 of the **Water (Resource Management) Act 2005** does not apply to a water system until the water system becomes a declared water system under a declaration under section 6A.

PART 2—CONVERSION OF PART 11 RIGHTS

3 Definition

In this Part—

managing Authority, in relation to a holding,
means the Authority responsible for
managing the irrigation district in which the
holding is situated.

**4 Conversion of water right and domestic and stock
right (prior joint right)**

- (1) On and from the appointed day for a water
system, the following subclauses apply to each
prior joint right within the water system, that does
not relate to Crown land.

Sch. 15 cl. 4(1)
amended by
No. 85/2006
s. 139.

Entitlement to water share

- (2) The holder of each prior joint right is deemed to
be the owner of a water share, deemed to be
issued under section 33F—
- (a) that authorises water to be taken at the
maximum volume that is the sum of—
- (i) the volume for the part of the prior joint
right that is the prior water right; and
- (ii) the volume for the part of the prior joint
right that is the prior domestic and
stock right—
- as shown in the relevant prior holdings
register (immediately before the appointed
day); and
- (b) that has a class of reliability that is
determined in accordance with the
conversion rules.

Entitlement to water-use licence

- (3) The holder of each prior joint right is deemed to be, the holder of a water-use licence, deemed to be granted under section 64L, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—
- (a) on that land; and
 - (b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and
 - (c) subject to an annual use limit determined in accordance with the conversion rules.

Delivery entitlement

- (4) The holder of each prior joint right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—
- (a) to the place or places determined by the Authority in accordance with the conversion rules;
 - (b) at the volume that is the proportion (as specified in the conversion rules) of the volume that is the sum of the volume of the prior water right and prior domestic and stock right immediately before the appointed day, or any other method that is set out in the conversion rules; and
 - (c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

Ownership of water share

- (5) If a prior joint right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

5 Conversion of water right only (prior water right)

- (1) On and from the appointed day for a water system, the following subclauses apply to each prior water right within the water system, that does not relate to Crown land.

Sch. 15 cl. 5(1)
amended by
No. 85/2006
s. 140.

Entitlement to water share

- (2) The holder of each prior water right is deemed to be the owner of a water share, deemed to be issued under section 33F—
- (a) that authorises water to be taken at the maximum volume that is the same as that shown for the prior water right in the relevant prior holdings register (immediately before the appointed day); and
 - (b) that has a class of reliability that is determined in accordance with the conversion rules.

Entitlement to water-use licence

- (3) The holder of each prior water right is deemed to be, the holder of a water-use licence, deemed to be granted under section 64L, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—
- (a) on that land; and
 - (b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and

Sch. 15

- (c) subject to an annual use limit determined in accordance with the conversion rules.

Delivery entitlement

Sch. 15 cl. 5(4)
amended by
No. 85/2006
s. 141.

- (4) The holder of each prior water right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—
- (a) to the place or places determined by the Authority in accordance with the conversion rules;
 - (b) at the volume that is the proportion (as specified in the conversion rules) of the prior water right immediately before the appointed day, or that is determined in accordance with any other method that is set out in the conversion rules; and
 - (c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11 of this Act, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

Ownership of water share

- (5) If a prior water right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

6 Conversion of domestic and stock allowance (prior domestic and stock right)

Sch. 15 cl. 6(1)
amended by
No. 85/2006
s. 142.

- (1) On and from the appointed day for a declared water system, the following subclauses apply to each prior domestic and stock right within the water system, that does not relate to Crown land.

Entitlement to water share

- (2) The holder of each prior domestic and stock right is deemed to be the owner of a water share, deemed to be issued under section 33F—
- (a) that authorises water to be taken at the maximum volume that is the same as that shown for the prior domestic and stock right in the relevant prior holdings register (immediately before the appointed day); and
 - (b) that has a class of reliability that is determined in accordance with the conversion rules.

Entitlement to water-use registration

- (3) The holder of each prior domestic and stock right is deemed to be, the holder of a water-use registration, deemed to be granted under section 64AP, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—
- (a) on that land; and
 - (b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and
 - (c) subject to an annual use limit determined in accordance with the conversion rules.

Delivery entitlement

- (4) The holder of each prior domestic and stock right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—

Sch. 15 cl. 6(4)
amended by
No. 85/2006
s. 143.

Sch. 15

- (a) to the place or places determined by the Authority in accordance with the conversion rules;
- (b) at the volume that is the proportion (as specified in the conversion rules) of the prior domestic and stock right immediately before the appointed day, or that is determined in accordance with any other method that is set out in the conversion rules; and
- (c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

Ownership of water share

- (5) If a prior domestic and stock right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

7 Prior 222(1)(c) sales water agreements

- (1) On and from the appointed day for a water system, the following subclauses apply to each prior 222(1)(c) sales water agreement entered into by the Authority responsible for managing the water system.

Entitlement to water share

- (2) The owner of the holding in respect of which the agreement was entered into is deemed to be the owner of a water share, deemed to be issued under section 33F—

- (a) that authorises water to be taken at the maximum volume that is the proportion (as specified in the conversion rules) of the volume of the prior water right shown in the prior holdings register (immediately before the appointed day); and
- (b) that has a class of reliability that is determined in accordance with the conversion rules.

Ownership of water share

- (3) If a prior 222(1)(c) sales water agreement has been entered into in respect of a holding owned by more than one person, the proportions of ownership of the water share by each owner of the holding are to be the same as the proportions determined for each such owner for the prior joint right or prior water right (as the case requires) applying to the holding.

8 Holdings to which no rights apply

- (1) A managing Authority must provide to an applicant under subclause (2), the service of delivering to the land specified under subclause (2), the volumes of water during the periods determined in accordance with the conversion rules applying to the water system.
- (2) A person who was, immediately before the appointed day for a declared water system, the owner of a holding that was serviced by the water system, being a holding in respect of which there was no prior water right or prior joint right, may, within 6 months or any other period (not being more than 12 months) specified in the conversion rules of the appointed day for the water system, apply to the managing Authority for the provision of a service under subclause (1) to the land that

Sch. 15 cl. 8(2)
amended by
No. 85/2006
s. 144.

comprised the holding immediately before the appointed day.

9 Other interest holders

(1) On the appointed day for a water system, if the registered proprietor of land in a holding in the water system is a life tenant, the life tenant is deemed to be the holder of a limited term transfer of the water share, in respect of the land, that the owner of the land is deemed to be the holder of under this Schedule.

(2) A limited term transfer under subclause (1) continues in force, despite any other provision of this Act, until the cessation of the life tenancy.

(2A) Section 33AV(4) does not apply to a limited term transfer under subclause (1).

(3) If, immediately before the appointed day for a water system—

(a) a purchaser under a terms contract of a holding in the water system is—

(i) in occupation of the holding; and

(ii) entitled to water, on or after that day under the terms of the contract; and

(b) the vendor under the contract is on and from the appointed day deemed to be the holder of a water share in respect of the holding under this Schedule—

on and from the appointed day, the purchaser is deemed to be the holder of a limited term transfer, if the Minister, on application, so approves before the appointed day.

(4) A limited term transfer under subsection (3) continues in force for so long as the purchaser is entitled to receive water under the contract.

Sch. 15
cl. 9(2A)
inserted by
No. 32/2010
s. 75.

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- (5) The vendor or purchaser under a terms contract of a holding in a water system may apply to the Minister for approval under subsection (3), before the appointed day, in the form approved by the Minister.

10 Water share deemed to be associated water share

On and from the appointed day for a water system, a water share in the system that is deemed to be owned by a person—

- (a) under clause 4, 5 or 6, is deemed to be determined to be an associated water share under Division 10, that is associated with the land specified in the water-use licence or water-use registration (as the case requires) that that person is deemed to be the holder of under that section; and
- (b) under clause 7 is deemed to be determined to be an associated water share under Division 10, that is associated with the land specified in the water-use licence that that person is deemed to be the holder of under clause 4, 5 or 6, as the case requires.

11 Application of section 64AE

For the purposes of Division 6 of Part 4B, a condition that a water-use licence is deemed to be subject to by clause 4, 5 or 6—

- (a) is deemed to be a particular condition imposed under Division 5 of Part 4B; and
- (b) is deemed to have been imposed before any standard water-use condition applying to that licence.

Sch. 15

Sch. 15 cl. 12
amended by
No. 85/2006
s. 145.

12 Properties deemed to be serviced properties

Where, under this Part, an owner of a parcel of land is deemed to be entitled to the service of having water delivered to a place or places determined by a managing Authority for the purposes of use on the parcel of land, the parcel of land is deemed to be serviced property within the meaning of section 220.

PART 3—CONVERSION OF OTHER RIGHTS

13 Conversion of take and use licences

Sch. 15
cl. 13(1)
amended by
No. 29/2007
s. 23.

- (1) On and from the appointed day for a water system, the following subclauses apply to each take and use licence in force immediately before the appointed day within the water system that is not a licence under which—

Sch. 15
cl. 13(1)(a)
inserted by
No. 29/2007
s. 23.

- (a) the water to be taken and used is subject to a condition that a proportion of the water so taken and used is returned to the water system; or

Sch. 15
cl. 13(1)(b)
inserted by
No. 29/2007
s. 23.

- (b) the water is to be taken and used for a purpose prescribed for the purposes of section 51(1AA).

Entitlement to water share

- (2) The holder of each take and use licence is deemed to be the owner of a water share, deemed to be issued under section 33—
- (a) that authorises water to be taken at the maximum volume that is the same as the volume shown on the take and use licence immediately before the appointed day; and
- (b) that has a class of reliability that is determined in accordance with the conversion rules.

Entitlement to water-use licence

- (3) The owner of the land to which each take and use licence relates is deemed to be the holder of a water-use licence, deemed to be granted under section 64L, that authorises water to be used—
- (a) on that land; and
 - (b) subject to the same conditions as those that applied to the use or drainage of water under the take and use licence immediately before the appointed day; and
 - (c) subject to an annual use limit determined in accordance with the conversion rules.

Entitlements to works licences

- (4) The holder of each take and use licence that, immediately before the appointed day, authorised the construction, alteration or operation of works, is deemed to be the holder of a licence under section 67 that authorises the construction, alteration or operation of any such works, subject to—
- (a) any conditions as to the maximum amounts of water which may be taken in any particular periods or circumstances—
 - (i) that applied under the licence immediately before the appointed day; or
 - (ii) as determined in accordance with the conversion rules—whichever is the greater; and
 - (b) any conditions of the take and use licence as to—
 - (i) the installation and use of measuring devices and pumps; and

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- (ii) the operation of any bores or works for extracting water from waterways.

Ownership of water share

- (5) If a take and use licence is held by more than one person, the proportions of ownership of the water share by each holder of the licence are to be determined in the manner set out in clause 18.

14 Prior 222(1)(d) sales water agreements

- (1) On and from the appointed day for a declared water system, the following subclauses apply to each prior 222(1)(d) sales water agreement entered into by an Authority to supply water to land from the water system.

Entitlement to water share

- (2) The owner or occupier of the land with whom the agreement was entered into is deemed to be the owner of a water share, deemed to be issued under section 33F—
- (a) that authorises water to be taken at the maximum volume that is the proportion (as specified in the conversion rules) of the volume that is the same as that shown in the licence, immediately before the appointed day; and
 - (b) that has a class of reliability that is determined in accordance with the conversion rules.

Ownership of water share

- (3) If the prior 222(1)(d) right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

15 Water share deemed to be associated water share

On and from the appointed day for a water system—

- (a) if a water share is deemed to be issued under clause 13 in relation to a take and use licence, the water share is deemed to be determined to be an associated water share under Division 10, that is associated with the land to which the take and use licence applied, in so far as a water-use licence is deemed to be issued under clause 13 in respect of that land;
- (b) if a water share is deemed to be issued under clause 14 in relation to a prior 222(1)(d) sales water agreement, the water share is deemed to be determined to be an associated water share under Division 10, that is associated with the land to which the agreement applied, in so far as a water-use licence is deemed to be issued under clause 13 in respect of that land.

16 Conversion of temporary transfers

- (1) On and from the appointed day for a declared water system, the following subclauses apply where a prior water right has been transferred (whether in whole or in part) under section 224 (as in force before the appointed day) for a consecutive period of 3 years immediately preceding the appointed day, where the owner of the land to which the right has been transferred is not the holder of—
 - (a) a prior joint right or prior water right; or
 - (b) a take and use licence.

Entitlement to water-use licence

- (2) The owner of the land to which such a right has been transferred is deemed to be the holder of a water-use licence that authorises water to be used—
- (a) on the land to which the right had been transferred; and
 - (b) subject to the same terms and conditions relating to the use of water as those that applied to the use of the water under the transferred rights, immediately before the appointed day; and
 - (c) subject to an annual use limit determined in accordance with the conversion rules.

PART 4—DETERMINATION OF PORTIONS OF OWNERSHIP OF WATER SHARES

17 Determination of portions generally

- (1) For the purposes of Part 2, the ownership of the persons' water share is deemed to be the same as the ownership of the land that comprised the holding unless—
- (a) parcels of land in the holding are owned by different persons or in a different manner; or
 - (b) different mortgages apply to different parcels of land in the holding; or
 - (c) in the opinion of the Minister, ownership of the whole or a part of the water share cannot be clearly established.
- (2) Subject to Part 2, where subclause (1)(a) or (b) applies, the ownership of the water share is to be determined as agreed between all entitled persons.

(3) If—

- (a) an agreement has not been reached under subclause (2); and
- (b) 18 calendar months have expired since the appointed day for the water system and an application for arbitration under clause 19 has not been made—

ownership of the water share is to be determined as follows—

- (c) the owner of each parcel of land that comprised the holding—
 - (i) is deemed, in respect of the ownership of that parcel, to hold the water share as a tenant in common, in equal undivided portions with the owner of each other parcel of the land that comprised the holding; and
 - (ii) if there is more than one owner for a portion of the water share those persons own that portion in the same manner as that in which, they hold the parcel of land that entitles them to ownership of that portion of the share.
- (4) Where subclause (1)(c) applies ownership of the water share is to be determined—
 - (a) as agreed between all entitled parties; or
 - (b) if agreement cannot be reached under paragraph (a), in accordance with the conversion rules.
- (5) For the purposes of this section, **mortgage** in relation to land under the **Transfer of Land Act 1958**, means a recorded mortgage under that Act.

18 Determination of portions on conversion of take and use licences

- (1) If a take and use licence to which clause 13 applies is held by more than one person, the holders of the licence are deemed to own the water share as tenants in common in equal undivided portions (unless subclause (2) applies).
- (2) If a take and use licence to which clause 13 applies is held by an unincorporated association, the ownership of the share is to be determined as agreed between all persons who are members of the association.

19 Arbitration

- (1) If, within—
 - (a) a period of 6 calendar months from the appointed day for a water system; or
 - (b) where the conversion rules so provide, any later date determined in accordance with the rules—

the entitled persons have not reached agreement under clause 17 on the proportions of ownership, any of the entitled persons may refer the matter to arbitration in accordance with the **Commercial Arbitration Act 1984**.

- (2) If—
 - (a) within a period of 6 calendar months from the appointed day for a water system; or
 - (b) where the conversion rules so provide, any later date determined in accordance with the rules—

the members of an unincorporated association have not reached agreement under clause 18(2), any member of the association may refer the

matter to arbitration in accordance with the
Commercial Arbitration Act 1984.

- (3) An arbitration under this section must be conducted before a single arbitrator selected by agreement by all the entitled persons, or, in the absence of such an agreement, by the Secretary-General of the Australian Centre for International Commercial Arbitration Limited ACN 006 404 664.
- (4) The costs of the arbitration are to be borne by all the entitled persons equally, unless otherwise awarded by the arbitrator.

20 Procedure and findings of arbitration

- (1) The arbitrator must make an award in the matter within 9 calendar months of his or her appointment, unless—
 - (a) the arbitrator believes there are exceptional circumstances which require a longer period; or
 - (b) all the entitled persons agree to a longer period.
- (2) The arbitrator may determine the procedures that apply to the arbitration, having regard to the commercial value of the subject matter of the dispute.

21 Matters to be taken into account in making finding

In making an award the arbitrator must—

- (a) in the case of a dispute under clause 17(3), relating to an amalgamated holding that comprises several parcels of land, have regard to the volume of prior water rights and prior domestic and stock rights of each parcel of land in the holding, before the parcels became part of the holding, and, if the arbitrator considers that the consideration

set out above would lead to an unfair or unjust result, have regard to—

- (i) any relevant agreements; and
 - (ii) any transfers under section 226 (as in force before the appointed day), entered into after the parcels of land were amalgamated; and
 - (iii) any other relevant matters;
- (b) in any other case, have regard to—
- (i) any relevant agreements; and
 - (ii) any transfers under section 226 (as in force before the appointed day); and
 - (iii) any other relevant matters.

22 Notification of award of arbitration

The arbitrator must give a copy of his or her award in the matter to each entitled person and to the Registrar.

23 Registrar to register ownership in accordance with the award of the arbitrator

On receiving a copy of an award under clause 21, the Registrar must record the ownership of the water share in the Water Register in accordance with the award of the arbitrator.

PART 5—MORTGAGES

24 Application of Part

This Part does not apply to a water share in a declared water system if the volume of water that is to be made available under the water share is 5 megalitres or less.

25 Mortgagee notices and agreements

- (1) In the case of a mortgage over the whole or a part of any parcel of land where the owner of the whole or a part of the parcel is deemed to be the owner of a water share by the operation of Part 2, the Authority, responsible for managing the irrigation district in which the water system from which the water share is derived is situated, must notify the owner, in the form and manner specified in the conversion rules, of the existence of the mortgage over the land and advise the owner that clause 26 will apply to the mortgage.

Sch. 15
cl. 25(1)
amended by
No. 85/2006
s. 146(1).

- (1A) A notice under subclause (1) must be given by the Authority before the appointed day for the water system, when it is practicable to do so.

Sch. 15
cl. 25(1A)
inserted by
No. 85/2006
s. 146(2).

- (2) For the purposes of this section, *mortgage* in relation to land under the **Transfer of Land Act 1958**, means a recorded mortgage under that Act.

26 Conversion of mortgages

- (1AA) On and from the appointed day for a water system, the following subclauses apply to each mortgage over the whole or a part of any parcel of land where, the owner of the whole or the part of the parcel, by virtue of that ownership, is deemed by the operation of Part 2, to be the owner of a water share in respect of the water system.

Sch. 15
cl. 26(1AA)
inserted by
No. 85/2006
s. 146(3).

- (1) The mortgage is deemed to become, in addition to being a mortgage over the whole or the part of the parcel of land specified in the mortgage, a mortgage over the water share to secure the debt secured by the mortgage, immediately before the appointed day, and amounts that may be advanced under the mortgage on or after that day, subject to the same terms and conditions as those that

Sch. 15
cl. 26(1)
amended by
No. 85/2006
s. 146(4).

applied to the mortgage immediately before the appointed day.

- (2) For the purposes of subclause (1)—
- (a) where the whole or part of the parcel of land is owned by one person only, and that person owns the water share as a tenant in common with other persons, the mortgage is deemed to be over that person's undivided interest in the water share; or
 - (b) where the whole or the part of the parcel of land is owned by more than one person, and those persons own the water share as tenant in common with other persons, the mortgage is deemed to be over those persons' undivided interest in the water share.
- (3) For the purposes of this Act, Schedule 12A applies to a mortgage that, under subclause (1), is deemed to be over a water share.
- (4) Mortgages that are deemed to be over a water share under subclause (1) that were previously over the one parcel of land are deemed to rank in the same priority to each other as that in which they were ranked when over the parcel of land.
- (5) In the case of land not under the **Transfer of Land Act 1958**, over which there is a mortgage where the mortgagee is the owner of the legal estate, where that mortgage is deemed to become (under subclause (1)) (in addition to being a mortgage over the land) a mortgage over a water share, the mortgage over the water share does not take effect as a transfer of the ownership of the mortgage, but takes effect in accordance with the provisions of this Act.

PART 6—MISCELLANEOUS CONVERSION ISSUES

27 Works licences

Sch. 15 cl. 27
amended by
No. 85/2006
s. 147.

On and from the appointed day for a declared water system, a licence under section 67 that is in force immediately before the appointed day and that relates to a bore or works for extracting water from a waterway in that system where conditions relating to that bore or those works are set out in a take and use licence, is deemed to be subject to—

- (a) any conditions as to the maximum amounts of water which may be taken in any particular periods or circumstances from that bore or through those works—
 - (i) under the take and use licence, as applying immediately before the appointed day; or
 - (ii) as determined in accordance with the conversion rules—

whichever is the greater; and

- (b) any conditions as to—
 - (i) the installation and use of measuring devices and pumps; and
 - (ii) the operation of any bores or works for extracting water from waterways—

under the take and use licence, as applying immediately before the appointed day.

28 Continuing operation of registration licences under section 51(1A)

Despite a water system becoming a declared water system, any registration licence issued under section 51(1A) in the declared water system is deemed to continue in force.

29 References to rights

On and from the appointed day for a declared water system, a reference in any document to—

- (a) a prior domestic and stock right (however described in the document) in the water system;
- (b) a prior water right (however described in the document) in the water system;
- (c) a prior joint right (however described in the document) in the water system;
- (d) a prior 222(1)(c) sales water agreement (however described in the document) in the water system;
- (e) a prior 222(1)(d) sales water agreement (however described in the document) in the water system;
- (f) take and use licence (however described in the document) in the water system—

is to be taken to be a reference to the water share the holder of that right is deemed to own by the operation of this Schedule.

30 Amendment of bulk entitlements

- (1) The Minister, by notice in writing, may make any amendments to a bulk entitlement that are necessary as a consequence of a water system becoming a declared water system.
- (2) A notice under this section must be made before the appointed day for the declared water system and must come into effect on that day.
- (3) Notice of the making of a notice under this section must be published in the Government Gazette before or on the appointed day for the water system.

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- (4) A copy of a notice made under this section must be given to the holder of the bulk entitlement before or on the appointed day for the water system.

PART 7—UNCONFIRMED WATER SHARES

31 Unconfirmed water shares

- (1) Where on the appointed day for a declared water system the ownership of a water share is to be determined in accordance with clause 17 or clause 18 and—
- (a) agreement has not been reached on the ownership of the share; or
 - (b) ownership of the whole or a part of the share cannot be clearly established—
- the ownership of the share under this Schedule is capable of being registered in the Register, subject to the qualification that the details recorded as to the share are unconfirmed.
- (2) A qualification that is in force under subclause (1) remains in force until the ownership is determined—
- (a) in accordance with this Schedule; or
 - (b) in accordance with the conversion rules.

32 Dealings in unconfirmed water shares

- (1) The following dealings are the only dealings that may take place in relation to unconfirmed water shares—
- (a) transfer of ownership of the share under section 33S;
 - (b) limited term transfer of the water share;

Sch. 15

Sch. 15
cl. 32(1)(c)
amended by
No. 32/2010
s. 76(1)(a).

- (c) discharge of a mortgage over the water share;

Sch. 15
cl. 32(1)(d)
inserted by
No. 32/2010
s. 76(1)(b).

- (d) assignment of a water allocation under the water share under section 33U or 33V;

Sch. 15
cl. 32(1)(e)
inserted by
No. 32/2010
s. 76(1)(b).

- (e) surrender of the water share under section 33AA;

Sch. 15
cl. 32(1)(f)
inserted by
No. 32/2010
s. 76(1)(b).

- (f) surrender of limited term transfer under section 33T(5).

- (2) In addition to any requirements applying to the transfer of water shares under Part 3A—

- (a) any transfer of ownership of an unconfirmed water share under section 33S does not have effect until the Authority (that is responsible for managing the irrigation district in which the water system in which the water share is issued) approves the transfer, in accordance with any relevant rules made under Part 3A, and notifies the Registrar of that approval; and
- (b) any limited term transfer of an unconfirmed water share must not be recorded in the water register until the Authority (that is responsible for managing the irrigation district in which the water system in which the water share is issued) approves the transfer, in accordance with any relevant rules made under Part 3A, and notifies the Registrar of that approval.

- (3) In the case of an assignment of a water allocation under a water share to which subclause (1)(d) applies, all persons who own the water share, in whole or in part, and all persons who have limited term transfers under the water share, in whole or in part are to be taken to be the holder of the water share.

Sch. 15
cl. 32(3)
inserted by
No. 32/2010
s. 76(2).

PART 8—CONVERSION PROCEDURES

33 Conversion Rules

- (1) Before the appointed day for a declared water system, the Minister may—
- (a) make a determination setting out the rules that are to apply to the conversion of rights in the water system; and
 - (b) amend any determination made under paragraph (a).
- (2) A determination under subclause (1) may provide for—
- (a) any procedures that an Authority is required to carry out to identify, verify, apportion and calculate information relating to rights to which Part 2, 3, 4, 5 or 6 applies and any matters that are to be determined under Part 2, 3, 4, 5 or 6; and
 - (b) any procedures that the Minister is required to carry out to identify, verify, apportion and calculate information relating to rights to which Part 2, 3, 4, 5 or 6 applies and any matters that are to be determined under Part 2, 3, 4, 5 or 6; and
 - (c) any submission procedures and dispute resolution procedures any Authority, the Minister or the Registrar is required to undertake for the purposes of performing

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- functions under paragraph (a) or (b) (as the case requires); and
- (d) any other matters that are required or permitted to be set out by this Schedule.
- (3) A determination under subclause (1) comes into operation on the day specified in the determination.
- (4) A determination under subclause (1) must be in writing and notice of the making of the declaration and of the day on which it comes into operation must be published in the Government Gazette.
- (5) A declaration under subclause (1)—
- (a) must not be amended, unless to correct any clerical, factual or other inadvertent mistake in the declaration; and
 - (b) must not be revoked.
- (6) Before making a determination under subclause (1), the Minister must consult with—
- (a) the Authority or Authorities responsible for the supply of water from the water system to which the determination relates; and
 - (b) the Registrar.

34 Disclosure of information for purposes of conversion

- (1) The Registrar of Titles must ensure that all records and information for which the Registrar of Titles is responsible which are necessary to enable—
- (a) an Authority to carry out its functions under this Schedule or to give effect to this Schedule; or

- (b) the Minister to carry out the Minister's functions under this Schedule or to give effect to this Schedule; or
- (c) the Registrar to carry out the Registrar's functions under this Schedule or to give effect to this Schedule—

are disclosed to the Authority, Minister or Registrar, as the case requires, for those purposes.

- (2) An Authority must ensure that all records and information for which the Authority is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.
- (3) The Minister must ensure that all records and information for which the Minister is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.
- (4) The Registrar must ensure that all records and information for which the Registrar is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.

35 Offence to provide false or misleading information

A person must not knowingly give false or misleading information to an Authority in the course of claiming that that person has a right to which Part 2 or 3 of this Schedule applies.

Penalty: 60 penalty units or 6 months imprisonment.

PART 9—TARIFFS, FEES AND CHARGES

Division 1—Fees under tariffs

36 Definitions

In this Division—

fee means the fee imposed under a tariff under Part 13 of this Act;

prior right means any of the following—

- (a) a prior joint right;
- (b) prior water right; or
- (c) prior domestic and stock right.

37 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of an Authority under Part 13 of this Act to obtain payment on or after the appointed day for that part of a fee, imposed by an Authority on a property in respect of a prior right in the water system, that applies to any period before the appointed day.

38 Application of fees by Authorities after the appointed day

- (1) If, before the appointed day for a water system, the holder of a prior right in the water system, has made a payment of money to which this section applies to an Authority, the Authority may apply that money, on and after the appointed day, to satisfy any fee imposed for any service provided by the Authority on or after the appointed day to the holder of the prior right in respect of any—
 - (a) water share; or

- (b) water-use licence; or
- (c) delivery service under Part 11—

deemed to be issued, granted or provided in respect of that prior right under this Schedule.

- (2) In this section, *payment of money to which this section applies* means a payment in satisfaction of a part of a fee imposed by the Authority under a tariff under Part 13 on a property in respect of the prior right, being that part of the fee that applies to a period on or after the appointed day.

39 Evidentiary provision, fees under Part 13

- (1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water supplied to a property from a water system during the fee period, is relevant, evidence may be given of the amount of water computed by the Authority having regard to—
 - (a) any quantity of water supplied to the property concerned before the appointed day; and
 - (b) the total amount of water recorded by a water meter as having been supplied or delivered to that property in that period, both before the appointed day and after the appointed day—

and that evidence, in the absence of evidence to the contrary, is proof of the amount of water supplied or delivered to the property.

- (2) In this section, *fee period*, in relation to a prior water right, means the period for which a fee is imposed in respect of a property that has water supplied or delivered to it under the prior right and in which the appointed day for the water system from which the water is so supplied or delivered occurs.

Division 2—Charges under section 264

40 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of an Authority under section 264 to obtain payment on or after the appointed day for that part of a fee, fixed by the Authority for a take and use licence in the water system, that applies to any period before the appointed day.

41 Application of fees under section 264 by an Authority after the appointed day

- (1) If, before the appointed day for a water system, the holder of a take and use licence in the water system, has made a payment of money to which this section applies to an Authority, the Authority may apply that money on and after the appointed day to satisfy any fee—
 - (a) payable on or after the appointed day in respect of any—
 - (i) water share; or
 - (ii) water-use licence—
deemed to be issued or granted in respect of that take and use licence under this Schedule; and
 - (b) payable under section 74AA in respect of any works licence under section 67.
- (2) In this section *payment of money to which this section applies* means a payment in satisfaction of a part of a fee fixed by an Authority under section 264 for the licence, being that part of the fee that relates to any period on or after the appointed day.

42 Evidentiary provision, fees under section 264

- (1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water taken under a take and use licence in a water system during the fee period for the purposes of the land specified in the licence, is relevant, evidence may be given of the amount of water computed by the Authority having regard to the total amount of water recorded by a water meter as having been taken during the fee period for the purposes of that land, and that evidence, in the absence of evidence to the contrary, is proof of the amount of water taken for the purposes of the land.
- (2) In this section, *fee period*, in relation to a take and use licence, means the period for which a fee is fixed under section 264 in respect of the licence and in which the appointed day for the water system from which water is taken under the licence occurs.

Division 3—Fees under Part 4 of this Act

43 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of the Minister under Part 4 of this Act to obtain payment on or after the appointed day for that part of a fee, fixed by the Minister for a take and use licence in the water system, that applies to any period before the appointed day.

44 Application of fees under Part 4 of this Act by the Minister after the appointed day

- (1) If, before the appointed day for a water system, the holder of a take and use licence in the water system, has made a payment of money to which this section applies to the Minister, the Minister may apply that money on and after the appointed day to satisfy any fee—
- (a) payable on or after the appointed day in respect of any—
 - (i) water share; or
 - (ii) water-use licence—
deemed to be issued or granted in respect of that take and use licence under this Schedule; and
 - (b) payable under section 74AA in respect of any works licence under section 67.
- (2) In this section *payment of money to which this section applies* means a payment in satisfaction of a part of a fee fixed by the Minister under Part 4 of this Act for the licence, being that part of the fee that relates to any period on or after the appointed day.

45 Evidentiary provision, fees under Part 4 of this Act

- (1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water taken under a take and use licence in a water system during the fee period for the purposes of the land specified in the licence, is relevant, evidence may be given of the amount of water computed by the Minister having regard to the total amount of water recorded by a water meter as having been taken during the fee period for the purposes of that land, and that evidence, in the absence of evidence to the contrary, is proof of

the amount of water taken for the purposes of the land.

- (2) In this section, *fee period*, in relation to a take and use licence, means the period for which a fee is fixed under Part 4 of this Act in respect of the licence and in which the appointed day for the water system from which water is taken under the licence occurs.

PART 10—MISCELLANEOUS PROVISIONS

46 Transitional provisions—Water (Resource Management) Act 2005

Despite the repeal of section 13 by section 7 of the **Water (Resource Management) Act 2005**, any qualification made by the Minister under that section before its repeal continues to apply.

Sch. 16
inserted by
No. 85/2006
s. 148.

SCHEDULE 16

TRANSITIONAL ARRANGEMENTS WATER (GOVERNANCE) ACT 2006

PART 1—PRELIMINARY

1 Definitions

In this Schedule—

pre-dating Authority, in relation to a water corporation set out in an item in Column 1 of the Table in Schedule 1 (other than item 12), means the body corporate that was, immediately before the commencement of section 54 of the 2006 Act, commonly known by the name set out in the item in Column 2 of the Table in Schedule 1 opposite that water corporation;

pre-dating Corporation means the body corporate that was, immediately before the commencement of section 162 of the 2006 Act, the "Corporation" within the meaning of the **Melbourne Water Corporation Act 1992**;

relevant post-dating water corporation, in relation to a pre-dating Authority means the water corporation set out in the item in Column 1 of the Table in Schedule 1 immediately opposite the pre-dating Authority;

2006 Act means the **Water (Governance) Act 2006**.

**PART 2—TRANSITIONAL ARRANGEMENTS—
AUTHORITIES**

**2 Water Corporations deemed to be the same body as
pre-dating Authorities**

- (1) Despite the commencement of section 54 of the 2006 Act—
 - (a) a pre-dating Authority, is deemed to continue in existence as if it were established as the relevant post-dating water corporation under Part 6 of this Act; and
 - (b) each member of a pre-dating Authority, is deemed to continue in office as a member of the board of directors of the relevant post-dating water corporation, as if the member had been appointed under this Act, for the remaining period of that member's term of appointment.
- (2) Where the maximum number of members of a pre-dating Authority was, immediately before the commencement of section 54 of the 2006 Act, greater than 9, clause (1)(b) has effect to continue each member in office despite section 95.
- (3) Despite the commencement of section 54 of the 2006 Act—
 - (a) any rights, property and assets that immediately before that commencement were vested in a pre-dating Authority are deemed to be vested in the relevant post-dating water corporation; and
 - (b) any debts, liabilities and obligations of a pre-dating Authority that were existing immediately before that commencement are deemed to be the debts, liabilities and

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- obligations of the relevant post-dating water corporation; and
- (c) the relevant post-dating water corporation is deemed to be substituted as a party to any proceedings pending in any court to which a pre-dating Authority was a party immediately before that commencement; and
 - (d) the relevant post-dating water corporation is substituted as a party to any arrangement or contract entered into by or on behalf of a pre-dating Authority and in force immediately before that commencement; and
 - (e) any reference to a pre-dating Authority in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to the relevant post-dating water corporation and the force and effect of any such document is not to be taken to be affected by that commencement.

3 Immunity of certain members of water corporations

- (1) A relevant member of a post-dating water corporation is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
 - (b) in the reasonable belief that the Act or omission was in the exercise of a power of the discharge of a duty under this Act or the regulations.

(2) Any liability arising from an act or omission that would, but for subsection (1), attach to a relevant member of a post-dating water corporation attaches instead to the post-dating water corporation.

(3) In this clause—

relevant member in relation to a post-dating water corporation, means a person who is a member of the board of directors of the water corporation and who was, at the commencement of section 7 of the **Water (Essential Services Commission and Other Amendments) Act 2003**, a member of the board of the relevant pre-dating Authority and whose term of office has not expired since that commencement.

4 By-laws

- (1) Subject to subclause (2), any by-law made by a pre-dating Authority and in force immediately before the commencement of section 54 of the 2006 Act is deemed to continue in force on and after that commencement as if the by-law were made by the relevant post-dating water corporation and may be amended or revoked accordingly.
- (2) Any by-law made by a pre-dating Authority under this Act and in force immediately before the commencement of section 54 of the 2006 Act, that was made 10 or more years before that commencement, is deemed to continue in force for a period of no more than 12 months after that commencement, as if it were made by the relevant post-dating water corporation and may be amended or revoked accordingly.

**PART 3—TRANSITIONAL AND SAVINGS—MELBOURNE
WATER CORPORATION**

**5 Melbourne Water Corporation deemed to be the
same body as pre-dating Corporation**

- (1) Despite the commencement of section 162 the 2006 Act—
 - (a) the pre-dating Corporation, is deemed to continue in existence as if it were established as Melbourne Water Corporation under Part 6 of this Act; and
 - (b) each member of the Board of Directors of the pre-dating Corporation, is deemed to continue in office as a member of the board of directors of Melbourne Water Corporation, as if the member had been appointed under this Act, for the remaining period of that member's term of appointment.
- (2) Despite the commencement of section 162 the 2006 Act—
 - (a) any rights, property and assets that immediately before that commencement were vested in the pre-dating Corporation are deemed to be vested in Melbourne Water Corporation; and
 - (b) any debts, liabilities and obligations of the pre-dating Corporation that were existing immediately before that commencement are deemed to be the debts, liabilities and obligations of Melbourne Water Corporation; and

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- (c) Melbourne Water Corporation is deemed to be substituted as a party to any proceedings pending in any court to which the pre-dating Corporation was a party immediately before that commencement; and
 - (d) Melbourne Water Corporation is substituted as a party to any arrangement or contract entered into by or on behalf of the pre-dating Corporation and in force immediately before that commencement; and
 - (e) any reference to the pre-dating Corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to Melbourne Water Corporation and the force and effect of any such document is not to be taken to be affected by that commencement.
- (3) On the commencement of section 162 of the 2006 Act, Melbourne Water Corporation ceases to be a reorganising body within the meaning of the **State Owned Enterprises Act 1992**.
- (4) Subject to this Schedule and to any other provision of this Act, the force and effect of any instrument made or anything done under the **Melbourne and Metropolitan Board of Works of Act 1958** or the **Melbourne Water Corporation Act 1992** by the pre-dating corporation, is not to be taken to be affected by the repeal of those Acts.
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6 Ownership of works

Any works that were, immediately before the commencement of section 162 of the 2006 Act—

- (a) owned; or
- (b) in the process of being constructed, that are not works in respect of which it has been agreed that they are to be owned by another person on completion of construction—

by the pre-dating Corporation are deemed to be owned by Melbourne Water Corporation.

7 Designated land or works

Any land or works within the waterway management district of Melbourne Water Corporation that was land or works of the pre-dating Corporation immediately before the commencement of section 79 of the 2006 Act that was used for the purposes in the nature of the purposes of Part 10 are deemed to be designated land or works of Melbourne Water Corporation for the purposes of that Part.

8 Main drains

Any drain or waterway that was a main drain (within the meaning of section 259(1) of the **Melbourne and Metropolitan Board of Works Act 1958**) immediately before the commencement of section 162 of the 2006 Act, is deemed to be a designated waterway of Melbourne Water Corporation for the purposes of Part 10.

9 Statutory easements

Any right in the nature of an easement or purporting to be an easement or deemed to be an easement vested in the pre-dating Corporation immediately before the commencement of section 162 of the 2006 Act is deemed to be a

right of Melbourne Water Corporation to which section 130(3) applies.

10 Continuation of operation of by-laws

Despite the commencement of section 162 of the 2006 Act, each by-law made by the pre-dating Corporation described in the Table to this clause is deemed to continue in force until its revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the by-law were made under this Act by Melbourne Water Corporation, and the by-law may be amended or revoked accordingly.

Table

Statutory Rule Number	Description of by-law
S.R. No. 173/1997	By-Law No. 1 Water Supply Protection (as in force immediately before the commencement of section 162 of the 2006 Act)
S.R. No. 94/2002	By-Law No. 294 Waterways (Revocation) (as in force immediately before the commencement of section 162 of the 2006 Act)
S.R. No. 113/1998	By-Law No. 2 Waterways and Drainage Protection (as in force immediately before the commencement of section 162 of the 2006 Act)

11 Transfer of sewerage or drainage reserves in certain subdivisions to Corporation

- (1) Where any map or plan has been lodged or deposited with the Registrar of Titles pursuant to section 97 of the **Transfer of Land Act 1958** or a corresponding previous enactment which has been sealed before the commencement of section 44 of the **Subdivision Act 1988** and any allotment on the map or plan has been transferred, the Governor in Council may on the request of

Melbourne Water Corporation, by Order published in the Government Gazette, direct that the whole or any part of the land comprised in any reserve shown on the map or plan as a reserve for the purposes of sewerage or drainage or sewerage and drainage, (being land which is under the jurisdiction of the Corporation) is vested in the Corporation.

- (2) Subclause (1) does not apply to any land which has been transferred to or vested in the council of a municipality or in respect of which a request has been made by a council that the owner of the land execute an agreement under seal to transfer that reserve or any part of that reserve to it.
- (3) On publication of an Order under subsection (1), that land vests in Melbourne Water Corporation freed and discharged from any mortgage, charge, lease or sub-lease.

12 Building lines

Any building line (within the meaning of section 268 of the **Melbourne and Metropolitan Board of Works Act 1958**, as in force immediately before its repeal) as determined under that section (as so in force), being a building line in force, immediately before that repeal, in any part of the area delineated in red on the plan lodged in the central plan office and numbered LEGL./05-406, is deemed to be a building line determined by Melbourne Water Corporation under Division 4 of Part 10.

13 Serviced properties

Any land that was, immediately before the commencement of section 163 of the 2006 Act, rateable property (within the meaning of the **Melbourne and Metropolitan Board of Works Act 1958** as in force before its repeal) for the

purposes of the pre-dating corporation, is deemed to be serviced property, within the meaning of this Act, for the purposes of Melbourne Water Corporation.

14 Saving of certain entitlements to water

Despite the repeal of the **Melbourne and Metropolitan Board of Works Act 1958**, any entitlement of the pre-dating corporation to take water under that Act, being an entitlement that was in force immediately before that repeal, is deemed to continue in force, as if the entitlement is an entitlement of Melbourne Water Corporation and the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal) is deemed to continue to apply to any such entitlement.

PART 4—MISCELLANEOUS TRANSITIONAL PROVISIONS

15 References to storage operators

A reference in any bulk entitlement in force immediately before the commencement of section 54 of the 2006 Act to a storage operator, in relation to a water storage, is deemed to be on and after that commencement, a reference to the storage manager appointed under Part 6C for that water storage.

16 Saving of certain regulations

- (1) Despite the commencement of section 54 of the 2006 Act, the Water (Lake Eildon) (Houseboat) Regulations 2003 are deemed to continue in force until their revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the regulations were made under section 122ZF of this Act (as in force on or after that commencement) and may be amended or revoked accordingly.

Sch. 16

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- (2) Despite the commencement of section 54 of the 2006 Act, the Water (Long Service Leave) Regulations 2001 are deemed to continue in force until their revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the regulations were made under section 119(4) of this Act (as in force on or after that commencement) and may be amended or revoked accordingly.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 26 May 1989

Legislative Council: 15 November 1989

The long title for the Bill for this Act was "A Bill to re-state, with amendments, the law relating to water in Victoria, to repeal the **Dandenong Valley Authority Act 1963**, the **Drainage of Land Act 1975**, the **Geelong Waterworks and Sewerage Act 1958**, the **Groundwater Act 1969**, the **Latrobe Valley Act 1958**, the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958**, the **River Improvement Act 1958**, the **Sewerage Districts Act 1958**, the **Victorian Water and Sewerage Authorities Association Act 1981**, the **Water Act 1958**, the **West Moorabool Water Board Act 1968** and certain other Acts, to amend the **Land Act 1958** and for other purposes."

The **Water Act 1989** was assented to on 5 December 1989 and came into operation as follows:

Section 328 on 5 December 1989: section 2(2); section 329 on 6 July 1988: section 2(3); rest of Act (*except* Schedule 13 items 10, 23, 24) on 1 November 1990: Government Gazette 15 August 1990 page 2473; Schedule 13 items 10, 23, 24 on 1 September 1991: section 2(1).

2. Table of Amendments

This Version incorporates amendments made to the **Water Act 1989** by Acts and subordinate instruments.

Local Government (Amendment) Act 1990, No. 13/1990

Assent Date: 8.5.90
Commencement Date: Ss 45, 46 on 8.5.90: s. 2(1)(a)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Waivers) Act 1991, No. 25/1991

Assent Date: 12.6.91
Commencement Date: All of Act (*except* s. 5) on 1.11.90: s. 2(1); s. 5 on 5.12.89: s. 2(2)
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: S. 74 on 25.6.91: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Administrative Appeals Tribunal (Planning) Act 1991, No. 62/1991

Assent Date: 12.11.91
Commencement Date: S. 39 on 29.5.90: s. 2(2); rest of Act on 8.1.92: Government Gazette 8.1.92 p. 2
Current State: All of Act in operation

Local Government (Rating) Act 1991, No. 78/1991 (as amended by No. 22/1992)

Assent Date: 3.12.91
Commencement Date: Ss 20–22 on 3.12.91: s. 2(5)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Elections) Act 1992, No. 12/1992

Assent Date: 2.6.92
Commencement Date: All of Act (*except* s. 7(3)) on 2.6.92: s. 2(1); s. 7(3) on 1.11.90: s. 2(2)
Current State: All of Act in operation

Heritage Rivers Act 1992, No. 36/1992

Assent Date: 16.6.92
Commencement Date: S. 21 on 10.9.92: Government Gazette 9.9.92 p. 2635
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Rural Water Corporation) Act 1992, No. 50/1992

Assent Date: 30.6.92
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

Melbourne Water Corporation Act 1992, No. 54/1992

Assent Date: 30.6.92
Commencement Date: S. 2 on 30.6.92: s. 2 (2); rest of Act on 1.7.92:
Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

Residential Tenancies (Water and Utilities Charges) Act 1993, No. 25/1993

Assent Date: 25.5.93
Commencement Date: Pt 1 (ss 1, 2) on 25.5.93: s. 2 (1); Pts 2, 3 (ss 3–12) on
1.7.93: s. 2(2); Pts 4–6 (ss 13–16) on 1.7.94: s. 2(3)
Current State: All of Act in operation

Water (Amendment) Act 1993, No. 69/1993

Assent Date: 5.10.93
Commencement Date: 5.10.93
Current State: All of Act in operation

Borrowing and Investment Powers (Amendment) Act 1993, No. 99/1993

Assent Date: 23.11.93
Commencement Date: Pt 1 (ss 1–3) on 23.11.93: s. 2(1); rest of Act on
23.5.94: s. 2(3)
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1993, No. 130/1993

Assent Date: 14.12.93
Commencement Date: S. 122(Sch. 4 item 17) on 3.1.94: Special Gazette
(No. 97) 23.12.93 p. 1
Current State: This information relates only to the provision/s
amending the **Water Act 1989**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 106) on 1.1.95: Government Gazette
28.7.94 p. 2055
Current State: This information relates only to the provision/s
amending the **Water Act 1989**

Water (Further Amendment) Act 1994, No. 49/1994

Assent Date: 7.6.94
Commencement Date: Ss 1, 2 on 7.6.94: s. 2(1); s. 8 (*except* (a)(c)) on 1.7.92:
s. 2(2); rest of Act on 1.7.94: s. 2(4)
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1994, No. 53/1994

Assent Date: 15.6.94
Commencement Date: S. 34 on 3.10.94: Special Gazette (No. 64) 27.9.94
p. 1; Sch. 1 items 11.1–1.3 on 3.10.94: s. 2(4A)
Current State: This information relates only to the provision/s
amending the **Water Act 1989**

Endnotes

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 31 on 23.1.95: Government Gazette 19.1.95 p. 121
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Further Amendment) Act 1994, No. 110/1994

Assent Date: 20.12.94
Commencement Date: S. 41(Sch. 1 item 11) on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Industry Act 1994, No. 121/1994

Assent Date: 20.12.94
Commencement Date: Ss 1, 2 on 20.12.94; s. 2(1); rest of Act on 1.1.95: Special Gazette (No. 105) 23.12.94 p. 1
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 48 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Amendment) Act 1995, No. 56/1995

Assent Date: 20.6.95
Commencement Date: Ss 65, 66 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Amendment) Act 1995, No. 62/1995

Assent Date: 20.6.95
Commencement Date: 20.6.95
Current State: All of Act in operation

Water Industry (Amendment) Act 1995, No. 65/1995

Assent Date: 27.6.95
Commencement Date: Ss 15, 16(1)–(7), 17–21, 22(b)–(d)(f)(i)–(k) on 29.6.95: Government Gazette 29.6.95 p. 1587; ss 16(8), 22(a)(e)(g)(h)(l) on 27.12.95: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Further Amendment) Act 1995, No. 79/1995

Assent Date: 28.11.95
Commencement Date: Ss 34–36 on 28.11.95: Special Gazette (No. 116) 28.11.95 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Further Amendment) Act 1995, No. 86/1995

Assent Date: 28.11.95
Commencement Date: 28.11.95
Current State: All of Act in operation

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Water Acts (Amendment) Act 1996, No. 12/1996

Assent Date: 25.6.96
Commencement Date: Ss 3–12 on 25.6.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Building (Amendment) Act 1996, No. 39/1996

Assent Date: 12.11.96
Commencement Date: Ss 11, 12 on 24.3.97: s.2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Miscellaneous Amendment) Act 1997, No. 35/1997

Assent Date: 3.6.97
Commencement Date: S. 29 on 3.6.97: Special Gazette (No. 58) 3.6.97 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 58 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 items 12.1–12.4) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Acts (Further Amendment) Act 1997, No. 110/1997

Assent Date: 23.12.97
Commencement Date: Ss 13–16, 19, 20, 23–25 on 1.1.98: Government Gazette 24.12.97 p. 3783; ss 17, 18, 21, 22 on 1.7.98: Government Gazette 24.12.97 p. 3783
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 21 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Endnotes

Catchment and Land Protection (Amendment) Act 1998, No. 39/1998

Assent Date: 26.5.98
Commencement Date: Ss 12, 13 on 26.5.98: s. 2(1)
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998** (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 105) on 1.7.98: Government
Gazette 18.6.98 p. 1512
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998,
No. 76/1998**

Assent Date: 10.11.98
Commencement Date: S. 29 on 15.12.98: s. 2(5)
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 66) on 1.1.99: s. 2(3)
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

Water Acts (Amendment) Act 1999, No. 22/1999

Assent Date: 18.5.99
Commencement Date: Ss 3–6(5), 6(7), 7 on 18.5.99: s. 2(1); s. 6(6) on
18.5.00: s. 2(2)
Current State: This information relates only to the provisions/s
amending the **Water Act 1989**

Water (Waterway Management Tariffs) Act 1999, No. 65/1999

Assent Date: 21.12.99
Commencement Date: 21.12.99: s. 2
Current State: All of Act in operation

Transport (Amendment) Act 2000, No. 30/2000

Assent Date: 30.5.00
Commencement Date: 31.5.00: s. 2
Current State: All of Act in operation

Essential Services Legislation (Dispute Resolution) Act 2000, No. 59/2000

Assent Date: 8.11.00
Commencement Date: S. 6 on 13.4.01: Government Gazette 29.3.01 p. 523
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Industry (Amendment) Act 2000, No. 66/2000

Assent Date: 8.11.00
Commencement Date: Ss 25–32 on 1.12.01: s. 2(4)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Electricity Industry Legislation (Miscellaneous Amendments) Act 2000, No. 69/2000

Assent Date: 21.11.00
Commencement Date: S. 65 on 1.1.01: s. 2(4)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Water (Amendment) Act 2001, No. 25/2001

Assent Date: 29.5.01
Commencement Date: 30.5.01: s. 2
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 127) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001

Assent Date: 7.11.01
Commencement Date: S. 3(Sch. item 12) on 20.12.01: Government Gazette 20.12.01 p. 3127
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Irrigation Farm Dams) Act 2002, No. 5/2002 (as amended by No. 6/2002)

Assent Date: 3.4.02
Commencement Date: Ss 4–19(1), 19(3), 21–24, 25(2)–(4), 29, 30, 32–56 on 4.4.02: s. 2(1); ss 19(2)(4), 20, 25(1), 26–28, 31 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 66) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Endnotes

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 205 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Utility Meters (Metrological Controls) Act 2002 No. 48/2002

Assent Date: 22.10.02
Commencement Date: S. 75 on 1.1.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Victorian Water Trust Advisory Council) Act 2003, No. 35/2003

Assent Date: 27.5.03
Commencement Date: 1.12.03: s. 2(2)
Current State: All of Act in operation

Safe Drinking Water Act 2003, No. 46/2003

Assent Date: 11.6.03
Commencement Date: S. 59(1) on 1.7.04: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Legislation (Essential Services Commission and Other Amendments) Act 2003, No. 48/2003

Assent Date: 11.6.03
Commencement Date: S. 12(1) on 4.4.02: s. 2(2); ss 8, 10 on 12.6.03: s. 2(1); ss 7, 12(2)(3) on 1.1.04: Government Gazette 11.12.03 p. 3117; s. 9 on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Legislation (Amendment) Act 2003, No. 90/2003

Assent Date: 11.11.03
Commencement Date: Ss 3–7, 12 on 12.11.03: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: Ss 175, 176 on 1.1.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date: 16.11.04
Commencement Date: S. 52 on 23.5.05: Government Gazette 19.5.05 p. 930
Current State: This information relates only to the provision/s amending the **Water Act 1989**

State Concessions Act 2004, No. 82/2004

Assent Date: 16.11.04
Commencement Date: S. 13(Sch. item 7) on 1.3.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 232) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Environment and Water Legislation (Miscellaneous Amendments) Act 2005, No. 48/2005

Assent Date: 24.8.05
Commencement Date: Ss 13–15 on 25.8.05: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Groundwater (Border Agreement) (Amendment) Act 2005, No. 79/2005

Assent Date: 22.11.05
Commencement Date: S. 5 on 31.10.06: Government Gazette 26.10.06 p. 2286
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Resource Management) Act 2005, No. 99/2005 (as amended by No. 85/2006)

Assent Date: 7.12.05
Commencement Date: Ss 4, 11, 34 on 15.12.05: Government Gazette 15.12.05 p. 2901; ss 3, 5–10, 12–33, 35–57, 59–68, 70, 71 on 3.8.06: Special Gazette (No. 191) 2.8.06 p. 1; s. 58 on 21.12.06: Government Gazette 21.12.06 p. 2768; s. 69 on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Rail Safety Act 2006, No. 9/2006

Assent Date: 4.4.06
Commencement Date: S. 161 on 1.8.06: Special Gazette (No. 181) 25.7.06 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 12) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Endnotes

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 116) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Governance) Act 2006, No. 85/2006 (as amended by No. 28/2007)

Assent Date: 17.10.06
Commencement Date: Ss 3(k), 5, 7–20, 27–33, 35, 36, 38–46, 48–53, 68, 69(2)(3), 95–97, 121, 123(1)–(4), 124, 129(1), 130, 137–147 on 21.12.06: Government Gazette 21.12.06 p. 2768; ss 3(a)–(j)(l)(m), 4, 6, 21–26, 34, 37, 47, 54–67, 69(1), 70–94, 98–120, 122, 123(5)–(7), 125–128, 129(2), 131–136, 148 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 75) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Acts Amendment (Enforcement and Other Matters) Act 2007, No. 29/2007

Assent Date: 26.6.07
Commencement Date: Ss 13–24 on 27.6.07: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 37) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 65) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 292 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Greenhouse Gas Geological Sequestration Act 2008, No. 61/2008

Assent Date: 5.11.08
Commencement Date: S. 323 on 1.12.09: Special Gazette (No. 439) 1.12.09 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Commonwealth Powers) Act 2008, No. 75/2008

Assent Date: 4.12.08
Commencement Date: Ss 21–23 on 15.12.08: Special Gazette (No. 358) 11.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 29) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Amendment (Non Water User Limit) Act 2009, No. 54/2009

Assent Date: 15.9.09
Commencement Date: Ss 4–14 on 16.9.09: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 133) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 62) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 93 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Transport Integration Act 2010, No. 6/2010

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 51) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Endnotes

Water Amendment (Entitlements) Act 2010, No. 32/2010

Assent Date: 8.6.10
Commencement Date: Ss 3–60, 63–77, Sch. on 24.6.10: Government Gazette 24.6.10 p. 1275
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010

Assent Date: 17.8.10
Commencement Date: S. 58 on 1.9.10: Special Gazette (No. 337) 24.8.10 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Amendment (Victorian Environmental Water Holder) Act 2010, No. 50/2010

Assent Date: 24.8.10
Commencement Date: Ss 9–12, 24–27 on 28.10.10: Government Gazette 28.10.10 p. 2584
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Traditional Owner Settlement Act 2010, No. 62/2010

Assent Date: 21.9.10
Commencement Date: Ss 130, 131 on 23.9.10: Special Gazette (No. 382) 22.9.10 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Special Gazette
(No. 26) 16 May 1991 pages 1–3.

Special Gazette
(No. 27) 31 March 1995 pages 1–3.

3. Explanatory Details

¹ S. 3(1) def. of **waterway**: In sections 36, 51 and 63, **waterway** has an extended meaning.

² S. 7(1): Section 8 confers water rights on persons other than the Crown, including the right to use rainwater that falls on land occupied by them. Section 10(1)(b) confers the right to construct works to store rainwater.

³ S. 8(1)(c): Inserted by section 327 of this Act.

⁴ S. 8(7): Section 15 protects rights conferred by or under this Act.

⁵ S. 8(7)(b): Liability may arise under section 16 if a flow of water is obstructed or deflected.

⁶ S. 12: The Crown is bound by this section (see s. 5(a)).

⁷ S. 15: See note 6.

⁸ S. 16: See note 6.

⁹ S. 17: Section 157 sets out the liability of Authorities in respect of a flow of water from their works.

¹⁰ S. 23: The Crown is bound by this section (see s. 5(b)).

¹¹ S. 40(ja): Section 22 of the **Heritage Rivers Act 1992**, No. 36/1992 reads as follows:

S. 22 amended by No. 68/2006 s. 10 (ILA s. 39B(1)).

22 Transitional provision

- (1) This Act is not to be taken to disturb the continuity, operation or effect of any instrument made granted or issued under any other Act before the commencement of this Act which authorises the carrying out of the grazing of domestic stock in a natural catchment area or heritage river area.

S. 22(2) inserted by No. 68/2006 s. 10.

- (2) Despite section 10(1), an impoundment that was in existence immediately before the commencement of section 6 of the **Heritage Rivers (Further Protection) Act 2006** may be replaced or maintained.

¹² S. 63: The Crown is bound by this section (see s. 5(c)).

¹³ S. 68(d): See note 11.

¹⁴ S. 75: The Crown is bound by this section (see s. 5(d)). The penalties for offences under this section are set out in section 84.

¹⁵ S. 76: The Crown is bound by this section (see s. 5(d)).

¹⁶ S. 76(6): The penalty for this offence is set out in section 84.

¹⁷ S. 78: See note 15.

¹⁸ S. 79: See note 15.

¹⁹ S. 80(3): See note 15.

²⁰ S. 81: See note 15.

²¹ Pt 6 (Heading and ss 85–122) amended by Nos 25/1991 s. 3, 12/1992 s. 5, 50/1992 ss 7(a)–(i), 10(Sch. items 11.6–11.16.), 54/1992 s. 56(b)–(e), 69/1993 s. 5(a)(b), 49/1994 s. 4(1)(c)–(i), 8(a)(b), 121/1994 ss 191, 192(1), 62/1995 s. 42, 65/1995 ss 16(1)–(7), 17, 22(b)–(e), 79/1995 s. 35, 86/1995 ss 13, 14, 12/1996 ss 6, 7, 110/1997 s. 16, 39/1998 s. 12, 46/1998 s. 7(Sch. 1), 85/1998 s. 24(Sch. items 66.1, 66.2), 22/1999 s. 7, 59/2000 s. 6, 69/2000 s. 65(4), 25/2001 ss 4–11, 72/2001 s. 3(Sch. items 12.3–12.5), 11/2002 s. 3(Sch. 1 item 66.1), 23/2002 s. 205, 48/2003 ss 7, 8, 108/2004 s. 117(1)(Sch. 3 item 232.5), 99/2005 s. 34, 80/2006 s. 26(Sch. item 116.1), substituted as Pt 6 (Heading and ss 85–122F) by No. 85/2006 s. 54.

²² S. 141: The Crown is bound by this section (see s. 5(e)).

²³ S. 143: See note 22.

²⁴ S. 145: See note 22.

²⁵ S. 145: Section 14 of the **Building (Amendment) Act 1996**, No. 39/1996 reads as follows:

14 Water supply or sewerage work for which an inspection fee has been paid must be inspected

(1) This section applies if—

(a) a person has obtained—

(i) under section 63 of the **Water Industry Act 1994** either—

(A) the permission of a licensee to cause or permit any works to be connected to the works of the licensee; or

- (B) the consent of a licensee to cause or permit the alteration or removal of any works that are connected to the works of the licensee; and
 - (ii) under section 145 of the **Water Act 1989** either—
 - (A) the permission of an Authority to cause or permit any works to be connected to the works of the Authority; or
 - (B) the consent of an Authority to cause or permit the alteration or removal of any works that are connected to the works of the Authority; and
 - (b) the licensee or Authority is required, either by contract or by the operation of law, to inspect the work in respect of which the permission or consent was given once it is completed; and
 - (c) the work in respect of which the permission or consent was given has not been completed; and
 - (d) the permission or consent is still current.
- (2) On being notified that any work referred to in subsection (1) has been, or is about to be, completed, the Plumbing Industry Board must ensure that the work is inspected by a plumbing inspector before any pipes or pipework involved in the work has been covered.
- (3) The licensee or Authority that gave the permission or consent for any work inspected under subsection (2) must reimburse the Board for any reasonable cost incurred by it for the inspection.
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²⁶ S. 148(1): The Crown is bound by this subsection (see s. 5(e)).

²⁷ S. 149: See note 22.

²⁸ S. 150: See note 22.

²⁹ S. 151: See note 22.

³⁰ S. 153: See note 22.

³¹ S. 154: See note 22.

³² S. 157: By virtue of section 17(2) Authorities cannot be liable under section 16 in respect of a flow of water from their works.

³³ S. 166 (*repealed*): Section 59(2) of the **Safe Drinking Water Act 2003**, No. 46/2003 reads as follows:

(2) Despite the repeal of section 166, that section continues to apply to a person who, immediately before that repeal, was a member of an Authority in respect of any action taken by the person in connection with the treatment of water (including disinfection or fluoridation) in accordance with any Act for the remainder of the current term of that member.

³⁴ S. 178: The Crown is bound by this section (see s. 5(f)).

³⁵ S. 194: The Crown is bound by this section (see s. 5(g)).

³⁶ S. 195: See note 35.

³⁷ S. 200: See note 35.

³⁸ S. 208: See note 35.

³⁹ S. 218: See note 35.

⁴⁰ Pt 13 Div. 4: Section 25(1) of the **Borrowing and Investment Powers (Amendment) Act 1993**, No. 99/1993 reads as follows:

25 Transitional provisions—declared Authorities

(1) If an Authority is declared under section 17A of the Principal Act to be a Water Authority to which Schedule 1 applies, Division 4 of Part 13 of the **Water Act 1989** continues to apply to or in respect of—

- (a) financial accommodation obtained by that Authority under that Division before the declaration; and
- (b) financial accommodation obtained by that Authority under that Division after the declaration, pursuant to arrangements entered into before the declaration; and
- (c) the investment of money by that Authority before the declaration—

as if the declaration had not been made.

⁴¹ S. 255(3): Section 25(2) of the **Borrowing and Investment Powers (Amendment) Act 1993**, No. 99/1993 reads as follows:

25 Transitional provisions—declared authorities

- (2) A guarantee by the Government of Victoria in force under section 255(3) of the **Water Act 1989** immediately before an Authority is declared under section 17A of the Principal Act to be a Water Authority to which Schedule 1 applies has effect and may be enforced as if the guarantee were a contract made on behalf of the Crown and section 23(1)(a) of the **Crown Proceedings Act 1958** applied accordingly.

⁴² S. 265: The Crown is bound by this section (see s. 5(h)).

⁴³ S. 268: See note 42.

⁴⁴ S. 269: See note 42.

⁴⁵ S. 270: See note 42.

⁴⁶ S. 281: See note 42.

⁴⁷ S. 288: The Crown is bound by this section (see s. 5(i)).

⁴⁸ S. 289: See note 47.

⁴⁹ S. 290: See note 47.

⁵⁰ Sch. 3 (*repealed*): Sections 33, 34 of the **Water Industry (Amendment) Act 1995**, No. 65/1995 read as follows:

33 Transitional provision—abolition of RWC

(1) In this section—

appointed day means the day on which this section comes into operation;

Director-General has the same meaning as in the **Conservation, Forests and Lands Act 1987**;

former body means the Rural Water Corporation established by clause 2(1) of Schedule 3 to the **Water Act 1989**.

(2) On the appointed day—

- (a) the former body shall be abolished; and
- (b) all rights, property and assets that, immediately before that day, were vested in the former body are, by force of this subsection, vested in the Director-General; and
- (c) all debts, liabilities and obligations of the former body existing immediately before that day shall become, by force of this subsection, debts, liabilities and obligations of the Director-General; and
- (d) the Director-General shall, by force of this subsection, be substituted as a party to any proceedings pending in any court to which the former body was a party immediately before that day; and
- (e) the Director-General shall, by force of this subsection, be substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day; and

- (f) any reference to the former body in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever shall, so far as it relates to any period after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Director-General.
- (3) Paragraphs (b) to (f) of subsection (2) are subject to any Order made under section 98 of the **Water Act 1989** affecting the former body that is in force on the appointed day.

34 Transfer of certain RWC staff

- (1) The Minister administering the **Water Act 1989** may, after consultation with the Managing Director of the Board of Directors of the Rural Water Corporation, determine which officers of that Corporation are to become officers under the **Public Sector Management Act 1992** as a consequence of the abolition of that Corporation by this Act.
- (2) Any officer of the Rural Water Corporation in respect of whom a determination has been made under subsection (1) shall, with effect from the date specified in the determination, become an officer under the **Public Sector Management Act 1992** on terms and conditions with respect to ordinary pay no less favourable than those of the former office and with the benefit of all leave entitlements accrued in respect of that former office.
- (3) An officer of the Rural Water Corporation who—
 - (a) by virtue of a determination made under subsection (1) becomes an officer under the **Public Sector Management Act 1992**; and

- (b) was immediately before then a member of a scheme established by or under the **State Superannuation Act 1988** or any corresponding previous enactment—

continues, subject to the **State Superannuation Act 1988**, to be a member of that scheme.

⁵¹ Sch. 3 (*repealed*): Section 4(2) of the **Water (Further Amendment) Act 1994**, No. 49/1994 reads as follows:

4 Repeal of provisions for regional management boards

(2) On the commencement of this section—

- (a) any Regional Management Board established by the Minister under clause 22(1) of Schedule 3 to the Principal Act is abolished and its members go out of office; and
- (b) any Regional General Manager of a Regional Management Board goes out of office; and
- (c) any reference to a Regional Management Board in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever shall, so far as it relates to any period after the commencement of this section and if not inconsistent with the context or subject-matter, be construed as a reference to the Rural Water Corporation.