

Version No. 046
Water Industry Act 1994
Act No. 121/1994

Version incorporating amendments as at 10 November 2004

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	1
4. Crown to be bound	4
PART 1A—REGULATION OF REGULATED WATER INDUSTRY	5
4A. Definitions	5
4B. Application of Essential Services Commission Act 2001	7
4C. Objectives of the Commission	7
4D. Water Industry Regulatory Order	8
4E. Other regulatory powers	10
4F. Codes	11
4G. Provision of information to the Commission	12
4H. Costs of Commission under this Part	13
4I. Statement of Obligations	13
PART 2—THE LICENSING SYSTEM	16
Division 1—Licences	16
5. Application for licence	16
6. Determination of application	17
7. Provisions relating to licences	18
8. Statement of Obligations	18
9. Customer dispute resolution	20
10. Licence charge	21
11. Area of licence	22
11A. <i>Repealed</i>	23
12. Variation or revocation of licence	23
12A, 12B. <i>Repealed</i>	23

<i>Section</i>	<i>Page</i>
13. Gazettal requirement	23
14. Licence not transferable	24
15. Transitional provision	24
16. Licensees not to represent Crown	25
17, 18. <i>Repealed</i>	25
Division 2—Customer Contracts	25
19. Implied customer contracts	25
20. Publication of implied customer contracts	25
21. Express customer contracts	26
Division 3—Financial Provisions	26
21A. Power of Governor in Council to regulate pricing	26
22. Fees and charges	29
23. Liability of occupier	31
24. Liability of body corporate	33
25. Exemptions from charges	35
26. Concessions etc. in respect of usage charges	36
27. Licensee may require payment	37
28. Contributions for increased services	38
29. Payments for provision of services	39
30. Review of required payments	39
31. When payment is due	40
32. Payment to licensees	41
33. Application of payments made to licensee	41
34. <i>Repealed</i>	42
35. Adjustments in respect of first billing period	42
Division 4—Supervision and Enforcement	43
36. Definitions	43
37. Appointment of inspectors	43
38. Searches to monitor licensee compliance	44
39. Occupier to be given copy of consent	45
40. Use of equipment to examine or process things	46
41. Use or seizure of electronic equipment at premises	47
42. Copies to be given	48
43. Return of seized things	48
44. Magistrates' Court may extend period	48
45. Power of inspector to require information or documents	49
46. Copying of documents	50
47. Protection against self-incrimination	50
48. Samples	50
49. Evidentiary certificates	50

<i>Section</i>	<i>Page</i>
Division 5—Regulations	51
50. Regulations	51
51. Regulations about water supply	52
52. Regulations about trade waste	53
53. Regulations about private works	54
PART 3—FUNCTIONS, OBLIGATIONS AND POWERS OF LICENSEES	56
Division 1—General	56
54. This Part subject to licence conditions	56
55. Acquisition of land	56
55A. Easements	58
56. Management of Crown land	58
57. Surrender or transfer of land	59
58. Power to enter land	59
59. Obligations in relation to entry of land	60
60. Offence of obstructing etc. licensee's employees etc.	61
61. Subdivisional easements and reserves	61
62. Closing of roads	62
63. Control over connections	62
64. Serviced properties	65
65. Notice to property owners	66
65A. System access	68
66. Structures over works	69
67. Removal of trees	71
68. Notice to repair	72
69. Notice of contravention	73
70. Notice of intention to affect works	74
71. Notice to alter or remove works	74
72. Determination of disputes	75
73. Compensation for damage	75
74. Liability of licensees arising out of flow of water	76
74A. Jurisdiction of Tribunal	79
74B. Matters to be taken into account in determining whether flow is reasonable or not reasonable	80
75. Information statements	82
76. <i>Repealed</i>	83
77. Separate accounts and records to be kept	83
78. Reporting requirements	84

<i>Section</i>	<i>Page</i>
Division 1A—Drought Response Plans and Emergency Management Plans	84
78A. Application of this Division	84
78B. Preparation and adoption of plans	84
78C. Variation of plan	86
78D. Emergency	87
78E. Major deviations from plan	88
78F. Copy of plan	88
78G. Implementation of plan	88
78H. Contravention of plan	89
Division 1B—Permanent water saving plan	90
78I. Application of this Division	90
78J. Preparation and adoption of plan	90
78K. Variation of plan	91
78L. Major deviations from plan	93
78M. Copy of plan	93
78N. Implementation of plan	94
78O. Contravention of plan	95
78P. Inconsistency	95
Division 2—Water Licence	96
79. Application of this Division	96
80. Functions of licensee	96
81. Water for fire-fighting and cleaning sewers and drains	96
82. Power to enter land for water supply protection	97
83. Immediate action for water supply protection in an emergency	98
84. Notice of contravention for water supply protection	98
85. Licensee may reduce or restrict water supply	99
86. Licensee may send water into waterway etc.	101
87. Maps of works	101
88. Provision of maps to councils	102
Division 3—Water and Sewerage Licence	103
89. Application of this Division	103
90. Functions of licensee	103
91. Application of Division 2	104
92. Testing etc. of waste	104
93. Protection of sewers	105
94. Enforcement of agreement	105
95. New works	106

<i>Section</i>	<i>Page</i>
Division 4—Drainage Services Licence	107
96. Application of this Division	107
97. Functions of licensee	107
98. Agreements for construction of drainage works	108
99. Application of liability provisions	111
Division 5—Sewage Treatment Licence	111
100. Application of this Division	111
101. Functions of licensee	111
102. Protection of sewage treatment system	112
Division 6—Water Headworks Licence	113
103. Application of this Division	113
104. Functions of licensee	113
105. Who may licensee supply with water?	113
106. Application of certain provisions of Division 2	114
PART 4—LAND MANAGEMENT AND RATING POWERS	115
Divisions 1–3—<i>Repealed</i>	115
107–131. <i>Repealed</i>	115
Division 4—Powers with respect to Land	115
132. Power of Secretary to enter into management agreements	115
133–135. <i>Repealed</i>	116
135A. Grant of licences for jetties etc.	116
135B. <i>Repealed</i>	118
136. Management of reservoir parks land	118
137. Transfer of lease and licence of reservoir parks to the State	119
138. <i>Repealed</i>	120
Division 5—Financial Provisions	120
139. Power to make and levy rates	120
140. Rates to be recovered from owner	124
141. Remission etc. of payment of rates	125
142. Agreement with licensee with respect to rate collection	126
143. Rate collection by metropolitan companies	126
144, 145. <i>Repealed</i>	126
Division 6—Miscellaneous	126
146. <i>Repealed</i>	126
147. Powers of authorised officers	127
148. <i>Repealed</i>	127
149. Regulations	127

<i>Section</i>	<i>Page</i>
Division 7—<i>Repealed</i>	128
150–153. <i>Repealed</i>	128
PART 4A—PARKS AND RESERVES TRUST ACCOUNT	129
153A. Parks and Reserves Trust Account	129
PART 5—TRANSFER OF ASSETS, LIABILITIES AND STAFF OF MELBOURNE WATER CORPORATION	131
Division 1—Definitions	131
154. Definitions	131
Division 2—Allocation of property	135
155. Minister may direct Melbourne Water Corporation to transfer property	135
156. Certificate of chief executive officer	136
Division 3—Transfer of property	137
157. Property transferred to nominee	137
158. Allocation of property etc. subject to encumbrances	137
159. Value of former Melbourne Water property	138
160. Substitution of party to agreement	138
161. Melbourne Water instruments	139
162. Proceedings	139
163. Interests in land	139
164. Amendment of Register	140
165. Taxes	140
166. Evidence	140
167. Validity of things done under this Act	141
Division 4—Financial obligations of Melbourne Water Corporation	142
168. Financial obligations of Melbourne Water Corporation	142
169. Company licensees to make payments to Melbourne Water Corporation	143
170. Payments in respect of financial obligations	143
Division 5—Rights as between transferees	144
171. Interim arrangements	144
Division 6—Staff	146
172. List of Melbourne Water Corporation staff	146
173. Transfer of Melbourne Water Corporation staff	146
174. Future terms and conditions of transferred employees	148
175. <i>Repealed</i>	148

<i>Section</i>	<i>Page</i>
PART 6—GENERAL	149
175A. Vesting in Crown of bed, banks and soil of certain watercourses	149
176. Power of Minister to delegate	150
176A. Notice of disposition of land	150
177. General evidentiary provisions	150
177A. Use of analyst's certificate in prosecutions	153
177B. Authentication of documents	154
177C. Discharges into works etc.	154
178. Offences by bodies corporate	155
179. Prosecutions	156
180. Service of documents on a licensee	157
181. Service of documents by a licensee	157
182. Treasurer may give guarantee	159
183. Trade Practices Act 1974 of the Commonwealth	159
183A. Supreme Court—limitation of jurisdiction	160
184. Regulations	160
185. Savings and transitionals	162
PART 7—TRANSITIONAL PROVISIONS	164
186. Transitional provision for Melbourne Parks and Waterways	164
187. Continued operation of jetty and mooring licences	165
PART 8—WATTLE PARK LAND	166
188. Repeal of the Wattle Park Land Act 1991	166
189. Surrender and reservation of Wattle Park Land	166
190. Saving of rights	166
PART 9—ENVIRONMENTAL CONTRIBUTIONS	168
Division 1—Definitions	168
191. Definitions	168
Division 2—Environmental Contributions	169
192. Obligation to pay environmental contributions for the period from 1 October 2004 to 30 June 2008	169
193. Obligation to pay environmental contributions for periods from 1 July 2008	170
194. Purpose for the collection of contributions	172
195. Annual Report	172
196. Review of the operation of this Part	172
197–215. <i>Repealed</i>	167

<i>Section</i>	<i>Page</i>
SCHEDULES	173
SCHEDULE 1—Land Exempt from Charges and Rates	173
SCHEDULE 2—Savings and Transitionals	174
SCHEDULE 3—Wattle Park Land	176
SCHEDULE 4—Table of Environmental Contributions from 1 October 2004 to 30 June 2008	177
<hr/>	
ENDNOTES	180
1. General Information	180
2. Table of Amendments	181
3. Explanatory Details	185

Version No. 046

Water Industry Act 1994

Act No. 121/1994

Version incorporating amendments as at 10 November 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is to provide for the reform of the water industry.

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definitions

- (1) In this Act—

"analyst" means a person approved by a licensee to carry out analyses on behalf of the licensee for the purposes of this Act and the **Water Act 1989**;

S. 3(1) def. of
"analyst"
inserted by
No. 110/1997
s. 26.

*Water Industry Act 1994**Act No. 121/1994*

Part 1—Preliminary

s. 3

S. 3(1) def. of
"authorised
officer"
inserted by
No. 66/2000
s. 3(a).

S. 3(1) def. of
"authorised
person"
amended by
No. 66/2000
s. 3(b).

S. 3(1) def. of
"Commission"
inserted by
No. 62/2001
s. 91(a).

S. 3(1) def. of
"company"
substituted by
No. 44/2001
s. 3(Sch.
item 128.1(a)).

S. 3(1) def. of
"officer"
amended by
No. 44/2001
s. 3(Sch.
item 128.1(b)).

S. 3(1) def. of
"rating
authority"
inserted by
No. 44/1998
s. 28(1),
substituted by
No. 66/2000
s. 3(c).

"**authorised officer**" means a person appointed as an authorised officer under the **Conservation, Forests and Lands Act 1987** for the purposes of Divisions 4 and 6 of Part 4 of this Act;

"**authorised person**" means a person authorised in writing by a licensee for the purpose of the provision in which the expression appears;

"**Commission**" means the Essential Services Commission established under the **Essential Services Commission Act 2001**;

"**company**" means a company within the meaning of the Corporations Act that is taken to be registered in Victoria;

"**licence**" means a licence issued under Division 1 of Part 2;

"**MMBW Act**" means the **Melbourne and Metropolitan Board of Works Act 1958**;

"**officer**", in relation to a body corporate, has the meaning given by section 82A of the Corporations Act;

"**principal works**", in relation to a licensee, means any property specified in the licence for the purposes of section 11(4)(o)(ii);

"**rating authority**" means the Minister administering Part 4;

*Water Industry Act 1994**Act No. 121/1994*

Part 1—Preliminary

s. 3

"retail licence" means a water licence, a water and sewerage licence or a drainage licence;

"Secretary" has the same meaning as Director-General has in the **Conservation, Forests and Lands Act 1987**;

S. 3(1) def. of "Secretary" inserted by No. 44/1998 s. 28(1).

"security deposit" means an amount payable by a person liable to pay a usage charge in accordance with section 22(8);

"service charge" means a service charge referred to in column 2 of the Table in section 22(1);

S. 3(1) def. of "service charge" inserted by No. 65/1995 s. 14(1)(a).

"trade waste agreement" includes a trade waste consent granted under any by-laws made under section 184A(1) of the MMBW Act or granted by a licensee under this Act;

S. 3(1) def. of "trade waste agreement" inserted by No. 65/1995 s. 14(1)(a).

"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. 90/2003 s. 13(1).

"usage charge" means a water usage charge or a sewage disposal charge;

S. 3(1) def. of "usage charge" amended by No. 65/1995 s. 14(1)(b).

"Victorian body corporate" means a company within the meaning of the Corporations Act that is taken to be registered in Victoria;

S. 3(1) def. of "Victorian body corporate" substituted by No. 44/2001 s. 3(Sch. item 128.1(c)).

*Water Industry Act 1994**Act No. 121/1994*

Part 1—Preliminary

s. 4

S. 3(1) def. of
"waterways
land"
inserted by
No. 66/2000
s. 3(a).

"waterways land" means land of the Crown which is comprised of—

- (a) the bed, soil and banks of any waterway within the metropolitan area (within the meaning of section 153A); and
- (b) any land which is within 20 metres of land described in paragraph (a);

"works", in relation to a licensee, means works owned by, or under the management and control of, the licensee.

- (2) Expressions used in this Act and in the **Water Act 1989** that are not defined in sub-section (1) or elsewhere in this Act have the same meanings as in the **Water Act 1989**.
- (3) This Act is to be read and construed as one with the **Water Act 1989**.

4. Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4A

**PART 1A—REGULATION OF REGULATED WATER
INDUSTRY**

Pt 1A
(Heading and
ss 4A–4I)
inserted by
No. 48/2003
s. 3.

4A. Definitions

S. 4A
inserted by
No. 48/2003
s. 3.

In this Part—

"Code" means a Code under section 4F;

"declared goods and services" means goods and services declared to be declared goods and services by a Water Industry Regulatory Order;

"Order" means an Order in Council made by the Governor in Council;

"prescribed goods and services" means goods and services prescribed to be prescribed goods and services by a Water Industry Regulatory Order;

"Regional Urban Water Authority" means—

- (a) the Barwon Region Water Authority;
- (b) the Central Gippsland Region Water Authority;
- (c) the Central Highlands Region Water Authority;
- (d) the Coliban Region Water Authority;
- (e) the East Gippsland Region Water Authority;
- (f) the Glenelg Region Water Authority;
- (g) the Goulburn Valley Region Water Authority;
- (h) the Grampians Region Water Authority;

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4A

- (i) the Lower Murray Region Water Authority;
- (j) the North East Region Water Authority;
- (k) the Portland Coast Region Water Authority;
- (l) the South Gippsland Region Water Authority;
- (m) the South West Water Authority;
- (n) the Western Region Water Authority;
- (o) the Westernport Region Water Authority—

or an Authority which is a successor Authority to an Authority specified in paragraphs (a) to (o);

"regulated entity" means—

- (a) the Melbourne Water Corporation;
- (b) a licensee under Division 1 of Part 2;
- (c) a Regional Urban Water Authority;
- (d) a Rural Water Authority;

"regulated water industry" means the water industry as constituted by—

- (a) the Melbourne Water Corporation;
- (b) licensees under Division 1 of Part 2;
- (c) Regional Urban Water Authorities;
- (d) Rural Water Authorities;

"Rural Water Authority" means—

- (a) the First Mildura Irrigation Trust;
- (b) the Gippsland and Southern Rural Water Authority;

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4B

- (c) the Goulburn-Murray Rural Water Authority;
- (d) the Sunraysia Rural Water Authority;
- (e) the Wimmera Mallee Rural Water Authority—

or an Authority which is a successor Authority to an Authority specified in paragraphs (a) to (e);

"Water Industry Regulatory Order" means an Order which is in force under section 4D.

4B. Application of Essential Services Commission Act 2001

S. 4B
inserted by
No. 48/2003
s. 3.

- (1) For the purposes of the **Essential Services Commission Act 2001**—
 - (a) this Act is relevant legislation; and
 - (b) the regulated water industry is a regulated industry.
- (2) For the purposes of the definition of "regulated industry" in the **Essential Services Commission Act 2001**, the regulated water industry is deemed to be operating under this Act.
- (3) If there is any inconsistency between this Part and a provision of the **Essential Services Commission Act 2001**, the **Water Act 1989**, the **Melbourne and Metropolitan Board of Works Act 1958** or the **Melbourne Water Corporation Act 1992**, the provision of this Part prevails.

4C. Objectives of the Commission

S. 4C
inserted by
No. 48/2003
s. 3.

The objectives of the Commission under this Act in relation to the regulated water industry are—

- (a) wherever possible, to ensure that the costs of regulation do not exceed the benefits;

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

- (b) to ensure that regulatory decision making and regulatory processes have regard to any differences between the operating environments of regulated entities;
- (c) to ensure that regulatory decision making has regard to the health, safety, environmental sustainability (including water conservation) and social obligations of regulated entities.

4D. Water Industry Regulatory Order

- (1) The Governor in Council may by Order—
 - (a) make a Water Industry Regulatory Order;
 - (b) amend, vary or revoke the Water Industry Regulatory Order.
- (2) The Water Industry Regulatory Order may—
 - (a) specify which goods or services made, produced or supplied by or within the regulated water industry are to be prescribed goods and services in respect of which the Commission has the power to regulate prices;
 - (b) specify a price, price-range, factor or term and condition which is to be a prescribed price in respect of which the Commission has power to regulate;
 - (c) require the Commission to adopt a specified approach, principle or methodology in regulating prices;
 - (d) fix regulatory asset values;
 - (e) declare which goods or services made, produced or supplied by or within the regulated water industry are to be declared goods and services in respect of which the Commission has the power to regulate

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4D

-
- standards and conditions of service and supply;
- (f) declare which goods or services made, produced or supplied by or within the regulated water industry are to be declared goods and services in respect of which the Commission has the power to regulate market conduct;
 - (g) confer on the Commission such functions as the Governor in Council considers necessary;
 - (h) specify matters relating to quality and performance standards of a health, environmental or technical nature in respect of which the Commission may not exercise any function or power;
 - (i) specify any matters to which the Commission must have regard in exercising its powers and functions.
- (3) Without limiting the generality of subsection (2)(c), the Water Industry Regulatory Order may—
- (a) include restrictions on price increases;
 - (b) make provision for the phasing in of price increases over time;
 - (c) specify matters which must be considered in making a price determination;
 - (d) specify matters in relation to the sharing of efficiency gains;
 - (e) specify the nature and manner of passing through identified costs to customers.
- (4) Without limiting the generality of subsection (2)(g), the Water Industry Regulatory Order may confer on the Commission functions relating to—
-

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4E

S. 4D(5)
amended by
No. 75/2004
s. 76.

S. 4E
inserted by
No. 48/2003
s. 3.

- (a) auditing performance and compliance with Codes and Statements of Obligations;
 - (b) monitoring and performance reporting;
 - (c) the resolution of disputes between regulated entities in relation to standards and conditions of service and supply;
 - (d) the resolution, with the agreement of the customer or person, of disputes with respect to prices for services;
 - (e) reviewing whether particular goods or services should be regulated and making a recommendation to the Minister, if so requested by the Minister after consultation with the Minister administering the **Essential Services Commission Act 2001**.
- (5) This section does not empower the making of a Water Industry Regulatory Order containing a provision purporting to have the effect of changing or substituting a determination made by the Commission.
- (6) An Order made under this section—
- (a) must be published in the Government Gazette; and
 - (b) has effect from the date specified in the Order.

4E. Other regulatory powers

- (1) The Commission may in relation to regulated entities regulate—
- (a) standards and conditions of service and supply of declared goods and services; and
 - (b) market conduct relating to declared goods and services.

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4F

- (2) In exercising its powers or carrying out its functions under this Part, the Commission must adopt an approach which—
 - (a) the Commission considers will best meet the objectives specified in the **Essential Services Commission Act 2001** and in this Part; and
 - (b) complies with any requirements specified in the Water Industry Regulatory Order.

4F. Codes

S. 4F
inserted by
No. 48/2003
s. 3.

- (1) In the exercise of any power or function of the Commission with respect to the regulated water industry, the Commission may make, amend or revoke Codes.
- (2) A Code may provide for any matter relating to—
 - (a) requiring a specified regulated entity or a specified class of regulated entity to develop, issue and comply with customer-related standards, procedures, policies and practices (including with respect to the payment of compensation to customers) in accordance with the Code;
 - (b) specifying minimum customer-related standards, procedures, policies and practices for inclusion by a specified regulated entity or a specified class of regulated entity in a customer charter for specific services;
 - (c) requiring a specified regulated entity or a specified class of regulated entity to enter into an agreement with another specified regulated entity or another specified class of regulated entity for the purpose of ensuring that obligations relating to customer-related standards can be met;

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4G

- (d) specifying principles for the negotiation of agreements required under paragraph (c) between regulated entities in relation to standards and conditions of service and supply;
- (e) requiring regulated entities to maintain specified accounting records and to prepare accounts according to specified principles.
- (3) The Commission may amend or revoke a Code in accordance with procedures specified by the Commission.
- (4) The Commission must cause a notice of—
 - (a) the making of a Code; or
 - (b) the amendment or revocation of a Code—
 to be published in the Government Gazette.
- (5) A Code is not a determination for the purposes of the **Essential Services Commission Act 2001**.
- (6) A regulated entity must comply with any provision of a Code which applies to the regulated entity.

S. 4G
inserted by
No. 48/2003
s. 3.

4G. Provision of information to the Commission

- (1) The Commission may by notice in writing require a regulated entity to provide to the Commission information that the Commission requires to enable the Commission to perform its functions.
- (2) A notice under sub-section (1) must specify—
 - (a) the information required; and
 - (b) the period of time within which the requirement must be complied with; and
 - (c) the manner and form in which the information must be provided.

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4H

- (3) A regulated entity must comply with a notice given to the regulated entity under sub-section (1).

Penalty: 120 penalty units.

4H. Costs of Commission under this Part

S. 4H
inserted by
No. 48/2003
s. 3.

- (1) The Minister administering the **Essential Services Commission Act 2001**—

- (a) in consultation with the Minister administering this Act; and
- (b) having regard to the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the performance of its functions and the achievement of its objectives in relation to the regulated water industry—

must determine the amount to be contributed towards those costs and expenses by each regulated entity.

- (2) The contribution is payable at such intervals and in such amounts as is determined by the Minister administering the **Essential Services Commission Act 2001** in consultation with the Minister administering this Act by notice in writing to the regulated entity.

4I. Statement of Obligations

S. 4I
inserted by
No. 48/2003
s. 3.

- (1) In this section "**water authority**" means—
- (a) the Melbourne Water Corporation;
 - (b) a Regional Urban Water Authority;
 - (c) a Rural Water Authority.

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4I

-
- (2) After consultation with the Treasurer and the Commission, the Minister may—
 - (a) make and issue a Statement of Obligations to a water authority specifying obligations of the water authority in performing its functions and exercising its powers;
 - (b) amend, vary or revoke a Statement of Obligations after complying with sub-section (5).
 - (3) Without limiting the generality of sub-section (2), a Statement of Obligations may include provisions relating to—
 - (a) governance;
 - (b) quality and performance standards;
 - (c) community service obligations;
 - (d) customer and community consultation;
 - (e) the specifying of—
 - (i) a maximum in relation to the amount of a payment or amounts of payments which may be required from the owner of a property for the provision of sewerage services to the property under section 268(1) of the **Water Act 1989**; and
 - (ii) the manner in which the payment or payments are to be made;
 - (f) failure to comply with any obligations imposed by a Statement of Obligations;
 - (g) obligations of a water authority with respect to other public authorities.
 - (4) A water authority must comply with a Statement of Obligations which applies to the water authority.
-

Water Industry Act 1994
Act No. 121/1994

Part 1A—Regulation of Regulated Water Industry

s. 4I

-
- (5) The Minister must not amend or vary a Statement of Obligations unless—
- (a) the water authority has agreed to the proposed amendment or variation; or
 - (b) the Minister has—
 - (i) given the water authority notice in writing of the proposed amendment or variation; and
 - (ii) considered any written submission made by the water 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 a water authority; or
 - (b) the amendment, variation or revocation of the Statement of Obligations—
- to be published in the Government Gazette.
- (7) If there is any inconsistency between a provision of a Statement of Obligations and a provision of a Code, the provision of the Statement of Obligations prevails.
-

PART 2—THE LICENSING SYSTEM

Division 1—Licences

Pt 2 Div. 1
(Heading and
ss 5–18)
amended by
Nos 65/1995
s. 14(2)–(7),
59/2000 s. 5,
66/2000 s. 4,
62/2001
ss 91(b)–(f),
92, 11/2002
s. 3(Sch. 1
item 67),
90/2003
s. 13(3),
substituted as
Pt2 Div. 1
(Heading and
ss 5–16) by
No. 48/2003
s. 4.

S. 5
substituted by
No. 48/2003
s. 4.

5. Application for licence

- (1) Subject to sub-section (2), a person may apply to the Minister for the issue of—
 - (a) a water licence; or
 - (b) a water and sewerage licence; or
 - (c) a drainage licence; or
 - (d) a sewage treatment licence; or
 - (e) a water headworks licence.
- (2) A person may only apply for a licence in respect of an area or areas if the Minister has by notice published in the Government Gazette and in a newspaper generally circulating in the area or areas concerned, invited applications for a licence of that type in respect of that area or areas.
- (3) An application must be in a form approved by the Minister and accompanied by such documents as may be determined by the Minister.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 6

- (4) An application must be accompanied by the application fee (if any) fixed by the Minister.

6. Determination of application

S. 6
substituted by
No. 48/2003
s. 4.

- (1) Subject to sub-section (2), the Minister may grant or refuse an application for the issue of a licence for any reason the Minister considers appropriate.
- (2) The Minister must not grant an application for the issue of a licence unless the Minister is satisfied that—
 - (a) the applicant is financially viable; and
 - (b) the applicant has the technical capacity to comply with the conditions of the licence; and
 - (c) the applicant is a Victorian body corporate or a statutory corporation within the meaning of the **State Owned Enterprises Act 1992**.
- (3) The Minister must publish a notice in a daily newspaper generally circulating in Victoria—
 - (a) specifying the name of any applicant for the issue of a licence, the type of licence applied for and the area or areas in respect of which the application is made; and
 - (b) inviting interested persons to make submissions to the Minister in respect of the application within the period and in the manner specified in the notice.
- (4) Subject to this section and any requirements specified in regulations made for the purposes of this section under section 184, the Minister may determine the procedures that are to apply in respect of the issue of licences.

*Water Industry Act 1994**Act No. 121/1994*

Part 2—The Licensing System

- (5) The Minister must notify an applicant in writing—
- (a) of the decision of the Minister to grant or refuse to grant the application; and
 - (b) in the case of a decision to refuse to grant the application, of the reasons for that decision.

7. Provisions relating to licences

- (1) A licence is to be issued for an unlimited term or a specific term as is determined by the Minister and is specified in the licence.
- (2) A person may at the same time hold more than one licence, whether of the same or different types.
- (3) A licence is subject to such conditions as are determined by the Minister and are specified in the licence.
- (4) Without limiting the generality of sub-section (3) the conditions may include provisions—
 - (a) requiring the licensee to pay a specified charge for the licence;
 - (b) preventing the licensee from engaging in or undertaking specified business activities or any other business;
 - (c) requiring compliance with a Statement of Obligations under section 8.

8. Statement of Obligations

- (1) After consultation with the Treasurer and the Commission, the Minister may—
 - (a) make and issue a Statement of Obligations to a licensee specifying obligations of the licensee in performing its functions and exercising its powers;

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 8

-
- (b) amend, vary or revoke a Statement of Obligations after complying with sub-section (3).
 - (2) Without limiting the generality of sub-section (1), a Statement of Obligations may include provisions relating to—
 - (a) governance;
 - (b) quality and performance standards;
 - (c) community service obligations;
 - (d) customer and community consultation;
 - (e) the specifying of—
 - (i) a maximum in relation to the amount of a payment or amounts of payments which may be required from the owner of a property for the provision of sewerage services to the property under section 27(1) of the **Water Industry Act 1994**; and
 - (ii) the manner in which the payment or payments are to be made;
 - (f) failure to comply with any obligations imposed by a Statement of Obligations;
 - (g) obligations of a licensee with respect to public authorities;
 - (h) transitional or savings arrangements in respect of any matter relating to existing implied customer contracts under Division 2 of Part 2 as in force immediately before the commencement of section 5 of the **Water Legislation (Essential Services Commission and Other Amendments) Act 2003**.
-

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

- (3) The Minister must not amend or vary a Statement of Obligations unless—
 - (a) the licensee has agreed to the proposed amendment or variation; or
 - (b) the Minister has—
 - (i) given the licensee notice in writing of the proposed amendment or variation; and
 - (ii) considered any written submission made by the licensee in response to the notice.
- (4) The Minister must cause a notice of—
 - (a) the making and issue of a Statement of Obligations to a licensee; or
 - (b) the amendment, variation or revocation of the Statement of Obligations—to be published in the Government Gazette.
- (5) If there is any inconsistency between a provision of a Statement of Obligations and a provision of a Code, the provision of the Statement of Obligations prevails.

9. Customer dispute resolution

- (1) A licence must be issued subject to a condition requiring the licensee to enter into a customer dispute resolution scheme approved by the Commission.
- (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.

S. 9
 substituted by
 No. 48/2003
 s. 4.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 10

- (3) In approving a customer dispute resolution scheme, the Commission must have regard to—
- (a) the objectives of the Commission under this Act and under the **Essential Services Commission Act 2001**; and
 - (b) the need to ensure that the scheme is accessible to the licensee's customers and that there are no cost barriers to those customers using the scheme; and
 - (c) the need to ensure that the scheme is independent of the members of the scheme; and
 - (d) the need for the scheme to be fair and be seen to be fair; and
 - (e) 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 customers of the scheme members; and
 - (f) the need for the scheme to undertake regular reviews of its performance to ensure that its operation is efficient and effective.
- (4) The Minister may, in accordance with this Part, vary any existing licence to include a condition of a kind referred to in sub-section (1).

10. Licence charge

- (1) The charge payable for a licence is as specified in the licence.
- (2) The charge may be—
 - (a) a fixed sum payable on the grant of the licence; or

S. 10
substituted by
No. 48/2003
s. 4.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 11

- (b) periodic payments of the amount and frequency specified in the licence each of which may be—
 - (i) a fixed sum; or
 - (ii) a sum determined either in whole or in part by reference to—
 - (A) the turnover of the business; or
 - (B) a specified index, for example an index of prices, costs or charges; or
 - (iii) a sum determined in any other manner; or
- (c) a combination of any of the charging methods specified in paragraphs (a) and (b).

S. 11
 substituted by
 No. 48/2003
 s. 4.

11. Area of licence

- (1) A licensee is permitted to perform its functions under the licence in respect of the area or areas specified in the licence.
- (2) An area may be specified in a licence by reference to a plan lodged at the Central Plan Office.
- (3) A retail licence may not specify an area that is specified in, or included within an area specified in, another retail licence of the same type.
- (4) A water headworks licence or a sewage treatment licence may empower the licensee to perform functions in respect of an area outside the area or areas specified in it.
- (5) No other licensee may perform functions in respect of an area outside the area or areas specified in its licence.

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

s. 12

* * * * *

S. 11A
 repealed by
 No. 48/2003
 s. 4.

12. Variation or revocation of licence

S. 12
 substituted by
 No. 48/2003
 s. 4.

- (1) A licence or the licence conditions may be varied—
 - (a) by agreement between the Minister and the licensee; or
 - (b) by a notice in accordance with sub-section (2) served on the licensee.
- (2) The Minister must not vary a licence or the licence conditions by a notice unless the Minister has—
 - (a) given the licensee notice in writing of the proposed variation; and
 - (b) considered any written submission made by the licensee in response to the notice.
- (3) The Minister may revoke a licence in accordance with the procedures specified in the licence conditions.

* * * * *

Ss 12A–12B
 repealed by
 No. 48/2003
 s. 4.

13. Gazettal requirement

S. 13
 substituted by
 No. 48/2003
 s. 4.

The Minister must ensure that—

- (a) notice of the issue of a licence including—
 - (i) the name of the licensee;
 - (ii) the term of the licence;
 - (iii) the area or areas specified in the licence and, if any area is specified by reference to a plan lodged at the Central

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 14

Plan Office, the address of that Office and sufficient information to enable the identification of the plan;

(iv) the place where a copy of the licence may be inspected;

(b) notice of a variation or revocation under section 12—

is published in the Government Gazette as soon as possible after the issue of a licence or the variation or revocation.

14. Licence not transferable

A licence is not transferable.

15. Transitional provision

(1) Despite anything to the contrary in this Act, the initial licences issued to—

(a) City West Water Ltd, A.C.N. 066 902 467;

(b) South East Water Ltd, A.C.N. 066 902 547;

(c) Yarra Valley Water Ltd,
A.C.N. 066 902 501—

as in force immediately before the commencement of section 4 of the **Water Legislation (Essential Services Commission and Other Amendments) Act 2003** are deemed to have been issued under this Part as in force after that commencement.

(2) This and any other Act applies to a licence specified in sub-section (1) as if it had been issued by the Minister.

(3) Without limiting sub-section (2), a licence issued in accordance with this section may be varied or revoked, or the licence conditions may be varied, under section 12.

S. 14
substituted by
No. 48/2003
s. 4.

S. 15
substituted by
No. 48/2003
s. 4.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 16

16. Licensees not to represent Crown

The companies referred to in section 15(1), as licensees, are public authorities if all the shares in them are held by or on behalf of the State, but they do not represent the Crown.

* * * * *

S. 16
substituted by
No. 48/2003
s. 4.

Ss 17, 18
repealed by
No. 48/2003
s. 4.

Division 2—Customer Contracts

19. Implied customer contracts

An owner of a serviced property connected to a retail licensee's works (whether or not the owner is liable to pay a usage charge) or an occupier of any such property who is liable to pay a usage charge is deemed to have entered into a customer contract with the licensee on the terms and conditions set out in the licence as varied from time to time under section 14.

S. 19
amended by
No. 65/1995
s. 14(8)(a)(b).

20. Publication of implied customer contracts

- (1) A retail licensee must cause a written summary of the terms and conditions of the customer contract which an owner or occupier of land is, by virtue of section 19, deemed to have entered into with the licensee to be sent to that owner or occupier not later than the date on which the account is sent to that person in respect of the first billing period ending after the issue of the licence.
- (2) If a contract referred to in sub-section (1) is varied at any time under section 14, the retail licensee must cause notice of that variation to be sent to each person bound by the contract not later than the date on which the account is sent to that person in respect of the first billing period ending after the making of the variation.

S. 20(1)
substituted by
No. 65/1995
s. 14(9).

S. 20(2)
amended by
No. 65/1995
s. 14(10).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 21

21. Express customer contracts

Section 19 does not apply to the extent that (consistently with the licence conditions) the terms and conditions of a contract or other arrangement relating to the provision of water supply or sewerage services have been expressly agreed to by a retail licensee and a person who is, by virtue of section 19, deemed to have entered into a customer contract with the licensee with respect to that matter.

Division 3—Financial Provisions

21A. Power of Governor in Council to regulate pricing

- (1) The Governor in Council, by Order published in the Government Gazette, may regulate, in any manner that the Governor in Council thinks fit—
 - (a) the imposition of fees or charges (including payments under section 27, 28 or 29), or any specified class of fees or charges, by a licensee;
 - (b) the imposition of fees or charges for the supply of water under an agreement between Melbourne Water Corporation and a licensee;
 - (c) the imposition of fees or charges for the collection, treatment or disposal of sewage under an agreement between Melbourne Water Corporation and a licensee;
 - (d) the setting of any tariff by Melbourne Water Corporation under the MMBW Act.

S. 21A
inserted by
No. 12/1996
s. 13.

S. 21A(1)(d)
substituted by
No. 110/1997
s. 27(1).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 21A

- (2) Without limiting sub-section (1), the manner of regulation may include—
- (a) fixing the fee, charge or price or the rate of increase or decrease in the fee, charge or price;
 - (b) fixing a maximum fee, charge or price or maximum rate of increase or minimum rate of decrease in the maximum fee, charge or price;
 - (c) fixing an average fee, charge or price for specified goods or services or an average rate of increase or decrease in the average fee, charge or price;
 - (ca) fixing a zero amount of fees or charges in relation to a specified service or thing supplied or provided to a specified class of property;
 - (cb) specifying a formula (by reference to the amount of water supplied to the property during any period or any other specified factor) according to which the amount of sewage disposal charge payable in respect of a property of a specified class may be calculated;
 - (d) specifying policies or principles to be applied in determining fees, charges or prices;
 - (e) specifying an amount determined by reference to a general price index, the cost of supplying the service, a rate of return on assets employed or any other specified factor;
 - (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of the goods or services;

S. 21A(2)(ca)
inserted by
No. 110/1997
s. 27(2).

S. 21A(2)(cb)
inserted by
No. 110/1997
s. 27(2).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 21A

- (g) fixing a maximum revenue or maximum rate of increase or minimum rate of decrease in the maximum revenue in relation to specified goods or services;
 - (h) specifying fees and charges that must not be imposed or that must cease to be imposed after a specified date.
- (3) An Order under sub-section (1)—
- (a) has effect despite the conditions of any licence or any other provision to the contrary made by or under this or any other Act;
 - (b) has effect as from the date specified in the Order as if the fees, charges, prices and other matters to which the Order applies had been determined by the Commission under the **Essential Services Commission Act 2001** except that sections 55 and 56 of that Act do not apply in respect of the Order;
 - (c) ceases to have effect, in respect of a fee, charge, price or other matter—
 - (i) on the date, or in the circumstances, specified in the Order; or
 - (ii) on the making by the Commission, on or after a date specified in the Order for this purpose, of a determination relating to that fee, charge, price or other matter in accordance with this Act and the **Essential Services Commission Act 2001**;
 - (d) may contain directions regarding the exercise by the Commission of its powers under the **Essential Services Commission Act 2001** in relation to the regulated industry.

S. 21A(3)(b)
 amended by
 No. 62/2001
 s. 91(c)(g).

S. 21A(3)(c)(i)
 amended by
 No. 110/1997
 s. 27(3).

S. 21A(3)(c)(ii)
 amended by
 No. 62/2001
 s. 91(b)(c).

S. 21A(3)(d)
 amended by
 No. 62/2001
 s. 91(b)(c).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 22

- (4) An Order cannot be made under sub-section (1) in relation to a fee, charge, price or other matter if the Commission has made a determination under the **Essential Services Commission Act 2001** relating to that fee, charge, price or other matter.

S. 21A(4)
amended by
No. 62/2001
s. 91(b)(c).

22. Fees and charges

- (1) A licensee of a kind referred to in column 1 of the Table may impose a charge of a kind referred to in column 2 of the Table which is payable by the person specified in column 3 of the Table in relation to that charge.

S. 22(1)
amended by
Nos 65/1995
ss 4(1), 5(1),
14(11)(a)(b),
110/1997
s. 28(1).

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Water licensee Water and sewerage licensee	Service charge	Property owner
Water licensee Water and sewerage licensee	Water usage charge	Property owner except in the circumstances specified in sections 23 and 24
Water and sewerage licensee	Sewage disposal charge	Property owner except in the circumstances specified in sections 23 and 24
Water and sewerage licensee	Trade waste charge	Party to trade waste agreement

S. 22(1) Table
amended by
No. 110/1997
s. 28(3).

- (2) A licensee of any kind may impose fees and charges for or in connection with any service or thing supplied or provided by the licensee in the exercise of its functions under the licence.

* * * * *

S. 22(3)
repealed by
No. 12/1996
s. 14(1).¹

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

s. 22

S. 22(3A)
 inserted by
 No. 65/1995
 s. 4(2).

(3A) A service charge imposed by a licensee—

- (a) may be a fixed charge or may be imposed at a fixed flat rate on any specified basis or may vary according to specified circumstances other than the value of the property;
- (b) may comprise an amount in respect of the provision of a supply of water to the property or an amount in respect of the provision of sewerage services to the property or amounts of both kinds, as the circumstances require.

* * * * *

S. 22(3B)
 inserted by
 No. 65/1995
 s. 5(2),
 repealed by
 No. 110/1997
 s. 28(4).

(4) A licensee must refund or credit to the customer an amount equal to any amount of sanitary service charge paid in respect of a period during which the property is exempt from such a charge by reason of it not being exempt from a sewage disposal charge during that period.

* * * * *

S. 22(5)
 repealed by
 No. 12/1996
 s. 14(1).³

- (6) Fees and charges are not a charge on the land to which they relate.
- (7) A fee or charge may be recovered by the licensee in any court of competent jurisdiction as a debt due to it.
- (8) A licensee may, before connecting a property to the licensee's works for the purpose of providing that property with a supply of water or with sewerage services or as a condition of maintaining

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 23

that connection on a change of ownership or occupation of the property, demand that the person liable to pay any usage charge imposed in respect of the property pay to the licensee an amount (not exceeding the estimated usage charge in the first billing period) as security against a failure by that person to pay any usage charge.

- (9) A licence may regulate the payment of security deposits under the licence and, in particular, may provide for any or all of the following—
- (a) specifying circumstances in which a security deposit must not be demanded;
 - (b) specifying the manner of dealing with any security deposit paid;
 - (c) specifying the entitlement of any person to the whole or any part of a security deposit in specified circumstances.

23. Liability of occupier

- (1) The occupier of a property is liable for any water usage charge or sewage disposal charge imposed in respect of the property if—
- (a) the property is occupied by a tenant under an agreement or lease or is, within the meaning of the **Residential Tenancies Act 1997**, a site in a caravan park occupied by a resident of the caravan park; and
 - (b) the quantity of water supplied to the premises is measured by a meter provided or installed by the licensee that only measures that quantity; and
 - (c) the owner has notified the licensee that the property is so occupied or is such a site and has given the licensee the particulars of the occupier required by the licensee; and

S. 23(1)
amended by
No. 65/1995
s. 14(13).

S. 23(1)(a)
amended by
Nos 110/1997
s. 29, 109/1997
s. 533(Sch. 2
item 13.2).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

- (d) the licensee has recorded the reading on the meter measuring the quantity of water supplied to the property as a result of a notice under paragraph (c).
- (2) The licensee 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 under sub-section (1)(c).
- (3) Sub-section (1) ceases to apply to a property from the date on which the reading on the meter measuring the quantity of water supplied to the property is recorded at the request of the occupier, whose particulars were given to the licensee by the owner under that sub-section, made to the licensee on notifying the licensee of his or her vacation or intended vacation of the property.
- (4) The licensee must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded on the day the property is vacated by the occupier referred to in sub-section (3) or as soon as is practicable after that day or within 48 hours of it being given notice under sub-section (3), whichever occurs last.
- (5) The owner of a property is liable for any water usage charge or sewage disposal charge imposed in respect of the property in relation to any period between sub-section (1) ceasing to apply to the property and the date on which the reading on the meter measuring the quantity of water supplied to the property is recorded in accordance with sub-section (2) following the giving of a new notice under sub-section (1)(c).
- (6) In this section "**property owner**" includes an owner of a property who has disposed of that property if the licensee has not been notified of that disposition in accordance with section 76.

S. 23(5)
 amended by
 No. 65/1995
 s. 14(14).

24. Liability of body corporate

- (1) A body corporate of a subdivision to which water is supplied is liable to pay any water usage charge or sewage disposal charge imposed—
 - (a) in respect of the land affected by the body corporate; and
 - (b) in respect of the common property, or any part of the common property, affected by the body corporate.
- (2) Instead of requiring a body corporate to pay a water usage charge or sewage disposal charge, a licensee may apportion the amount for which the body corporate 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.
- (3) A body corporate may request a licensee to use lot liability when apportioning amounts under subsection (2).
- (4) The request must—
 - (a) be in writing;
 - (b) give details of lot liability for each lot affected by the body corporate.
- (5) A body corporate that makes a request under subsection (3) must give written notice to the licensee of any change in lot liability of any lot affected by it as soon as possible after the change occurs.
- (6) If requested to do so in accordance with this section, a licensee must use the lot liability method in apportioning an amount to which a body corporate would otherwise be liable in

S. 24(1)
 amended by
 No. 65/1995
 s. 14(15).

S. 24(2)
 amended by
 No. 65/1995
 s. 14(15).

S. 24(6)
 amended by
 No. 65/1995
 s. 14(16).

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

respect of water usage charges and sewage disposal charges 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 body corporate under this section.

- (7) If a subdivision has more than one body corporate and a licensee considers it impracticable to determine how much water is supplied to the land affected by each body corporate it may—
 - (a) under sub-section (1), treat one of those bodies corporate as being the only body corporate for the subdivision; and
 - (b) under sub-section (2), apportion the amount for which that body corporate would otherwise be liable between all the lots in the subdivision.
- (8) Any water usage charges and sewage disposal charges imposed on the owner of a lot affected by a body corporate (other than a lot used primarily for residential purposes) must be offset against the amount for which the body corporate is liable under sub-section (1).
- (9) Any amount for which an owner of a lot is liable under sub-section (2) must be offset against the amount for which the body corporate affecting that lot is liable under sub-section (1).
- (10) The liability imposed by sub-section (1) does not relieve any other person from liability to pay a water usage charge or sewage disposal charge payable by that person.
- (11) Terms used in this section have the same meaning as in the **Subdivision Act 1988**.

S. 24(8)
 amended by
 No. 65/1995
 s. 14(16).

S. 24(10)
 amended by
 No. 65/1995
 s. 14(15).

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

s. 25

25. Exemptions from charges

S. 25
 amended by
 No. 65/1995
 s. 4(3).

* * * * *

S. 25(1)
 amended by
 No. 65/1995
 s. 6(a)(b),
 repealed by
 No. 110/1997
 s. 30(1).

(2) A licensee may not impose a service charge—

S. 25(2)
 inserted by
 No. 65/1995
 s. 4(4).

* * * * *

S. 25(2)(a)
 amended by
 No. 45/1997
 s. 37(1),
 repealed by
 No. 110/1997
 s. 30(2)(a).

* * * * *

S. 25(2)(b)
 repealed by
 No. 110/1997
 s. 30(2)(b).

(c) on land in respect of a period in respect of which a fee imposed under a tariff set in relation to it in accordance with the provisions of Part 13 of the **Water Act 1989** or Part X of the MMBW Act has been paid or is payable, being a fee imposed for the provision of a service of the same kind as that to which the service charge relates; or

S. 25(2)(c)
 amended by
 No. 110/1997
 s. 30(2)(c)(i)(ii).

(d) on land in respect of a period in respect of which a charge in the nature of a service charge has been imposed on it by the licensee otherwise than in accordance with this Division.

S. 25(2)(d)
 amended by
 No. 110/1997
 s. 30(2)(d).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 26

S. 25(2)(d)(i)(ii)
repealed by
No. 110/1997
s. 30(2)(d).

* * * * *

S. 25(2A)
inserted by
No. 45/1997
s. 37(2),
repealed by
No. 110/1997
s. 30(3).

* * * * *

S. 25(3)(4)
inserted by
No. 65/1995
s. 5(3),
repealed by
No. 110/1997
s. 28(4).

* * * * *

26. Concessions etc. in respect of usage charges

S. 26(1)
amended by
Nos 65/1995
s. 4(5),
110/1997
s. 31(1).

- (1) 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 a licensee must remit, excuse or defer the payment of, the whole or any part of a usage charge or service charge.

S. 26(2)
amended by
No. 110/1997
s. 31(2)(a)-(c).

- (2) A licensee must, on the application in the form approved by the licensee of a person entitled by an Order under sub-section (1) to so apply, in accordance with that Order—

S. 26(2)(a)
amended by
No. 65/1995
s. 4(6).

- (a) remit or excuse the payment of a usage charge, service charge or any part of such a charge; or

S. 26(2)(b)
amended by
No. 65/1995
s. 4(6).

- (b) defer payment of a usage charge, service charge or any part of such a charge.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 27

(3) A person must not—

- (a) give false or misleading information to a licensee in or in relation to an application under sub-section (2); or
- (b) fail to advise a licensee of any change in circumstances which is material to the application.

S. 26(3)
inserted by
No. 110/1997
s. 31(3).

Penalty: 10 penalty units.

- (4) The Minister must ensure that a licensee is reimbursed by the State any amount remitted or excused by the licensee in accordance with an Order under sub-section (1).

S. 26(4)
inserted by
No. 110/1997
s. 31(3).

- (5) A licensee must provide any information that the Minister or the Treasurer may require for the purposes of sub-section (4).

S. 26(5)
inserted by
No. 110/1997
s. 31(3).

27. Licensee may require payment

- (1) A licensee 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 a licensee under the **Planning and Environment Act 1987**, the licensee 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 licensee 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 30.
- (5) In the case of a notice under sub-section (1), the licensee must make sure that details of the proposed services and the costs are available for inspection, free of charge, at the licensee's office during normal business hours.

28. Contributions for increased services

- (1) A licensee 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 27(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 licensee to be fair and reasonable in all the circumstances; and

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 29

- (b) take into account any payment that the owner has made or is liable to make under section 27 or 29 in relation to that property.
- (3) The notice must specify the things set out in section 27(4).

29. Payments for provision of services

- (1) A licensee 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 licensee 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 27 in relation to that property.
- (3) The notice must specify the things set out in section 27(4).

30. Review of required payments

- (1) An owner who is required to make a payment under section 27, 28 or 29 may, within 1 month after receipt of the notice (or any longer time allowed by the licensee and specified in the notice), object in writing to the licensee on any of the following grounds—
 - (a) in the case of a notice under section 27, that the property of the owner will not benefit from the provision of the services;
 - (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;

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 31

- (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 28, that the use of the services has not increased, or will not increase, as the case requires;
 - (f) in the case of a notice under section 27(1), any other grounds.
- (2) A licensee must, within 2 months after receipt of an objection, notify the person of its decision on the objection.
- (3) A person may apply to the Tribunal for review of a licensee's decision on any of the grounds specified in sub-section (1)(a) to (e).

31. When payment is due

The date by which a payment under section 27, 28 or 29 must be made is—

- (a) if there have been no objections, any date that is set by the licensee and that is after the expiry of 1 month after the receipt of the notice, or of any longer time allowed by the licensee 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 licensee 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 licensee and that is after each person who objected, or who did not agree in writing not

S. 30(3)
amended by
No. 90/2003
s. 13(2).

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 32

to object, has been notified by the licensee of its decision on any objections made.

32. Payment to licensees

- (1) A service charge, sanitary service charge, usage charge or any other fee or charge payable to a licensee (other than an amount being collected by a licensee on behalf of another person) is due and must be paid by the date specified in the notice requiring payment which must be at least 14 days after the date of issue of the notice.
- (2) A person who is liable to pay to a licensee a service charge or an amount under section 27(1) or 29 may, by notice in writing to the licensee 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 licensee.
- (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.
- (4) At the written request of the person liable to make a payment to a licensee, the licensee may send the notice requiring the payment to a person specified in the request.

S. 32(1)
amended by
No. 65/1995
ss 4(7), 5(4),
14(17).

S. 32(2)
amended by
No. 65/1995
s. 4(8).

33. Application of payments made to licensee

- (1) Any money paid to a licensee by or on behalf of a person or body must be applied by the licensee as follows—
 - (a) first, towards any amount owing to the licensee by that person or body in respect of a usage charge or any other fee or charge imposed by the licensee;

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

s. 35

S. 33(1)(b)
 amended by
 No. 66/2000
 s. 5(1).

(b) secondly, towards any amount owing to the rating authority by that person or body that is being collected by the licensee on behalf of the rating authority;

(c) thirdly, towards any amount owing to Melbourne Water Corporation by that person or body that is being collected by the licensee on behalf of Melbourne Water Corporation.

S. 33(2)
 amended by
 No. 66/2000
 s. 5(2).

(2) Any dispute arising between a licensee and the rating authority or Melbourne Water Corporation over the application of any money under sub-section (1) may be referred to the Treasurer by any party to the dispute and the decision of the Treasurer on the matter is binding on the parties.

* * * * *

S. 34
 repealed by
 No. 110/1997
 s. 32.

35. Adjustments in respect of first billing period

(1) If, in relation to any property, the first billing period ending after the issue of a licence includes any period before the issue of the licence, the retail licensee and Melbourne Water Corporation may enter into an agreement with respect to the share of the total amount payable in respect of that period to which each party is entitled.

(2) Any dispute arising between a licensee and Melbourne Water Corporation over the sharing of any amount referred to in sub-section (1) may be referred to the Treasurer by any party to the dispute and the decision of the Treasurer on the matter is binding on the parties.

Division 4—Supervision and Enforcement

36. Definitions

In this Division—

"business day" means a day other than a Saturday, a Sunday or a public holiday appointed under the **Public Holidays Act 1993**;

"retention period" means a period of 14 days after seizure of a thing under section 38.

37. Appointment of inspectors

S. 37
amended by
No. 65/1995
s. 14(18)(a).

- (1) There are to be appointed or employed within the Department, whether subject to the **Public Sector Management and Employment Act 1998** or otherwise, such number of inspectors as are necessary for the purposes of this Division.

S. 37(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The Secretary to the Department may engage persons with suitable qualifications and experience as consultants or technical advisers.

S. 37(2)
inserted by
No. 65/1995
s. 14(18)(b).

- (3) An engagement under sub-section (2) may be on any terms and conditions the Secretary considers appropriate.

S. 37(3)
inserted by
No. 65/1995
s. 14(18)(b).

- (4) The Secretary may authorise in writing any person engaged under sub-section (2), or a specified person or any person included in a specified class of person employed or engaged by a person engaged under sub-section (2), to exercise the powers or a specified power of an inspector under this Division.

S. 37(4)
inserted by
No. 65/1995
s. 14(18)(b).

S. 38(1)(a)
 amended by
 No. 65/1995
 s. 14(19).

38. Searches to monitor licensee compliance

- (1) An inspector may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining whether a licensee is meeting or complying with any requirements imposed on it by or under this Act or the licence with respect to—
 - (a) the planning, construction, operation or maintenance of works;
 - (b) technical performance standards;
 - (c) water quality standards.
- (2) Subject to this section, an inspector with any assistants the inspector considers necessary may enter, at any time during ordinary working hours on any business day, any premises that the inspector believes on reasonable grounds are premises where functions of a kind that the licensee is empowered to perform under the licence are being performed and may do any one or more of the following—
 - (a) search the premises and any thing found at the premises;
 - (b) inspect and take photographs (including video recordings), or make sketches, of the premises or any thing at the premises;
 - (c) in accordance with section 48, take and keep samples of any thing at the premises;
 - (d) inspect, and make copies of, or take extracts from, any document kept at the premises;
 - (e) seize any thing at the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 39

- (f) open any container at the premises for the purpose of inspecting, or taking a sample of, its contents but must reseal the container after the inspection is made or the sample is taken.
- (2A) An inspector may not take samples of a thing or seize a thing apparently in the possession or custody of a person unless the inspector makes out and tenders to the person a receipt in the prescribed form for the sample taken or thing seized.
- (3) If an inspector is unable to ascertain the identity of the owner or custodian of any thing seized or sampled, the inspector must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.
- (4) An inspector may not exercise any powers under this section if the inspector fails to produce, on request, his or her identity card for inspection by the occupier of the premises.
- (5) An inspector may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry and the carrying out of a search.

S. 38(2)
renumbered
as s. 38(2A)
by No.
22/1999
s. 11(1).

39. Occupier to be given copy of consent

- (1) An occupier who consents in writing to entry and search of the occupier's premises or residence under section 38 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

40. Use of equipment to examine or process things

- (1) An inspector who enters premises under section 38 or an assistant the inspector considers necessary may bring to the premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under that section.
- (2) If—
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under section 38.
- (3) The inspector or a person helping the inspector may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 38 if the inspector or person helping believes on reasonable grounds that—
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

41. Use or seizure of electronic equipment at premises

(1) If—

- (a) a thing found at premises that an inspector has entered under section 38 is or includes a disk, tape or other device for storage of information; and
- (b) equipment at the premises may be used with the disk, tape or other storage device; and
- (c) the inspector believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether any requirements imposed by or under this Act or the licence have been met or complied with—

the inspector or a person assisting the inspector may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

(2) If the inspector or a person assisting the inspector finds that a disk, tape or other storage device at the premises contains information of the kind referred to in sub-section (1)(c), he or she may—

- (a) put the information in documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or
- (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.

(3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 42

inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

42. Copies to be given

If an inspector seizes, other than under section 41(2)(a) or (b)—

- (a) a document (including a disk or tape) or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied—

the inspector, on request by the occupier, must give a copy of the thing or information to the occupier as soon as practicable after the seizure.

43. Return of seized things

- (1) If an inspector seizes a thing under section 38, the inspector must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of the retention period, the inspector must take reasonable steps to return it unless—
 - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 44 extending the retention period.

44. Magistrates' Court may extend period

- (1) An inspector may apply to the Magistrates' Court within the retention period or within a period extended by the Court under this section for an extension of that period.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 45

- (2) The Magistrates' Court may order such an extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

45. Power of inspector to require information or documents

- (1) An inspector who—
 - (a) exercises a power of entry under this Division; and
 - (b) produces his or her identity card for inspection by a person—

may, to the extent that it is reasonably necessary to determine whether any requirements imposed by or under this Act or the licence are being met or complied with, require the person to give information to the inspector, to produce documents to the inspector and to give reasonable assistance to the inspector.
- (2) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under sub-section (1).
 Penalty: 20 penalty units.
- (3) A person must not—
 - (a) give information that the person knows to be false or misleading in a material particular; or

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 46

- (b) produce a document that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 20 penalty units.

46. Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 45(1), the inspector may make copies of, or take extracts from, the document.

47. Protection against self-incrimination

A person may refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Division if the giving of the information, the production of the document or the doing of that other thing would tend to incriminate the person.

48. Samples

If an inspector proposes to take a sample, the inspector must—

- (a) advise the owner, if possible prior to taking the sample, that it is obtained for the purpose of analysis; and
- (b) divide the sample into 3 parts and give 1 part to the owner, 1 part to the analyst and keep 1 part untouched for future comparison.

49. Evidentiary certificates

In any proceeding for an offence against this Act or the regulations, a certificate signed by the Secretary to the Department and stating that—

- (a) a licence referred to in the certificate was in force at a particular time or during a particular period;

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 50

- (b) a licence referred to in the certificate is, or was at a particular time or during a particular period, subject to a stated condition;
- (c) a person named in the certificate was an inspector at a particular time or during a particular period—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it.

Division 5—Regulations

50. Regulations

Regulations may be made under this Act for or with respect to—

- (a) the management, protection and use of all lands, waterways and works under a licensee's management and control; and
- (b) the management, protection and use of environmental and recreational areas under a licensee's management and control; and
- (c) sanitary drainage plans held by licensees, including⁴—
 - (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
- (d) prescribing standards for any saline or other matter (whether in liquid form or not) that may be discharged—
 - (i) into works under a licensee's control; or

S. 50(c)
substituted by
No. 39/1996
s. 13(1).

S. 50(d)
amended by
No. 65/1995
s. 14(20)(a).

Water Industry Act 1994
Act No. 121/1994
 Part 2—The Licensing System

s. 51

- (ii) into any waterway; or
- (iii) onto any place from which it may enter into—
 - (A) any works under the control of a licensee; or
 - (B) any waterway; or
 - (C) any aquifer; or
 - (D) any bore.

S. 50(d)(iii)(D)
 amended by
 No. 110/1997
 s. 40(1).

S. 50(e)
 repealed by
 No. 65/1995
 s. 14(20)(b).

* * * * *

51. Regulations about water supply

Regulations may be made under this Act for or with respect to—

* * * * *

S. 51(a)(b)
 repealed by
 No. 110/1997
 s. 33.

- (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 a billing period;
- (d) prescribing ways of determining the quantity of water supplied to land, other than by a meter or other measuring device;
- (e) prohibiting any act which would cause wastage of water;

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 52

- (f) regulating or prohibiting any activity—
 - (i) that is carried out within 40 metres of works or waterways forming part of a licensee's water supply system; and
 - (ii) that may affect the system;
- (g) prohibiting people who are not entitled to water supply from using water from a licensee's works;
- (h) regulating or prohibiting the access to or use of land and works under the management and control of a licensee;
- (i) regulating the use of water for fire-fighting purposes.

52. Regulations about trade waste

- (1) Regulations may be made under this Act for or with respect to—
 - (a) regulating or prohibiting the discharge of any trade waste into the sewers of a licensee;
 - (b) prescribing the terms and conditions to be included in agreements for the receipt and disposal of trade waste by a licensee, including the grounds on which a licensee may disconnect the service;

* * * * *

S. 52(1)(c)
 repealed by
 No. 12/1996
 s. 15(2).

- (d) prescribing any waste as trade waste for the purposes of this Act;
- (e) prescribing the information to be provided to a licensee by any person whose trade waste the licensee agrees to receive;

s. 53

- (f) the resolution of disputes under or in connection with a trade waste agreement or a proposed trade waste agreement;

S. 52(1)(g)
 repealed by
 No. 65/1995
 s. 14(21)(a).

* * * * *

S. 52(2)
 repealed by
 No. 65/1995
 s. 14(21)(b).

* * * * *

- (3) Nothing in this section requires a licensee to accept the discharge of trade waste into its sewers otherwise than in accordance with an agreement for the receipt of trade waste.

53. Regulations about private works

- (1) Regulations may be made under this Act for or with respect to—
- (a) regulating works or apparatus that are part of any private works;
 - (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 a licensee;
 - (c) prohibiting septic tank discharge within an area in respect of which a licensee has functions without the consent of the licensee;
 - (d) imposing penalties for contravention of the regulations.

Water Industry Act 1994
Act No. 121/1994

Part 2—The Licensing System

s. 53

(2) A penalty imposed for a contravention of a regulation made under sub-section (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 69; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 54

**PART 3—FUNCTIONS, OBLIGATIONS AND POWERS OF
LICENSEES**

Division 1—General

54. This Part subject to licence conditions

The conditions of a licence may exclude from the licensee a function that otherwise, because of this Part, would be a function of that licensee and, if so, the licensee does not have that function despite anything to the contrary in this Part.

55. Acquisition of land

- (1) A licensee that is a statutory corporation within the meaning of the **State Owned Enterprises Act 1992** has power, if but for this sub-section it would not have it and despite any provision of any other Act to the contrary, to purchase, hold and dispose of real or personal property.
- (2) A licensee may recommend to the Minister the compulsory acquisition of any land which is or may be required by the licensee for or in connection with, or as incidental to, the performance of its functions.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) the **Water Industry Act 1994** is the special Act; and
 - (b) the Minister 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

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 55

-
- (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.
- * * * *
- S. 55(4)
repealed by
No. 65/1995
s. 14(22).
- (5) If any land to be acquired by the Minister in
accordance with this section is held by a licensee
or lessee of the Crown, the Minister must notify
the Secretary to the Department of Natural
Resources and Environment of the intention to
acquire the land, and must include in the notice a
description of the land.
- S. 55(5)
amended by
No. 46/1998
s. 7(Sch. 1).
- (6) 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.
- (7) If any land acquired by the Minister in accordance
with this section is Crown land other than that
referred to in sub-section (5), the Minister must,
as soon as practicable after the acquisition, notify
the Secretary to the Department of Natural
Resources and Environment of the acquisition.
- S. 55(7)
amended by
No. 46/1998
s. 7(Sch. 1).
- (8) Despite anything to the contrary in the **Land
Acquisition and Compensation Act 1986**,
section 109(2) of that Act does not apply to land
acquired by the Minister in accordance with this
section.
-

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 55A

S. 55A
inserted by
No. 65/1995
s. 7.

55A. Easements

If a licensee acquires any right in the nature of an easement or purporting to be an easement (whether as a result of the disposal to the licensee of an interest in land acquired by the Minister by compulsory process or otherwise and whether before or after the commencement of section 7 of the **Water Industry (Amendment) Act 1995**), that right must be taken to be an easement even though there is no land vested in the licensee which is benefited or capable of being benefited by that right.

56. 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 licensee 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 sub-section (1) placed under the management and control of a licensee and that is required for any public purpose or for any public highway.
- (3) A licensee 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 sub-section (1), placed under the management and control of the licensee.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 57

- (4) Any Crown land that is surrendered under sub-section (3) becomes, by virtue of that surrender, unalienated Crown land.

57. Surrender or transfer of land

- (1) A licensee may, with the approval of the Minister and subject to any conditions that the Minister thinks fit, surrender to the Crown any interest of the licensee in freehold land.
- (2) Without limiting sub-section (1), a licensee is an authority for the purposes of the surrender, transfer or exchange of land under section 22A of the **Land Act 1958**.

58. Power to enter land

- (1) An employee of a licensee or an authorised person may, subject to sub-section (3), enter any land for the purpose of reading a meter installed to measure the quantity of water supplied to the land.
- (2) An employee of a licensee or an authorised person may, subject to sub-sections (3), (4) and (5) and after the licensee has given 7 days notice in writing to the occupier, enter any land for the purpose of—
- (a) carrying out on that land or on any land adjoining that land any works that the licensee is empowered to carry out; or
 - (b) inspecting any works, or making any test, to find out whether this Act or the regulations are being complied with.
- (3) If the land is used primarily for residential purposes entry under sub-section (1) or (2) may only be made between 7.30 a.m. and 6.00 p.m. unless the occupier consents to the entry being made at some other time.

S. 58
amended by
No. 65/1995
s. 14(23),
substituted by
No. 12/1996
s. 16.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

- (4) An employee of a licensee or an authorised person need not give the notice required by sub-section (2) to enter any land for the purpose referred to in sub-section (2)(a)—
- (a) if the occupier consents to the entry being made sooner; or
 - (b) if there is an emergency.
- (5) An employee of a licensee or an authorised person need not give the notice required by sub-section (2) to enter any land (other than a building or structure occupied as a residence) for a purpose referred to in sub-section (2)(b) if the licensee has reasonable grounds for believing that this Act or the regulations are not being complied with by the occupier.

59. Obligations in relation to entry of land

In exercising the powers given by section 58, an employee of a licensee or an 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 employee or authorised person, other than anything that the owner or occupier of the land agrees may be left there; and

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 60

- (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.

60. Offence of obstructing etc. licensee's employees etc.

A person must not obstruct, threaten or intimidate an employee of a licensee or an authorised person, or a person lawfully assisting an employee of a licensee or an authorised person, in the exercise of a power of entry onto land given by section 58.

Penalty: 20 penalty units.

61. Subdivisional easements and reserves

- (1) If a proposal for subdivision of land is referred to a licensee under the **Planning and Environment Act 1987**, the licensee may (as appropriate to the kind of licence held by the licensee) require the creation of easements or reserves, or both, for the use of the licensee 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 sub-section (1) gives the licensee for whose use it is created the rights prescribed in relation to an easement or reserve created for that purpose.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 62

62. Closing of roads

- (1) A licensee may temporarily close to traffic a road, or any part of it, if it is necessary to do so for the carrying out by the licensee of any works on the road, road reserve, footpath, nature strip or median strip.
- (2) The licensee must give notice to the person responsible for maintaining the road—
 - (a) in writing 5 days before the closure, unless a shorter time is agreed by that person; or
 - (b) in an emergency, as soon as possible after the closure.
- (3) In exercising the power given by this section, a licensee must not close to traffic a road, or any part of a road, for any longer than is reasonably necessary.

63. Control over connections⁵

- (1) A person must not cause or permit—
 - (a) any works to be connected to the works of a licensee except in accordance with this section; or
 - (b) the alteration or removal of any works that are connected to the works of a licensee without the licensee's consent; or
 - (c) anything to be discharged into the works of a licensee without the licensee's 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—

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 63

- (d) after service of a notice of
contravention on the person under
section 69; or
- (e) if no notice of contravention is
served, after conviction of the
person for the offence.
- (2) It is the duty of a retail licensee to permit a
property to be connected to works of the licensee
if the owner or occupier of the property requests,
by notice served on the licensee, the making of
that connection. S. 63(2)
amended by
No. 65/1995
s. 14(24).
- (3) The duty owed by sub-section (2) is only owed
if—
 - (a) the person serving the notice pays, or agrees
to pay, the cost of making the connection;
and
 - (b) any reasonable terms and conditions subject
to which the licensee agrees to permit the
connection (including payment of any
security deposit demanded) are complied
with. S. 63(3)(b)
amended by
No. 65/1995
s. 14(25).
- (4) A notice under sub-section (2) must be
accompanied by any fee fixed by the licensee
(unless the licensee has agreed to permit payment
of that fee to be made by a later date set by the
licensee) and any plans and other information that
the licensee requires. S. 63(4)
amended by
No. 65/1995
s. 14(26).
- (4A) Terms and conditions subject to which the
licensee agrees to permit a connection to its works
are binding on the successors in title of the person
who served the notice under sub-section (2). S. 63(4A)
inserted by
No. 110/1997
s. 34.
- (5) An application for the licensee's consent to the
doing of anything referred to in sub-section (1)(b)
or (c) must be made in the manner determined by
the licensee, and must be accompanied by any fee

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

fixed by the licensee and any plans and other information that the licensee requires.

- (6) On an application under sub-section (5) the licensee may—
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions that it thinks fit.
- (7) A person may apply to the Tribunal for review of a decision by a licensee under sub-section (6).
- (8) A person who causes or permits anything referred to in sub-section (1)(b) or (c) to be done must make sure that it is done in accordance with any terms and conditions subject to which the licensee 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 69; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (9) Terms and conditions subject to which the licensee consents under sub-section (6) are binding on the successors in title of the person who applied for that consent.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 64

64. Serviced properties

- (1) A retail licensee may, by notice in writing, declare any land to be a serviced property for the purposes of the supply of water supply services or sewerage services if the licensee has made provision for the supply of those services to the land.
- (2) A notice under sub-section (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) A licensee 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) specify the services available; and
 - (c) generally identify the properties to which the services are available; 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) Despite anything to the contrary in this or any other Act—
 - (a) a property to which a notice under section 69 of the MMBW Act applies must be taken to have been declared under this section to be a serviced property for the purposes of the supply of water supply services; and

S. 64(5)
inserted by
No. 12/1996
s. 17.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 65

- (b) a sewered property for the purposes of Part III of the MMBW Act must be taken to have been declared under this section to be a serviced property for the purposes of the supply of sewerage services.

65. Notice to property owners

- (1) A retail licensee may, by notice served on the owner of a serviced property, require the owner—
 - (a) in the case of a water and sewerage licensee, to connect the property to the licensee's works for the purpose of providing that property with sewerage services if, after consulting the Chief General Manager within the meaning of the **Health Act 1958** or the Environment Protection Authority (as the case requires) or both, the licensee is of the opinion that it is necessary for this to be done in the interests of health or the environment; or
 - (b) to remove any existing connection between that property and the licensee's works if—
 - (i) that connection has been made in contravention of section 63 or it contravenes any regulation made under section 50(c); or
 - (ii) in the opinion of the retail licensee, it is necessary to do so—
 - (A) to protect water purity; or
 - (B) in the interests of health, safety or the environment; or
 - (C) to prevent damage to the licensee's works; or

S. 65(1)(a)
amended by
No. 65/1995
s. 14(27).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 65

- (c) to carry out any work that the licensee considers necessary for the provision of a service that is required to be provided to that property—
- within the time specified in the notice, or any longer time allowed by the licensee.
- (2) A retail licensee may, by notice served on the owners of a group of properties that are being provided with a service by the licensee, require the owners to connect the properties by a combined connection to the licensee's works within the time specified in the notice, or any longer time allowed by the licensee.
- (3) 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 licensee.
- Penalty: 20 penalty units.
- (4) 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 licensee, the licensee may—
- (a) do the things that 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 licensee.
- (5) The owner of a property to which a notice applies may apply to the Tribunal for review of the decision by the licensee to serve the notice.

S. 65(5)
amended by
No. 90/2003
s. 13(2).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 65A

S. 65A
inserted by
No. 65/1995
s. 8.

65A. System access

- (1) It is the duty of a water licensee, water and sewerage licensee and water headworks licensee to 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 granted in accordance with the provisions of Part 4 of the **Water Act 1989**; 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 another water headworks licensee or by an 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) The duty owed by sub-section (1)—
 - (a) is only owed if the works of the licensee have sufficient available 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 the licensee by or under this or any other Act;
 - (c) is owed whether or not the person is a person referred to in section 105.
- (3) Subject to any determination made by the 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 a licensee as mentioned in sub-section (1) are as agreed between the licensee and that person.

S. 65A(3)
amended by
No. 62/2001
s. 91(c)(d).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 66

- (4) This section applies despite any provision to the contrary made by or under this or any other Act.

66. Structures over works

- (1) A person must not, without a licensee's consent, cause or permit—
- (a) any structure to be built, or any filling to be placed, on land over which—
 - (i) an easement exists in favour of the licensee; 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, within 1 metre laterally of any works of the licensee; 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 licensee 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 69; or
- (f) if no notice of contravention is served, after conviction of the person for the offence.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 66

- (2) An application for the licensee's consent must be made in the manner determined by the licensee, and must be accompanied by any plans and other information that the licensee requires.
 - (3) The licensee may—
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions that it thinks fit.
 - (4) A person who, with the consent of a licensee, 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 licensee 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 69; 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 licensee consents are binding on the successors in title of the person who applied for that consent.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 67

67. Removal of trees

(1) A licensee may, by notice in writing, require the owner of any property to remove any tree on that property if the licensee reasonably decides that the tree is obstructing or damaging the licensee's works or that it is likely to obstruct or damage them.

(2) If the tree required to be removed is not on land over which—

(a) an easement exists in favour of the licensee;
or

(b) an easement exists for water supply,
sewerage or drainage purposes—

the licensee must, subject to sub-section (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 licensee.

(4) A licensee 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 the owner receives notice from the licensee that the objection is not upheld; or

(c) within any longer time allowed by the licensee—

the licensee 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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 68

- (6) The licensee may recover from the owner the cost of any repairs to the licensee's works that are necessary to repair the damage caused by a tree that is removed by the owner or the licensee after service of a notice under sub-section (1).
- (7) A licensee is not liable to pay compensation for the removal of a tree that is planted after the completion of the works of the licensee that are obstructed, damaged or at risk.
- (8) A person may apply to the Tribunal for review of a decision by a licensee not to uphold an objection to a notice to remove a tree.

68. Notice to repair

- (1) A licensee may, by notice served on 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 licensee, any works on that land or that connect the land to the works of the licensee or that are necessary for any service provided to the land by the licensee.
- (1A) However, a licensee 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.
- (2) If land is connected to the works of the licensee by a combined connection, a notice to repair may be served on any or all of the owners of that land.
- (3) If a notice to repair is not complied with within the time specified in it, or any longer time allowed by the licensee, the licensee 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 licensee.

S. 67(8)
amended by
No. 90/2003
s. 13(2).

S. 68(1A)
inserted by
No. 39/1996
s. 13(2).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 69

69. Notice of contravention

- (1) A retail licensee may by notice served on a customer of the licensee who is in contravention of—
- (a) a provision of this Act or the regulations; or
 - (b) a requirement made by the licensee under this Act or the regulations—

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 licensee, 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 licensee.

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 licensee, the licensee may—
- (a) carry out any works and take any other action that 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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 70

70. Notice of intention to affect works

- (1) A licensee that intends to do anything that will adversely affect or interfere with the works of another licensee or of an Authority or of a public statutory body must, except in an emergency or with the consent of that licensee, Authority or public statutory body to a shorter period, give 14 days' notice of its intention to that other licensee or to the Authority or public statutory body.
- (2) If the other licensee or the Authority or public statutory body notifies the Minister of its objection to the proposal, the matter must be resolved in accordance with section 72.
- (3) A licensee that, in an emergency, adversely affects or interferes with the works of another licensee or of an Authority or of a public statutory body must, as soon as practicable after the works are so affected or interfered with, notify the other licensee or the Authority or public statutory body.
- (4) This section does not apply to the closure of a road, or any part of it, under section 62.

71. Notice to alter or remove works

- (1) A licensee that intends to do anything that affects the works of another licensee or of an Authority or of a public statutory body may, by notice in writing, require the other licensee or the 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 licensee or the Authority or public statutory body notifies the Minister of its objection to the notice, the matter must be resolved in accordance with section 72.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 72

72. Determination of disputes

- (1) Any dispute arising between licensees or between a licensee and an Authority or public statutory body over a notice under section 70 or 71 may be referred to the Commission for an opinion. The opinion of the Commission is not binding on the parties.
- (2) If a dispute referred to in sub-section (1) is not settled (whether or not it has been referred to the Commission for an opinion), the parties to the dispute must be taken to have entered into an agreement in writing to refer the dispute to arbitration in accordance with the **Commercial Arbitration Act 1984** before a single arbitrator appointed by the Secretary-General for the time being of the Australian Centre for International Commercial Arbitration.

S. 72(1)
amended by
No. 62/2001
s. 91(c)(f).

S. 72(2)
amended by
No. 62/2001
s. 91(c).

73. Compensation for damage

- (1) A licensee must cause as little damage and inconvenience as possible in the performance of its functions.
- (2) A licensee 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 licensee's functions.
- (3) 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.
- (4) This section does not apply to any injury, damage or loss to which section 74 applies.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74

74. Liability of licensees arising out of flow of water

(1) If—

- (a) as a result of intentional or negligent conduct on the part of a licensee in the exercise of a function under its licence, 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 licensee is liable to pay damages to that other person in respect of that injury, damage or loss.

(2) If it is proved in a proceeding brought under sub-section (1) that water has flowed from the works of a licensee onto any land, it must be presumed that the flow occurred as a result of intentional or negligent conduct on the part of the licensee unless the licensee proves on the balance of probabilities that it did not so occur.

(3) For the purposes of a proceeding brought under sub-section (1)—

- (a) a flow of water is to be taken to have occurred as a result of intentional conduct on the part of a licensee if the flow—
 - (i) was designed or intended by the licensee; or
 - (ii) inevitably and without intervening cause resulted from the exercise of a power by the licensee; and

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74

-
- (b) in determining whether or not a flow of water occurred as a result of negligent conduct on the part of a licensee, 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;
 - (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 sub-section (1)—
 - (a) the person bringing the proceeding must answer in writing any reasonable inquiry relating to the cause of action that is addressed to the person by or on behalf of the licensee;
 - (b) the proportion (if any) of the responsibility of the licensee for the injury, damage or loss must be assessed and only that proportion of the assessed damages must be awarded against the licensee;
-

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74

S. 74(4)(e)
amended by
No. 90/2003
s. 13(2).

- (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 licensee is not liable to pay any further damages in respect of that injury, damage or loss;
- (e) if it is claimed that damage to property has resulted from the conduct of the licensee, the Tribunal may, before making a determination in the proceeding, require notice of the proceeding to be given to any person having an ascertainable interest (whether present, future or contingent) in the property;
- (f) a person served under paragraph (e) or any other person having an interest in the property may apply to the Tribunal to be added as a party;
- (g) a determination made in the proceeding binds the parties and all persons served under paragraph (e);
- (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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74A

- (5) This section does not create any liability in respect of a flow of water from the works (including any dam) of a licensee in the exercise of a function under its licence if that flow is reasonable.

S. 74(5)
inserted by
No. 65/1995
s. 14(28).

74A. Jurisdiction of Tribunal

S. 74A
inserted by
No. 52/1998
s. 311(Sch. 1
item 106.1).

- (1) The Tribunal has jurisdiction in relation to all causes of action (other than any claim for damages for personal injury) arising under section 74(1).
- (2) In a proceeding under this Act, the Tribunal may—
- (a) make an order granting an injunction (whether interim or final), including one to prevent an act that has not yet taken place;
 - (b) make an order with respect to—
 - (i) compensation for damage to land;
 - (ii) the continuation, removal or modification of works; or
 - (iii) payment of the costs of the removal or modification of works;
 - (ba) make an order for payment of a sum of money awarding damages in the nature of interest;
 - (c) make a declaration as to any matter.

S. 74A(2)(ba)
inserted by
No. 90/2003
s. 8(1).

- (2A) 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.
- (3) In determining a proceeding under section 74(1), the Tribunal must apply to the questions of causation and remoteness of damage the same tests a court would apply to those questions in an action based on negligence.

S. 74A(2A)
inserted by
No. 90/2003
s. 8(2).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74B

S. 74A(5)
substituted by
No. 22/1999
s. 8.

S. 74A(6)
inserted by
No. 22/1999
s. 8.

S. 74A(7)
inserted by
No. 22/1999
s. 8.

S. 74A(8)
inserted by
No. 22/1999
s. 8.

S. 74B
inserted by
No. 52/1998
s. 311(Sch. 1
item 106.1).

- (4) 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 section 74(1).
- (5) On and from 25 March 1999 a proceeding based on a cause of action of a kind referred to in section 74(1) (other than a claim for damages for personal injury) must not be brought otherwise than in the Tribunal.
- (6) If on or after 25 March 1999 and before the passing of the **Water Acts (Amendment) Act 1999** a person brings a proceeding to which sub-section (5) applies in the Supreme Court, the County Court or the Magistrates' Court and as at immediately before that passing the proceeding had not been finally determined, the Court must make an order striking out the proceeding on the application of a party to the proceeding made at any time after that passing.
- (7) Nothing in sub-section (5) invalidates an order made by a court in a proceeding to which sub-section (5) applies that had been finally determined by that court before the passing of the **Water Acts (Amendment) Act 1999**.
- (8) Nothing in sub-section (5) invalidates an order made by a court on an application under sub-section (6), including an order with respect to the costs of the proceeding brought in contravention of sub-section (5).

74B. 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—

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 74B

-
- (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 or the **Water Act 1989** 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.
-

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

- (2) In taking account of the matters specified in sub-section (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 (within the meaning of the **Water Act 1989**) 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 sub-section (1).

75. Information statements

- (1) Any person may apply to a licensee for an information statement in relation to any land that is within an area in respect of which the licensee has functions.
- (2) An application must—
 - (a) be in writing; and
 - (b) be in a form approved by the licensee; and
 - (c) be accompanied by any fee fixed by the licensee; 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) A licensee 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 licensee's functions under this or any other Act—

S. 75(2)(c)
amended by
No. 65/1995
s. 14(29).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 77

- (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 licensee or not) or any matters that are outstanding and in respect of which the licensee has served any notice, made any resolution, exercised any discretion or entered into any agreement under this Act;
- (c) any relevant rate or charge (whether payable to the licensee, Melbourne Water Corporation or the rating authority), including any amounts outstanding.
- (4) The statement must be signed by a person who is authorised by the licensee to do so.

S. 75(3)(c)
amended by
Nos 65/1995
s. 14(30),
66/2000 s. 6.

* * * * *

S. 76
repealed by
No. 65/1995
s. 14(31).

77. Separate accounts and records to be kept

- (1) A licensee must keep, separate from any other accounts and records that it may keep, proper accounts and records of its transactions and affairs as a licensee and such other records as sufficiently explain the financial operations and financial position of the licensee as licensee.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78

S. 77(2)
amended by
No. 65/1995
s. 14(32).

- (2) A requirement imposed on a licensee by sub-section (1) is additional to any record-keeping requirement imposed on the licensee by the licence.

78. Reporting requirements

- (1) A licensee must, in accordance with the regulations, report in the prescribed manner and form on the prescribed matters to—
- (a) the Minister; and
 - (b) the Commission; and
 - (c) its customers.
- (2) A requirement imposed on a licensee under sub-section (1) is additional to any reporting requirement imposed on the licensee by the licence.

S. 78(1)(b)
amended by
No. 62/2001
s. 91(c).

Pt 3 Div. 1A
(Heading and
ss 78A–78H)
inserted by
No. 110/1997
s. 35.

Division 1A—Drought Response Plans and Emergency Management Plans

S. 78A
inserted by
No. 110/1997
s. 35.

78A. Application of this Division

This Division applies to a licensee who is the holder of a water licence or a water and sewerage licence.

S. 78B
inserted by
No. 110/1997
s. 35.

78B. Preparation and adoption of plans

- (1) A licensee must prepare a drought response plan and an emergency management plan and submit any such plan to the Minister for approval on or before the date specified by the Minister.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78B

-
- (2) In preparing a plan, a licensee must have regard to any written guidelines issued by the Minister and served on the licensee concerning the form of, and the information to be contained in, such a plan.
 - (3) Without limiting sub-section (2), a plan must contain a Schedule setting out—
 - (a) restrictions or prohibitions on the use of water; or
 - (b) restrictions or prohibitions on the use of water in 2 or more stages of varying severity capable of being separately implemented—

in any area, or a specified part of any area, in respect of which the licensee has the function of providing a water supply system.
 - (4) Without limiting sub-section (3), a restriction may require a use of water to be approved by a specified person or a specified class of person.
 - (5) Before submitting a plan to the Minister under sub-section (1), a licensee must ensure that a notice in accordance with sub-section (6) is published in a newspaper circulating generally in any area capable of being affected by the plan.
 - (6) 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 publication of the notice) as is specified in the notice.
 - (7) A licensee must ensure that all comments and submissions received before the date specified in the notice are considered, and any variations to the
-

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78C

S. 78C
inserted by
No. 110/1997
s. 35.

proposed plan that the licensee thinks fit are made, before the proposed plan is submitted to the Minister under sub-section (1).

- (8) A licensee must adopt a plan as approved by the Minister under sub-section (1).

78C. Variation of plan

- (1) A licensee may at any time, in accordance with this section, make any variations to an adopted drought response plan or emergency management plan that it thinks fit.
- (2) Before making any variation to an adopted plan, a licensee must submit the proposed variation to the Minister for approval.
- (3) The Minister may at any time, by notice served on the licensee, require a licensee to review a drought response plan or emergency management plan and submit a revised plan to the Minister for approval on or before the date specified by the Minister.
- (4) Except with the approval of the Minister, before submitting a proposed variation or revised plan to the Minister under sub-section (2) or (3), a licensee must ensure that a notice in accordance with sub-section (5) is published in a newspaper circulating generally in any area capable of being affected by the proposed variation or the revised plan.
- (5) 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 publication of the notice) as is specified in the notice.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78D

- (6) A licensee must ensure that all comments and submissions received before the date specified in the notice are considered, and any changes to the proposed variation or variations 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 sub-section (2) or (3).
- (7) A licensee must vary a drought response plan or emergency management plan, or adopt a revised drought response plan or emergency management plan, as approved by the Minister under sub-section (2) or (3).

78D. Emergency

S. 78D
inserted by
No. 110/1997
s. 35.

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
 - (a) require a licensee to take a specified action in relation to a specified area during a specified period or in specified circumstances;
 - (b) vary a drought response plan or emergency management plan of a licensee.
- (2) The Minister must not recommend to the Governor in Council the making of an Order under sub-section (1) unless he or she is satisfied that an emergency or water shortage exists in the area to which the Order is to apply and that the making of the Order is necessary to deal with that emergency or water shortage.
- (3) An Order under sub-section (1) has effect despite anything to the contrary in a drought response plan or emergency management plan.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78E

S. 78E
inserted by
No. 110/1997
s. 35.

78E. Major deviations from plan

- (1) Except to the extent required by an Order under section 78D(1), a licensee must not make a major deviation from a drought response plan or emergency management plan.
- (2) The Minister may issue guidelines as to what are major deviations for the purposes of subsection (1).

S. 78F
inserted by
No. 110/1997
s. 35.

78F. Copy of plan

- (1) The drought response plan or emergency management plan of a licensee at any time is that plan adopted in accordance with section 78B as varied under section 78C or by an Order under section 78D(1) at that time.
- (2) A licensee must ensure that an up to date copy of its drought response plan and emergency management plan is available at its offices during business hours for inspection on request.

S. 78G
inserted by
No. 110/1997
s. 35.

78G. Implementation of plan

- (1) A licensee may implement—
 - (a) a drought response plan or emergency management plan at any time after it has been adopted by the licensee in accordance with section 78B;
 - (b) a variation to an adopted drought response plan or emergency management plan made in accordance with section 78C.
- (2) Implementation involving the imposition or removal of restrictions or prohibitions, or the substitution of a different stage of restrictions or prohibitions, on the use of water in an area may be effected by the licensee publishing a notice in a newspaper circulating generally in the area specifying—

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78H

- (a) the restrictions and 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 day of publication of the notice.
- (3) A person cannot be convicted of an offence against section 78H in respect of a contravention of a restriction or prohibition on the use of water contained in a drought response plan or emergency management plan if prior to the relevant time notice of the particular restriction or prohibition had not been published in accordance with sub-section (2).

78H. Contravention of plan

A person who receives a supply of water from a licensee must not, after receiving a warning notice from the licensee, contravene a restriction or prohibition on the use of that water contained in a drought response plan or emergency management plan of the licensee.

Penalty: **Penalty:**For a first offence, 40 penalty units or imprisonment for 3 months;
 For a subsequent offence, 80 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 (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

S. 78H
inserted by
No. 110/1997
s. 35,
amended by
No. 90/2003
s. 9.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78I

Pt 3 Div. 1B
(Heading and
ss 78I-78P)
inserted by
No. 90/2003
s. 10.

S. 78I
inserted by
No. 90/2003
s. 10.

S. 78J
inserted by
No. 90/2003
s. 10.

Division 1B—Permanent water saving plan

78I. Application of this Division

This Division applies to a licensee who is the holder of a water licence or a water and sewerage licence.

78J. Preparation and adoption of plan

- (1) A licensee 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 licensee, give directions or issue guidelines concerning the form of, and the information to be contained in, such a plan.
- (3) In preparing a plan, a licensee must—
 - (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
 given or issued by the Minister under sub-section (2).
- (4) Without limiting sub-section (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 licensee has the function of providing a water supply system.
- (5) Without limiting sub-section (4), a restriction may require a use of water to be approved by a specified person or a specified class of person.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78K

- (6) Before submitting a plan to the Minister under sub-section (1), a licensee must ensure that a notice in accordance with sub-section (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 sub-section (6)) as is specified in the notice.
- (8) A licensee 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 licensee thinks fit are made, before the proposed plan is submitted to the Minister under sub-section (1).
- (9) A licensee must adopt a plan as approved by the Minister under sub-section (1).
- (10) The Minister must consult with the Treasurer before approving a permanent water saving plan.

78K. Variation of plan

- (1) A licensee 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, a licensee must submit the proposed variation to the Minister for approval.

S. 78K
inserted by
No. 90/2003
s. 10.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78K

- (3) The Minister may at any time, by notice served on the licensee, require a licensee 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.
- (4) In preparing a variation to an adopted plan or a revised plan, a licensee must—
 - (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
given or issued by the Minister under section 78J(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 sub-section (2) or (3), a licensee must ensure that a notice in accordance with sub-section (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 sub-section (5)) as is specified in the notice.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78L

- (7) A licensee 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 sub-section (2) or (3).
- (8) A licensee must vary a permanent water saving plan, or adopt a revised permanent water saving plan, as approved by the Minister under sub-section (2) or (3).
- (9) The Minister must consult with the Treasurer before approving—
 - (a) any variation to a permanent water saving plan; or
 - (b) a revised permanent water saving plan.

78L. Major deviations from plan

S. 78L
inserted by
No. 90/2003
s. 10.

- (1) A licensee 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 sub-section (1).

78M. Copy of plan

S. 78M
inserted by
No. 90/2003
s. 10.

- (1) The permanent water saving plan of a licensee at any time is that plan adopted in accordance with section 78J or 78K(8), as varied under section 78K at that time.
- (2) A licensee 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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78N

S. 78N
inserted by
No. 90/2003
s. 10.

78N. Implementation of plan

- (1) A licensee must implement immediately—
 - (a) a permanent water saving plan adopted by the licensee in accordance with section 78J or 78K(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 licensee 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 78O 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 sub-section (2).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 78O

78O. Contravention of plan

A person who receives a supply of water from a licensee must not, after receiving a warning notice from the licensee, contravene a restriction or prohibition on the use of that water contained in a permanent water saving plan of the licensee.

Penalty: For a first offence, 10 penalty units;
For a subsequent offence, 20 penalty units;
For a continuing offence, an additional penalty of 2 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

S. 78O
inserted by
No. 90/2003
s. 10.

78P. Inconsistency

- (1) If there is an inconsistency between a restriction or prohibition in—
 - (a) a drought response plan and a permanent water saving plan; or
 - (b) an emergency management plan and a permanent water saving plan—applying to a person who receives a supply of water from a licensee, the person must comply with the restriction or prohibition in the drought response plan or emergency management plan.
- (2) A restriction or prohibition in a permanent water saving plan is of no effect to the extent of that inconsistency.

S. 78P
inserted by
No. 90/2003
s. 10.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 79

Division 2—Water Licence

79. Application of this Division

This Division applies to a licensee who is the holder of a water licence.

80. Functions of licensee

A licensee has the following functions in relation to the area or areas specified in its licence—

- (a) to provide, manage, operate and protect water supply systems;
- (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 community about any aspect of water supply.

81. Water for fire-fighting and cleaning sewers and drains

- (1) A council may require a licensee that has functions in respect of an area situated wholly or partly within the council's municipal district to fix fire plugs to any of the works of the licensee within that area in suitable locations for the supply of water for the purpose of fire-fighting or cleaning sewers and drains.
- (2) A council must meet the costs of providing, installing, marking and maintaining all fire plugs that the council requires under sub-section (1) to be installed in its municipal district.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 82

- (3) A licensee 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) A licensee must—
 - (a) keep all fire plugs 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 from fire plugs fixed to its works unless the water is unavailable due to a shortage of water or another unavoidable cause, or due to repairs.
- (5) Sub-section (4)(a) does not require a licensee to make sure that water pressure is adequate for fire-fighting.
- (6) No charge may be made by a licensee in respect of water taken for fire-fighting purposes from a fire plug fixed to its works.
- (7) A licensee may impose a reasonable charge in respect of water taken for cleaning sewers and drains from a fire plug fixed to its works.

82. Power to enter land for water supply protection

- (1) An employee of a licensee or an authorised person may enter any land for the purposes of water supply protection.
- (2) Sections 58 and 59 apply in relation to the entry of land under sub-section (1) as if that entry were made under section 58 for the purpose referred to in section 58(2)(a).

S. 82(2)
amended by
No. 12/1996
s. 18.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 83

83. Immediate action for water supply protection in an emergency

In an emergency a licensee may, immediately and without notice, remove from—

- (a) any land that is adjacent to any waterway or works forming part of the licensee'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 licensee's opinion, likely to affect the purity of the licensee's water supply system.

84. Notice of contravention for water supply protection

- (1) Subject to sub-section (2), a licensee may, by notice served on 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 from any land owned or occupied by that person that is adjacent to any waterway or works forming part of the licensee's water supply system—

if the carrying out of the activity, or the presence of the substance or thing is, in the opinion of the licensee, likely to affect the purity of the licensee's water supply system.

- (2) A notice under sub-section (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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 85

- (3) A person served with a notice under subsection (1) may apply to the Tribunal for review of the decision by the licensee to serve the notice.
- (4) Section 69 applies to a notice under subsection (1) as if it were a notice of contravention under section 69(1).

S. 84(3)
amended by
No. 90/2003
s. 13(2).

85. Licensee may reduce or restrict water supply

- (1) A licensee may reduce or restrict the quantity of water supplied to any person if—
 - (a) the licensee 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 licensee believes that the reduction or restriction is necessary to avoid future water shortages; or
 - (ba) the licensee believes that the reduction or restriction is necessary to enable it to carry out maintenance of its works; or
 - (c) any private works for the supply of water to the person—
 - (i) are, in the opinion of the licensee, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 68 and not complied with by the time specified or allowed under that section; or
 - (ii) do not, in the opinion of the licensee, comply with the regulations; or
 - (d) the person contravenes this Act or the regulations in relation to the misuse of water supplied to the person by the licensee; or

S. 85(1)(ba)
inserted by
No. 65/1995
s. 14(33).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 85

- (e) the person contravenes this Act or the regulations in relation to the taking of water; or
 - (f) the person refuses entry to an employee of the licensee or an authorised person who intends to exercise powers conferred by or under this Act to investigate any suspected contravention referred to in paragraph (d) or (e); or
 - (g) the person refuses or fails to pay any money due to the licensee, including any security deposit demanded by the licensee or any rate due to Melbourne Water Corporation under Division 3 of Part II of the MMBW Act.
- (2) A licensee must reduce the supply of water under sub-section (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) A licensee that reduces or restricts the supply of water to a person in accordance with this section is not liable to any claim or demand in respect of the reduction or restriction.
- (4) A licensee that restricts the supply of water to a person under sub-section (1)(c), (d), (e), (f) or (g) may charge a fee for removing the restrictor.
- (5) A licensee may reduce or restrict the quantity of water supplied to a person under sub-section (1)(c), (d), (e), (f) or (g) 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.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 86

86. Licensee may send water into waterway etc.

- (1) A licensee may send water into any waterway, works or natural channel which crosses any land.
- (2) A licensee which exercises its powers under sub-section (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 a licensee to maintain any crossing under sub-section (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 licensee as to—
 - (a) the number, type and position of any crossings to be constructed; or
 - (b) the amount of compensation to be paid.

S. 86(4)
amended by
No. 90/2003
s. 13(2).

87. Maps of works

- (1) Subject to sub-section (7), it is the duty of a licensee to keep records of the location, and the prescribed particulars, of all principal works under its management and control.
- (2) The records kept by a licensee under this section must be kept separately in relation to each council within whose municipal district there are any works of which the licensee is required to keep records and to whom the licensee is required under section 88 to provide copies of the contents of those records.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 88

- (3) It is the duty of a licensee to make sure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the licensee.
- (4) Any information which is required under this section to be made available by a licensee for inspection by the public shall be so made available in the form of a map.
- (5) For the purpose of determining whether a failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by sub-section (1), that duty must be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary.
- (6) If records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary must be incorporated in the records.
- (7) Nothing in this section requires a licensee to keep records of any works in an area which were completed before the date on which a licence of the same type was first granted in respect of that area unless those particulars were shown as at that date on a map kept immediately before that date by an Authority or Melbourne Water Corporation and given to the first licensee of that type in respect of that area on the grant of the licence.

88. Provision of maps to councils

- (1) It is the duty of a licensee to provide councils, for a charge specified by the licensee, with—
 - (a) copies of the contents of all records kept under section 87; and

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 89

- (b) copies of any modifications of those records—

so that every council to whose municipal district any of those records relate are at all times informed of the contents for the time being of the records relating to their district.

- (2) A council must make sure that so much of any information provided to it by virtue of this section as consists in the contents for the time being of records kept by a licensee under section 87 is available, at all reasonable times, for inspection by the public free of charge at an office of the council.
- (3) Any information which is required under this section to be provided to a council or to be made available by a council for inspection by the public must be so provided or made available in the form of a map.

Division 3—Water and Sewerage Licence

89. Application of this Division

This Division applies to a licensee who is the holder of a water and sewerage licence.

90. Functions of licensee

A licensee has the functions specified in section 80 and the following functions in relation to the area or areas specified in its licence—

- (a) to provide, manage and operate systems for the conveyance and disposal of sewage and, if the licensee enters into an agreement for, or consents to, its receipt, 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;

S. 90(a)
amended by
No. 65/1995
s. 14(34).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 91

- (c) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to sewerage services;
- (d) to educate the community about any aspect of sewerage.

91. Application of Division 2

Division 2 applies to a licensee who is the holder of a water and sewerage licence in the same way that it applies to a licensee who is the holder of a water licence.

92. Testing etc. of waste

- (1) A person authorised by a licensee 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 licensee 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 licensee's sewerage system; and
 - (b) require any person to supply any information relating to any trade waste that is to be received by the licensee or any matter used or produced in a process involving trade waste.
- (2) Powers conferred by sub-section (1) are in addition to any other powers of the licensee.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 93

- (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 licensee; or
 - (b) for the purposes of legal proceedings; or
 - (c) with the consent of the person who supplied the information.

Penalty: 20 penalty units.

93. Protection of sewers

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 a sewerage system under the control and management of a licensee.

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 69; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

94. Enforcement of agreement

Whether or not proceedings are instituted for the contravention of any terms or conditions of a trade waste agreement, a licensee may apply to a court for an order with respect to the enforcement of the agreement.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 95

95. New works

- (1) Subject to sub-section (4), at least 14 days before starting construction of any sewer a licensee 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 licensee'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 licensee, and the licensee must, before starting construction, consider any submissions received.
- (3) The licensee 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 licensee 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 sub-sections (1) to (3).

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 96

Division 4—Drainage Services Licence

96. Application of this Division

This Division applies to a licensee who is the holder of a drainage services licence.

97. Functions of licensee

- (1) A licensee has the following functions in relation to the area or areas specified in its licence—
 - (a) to provide, manage, operate and maintain drainage systems including the provision or augmentation of pipes, levees, floodgates, retarding basins and other works and the maintenance of wetlands;
 - (b) to control the quality of water in drainage systems;
 - (c) to manage the hydraulic capacity of waterways including the stabilisation of their banks;
 - (d) to investigate, plan, promote, conduct research into and develop strategies for any matter related to its functions, powers and duties in relation to drainage services;
 - (e) to educate the community about any aspect of drainage.
- (2) Nothing in this section authorises a licensee to construct, alter, operate, remove or abandon any works on a waterway without holding a licence issued under section 67 of the **Water Act 1989**.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 98

98. Agreements for construction of drainage works

- (1) A licensee may enter into an agreement with the owner of a property—
 - (a) for the acceptance of surface, storm or other water from that property to the licensee's works;
 - (b) for the construction, reconstruction or improvement of drainage works serving the property concerned either alone or together with any other property or properties.
- (2) An agreement under sub-section (1) may include provision for—
 - (a) the payment to the licensee by the owner of the property of the whole of the construction, reconstruction or improvement costs or any part of them that the licensee considers reasonable to be paid by that owner having regard to the benefit of the works to the property and to any other property that will, in the opinion of the licensee, be capable of being served by the works;
 - (b) the payment to the licensee by the owner of the property of an amount based on the area of the property and the proposed use to which the property is to be put and assessed by the licensee as being a fair and reasonable contribution towards the cost of development of the licensee's drainage systems;
 - (c) the payment to the licensee by the owner of the property of—
 - (i) a reasonable proportion of the cost of any works being or to be constructed, reconstructed or improved by the licensee and paid for by the licensee;

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 98

- (ii) a reasonable proportion of the present day cost of the construction, reconstruction or improvement of completed works constructed, reconstructed or improved by the licensee and paid for by the licensee—

which are or will be available to be connected to, and are or will be of adequate capacity to serve, the property or any part of it, whether with or without the construction or installation of additional works;

- (d) the payment to the licensee by the owner of the property of—
 - (i) a reasonable proportion of the cost of any works being or to be constructed, reconstructed or improved by the licensee under an agreement between the licensee and the owner of any other property in the vicinity;
 - (ii) a reasonable proportion of the present day cost of the construction, reconstruction or improvement of completed works constructed, reconstructed or improved by the licensee under an agreement between the licensee and the owner of any other property in the vicinity—

which are or will be available to be connected to, and are or will be of adequate capacity to serve, the property or any part of it, whether with or without the construction or installation of additional works;

- (e) the construction, reconstruction or improvement of all or any part of the works required by and at the expense of the owner;

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 98

- (f) the amount to be advanced to the licensee by the owner towards any remaining part of the cost of construction, reconstruction or improvement of the works;
 - (g) the repayment to the owner by the licensee of the whole, or any part that may be agreed on, of the advance referred to in paragraph (f);
 - (h) security which may be lodged with the licensee to secure a payment or advance referred to in paragraph (a), (b), (c), (d) or (f).
- (3) If a proposal for the subdivision or consolidation of land is referred to the licensee under the **Planning and Environment Act 1987**, the licensee may, by notice in writing, require the owner of the property to enter into an agreement under sub-section (1).
 - (4) Any works constructed, reconstructed or improved under an agreement under sub-section (1) must be taken to have been made by the licensee and vest in the licensee.
 - (5) If a licensee proposes to enter into an agreement under sub-section (1) and the works to be constructed, reconstructed or improved under the agreement will be available to serve a property other than the property of the person with whom the licensee proposes to enter into the agreement, the licensee may serve a notice under sub-section (6) on the owner of that other property.
 - (6) A notice under this sub-section must inform the other property owner that he, she or it may, within 3 months after receiving the notice, enter into an agreement to contribute a reasonable proportion of the cost of the works to be constructed, reconstructed or improved and that if the owner

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 99

does so, any agreement which the owner is asked to enter into in the event of the owner subsequently giving notice of intention to subdivide will not contain any provision for any further contribution towards the cost of the works.

- (7) If a licensee is to carry out the construction, reconstruction or improvement of any works under an agreement under sub-section (1), the licensee may, despite the terms of the agreement, construct, reconstruct or improve the works in a way that involves greater expenditure than that specified in the agreement if the additional cost is borne by the licensee.

99. Application of liability provisions

Sections 15 and 16 of the **Water Act 1989** do not create any liability in respect of a flow of water from the works (including any dam) of a licensee in the exercise of a function under its licence.

Division 5—Sewage Treatment Licence

100. Application of this Division

This Division applies to a licensee who is the holder of a sewage treatment licence.

101. Functions of licensee

A licensee has the following functions in relation to the area or areas specified in its licence and any other area in respect of which it is empowered by its licence to perform functions—

- (a) to provide, manage and operate systems for the collection (as specified in the licence), treatment and disposal of sewage discharged from properties within an area in respect of which the licensee is empowered by the licence to perform functions;

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

- (b) to identify community needs relating to sewage treatment services and to plan for the future needs of the community relating to those services;
- (c) to provide, manage and operate systems for the recycling, reuse and supply of treated waste and water and by-products of sewage treatment;
- (d) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to sewage treatment services;
- (e) to educate the community about any aspect of sewage treatment.

102. Protection of sewage treatment system

A person who is not a water and sewerage licensee must not cause or permit sewage or any other thing to be discharged into a sewage treatment system under the control and management of a licensee.

Penalty: 200 penalty units and, for a continuing offence, 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 69; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 103

Division 6—Water Headworks Licence

103. Application of this Division

This Division applies to a licensee who is the holder of a water headworks licence.

104. Functions of licensee

A licensee has the following functions in relation to the area or areas specified in its licence and any other area in respect of which it is empowered by its licence to perform functions—

- (a) to provide, manage, operate and protect systems for the collection, storage, treatment and distribution of water, including distribution to an area outside the area or areas specified in the licence;
- (b) to make sure that present and future community needs relating to water supply (as identified by any holder of a water licence or of a water and sewerage licence) are able to be met;
- (c) to supply water to any person referred to in section 105;
- (d) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to water collection and storage;
- (e) to educate the community about any aspect of water collection and storage.

105. Who may licensee supply with water?

A licensee may only supply water to—

- (a) the holder of a water licence; or
 - (b) the holder of a water and sewerage licence;
- or

Water Industry Act 1994
Act No. 121/1994

Part 3—Functions, Obligations and Powers of Licensees

s. 106

- (c) the holder of a bulk entitlement to water in the licensee's works granted in accordance with the provisions of Division 1 of Part 4 of the **Water Act 1989**; or
- (d) any other person or class of person prescribed for the purposes of this section.

106. Application of certain provisions of Division 2

Sections 82 to 86 apply to a licensee who is the holder of a water headworks licence in the same way that they apply to a licensee who is the holder of a water licence but with the modification that any reference in those sections to water supply must be taken to be a reference to water collection and storage and as if sub-sections (1)(c) to (g), (4) and (5) did not form part of section 85.

PART 4—LAND MANAGEMENT AND RATING POWERS

Pt 4 (Heading) amended by No. 66/2000 s. 7.

Pt 4 Div. 1 (Heading and ss 107–114) amended by Nos 51/1996 s. 19, 44/1998 s. 27(a)(i)(ii), 46/1998 s. 7(Sch. 1), repealed by No. 66/2000 s. 8.

Pt 4 Div. 2 (Heading and ss 115–128) amended by Nos 65/1995 s. 14(36), 44/1998 s. 27(b)(c), 46/1998 s. 7(Sch. 1), 44/2001 s. 3(Sch. item 128.2), repealed by No. 66/2000 s. 8.

Pt 4 Div. 3 (Heading and ss 129–131) repealed by No. 66/2000 s. 8.

Division 4—Powers with respect to Land

132. Power of Secretary to enter into management agreements

S. 132 amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 66/2000 s. 9.

Despite anything to the contrary in the **Land Act 1958**, the Secretary, with the approval of the Minister responsible for administering the **Land Act 1958**, may enter into a management agreement with any person with respect to the whole or any part of any waterways land (which is

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 135A

not land under the **National Parks Act 1975** or Crown land permanently or temporarily reserved under the **Crown Land (Reserves) Act 1978**) to manage the land for the purposes of recreation, leisure, tourism or water transport.

S. 133
repealed by
No. 66/2000
s. 11.

* * * *

S. 134
amended by
No. 66/2000
s. 10,
repealed by
No. 66/2000
s. 11.

* * * *

S. 135
amended by
No. 65/1995
s. 9,
repealed by
No. 66/2000
s. 11.

* * * *

S. 135A
inserted by
No. 12/1996
s. 19.

135A. Grant of licences for jetties etc.

S. 135A(1)
substituted by
No. 66/2000
s. 12(1).

(1) Despite anything to the contrary in the **Land Act 1958** or any other Act, the Minister may grant, to an applicant, a licence in respect of any waterways land for the purposes of a jetty or mooring.

* * * *

S. 135A(2)(3)
repealed by
No. 66/2000
s. 12(1).

(4) An application for a licence must be made in writing.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 135A

(5) A licence shall—

- (a) specify the purpose for which it is granted;
and
- (b) be for a term not exceeding 10 years but may
be renewed by the Minister; and
- (c) be subject to such covenants, conditions,
reservations and restrictions as are specified
in it; and
- (d) be subject to the payment of a licence fee of
such amount as is fixed by the Minister.

S. 135A(5)(b)
amended by
No. 66/2000
s. 12(2).

S. 135A(5)(d)
amended by
No. 66/2000
s. 12(2).

(6) A licensee must not transfer or assign their
interest in the licence without the prior consent in
writing of the Minister.

S. 135A(6)
amended by
No. 66/2000
s. 12(2).

(7) If the Minister is satisfied, after giving a licensee a
reasonable opportunity to be heard, that the
licensee has—

S. 135A(7)
substituted by
No. 66/2000
s. 12(3).

- (a) failed, during the term of the licence, to use
the land for the purpose for which the licence
was granted; or
- (b) used the land for any purpose other than the
purpose for which the licence was granted;
or
- (c) failed to comply with any of the terms and
conditions of the licence—

the Minister may declare, by notice published in
the Government Gazette, that the licence is
cancelled.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 136

S. 135A(9)
amended by
No. 66/2000
s. 12(4).

S. 135A(10)
amended by
No. 66/2000
s. 12(5)(a)(b).

S. 135A(11)
amended by
No. 66/2000
s. 12(6).

S. 135B
inserted by
No. 12/1996
s. 19,
repealed by
No. 66/2000
s. 13.

S. 136
substituted by
No. 66/2000
s. 14.

- (8) On the declaration under sub-section (7) that a licence is cancelled—
 - (a) any interest, right or privilege created by the licence ceases to exist; and
 - (b) all money paid under the licence is forfeited.
- (9) On or before the expiry or cancellation of a licence, the licensee may remove any structure or improvement erected by the licensee on licensed land making good to the satisfaction of the Minister any injury which may be done to the land.
- (10) Any structure or improvement not removed from land before the expiry or cancellation of a licence or within any further period allowed by the Minister is the property of the Minister and may be sold, removed or demolished as the Minister may direct.
- (11) The costs and expenses incidental to the removal or demolition of any structure or improvement in accordance with sub-section (10) and of making good any injury to land is a debt due to the Minister by the former licensee.

* * * * *

136. Management of reservoir parks land

- (1) The Governor in Council may make regulations for or with respect to any of the matters referred to in section 13(1)(b)(ii) to (xi) of the **Crown Land (Reserves) Act 1978** in relation to any reservoir parks land as if—

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 137

- (a) any reference in that section to a committee of management were a reference to the Minister; and
 - (b) any reference in that section to the land were a reference to reservoir parks land.
- (2) Section 13(5), (6), (7) and (8) of the **Crown Land (Reserves) Act 1978** applies to regulations made under sub-section (1) as if—
- (a) the regulations had been made under section 13(1) of that Act; and
 - (b) any reference to—
 - (i) an authorised officer in that section; or
 - (ii) an officer or servant employed by the committee of management or the trustees of any land—
 were a reference to an authorised officer.
- (3) Regulations under this section do not have effect unless there is in force a lease and licence of the reservoir parks land which is or is to the effect of the lease and licence referred to in section 137.
- (4) In this section—
- "reservoir parks land"** means the land which is the subject of the lease and licence referred to in section 137.

137. Transfer of lease and licence of reservoir parks to the State

On the commencement of section 8 of the **Water Industry (Amendment) Act 2000**, in relation to the lease and licence of the land generally described as reservoir parks dated 13 April 1995, between Melbourne Water Corporation and Melbourne Parks and Waterways, the Minister is substituted for Melbourne Parks and Waterways

S. 137
 substituted by
 No. 66/2000
 s. 14.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 139

as the lessee and licensee under the lease and licence.

* * * * *

S. 138
repealed by
No. 66/2000
s. 14.

Division 5—Financial Provisions

139. Power to make and levy rates

* * * * *

S. 139(1)
amended by
No. 44/1998
s. 28(2),
repealed by
No. 66/2000
s. 15.

S. 139(1A)
inserted by
No. 44/1998
s. 28(3).

S. 139(2)
amended by
Nos 45/1997
s. 38(1),
44/1998
s. 28(4)(a).

- (1A) Having regard to the estimated disbursements from the Parks and Reserves Trust Account for a financial year commencing on 1 July 1999 or a subsequent financial year, the Governor in Council, on the recommendation of the Minister and Treasurer, may, subject to and in accordance with this section and the regulations, by Order published in the Government Gazette, in respect of that financial year, or any quarter or half of that financial year, make, and the rating authority may levy, a rate in relation to land (other than land described in Schedule 1) within any area or areas specified by the Governor in Council by Order published in the Government Gazette for the purposes of this sub-section.
- (2) The rating authority may not levy a rate on land described in Schedule 1, other than land referred to in item 1, 2 or 3 of that Schedule vested in or owned by a declared public statutory authority (within the meaning of sub-section (2A)) that is not used exclusively as public open space or as a park.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 139

- (2A) 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 for the purposes of sub-section (2). S. 139(2A)
inserted by
No. 45/1997
s. 38(2).
- (3) A rate may be fixed by reference to the net annual value (as determined in accordance with the **Valuation of Land Act 1960**) of the particular land.
- (3A) Despite sub-section (3), all rates made and levied under this section after the commencement of section 10 of the **Water Industry (Amendment) Act 1995** shall be levied upon the net annual value of the particular land as at 30 June 1990 levels of value as determined for the purposes of the **Local Government Act 1989**. S. 139(3A)
inserted by
No. 65/1995
s. 10,
amended by
No. 44/1998
s. 28(4)(b).
- (3B) The net annual value of particular land as at the levels of value referred to in sub-section (3A) shall be determined as follows— S. 139(3B)
inserted by
No. 65/1995
s. 10.
- (a) if the valuation of that land in force for the purposes of the **Local Government Act 1989** immediately before the commencement of section 10 of the **Water Industry (Amendment) Act 1995** is at 30 June 1990 levels of value—the net annual value is, subject to paragraph (d), the net annual value as shown in that valuation;
 - (b) if the valuation of that land in force for the purposes of the **Local Government Act 1989** immediately before that commencement is at levels of value as at a date before 30 June 1990 or at levels of value as at a date after 30 June 1990 but at no time before that later date was there in force for the purposes of that Act a valuation of that land at 30 June 1990 levels of value—the net annual value is, subject to paragraph (d), the

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

net annual value as shown in the valuation then in force multiplied by the valuation equalization factor applying to the area in which the land is situated;

- (c) if the valuation of that land in force for the purposes of the **Local Government Act 1989** immediately before that commencement is at levels of value as at a date after 30 June 1990 but at any time before then the valuation of that land in force for the purposes of that Act was at 30 June 1990 levels of value—the net annual value is, subject to paragraph (d), the net annual value as shown in the valuation at 30 June 1990 levels of value;
 - (d) if subsequent to that commencement that land is valued for the purposes of a supplementary valuation made for the purposes of the **Local Government Act 1989**—the net annual value is the net annual value as shown in the most recent such supplementary valuation or, if that supplementary valuation is not at 30 June 1990 levels of value, that net annual value multiplied by the valuation equalization factor applying to the area in which the land is situated.
- (3C) A reference in sub-section (3B) to a valuation equalization factor applying to an area is a reference to a factor determined by the Valuer-General and published in the Government Gazette being a factor by which, in the opinion of the Valuer-General, the net annual value of land within that area determined as at a particular date ought to be multiplied if the net annual value of the land is to accord with levels of value generally prevailing in that area as at 30 June 1990.

S. 139(3C)
 inserted by
 No. 65/1995
 s. 10.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 139

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| (3CA) Nothing in section 266(6) of the Water Act 1989 applies to the calculation or application of a valuation equalisation factor under this section. | S. 139(3CA) inserted by No. 110/1997 s. 36. |
| (3D) Despite sub-section (3), (3A) or (3B), a rate levied by the rating authority under this section on any land may be levied on the basis of a value determined by the rating authority from time to time in respect of that land. | S. 139(3D) inserted by No. 45/1997 s. 38(3), amended by No. 44/1998 s. 28(4)(a). |
| (3E) The value determined by the rating authority under sub-section (3D) in respect of any land must not be greater than the value on which rates would have been levied on that land under this section if the rating authority had not made a determination under sub-section (3D) in respect of that land. | S. 139(3E) inserted by No. 45/1997 s. 38(3), amended by No. 44/1998 s. 28(4)(a). |
| (4) The rating authority may fix a minimum amount of rate to be paid in respect of any land and may fix different minimum amounts in respect of different classes of land. | S. 139(4) amended by No. 44/1998 s. 28(4)(a). |
| (4A) Despite anything to the contrary in this section or 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 the rating authority levying an amount in lieu of a rate under this section in respect of a financial year, or any quarter or half of a financial year, in relation to land vested in or owned by the authority. | S. 139(4A) inserted by No. 45/1997 s. 38(4), amended by No. 44/1998 s. 28(4)(a). |
| (4B) The amount to be levied in lieu of a rate in accordance with sub-section (4A) is the amount agreed between the authority and the rating authority or, in the absence of agreement, determined by the Treasurer. | S. 139(4B) inserted by No. 45/1997 s. 38(4), amended by No. 44/1998 s. 28(4)(a). |
| (4C) An approval may only be given by the Treasurer under sub-section (4A) on the application of the rating authority. | S. 139(4C) inserted by No. 45/1997 s. 38(4), amended by No. 44/1998 s. 28(4)(a). |

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 140

S. 139(6)
amended by
No. 44/1998
s. 28(4)(c)
(i)–(iii).

S. 139(7)
amended by
No. 44/1998
s. 28(4)(d).

S. 139(8)
substituted by
No. 44/1998
s. 28(5).

S. 140(2)
amended by
No. 44/1998
s. 28(6)(a).

- (5) A rate made and levied under this section must not in any case exceed the amount specified by the Governor in Council by Order published in the Government Gazette for the purposes of this sub-section.
- (6) If the rating authority is of the opinion that relief should be given under this sub-section in respect of any land or class of land on which a rate under this section would otherwise be made and levied, the rating authority may exempt the person or persons who would otherwise be from time to time liable to pay the rate in respect of that land or land of that class from liability to pay the rate either wholly or to such an extent as is specified by the rating authority.
- (7) An exemption must not be given under sub-section (6) in the case of land used primarily for residential, commercial or industrial purposes.
- (8) An exemption given under sub-section (6) may be revoked by a subsequent decision of the rating authority and has effect in each year until so revoked.
- (9) In a proceeding to levy or recover a rate, until there is evidence to the contrary, no proof is required that the requirements of this section or the regulations have been complied with.

140. Rates to be recovered from owner

- (1) A rate made and levied under section 139 in respect of any land is payable by and recoverable from the owner of the land for the time being.
- (2) A rate made and levied under section 139 in respect of any land, and any interest payable in respect of that rate, is a charge on the land and remains so until paid.

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 141

- (3) A rate made and levied under section 139 in respect of any land is due and must be paid by the date specified in the notice requiring payment.
- (4) A notice requiring payment of a rate must not specify a payment date that is not at least 14 days after the date of issue of the notice. S. 140(4)
amended by
No. 12/1996
s. 20.
- (5) The rating authority may require a person to pay interest on any amounts of rates— S. 140(5)
amended by
No. 44/1998
s. 28(6)(b).
 - (a) which that person is liable to pay; and
 - (b) which have not been paid by the due date.
- (6) The interest—
 - (a) is to be calculated at the prescribed rate; and
 - (b) becomes payable on and from the date on which the rate was made and levied; and
 - (c) continues to be payable until the payment or recovery of all rates and interest due. S. 140(6)(c)
amended by
No. 44/1998
s. 28(6)(c).
- (7) If a rate in respect of any land or interest on such a rate remains unpaid after it is due and payable, it may be recovered from the owner of the land for the time being as a debt due to the State by that owner. S. 140(7)
substituted by
No. 44/1998
s. 28(7).

141. Remission etc. of payment of rates

The rating authority, on the application of a person liable to pay a rate made and levied under section 139 in respect of any land who in the opinion of the rating authority is in necessitous circumstances or is a member of a class of persons prescribed for the purposes of this section—

- (a) may remit or excuse the payment of the rate or any part of it or any interest payable in respect of the rate or any part of that interest; or

S. 141
amended by
No. 44/1998
s. 28(8)(a)(i)(ii).

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 142

- (b) may defer payment of the rate or any part of it or any interest payable in respect of the rate or any part of that interest.

142. Agreement with licensee with respect to rate collection

The rating authority may enter into an agreement with a licensee with respect to the collection by that licensee, on behalf of the rating authority, of any rate made and levied under section 139 in respect of any land and any interest payable in respect of that rate.

143. Rate collection by metropolitan companies

The companies referred to in section 17(1) must collect, on behalf of the rating authority, rates and interest referred to in section 142 that relate to the area or areas specified in their licences on the terms and conditions agreed with the rating authority or, in default of agreement, determined by the Commission.

* * * *

* * * *

Division 6—Miscellaneous

* * * *

S. 142
amended by
No. 44/1998
s. 28(8)(b)(i)(ii).

S. 143
amended by
Nos 44/1998
s. 28(8)(c),
62/2001
s. 91(c).

S. 144
amended by
No. 65/1995
s. 11,
repealed by
No. 66/2000
s. 16.

S. 145
repealed by
No. 66/2000
s. 16.

S. 146
repealed by
No. 65/1995
s. 14(37).

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 147

147. Powers of authorised officers

- (1) For the purposes of this Part and section 184(2) and (3), each authorised officer has the same powers as an authorised officer has under section 31 of the **Land Act 1958**.
- (2) Sub-section (1) has effect as if any reference in section 31 of the **Land Act 1958** to regulations made under the **Land Act 1958** or section 13 of the **Crown Land (Reserves) Act 1978** were a reference to regulations made under this Part or section 184(2) and (3).

* * * * *

S. 147
substituted by
No. 66/2000
s. 17.

S. 148
repealed by
No. 66/2000
s. 17.

149. Regulations

The Governor in Council may make regulations for or with respect to—

- (a) the care, preservation, protection, management and use of, and the preservation of good order on, any waterways land;
- (b) the removal from any waterways land of any structure, abandoned or derelict vessel or vehicle, or other thing, and the manner in which the thing removed may be dealt with or disposed of;
- (c) prohibiting or regulating activities relating to recreation, leisure, tourism or water transport on waterways land;
- (d) fees or charges in relation to the use of waterways land for the purposes of recreation, leisure, tourism or water transport for—

S. 149(a)
amended by
No. 66/2000
s. 18(a).

S. 149(b)
substituted by
No. 66/2000
s. 18(b).

S. 149(c)
inserted by
No. 66/2000
s. 18(c).

S. 149(d)
inserted by
No. 66/2000
s. 18(c).

Water Industry Act 1994
Act No. 121/1994

Part 4—Land Management and Rating Powers

s. 149

S. 149(e)
 inserted by
No. 66/2000
 s. 18(c).

Pt 4 Div. 7
 (Heading and
 ss 150–153)
 repealed by
No. 66/2000
 s. 19.

- (i) entry on the whole or any part of waterways land by any person or animal; or
- (ii) the provision or use of any improvements, services or facilities on any waterways land;
- (e) closing any part of waterways land—
 - (i) for the purposes of an organised activity; or
 - (ii) in an emergency.

* * * * *

Water Industry Act 1994
Act No. 121/1994

Part 4A—Parks and Reserves Trust Account

s. 153A

PART 4A—PARKS AND RESERVES TRUST ACCOUNT

Pt 4A
(Heading and
s. 153A)
inserted by
No. 44/1998
s. 29.

153A. Parks and Reserves Trust Account

S. 153A
inserted by
No. 44/1998
s. 29.

(1) There shall be established in the Trust Fund an account to be known as the "Parks and Reserves Trust Account".

(2) There shall be paid into the Parks and Reserves Trust Account—

(a) all amounts in payment of rates and interest received by, or collected on behalf of, the Minister under Division 5 of Part 4; and

S. 153A(2)(a)
amended by
No. 66/2000
s. 20(1)(a).

* * * * *

S. 153A(2)(b)
repealed by
No. 66/2000
s. 20(1)(b).

(c) any income from the investment of money standing to the credit of the Trust Account and the proceeds of sale of any investment; and

(d) any other money approved by the Treasurer.

(3) There shall be paid out of the Parks and Reserves Trust Account—

(a) such amounts as the Secretary, with the approval of the Minister, determines for the purposes of the management and control, within the metropolitan area, of open space, parks and waterways for the purposes of conservation, recreation, leisure, tourism and navigation;

Water Industry Act 1994
Act No. 121/1994

Part 4A—Parks and Reserves Trust Account

s. 153A

S. 153A(3)(ba)
inserted by
No. 66/2000
s. 20(2)(a).

S. 153A(3)(c)
amended by
No. 66/2000
s. 20(2)(b).

S. 153A(3)(d)
repealed by
No. 66/2000
s. 20(2)(c).

S. 153A(5)
substituted by
No. 66/2000
s. 20(3).

(b) such amounts as the Secretary, with the approval of the Minister, determines as financial assistance by way of grants, loans or otherwise to persons or bodies engaged in activities within the metropolitan area of the kind referred to in paragraph (a);

(ba) such amounts as the Secretary, with the approval of the Minister, determines are necessary for the purpose of the acquisition of land by the Crown in the metropolitan area, for the purposes of conservation, recreation, leisure or tourism or for any of the purposes specified in paragraphs (l), (m), (n), (o) and (w) of section 4(1) of the **Crown Land (Reserves) Act 1978**;

(c) costs and expenses incurred by the Minister in connection with the making, levying, collection and recovery of rates under Division 5 of Part 4;

* * * * *

(e) any other amounts authorised under this or any other Act to be paid out of the Trust Account.

(4) Money standing to the credit of the Parks and Reserves Trust Account may be invested in any manner in which trust funds may be invested under the **Trustee Act 1958**.

(5) In this section—

"metropolitan area" means the area or areas specified by the Governor in Council for the purposes of this section by Order published in the Government Gazette.

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 154

**PART 5—TRANSFER OF ASSETS, LIABILITIES AND STAFF
OF MELBOURNE WATER CORPORATION**

Division 1—Definitions

154. Definitions

(1) In this Part—

"chief executive officer", in relation to Melbourne Water Corporation, means Managing Director of Melbourne Water Corporation and, in relation to a company licensee, means the chief executive officer of the company licensee;

S. 154(1) def. of "chief executive officer" substituted by No. 65/1995 s. 14(38)(a).

"company licensee" means City West Water Ltd, A.C.N. 066 902 467, South East Water Ltd, A.C.N. 066 902 547 or Yarra Valley Water Ltd, A.C.N. 066 902 501;

"financial accommodation" means a financial benefit or assistance to obtain a financial benefit arising from or as a result of—

- (a) a loan;
- (b) issuing, endorsing or otherwise dealing in promissory notes;
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) issuing, purchasing or otherwise dealing in securities;
- (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
- (f) in relation to Melbourne Water Corporation, any other arrangement that the Governor in Council on the recommendation of the Treasurer has approved as financial accommodation

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 154

in relation to Melbourne Water Corporation under the **Borrowing and Investment Powers Act 1987**;

"financial arrangement" means an arrangement entered into for the purpose of managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or other costs of obtaining financial accommodation;

"financial obligation", in relation to Melbourne Water Corporation, means the liability of Melbourne Water Corporation in respect of—

- (a) financial accommodation obtained by Melbourne Water Corporation; or
- (b) a financial arrangement entered into by Melbourne Water Corporation—

and includes the liability of Melbourne Water Corporation in respect of inscribed stock issued by Melbourne Water Corporation;

"former Melbourne Water property" means property, rights or liabilities of Melbourne Water Corporation that, under this Part, have vested in, or become liabilities of, another person;

"instrument" includes a document and an oral agreement;

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective but, in relation to Melbourne Water Corporation, does not include financial obligations;

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 154

"Melbourne Water instrument" means an instrument (including a legislative instrument other than this Act) subsisting immediately before the relevant date—

- (a) to which Melbourne Water Corporation was a party; or
- (b) that was given to or in favour of Melbourne Water Corporation; or
- (c) that refers to Melbourne Water Corporation; or
- (d) under which—
 - (i) money is, or may become, payable to or by Melbourne Water Corporation; or
 - (ii) other property is to be, or may become liable to be, transferred to or by Melbourne Water Corporation;

"new employer", in relation to a transferred Melbourne Water employee, means the body by which, by virtue of section 173, the transferred Melbourne Water employee is regarded as being employed with effect from the relevant date;

"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"—

- (a) in relation to an allocation statement or property, rights or liabilities allocated under an allocation statement, means the date fixed by the Minister under sub-section (2) for the purposes of that statement;

S. 154(1) def. of "relevant date" substituted by No. 65/1995 s. 14(38)(b).

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 154

(b) in relation to a document referred to in section 172(1), means a date fixed by the Minister under sub-section (2) for the purposes of that document;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"security" includes inscribed stock and debenture, bond, debenture stock, notes or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation, whether or not constituting a charge on property;

"swap contract" means an agreement entered into by Melbourne Water Corporation with another person under which—

- (a) Melbourne Water Corporation undertakes to make payments in any currency to, or to the account of, the other party to the agreement; and
- (b) the other party undertakes to make payments to, or to the account of, Melbourne Water Corporation in the same or another currency;

"TCV" means Treasury Corporation of Victoria;

"transferred Melbourne Water employee" means a person who, by virtue of section 173, is regarded as being employed by a new employer with effect from the relevant date;

"transferee", in relation to former Melbourne Water property, means the person to whom the property has been transferred under this Part.

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 155

- (2) The Minister may, by notice published in the Government Gazette—
- (a) fix the relevant date for the purposes of an allocation statement under section 155;
 - (b) fix the relevant date for the purposes of a document referred to in section 172(1).

S. 154(2)
substituted by
No. 65/1995
s. 14(39).

Division 2—Allocation of property

155. Minister may direct Melbourne Water Corporation to transfer property

- (1) The Minister may, in writing, direct Melbourne Water Corporation or a company licensee to transfer property, rights and liabilities of a specified kind to a person or persons nominated by the Minister.
- (2) Within 3 months after receiving a direction under sub-section (1), Melbourne Water Corporation or the company licensee must give to the Minister a statement or statements approved by the Minister relating to the property, rights and liabilities of Melbourne Water Corporation or the former Melbourne Water property to which the direction relates, as at a date specified by the Minister for the purposes of the relevant statement.
- (3) A statement under this section—
 - (a) must allocate the property, rights and liabilities of Melbourne Water Corporation or the former Melbourne Water property shown in the statement to, or between, the person or persons nominated by the Minister; and
 - (b) must be signed by the chief executive officer.

S. 155(1)
amended by
No. 65/1995
s. 14(40).

S. 155(2)
amended by
No. 65/1995
s. 14(41)
(a)–(d).

S. 155(3)(a)
amended by
No. 65/1995
s. 14(42).

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 156

S. 155(5)
amended by
No. 65/1995
s. 14(43).

S. 155(6A)
inserted by
No. 12/1996
s. 21.

S. 156(1)
amended by
No. 65/1995
s. 14(44).

- (4) If a statement under this section is approved by the Treasurer and the Minister—
 - (a) the Treasurer and the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.
- (5) The Treasurer and the Minister may at any time direct Melbourne Water Corporation or a company licensee to amend a statement given to them under this section as specified in the direction.
- (6) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.
- (6A) An amendment under sub-section (6) of an allocation statement for which the relevant date is 1 January 1995 may be made with effect from 1 January 1995 if the Treasurer and the Minister are satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than Melbourne Water Corporation, Melbourne Parks and Waterways or a company licensee.
- (7) In this section, "**statement**" and "**allocation statement**" include a statement or allocation statement amended in accordance with this section.

156. Certificate of chief executive officer

- (1) A certificate signed by the chief executive officer certifying that property, rights or liabilities specified in the certificate have been allocated under the allocation statement to a person so specified is, unless revoked under sub-section (2), conclusive evidence—

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 157

- (a) that the property, rights or liabilities have been so allocated; and
- (b) that the property, rights or liabilities vested in or became the property, rights or liabilities of the transferee on the relevant date.
- (2) If the Treasurer and the Minister so direct the chief executive officer in writing, the chief executive officer must revoke a certificate given under sub-section (1) by issuing another certificate or certificates in place of the first certificate.
- (3) The chief executive officer—
 - (a) must keep a register of certificates issued under this section; and
 - (b) must make the register reasonably available for inspection by a transferee or other interested person.

Division 3—Transfer of property

157. Property transferred to nominee

On the relevant date—

- (a) all property and rights, wherever located, that are allocated under an allocation statement to a person nominated by the Minister in a direction under section 155, vest in that person; and
- (b) all liabilities, wherever located, that are allocated under an allocation statement to that person, become liabilities of that person.

S. 157(a)
amended by
No. 65/1995
s. 14(45).

S. 157(b)
amended by
No. 65/1995
s. 14(45).

158. Allocation of property etc. subject to encumbrances

Unless an allocation statement under this Part otherwise provides, where, under this Part—

- (a) property and rights vest in; or

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 159

(b) liabilities become liabilities of—

a person nominated by the Minister in a direction under section 155—

- (c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (d) the rights to which Melbourne Water Corporation or the company licensee was entitled in respect of those liabilities immediately before they ceased to be liabilities of Melbourne Water Corporation or the company licensee vest in the transferee.

S. 158(d)
amended by
No. 65/1995
s. 14(46).

S. 159
amended by
No. 65/1995
s. 14(47).

159. Value of former Melbourne Water property

The value to a person nominated by the Minister in a direction under section 155 of former Melbourne Water property as at the relevant date is the value shown in, or calculated in accordance with, the relevant allocation statement.

S. 160
amended by
No. 65/1995
s. 14(48)(a).

160. Substitution of party to agreement

If, under an allocation statement, the rights and liabilities of Melbourne Water Corporation or a company licensee under an agreement are allocated to a person nominated by the Minister in a direction under section 155—

- (a) the person becomes, on the relevant date, a party to the agreement in place of Melbourne Water Corporation or the company licensee; and
- (b) on and after the relevant date, the agreement has effect as if the person had always been a party to the agreement.

S. 160(a)
amended by
No. 65/1995
s. 14(48)(b).

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 161

161. Melbourne Water instruments

Each Melbourne Water instrument relating to former Melbourne Water property continues to have effect according to its tenor on and after the relevant date as if a reference in the instrument to Melbourne Water Corporation were a reference to the transferee.

162. Proceedings

If, immediately before the relevant date, proceedings relating to former Melbourne Water property (including arbitration proceedings) to which Melbourne Water Corporation or a company licensee was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for Melbourne Water Corporation or the company licensee as a party to the proceedings and has the same rights in the proceedings as Melbourne Water Corporation or the company licensee had.

S. 162
amended by
No. 65/1995
s. 14(49)(a)(b).

163. Interests in land

Without prejudice to the generality of this Act and despite anything to the contrary in any other Act or law, if, immediately before the relevant date, Melbourne Water Corporation or a company licensee is, in relation to former Melbourne Water property, the registered proprietor of, or entitled to be registered as the proprietor of, an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

S. 163
amended by
No. 65/1995
s. 14(50)(a).

- (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 Melbourne Water Corporation or the company licensee had.

S. 163(b)
amended by
No. 65/1995
s. 14(50)(b).

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 164

164. 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 chief executive officer, must make any amendments in the Register that are necessary because of the operation of this Act.

* * * * *

S. 164(2)(3)
repealed by
No. 85/1998
s. 24(Sch.
item 67).

S. 165
amended by
Nos 65/1995
s. 14(51),
110/1997
s. 37 (ILA
s. 39B(1)).

165. Taxes

- (1) No stamp duty or other tax is chargeable under any Act in respect of anything 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 Melbourne Water Corporation or former Melbourne Water property.
- (2) No stamp duty or other tax is chargeable under any Act in respect of any transaction entered into or instrument made, executed, lodged or given for the purpose of, or connected with, the transfer otherwise than under this Part to Melbourne Water Corporation, Melbourne Parks and Waterways or a company licensee of property arising out of a subdivision of property of Melbourne Water Corporation or of former Melbourne Water property.

S. 165(2)
inserted by
No. 110/1997
s. 37.

166. Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of Melbourne Water Corporation in relation to former Melbourne Water property if this Part had

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 167

not been enacted, is admissible for or against the interests of the transferee.

- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of Melbourne Water Corporation and to entries made in those books of account before the relevant date, whether or not they relate to former Melbourne Water property.
- (3) In sub-section (2), "**books of account**" has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

167. Validity of things done under this Act

- (1) Nothing effected by this Act or done or suffered under this Act—
 - (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 any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (c) is to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) is to be regarded as frustrating any contract; or
 - (e) releases any surety or other obligee wholly or in part from any obligation.

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 168

S. 167(2)
amended by
No. 65/1995
s. 14(52)(a)(b).

- (2) The validity of any act or transaction of Melbourne Water Corporation or a company licensee or the chief executive officer must not be called in question in any proceedings on the ground that any provision of this Part had not been complied with.

Division 4—Financial obligations of Melbourne Water Corporation

168. Financial obligations of Melbourne Water Corporation

S. 168(2)(a)
amended by
No. 65/1995
s. 14(53)(a)(b).

- (1) Melbourne Water Corporation must give to the Treasurer and the Minister, within the period of 3 months after the day on which this Act receives the Royal Assent or such longer period as the Treasurer and the Minister approve, a statement, in a form approved by the Treasurer and the Minister, of its financial obligations valued at a fair market value as at a date specified by the Minister.
- (2) The statement under sub-section (1)—
- (a) may allocate, for the purposes of section 170, responsibility for all or for any specified financial obligations to which that section applies between the company licensees; and
 - (b) must specify the financial obligations of Melbourne Water Corporation to which section 170 does not apply and specify the company licensee that is to be responsible for making payments to Melbourne Water Corporation in respect of Melbourne Water Corporation's liability under particular financial obligations.

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 169

- (3) If the statement is approved by the Treasurer and the Minister—
 - (a) the Treasurer and the Minister must sign the statement; and
 - (b) the statement is the allocation statement of financial obligations for the purposes of this Division.
- (4) An allocation statement of financial obligations may be amended, or further amended, by writing signed by the Treasurer and the Minister.

169. Company licensees to make payments to Melbourne Water Corporation

- (1) Each company licensee must pay to Melbourne Water Corporation such amounts, and at such times, as Melbourne Water Corporation is liable to pay in respect of financial obligations for which the company licensee is responsible in accordance with the allocation statement under section 168.
- (2) Melbourne Water Corporation must pay to each company licensee amounts that Melbourne Water Corporation receives in respect of financial obligations (including amounts received under swap contracts) for which the company licensee is responsible in accordance with the allocation statement under section 168.

170. Payments in respect of financial obligations

- (1) If—
 - (a) an Order has been made under section 36D(1) or 36E(1) of the **Treasury Corporation of Victoria Act 1992** relating to financial obligations of Melbourne Water Corporation; and

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 171

(b) responsibility for those financial obligations has been allocated under an allocation statement under section 168 to a company licensee—

then—

(c) the company licensee must pay to TCV such amounts, and at such times, as Melbourne Water Corporation would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as TCV and the company licensee otherwise agree; and

(d) TCV must pay to the company licensee such amounts, and at such times, as Melbourne Water Corporation would have been entitled to receive in respect of the financial accommodation or financial arrangements to which the financial obligations relate if the Order had not been made, except in so far as TCV and the company licensee otherwise agree.

(2) An amount payable under sub-section (1) may be recovered in a court of competent jurisdiction as a debt due to TCV or the company licensee, as the case requires.

Division 5—Rights as between transferees

171. Interim arrangements

(1) At any time before the expiration of the period of 6 months after the commencement of this section (or such longer period as the Minister approves by writing given to each of the transferees of former Melbourne Water property before the expiration of that period of 6 months), each transferee of former Melbourne Water property ("the new body")—

S. 171(1)
amended by
No. 65/1995
s. 14(54).

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 171

-
- (a) may, subject to any agreement to the contrary, exercise the same rights and privileges (including access to goods and services) in relation to former Melbourne Water property that is transferred to another transferee as are reasonably necessary to enable the new body to carry out its functions in a manner similar to the manner in which Melbourne Water Corporation carried out corresponding functions before the relevant date; and
 - (b) must, subject to any agreement to the contrary—
 - (i) permit any other transferee to exercise the same rights and privileges in relation to former Melbourne Water property that is transferred to the new body; and
 - (ii) make available to each other transferee such goods and services as are available from that former Melbourne Water property—

as are reasonably necessary to enable the other transferee to carry out its functions in a manner similar to the manner in which Melbourne Water Corporation carried out corresponding functions before the relevant date.
- (2) A transferee must pay such reasonable charges for the exercise of rights and privileges under subsection (1)(a) in respect of former Melbourne Water property of another transferee as are determined by the other transferee and agreed between the parties or, if the other transferee determines charges and there is no agreement, as are determined by the Minister.
-

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 172

Division 6—Staff

172. List of Melbourne Water Corporation staff

- (1) Before the relevant date, Melbourne Water Corporation must prepare and submit to the Minister and Treasurer a document signed by the chief executive officer listing officers and employees of Melbourne Water Corporation and specifying in respect of each such officer or employee, the body by which he or she is to be regarded as having been employed by virtue of section 173 with effect from the relevant date.
- (2) The document may be amended, before or after the relevant date, by instrument signed by the chief executive officer and given to the Minister and Treasurer and the amendment is to be regarded as having effect, or having had effect, from the relevant date.
- (3) Nothing in this section prevents a person listed in the document as an officer or employee of Melbourne Water Corporation from resigning or being dismissed at any time before the relevant date in accordance with the terms and conditions of his or her appointment or employment.

173. Transfer of Melbourne Water Corporation staff

- (1) A person listed as an officer or employee of Melbourne Water Corporation in a document under section 172 who was such an officer or employee immediately before the relevant date is to be regarded as—
 - (a) having been employed by the new employer with effect from the relevant date; and

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 173

- (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the relevant date, as an officer or employee of Melbourne Water Corporation; and
 - (c) having accrued an entitlement to benefits, in connection with that employment by the new employer, that is equivalent to the entitlement that the person had accrued, as an officer or employee of Melbourne Water Corporation, immediately before the relevant date.
- (2) The service of a transferred Melbourne Water employee as an employee of the new employer is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the relevant date, as an officer or employee of Melbourne Water Corporation.
- (3) A transferred Melbourne Water employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of Melbourne Water Corporation because of this Act.
- (4) A certificate purporting to be signed by the chief executive officer certifying that a person named in the certificate was with effect from the relevant date employed, by virtue of this section, by a body named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

Water Industry Act 1994
Act No. 121/1994

Part 5—Transfer of Assets, Liabilities and Staff of Melbourne Water Corporation

s. 174

174. Future terms and conditions of transferred employees

Nothing in section 173 prevents—

- (a) any of the terms and conditions of employment of a transferred Melbourne Water employee from being altered by or under any law, award or agreement with effect from any time after the relevant date; or
- (b) a transferred Melbourne Water employee from resigning or being dismissed at any time after the relevant date in accordance with the then existing terms and conditions of his or her employment by the new employer.

* * * * *

S. 175
 repealed by
 No. 4/1996
 s. 134(13).

PART 6—GENERAL**175A. Vesting in Crown of bed, banks and soil of certain watercourses**

S. 175A
inserted by
No. 65/1995
s. 12.

- (1) Despite anything to the contrary in any Act, there shall by virtue of and without further or other conveyance, transfer or assignment than this section, be divested from Melbourne Water Corporation and vested in the Crown, all the bed, soil and banks of the River Yarra Yarra and of all other public rivers, creeks, watercourses and waterways—
 - (a) within the metropolis within the meaning of the MMBW Act and vested in Melbourne Water Corporation immediately before the commencement of this section under section 60 or 271 of that Act; or
 - (b) on land included in the metropolis within the meaning of the MMBW Act as mentioned in section 3(7) of that Act and vested in Melbourne Water Corporation immediately before the commencement of this section under an Order in Council made under section 3 of that Act.
- (2) Any land vested in the Crown under subsection (1)—
 - (a) is deemed to be unalienated land of the Crown; and
 - (b) is vested subject to any trust, encumbrance, limitation or restriction, and to any other estate or interest in the land, existing immediately before that vesting.

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 176

S. 175A(3)
amended by
No. 66/2000
s. 21.

- (3) Despite anything in the **Water Act 1989** or any other Act, any bed, soil and banks to which subsection (1) applies shall be under the management and control of Melbourne Water Corporation to the extent necessary to enable that body to exercise its functions under this Act or the MMBW Act.

S. 176
amended by
Nos 65/1995
s. 14(55),
66/2000 s. 22.

176. Power of Minister to delegate

The Minister may delegate, by instrument, to any officer of the Department, any director or officer of Melbourne Water Corporation, any director, member or officer of a licensee or any person employed by a licensee any power, discretion, function, authority or duty of the Minister under this Act, other than this power of delegation.

S. 176A
inserted by
No. 65/1995
s. 13.

176A. 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
- (b) to each prescribed person; and
- (c) within a prescribed period.

Penalty: 10 penalty units.

177. General evidentiary provisions

- (1) If in any proceeding under this Act or the regulations 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.

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 177

(2) If—

- (a) in any proceeding under this Act or the regulations 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, a licensee 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 to the amount of water computed by the licensee in accordance with sub-section (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 sub-section (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) In any proceeding under this Act or the regulations until evidence is given to the contrary proof is not required as to any of the following—

- (a) the issue of a licence to a licensee;
- (b) the due appointment of the directors of a licensee;
- (c) the employment of any person by a licensee;

**S. 177(4)
inserted by
No. 110/1997
s. 38.**

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 177

- (d) the authorisation of a person by a licensee to do any act or for any particular purpose;
- (e) the size, location or boundaries of any area for which a licence is issued to a licensee;
- (f) the fact that a particular property is located within a particular area;
- (g) the presence of a quorum at any meeting of a licensee;
- (h) that a document purporting to be made or issued by a licensee was made or issued by that licensee;
- (i) the validity of the contents of any records or minutes of a licensee.

(5) A document purporting—

- (a) to be a map or plan made or issued by a licensee, whether before or after the commencement of section 38 of the **Water Acts (Further Amendment) Act 1997**; 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 and, in the absence of evidence to the contrary, is proof of the matters shown in the map or plan.

(6) In any proceeding under this Act or the regulations—

- (a) evidence that a person is liable to a service charge or usage charge in respect of any property; or

S. 177(5)
 inserted by
 No. 110/1997
 s. 38.

S. 177(6)
 inserted by
 No. 110/1997
 s. 38.

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 177A

- (b) evidence that a person's name appears in any records kept by a licensee as the owner or occupier of any property; 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 property; 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 property—

is, in the absence of evidence to the contrary, proof that that person is the owner or occupier (as the case requires) of that property.

- (7) In any proceeding under this Act or the regulations, 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.

S. 177(7)
inserted by
No. 110/1997
s. 38.

177A. Use of analyst's certificate in prosecutions

- (1) If in respect of a proceeding for an offence against this Act or against any regulation 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

S. 177A
inserted by
No. 110/1997
s. 39.

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 177B

are based unless the defendant has at least 7 days before the 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.

177B. Authentication of documents

Despite anything to the contrary in any other Act, a document requiring authentication by a licensee may be sufficiently authenticated without the seal of the licensee if signed by an authorised person.

177C. Discharges into works etc.

- (1) Any instrument or monitoring, recording or other equipment or installation used by an authorised person or an analyst in connection with any evidence given in a proceeding under this Act or the regulations relating to the discharge of anything into the works of a licensee or a sewerage system under the control and management of a licensee must be presumed, until the contrary is proved, to be accurate and precise.
- (2) Despite the rule against hearsay, the results of any analysis based on any analytical techniques which by their nature infringe that rule are admissible in evidence in any proceeding referred to in sub-section (1).
- (3) Each attribute of a sample taken under this Act or the regulations must for the purpose of any proceeding referred to in sub-section (1) be presumed, until the contrary is proved, not to be materially affected by its method of storage or preservation.

S. 177B
inserted by
No. 110/1997
s. 39.

S. 177C
inserted by
No. 110/1997
s. 39.

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 178

(4) A finding by a court that an attribute of a sample referred to in sub-section (3) was materially affected by its method of storage or preservation does not rebut the presumption created by that sub-section in relation to the other attributes of the sample.

(5) If—

(a) a corporation has entered into a trade waste agreement with a licensee; and

(b) that corporation shares premises with a corporation that is a subsidiary of that corporation within the meaning of the Corporations Act; and

S. 177C(5)(b)
amended by
No. 44/2001
s. 3(Sch.
item 128.3).

(c) there occurs on the premises an act or omission that is capable of constituting a contravention of the trade waste agreement—

the corporation that entered into the trade waste agreement must be presumed, for the purpose of any proceeding under this Act or the regulations relating to that contravention, to have caused that act or omission until the contrary is proved.

(6) For the purpose of any proceeding under this Act or the regulations, anything found in a sewer on a property or which exclusively services a property or in any drain or other works on a property connected to such a sewer, must be presumed, in the absence of evidence to the contrary, to have been discharged into that sewer, drain or other works by the occupier of that property.

178. Offences by bodies corporate

(1) If a body corporate commits an offence against this Act or the regulations, any officer of the body corporate 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

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 179

guilty of that offence and liable to the penalty for it, irrespective of whether the body corporate has itself been prosecuted for, or convicted or found guilty of, the offence.

- (2) If in a proceeding for an offence against this Act or the regulations it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) A statement made by an officer of a body corporate is admissible as evidence against the body corporate in any proceeding for an offence against this Act or the regulations.

179. Prosecutions

- (1) Proceedings for an offence against a provision of this Act or of regulations made under this Act may only be brought by—
 - (a) a member of the police force; or
 - (ab) in the case of an offence against section 78H or 78O, where the licensee responsible for the implementation of the relevant plan is a licensee referred to in section 17(1), an employee of the licensee authorised to do so, either generally or in any particular case, by the licensee; or
 - (b) a prescribed person or a person included in a prescribed class of persons.

- (1A) Without limiting section 184, regulations made for the purposes of sub-section (1)(b) may prescribe a person or a class of persons in relation to all offences against this Act or the regulations made under this Act or in relation to a specified offence or class of offence.

S. 179(1)(ab)
 inserted by
 No. 90/2003
 s. 11(1).

S. 179(1A)
 inserted by
 No. 22/1999
 s. 9.

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 180

- (2) In a proceeding for an offence referred to in sub-section (1) 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 a licensee under sub-section (1)(ab) if the licensee is satisfied that the employee is appropriately qualified and trained.

S. 179(3)
inserted by
No. 90/2003
s. 11(2).

180. Service of documents on a licensee

- (1) Any document required or permitted to be served on a licensee that is not a Victorian body corporate may be served—
 - (a) by being left at the principal office of the licensee with a person authorised in writing by the licensee to accept service of documents on behalf of the licensee; or
 - (b) by sending it by certified mail addressed to the chief executive officer of the licensee at the principal office of the licensee.
- (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.

181. Service of documents by a licensee

- (1) If by or under this Act a document is required or permitted to be served by a licensee 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

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 181

- (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 licensee, 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 licensee, 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 sub-section (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 certified mail 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.

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 182

- (4) 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.

182. Treasurer may give guarantee

- (1) The Treasurer may, on behalf of the Government of Victoria, execute a guarantee on such terms and conditions as the Treasurer determines in favour of any person guaranteeing the due satisfaction of amounts that become payable by a company licensee within the meaning of Part 5 under section 170(1) or of amounts that become payable and of other actions required to be performed as a result of or in connection with the provision to a company licensee within the meaning of Part 5 of financial accommodation including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring to obtain such satisfaction.
- (2) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee given under this section shall be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.
- (3) Any sums received or recovered by the Treasurer from a company licensee within the meaning of Part 5 or otherwise in respect of any sum paid by the Treasurer under a guarantee shall be paid into the Consolidated Fund.

S. 182(1)
amended by
No. 12/1996
s. 22.

183. Trade Practices Act 1974 of the Commonwealth

The regulations may provide that any act or thing or kind of act or thing of or relating to a particular licensee is authorised for a particular period for the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth.

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 183A

S. 183A
inserted by
No. 52/1998
s. 311(Sch. 1
item 106.2),
substituted by
No. 22/1999
s. 10.

183A. Supreme Court—limitation of jurisdiction

It is the intention of section 74A(5) (as substituted by section 8 of the **Water Acts (Amendment) Act 1999**) and section 74A(6) to alter or vary section 85 of the **Constitution Act 1975**.

184. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) the conservation and efficient use of water including—
 - (i) the standards, criteria and procedures to be used for measuring the efficiency of water use of specified classes of private works, fittings and apparatus and the testing, marking and labelling of such works, fittings and apparatus;
 - (ii) the safe operation of licensees' water supply or sewerage systems;
 - (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.
- (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

S. 184(1)(a)(ii)
substituted by
No. 39/1996
s. 13(3).

*Water Industry Act 1994**Act No. 121/1994*

Part 6—General

s. 184

-
- (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) 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 sub-paragraphs (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 person; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
 - (i) wholly or partially or as amended by the regulations; or
-

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 185

- (ii) as in force at a particular time or as in force 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 person; and
- (e) 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 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 for a contravention of the regulations, 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 69; or
 - (ii) if no notice of contravention is served, after conviction of the person for the offence.

185. Savings and transitionals

- (1) Schedule 2 contains savings or transitional provisions.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on—
 - (a) the coming into operation of any provision of this Act; or
 - (b) the removal of any power or function from Melbourne Water Corporation.

Water Industry Act 1994
Act No. 121/1994

Part 6—General

s. 185

-
- (3) The provisions of Schedule 2 are in addition to, and not in derogation from, the provisions of the **Interpretation of Legislation Act 1984**.
-

New Pt 7
(Heading and
ss 186, 187)
inserted by
No. 66/2000
s. 23.

New s. 186
inserted by
No. 66/2000
s. 23.

Water Industry Act 1994
Act No. 121/1994

Part 7—Transitional Provisions

s. 186

PART 7—TRANSITIONAL PROVISIONS

186. Transitional provision for Melbourne Parks and Waterways

Except as otherwise provided in this Act, on the commencement of section 8 of the **Water Industry (Amendment) Act 2000**—

- (a) Melbourne Parks and Waterways is abolished and the members of its Board of directors go out of office; and
- (b) all rights, property and assets that, immediately before that commencement were vested in Melbourne Parks and Waterways, vest in the State; and
- (c) all debts, liabilities and obligations of Melbourne Parks and Waterways existing immediately before that commencement, become debts, liabilities and obligations of the State; and
- (d) the State is substituted as a party to any proceedings pending in any court or tribunal to which Melbourne Parks and Waterways was a party immediately before that commencement; and
- (e) the State is substituted as a party to any arrangement or contract entered into by or on behalf of Melbourne Parks and Waterways and in force immediately before that commencement; and

Water Industry Act 1994
Act No. 121/1994

Part 7—Transitional Provisions

s. 187

- (f) any reference to Melbourne Parks and Waterways in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, 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 State.

187. Continued operation of jetty and mooring licences

Despite the commencement of section 12 of the **Water Industry (Amendment) Act 2000**, any licence granted under section 135A of this Act, and in force immediately before that commencement, continues in force on and from that commencement and section 135A, as in force immediately before that commencement, continues to apply to any such licence until the licence expires or is cancelled (whichever is the earlier).

New s. 187
 inserted by
 No. 66/2000
 s. 23.

Water Industry Act 1994
Act No. 121/1994

Part 8—Wattle Park Land

s. 188

New Pt 8
(Heading and
ss 188–190)
inserted by
No. 66/2000
s. 23.

New s. 188
inserted by
No. 66/2000
s. 23.

New s. 189
inserted by
No. 66/2000
s. 23.

New s. 190
inserted by
No. 66/2000
s. 23.

PART 8—WATTLE PARK LAND

188. Repeal of the Wattle Park Land Act 1991

The Wattle Park Land Act 1991 is repealed.

189. Surrender and reservation of Wattle Park Land

By force of this section the land shown hatched on the Plan in Schedule 3 is surrendered to the Crown and—

- (a) is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests; and
- (b) the folios of the Register Volume 1416 Folio 110, Volume 1761 Folio 141 and Volume 3010 Folio 859 are cancelled; and
- (c) the land is deemed to be permanently reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for public purposes, being in particular the purposes of conservation, recreation, leisure and tourism and the reservation may be dealt with in accordance with that Act.

190. Saving of rights

- (1) This Part does not affect the status or continuity of any interest in, licence or right affecting, or arrangement or agreement relating to—
 - (a) the Wattle Park Chalet; or
 - (b) any golf course or tennis court—on the land set out in Schedule 3.

- (2) On the coming into operation of this Part, any lease, licence, agreement or arrangement to which sub-section (1) applies and to which Melbourne Parks and Waterways was a party has effect as if the Minister were substituted for Melbourne Parks and Waterways as that party.
- (3) Nothing effected by this section is to be regarded as placing any person in breach of or as constituting a default under any provision of a lease, including any provision prohibiting, restricting or regulating the assignment of a lease.

* * * * *

Pts 7, 8
(Headings
and ss 186–
206)
repealed by
No. 22/1999
s. 11(2).

Water Industry Act 1994
Act No. 121/1994

s. 191

Victorian Legislation and Parliamentary Documents

Pt 9 (Heading
and ss 207–
215)
amended by
Nos 65/1995
s. 14(56),
109/1997
s. 533(Sch. 2
item 13.3),
repealed by
No. 22/1999
s. 11(2), new
Pt 9 (Heading
and ss 191–
196)
inserted by
No. 57/2004
s. 3.

PART 9—ENVIRONMENTAL CONTRIBUTIONS

Division 1—Definitions

New s. 191
inserted by
No. 57/2004
s. 3.

191. Definitions

In this Part—

"environmental contribution" means an amount payable by a water supply authority under section 192 or 193;

"financial year" means a period of 12 months beginning on 1 July in any year and ending on 30 June in the next following year;

"water supply authority" means any of the following—

- (a) an Authority that has—
 - (i) a water district under Part 8; or
 - (ii) a sewerage district under Part 9; or
 - (iii) an irrigation district under Part 11—

of the **Water Act 1989**;

Water Industry Act 1994
Act No. 121/1994

Part 9—Environmental Contributions

s. 192

- (b) a person who is the holder of a water licence, a water and sewerage licence or a sewage treatment licence under this Act;
- (c) Melbourne Water Corporation constituted under the **Melbourne Water Corporation Act 1992**.

Division 2—Environmental Contributions

192. Obligation to pay environmental contributions for the period from 1 October 2004 to 30 June 2008

New s. 192
 inserted by
 No. 57/2004
 s. 3.

An authority specified in an item in Column 2 of the Table in Schedule 4 must pay into the Consolidated Fund—

- (a) for the period beginning on 1 October 2004 and ending on 30 June 2005, the amount specified in relation to that item in Column 3 of the Table; and
- (b) for the period beginning on 1 July 2005 and ending on 30 June 2006, the amount specified in relation to that item in Column 4 of the Table; and
- (c) for the period beginning on 1 July 2006 and ending on 30 June 2007, the amount specified in relation to that item in Column 5 of the Table; and
- (d) for the period beginning on 1 July 2007 and ending on 30 June 2008, the amount specified in relation to that item in Column 6 of the Table.

Water Industry Act 1994
Act No. 121/1994

Part 9—Environmental Contributions

193. Obligation to pay environmental contributions for periods from 1 July 2008

- (1) Each water supply authority must pay into the Consolidated Fund, in respect of each financial year in respect of which an Order is made under this section, the amount—
 - (a) that is calculated by reference to the revenue of the authority; and
 - (b) that is determined in accordance with the Order.
- (2) For the purposes of sub-section (1), the Minister, by Order published in the Government Gazette, may specify—
 - (a) the period (being not more than 4 years and not beginning any earlier than 1 July 2008) to which the Order relates; and
 - (b) the revenue or the class or classes of revenue that are to be used in the calculation of the amount under sub-section (1), being—
 - (i) revenue that is derived from the provision of services by the authority, other than recycled water supply services; and
 - (ii) revenue that is derived from a period, as determined by the Minister and specified in the Order, that precedes the period to which the Order relates; and
 - (c) for each financial year to which the Order relates, the percentage or percentages of the revenue specified under paragraph (b) that are to be used in calculating the amount to be paid under sub-section (1), which may vary in accordance with the nature of the service to which the revenue relates or the nature of the authority that is to pay the amount; and

Water Industry Act 1994
Act No. 121/1994

Part 9—Environmental Contributions

s. 193

-
- (d) any authority or authorities that are exempt from the requirement to pay an amount under sub-section (1) in any financial year to which the Order relates, and the reasons for giving any such exemption; and
 - (e) for each financial year to which the Order relates, the total amount being raised under sub-section (1); and
 - (f) the nature of projects or programs to which the amount being raised under sub-section (1) is proposed to be applied; and
 - (g) for each financial year to which the Order relates, the arrangements for the payment of the amount under sub-section (1) within that year.
- (3) In making an Order under this section, the Minister must have regard, amongst other things, to the following—
- (a) the purposes set out in section 194 for which each environmental contribution is collected;
 - (b) the ability of all water supply authorities or any particular water supply authority to make an environmental contribution;
 - (c) any amount that any particular water supply authority has spent or will spend on funding initiatives that are consistent with the purposes set out in section 194;
 - (d) the conclusions reached as a result of any review completed under section 196.
- (4) Despite anything to the contrary in section 27 of the **Interpretation of Legislation Act 1984**, an Order made under this section can only be amended to correct a typographical error or a mathematical miscalculation (or anything stemming from a mathematical miscalculation) or
-

Water Industry Act 1994
Act No. 121/1994

Part 9—Environmental Contributions

any other error that is apparent on the face of the Order.

194. Purpose for the collection of contributions

Each environmental contribution paid by a water supply authority under this Part is collected for the purposes of funding initiatives that seek to—

- (a) promote the sustainable management of water; or
- (b) address adverse water-related environmental impacts.

195. Annual Report

- (1) The Minister must, within 3 months after the end of each financial year in respect of which a water supply authority pays an environmental contribution under this Part, prepare a report setting out details of the expenditure of all money paid as environmental contributions by water supply authorities in that financial year.
- (2) The report must be included in the department's annual report of operations for that financial year under Part 7 of the **Financial Management Act 1994**.

196. Review of the operation of this Part

The Secretary must—

- (a) on or before 1 July 2008; and
- (b) thereafter, on or before the end of each period to which an Order under section 193 relates—

complete a review of the operation of this Part and report to the Minister on the conclusions reached as a result of that review.

New s. 194
inserted by
No. 57/2004
s. 3.

New s. 195
inserted by
No. 57/2004
s. 3.

New s. 196
inserted by
No. 57/2004
s. 3.

Water Industry Act 1994
Act No. 121/1994

Sch. 1

SCHEDULES

SCHEDULE 1

Sections 25 and 139(2)

Sch. 1
amended by
Nos 65/1995
s. 14(57)(a)(b),
54/2001 s. 44.

LAND EXEMPT FROM CHARGES AND RATES

1. Land within the metropolis within the meaning of the MMBW Act vested in, and occupied by, the Crown, Victorian Rail Track established by Division 2 of Part 2 of the **Rail Corporations Act 1996** or the Minister administering the **Education Act 1958**.
2. Land within the metropolis within the meaning of the MMBW Act vested in the Crown, Victorian Rail Track established by Division 2 of Part 2 of the **Rail Corporations Act 1996** or the Minister administering the **Education Act 1958** and used for public purposes.
3. Land within the metropolis within the meaning of the MMBW Act that is not rateable under section 154 of the **Local Government Act 1989**.
4. Recreational lands within the meaning of the **Cultural and Recreational Lands Act 1963** that are within the metropolis within the meaning of the MMBW Act.

Water Industry Act 1994
Act No. 121/1994

Sch. 2

SCHEDULE 2

Section 185

SAVINGS AND TRANSITIONALS

1. New and restructured Authorities

The amendments of the **Water Act 1989** made by section 192 apply only with respect to an Authority constituted or restructured by an Order made after the commencement of that section.

2. By-laws

- (1) Any by-laws made under section 214 of the MMBW Act and in force immediately before the commencement of section 203(1) of this Act continue in force on and after that commencement and have effect as if they were regulations made under section 149 of this Act insofar as they could have been made under section 149 of this Act.
- (2) By-laws continued in force by sub-clause (1) continue in force for so long as, but for this Act, they would have remained in force unless sooner revoked by regulations made under section 149.

3. Metropolitan Improvement Rate

The repeal by section 203(2) of this Act of section 218 of the MMBW Act does not affect any liability to pay a rate made and levied under that section before its repeal.

4. Metropolitan drainage and waterways

Despite the amendments of the MMBW Act made by section 205, Melbourne Water Corporation has power to complete any river improvement works within the meaning of Part X of the MMBW Act as in force immediately before the commencement of section 205(1) that were commenced to be carried out by Melbourne Water Corporation before the commencement of that section but were not completed before then.

Water Industry Act 1994
Act No. 121/1994

Sch. 2

5. Floodplain management

Division 4 of Part 10 of the **Water Act 1989** applies to a declaration made by Melbourne Water Corporation under section 203 of that Act and in force immediately before the commencement of section 205(2) of this Act as if it had been made by the Minister.

6. MWC directors

The amendments of the **Melbourne Water Corporation Act 1992** made by section 214(e) and (f) do not affect any appointment of a person as a director, or the Managing Director, of Melbourne Water Corporation made before the commencement of that section.

Water Industry Act 1994
Act No. 121/1994

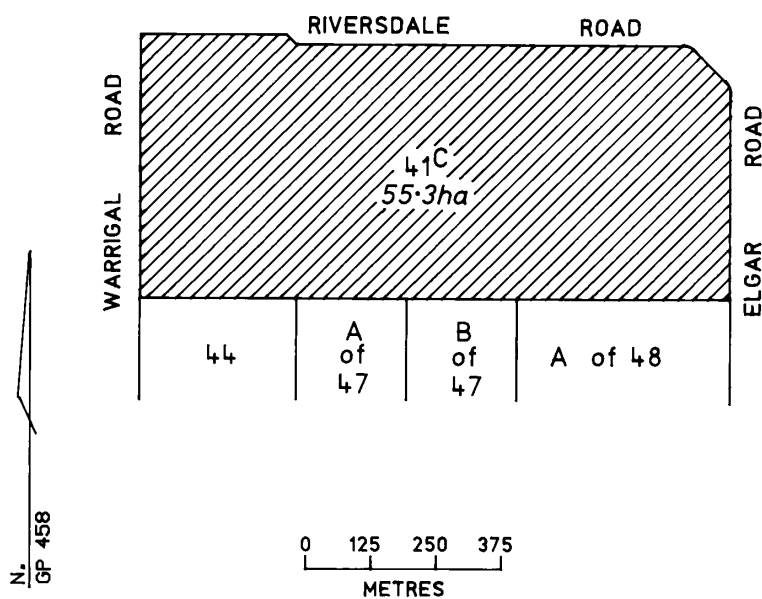
Sch. 3

Sch. 3
inserted by
No. 66/2000
s. 24.

SCHEDULE 3

WATTLE PARK LAND

Parish of Nunawading



Water Industry Act 1994
Act No. 121/1994

Sch. 4

SCHEDULE 4

Sch. 4
inserted by
No. 57/2004
s. 4.

**TABLE OF ENVIRONMENTAL CONTRIBUTIONS FROM
1 OCTOBER 2004 TO 30 JUNE 2008**

TABLE

<i>Column 1 Item No.</i>	<i>Column 2 Authority</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
1.	Barwon Region Water Authority	\$2 760 000	\$3 680 000	\$3 680 000	\$3 680 000
2.	Central Gippsland Region Water Authority	\$1 520 000	\$2 030 000	\$2 030 000	\$2 030 000
3.	Central Highlands Region Water Authority	\$1 140 000	\$1 510 000	\$1 510 000	\$1 510 000
4.	City West Water Limited	\$7 660 000	\$10 220 000	\$10 220 000	\$10 220 000
5.	Coliban Region Water Authority	\$1 270 000	\$1 740 000	\$1 740 000	\$1 740 000
6.	East Gippsland Region Water Authority	\$440 000	\$590 000	\$590 000	\$590 000
7.	First Mildura Irrigation Trust		\$100 000	\$100 000	\$100 000
8.	Gippsland and Southern Rural Water Authority		\$210 000	\$210 000	\$210 000

Water Industry Act 1994
Act No. 121/1994

Sch. 4

<i>Column 1 Item No.</i>	<i>Column 2 Authority</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
9.	Glenelg Region Water Authority	\$170 000	\$230 000	\$230 000	\$230 000
10.	Goulburn Valley Region Water Authority	\$1 130 000	\$1 500 000	\$1 500 000	\$1 500 000
11.	Goulburn- Murray Rural Water Authority				\$1 240 000
12.	Grampians Wimmera Mallee Water Authority	\$790 000	\$1 240 000	\$1 240 000	\$1 240 000
13.	Lower Murray Urban and Rural Water Authority	\$600 000	\$980 000	\$980 000	\$980 000
14.	Melbourne Water Corporation		\$6000	\$6000	\$6000
15.	North East Region Water Authority	\$890 000	\$1 180 000	\$1 180 000	\$1 180 000
16.	Portland Coast Region Water Authority	\$170 000	\$230 000	\$230 000	\$230 000
17.	South East Water Limited	\$11 340 000	\$15 120 000	\$15 120 000	\$15 120 000

Water Industry Act 1994
Act No. 121/1994

Sch. 4

<i>Column 1 Item No.</i>	<i>Column 2 Authority</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
18.	South Gippsland Region Water Authority	\$400 000	\$530 000	\$530 000	\$530 000
19.	South West Water Authority	\$470 000	\$670 000	\$670 000	\$670 000
20	Western Region Water Authority	\$970 000	\$1 300 000	\$1 300 000	\$1 300 000
21.	Westernport Region Water Authority	\$340 000	\$450 000	\$450 000	\$450 000
22.	Yarra Valley Water Limited	\$12 540 000	\$16 720 000	\$16 720 000	\$16 720 000

Water Industry Act 1994
Act No. 121/1994

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 November 1994

Legislative Council: 7 December 1994

The long title for the Bill for this Act was "A Bill to provide for the reform of the water industry, to amend the **Melbourne and Metropolitan Board of Works Act 1958**, the **Water Act 1989**, the **Melbourne Water Corporation Act 1992** and certain other Acts and for other purposes."

The **Water Industry Act 1994** was assented to on 20 December 1994 and came into operation as follows:

Sections 1, 2 on 20 December 1994: section 2(1); rest of Act on 1 January 1995: Special Gazette (No. 105) 23 December 1994 page 1.

Water Industry Act 1994
Act No. 121/1994

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Water Industry Act 1994** by Acts and subordinate instruments.

Water Industry (Amendment) Act 1995, No. 65/1995

Assent Date: 27.6.95
Commencement Date: S. 14(53)(56) on 20.12.94: s. 2(2); Pt 1 (ss 1–3) on 27.6.95: s. 2(1); rest of Act (*except* ss 16(8), 22(a)(e)(g)(h)(l), 33) on 29.6.95: Government Gazette 29.6.95 p. 1587; ss 16(8), 22(a)(e)(g)(h)(l), 33 on 27.12.95: s. 2(4)
Current State: All of Act in operation

Superannuation Acts (Amendment) Act 1996, No. 4/1996

Assent Date: 18.6.96
Commencement Date: S. 134(13) on 30.6.96: s. 2(12)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Acts (Amendment) Act 1996, No. 12/1996

Assent Date: 25.6.96
Commencement Date: Ss 13, 14, 16–22 on 25.6.96: s. 2(1); s. 15 on 25.6.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Building (Amendment) Act 1996, No. 39/1996

Assent Date: 12.1.96
Commencement Date: S. 13 on 24.3.97: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Port Services and Marine (Amendment) Act 1996, No. 51/1996

Assent Date: 26.11.96
Commencement Date: S. 19 on 26.11.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**.

Miscellaneous Acts (Omnibus No. 3) Act 1997, No. 45/1997

Assent Date: 11.6.97
Commencement Date: Ss 37, 38 on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 items 13.2, 13.3) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Industry Act 1994
Act No. 121/1994

Endnotes

Water Acts (Further Amendment) Act 1997, No. 110/1997

Assent Date: 23.12.97
Commencement Date: S. 31 on 1.1.98: s. 2(2); ss 26, 27, 28(1)(2), 29, 30(2)(b)–(d), 33–40 on 1.1.98: Government Gazette 24.12.97 p. 3783; ss 28(3)(4), 30(1)(2)(a)(3) on 1.7.98: Government Gazette 24.12.97 p. 3783; s. 32 on 1.1.99: s. 2(5)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Parks Victoria Act 1998, No. 44/1998

Assent Date: 26.5.98
Commencement Date: Ss 27–29 on 3.7.98: Government Gazette 2.7.98 p. 1690
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

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 provision/s amending the **Water Industry Act 1994**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 106) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 67) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Acts (Amendment) Act 1999, No. 22/1999

Assent Date: 18.5.99
Commencement Date: Ss 8, 10 on 25.3.99: s. 2(3); ss 9, 11 on 18.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Essential Services Legislation (Dispute Resolution) Act 2000, No. 59/2000

Assent Date: 8.11.00
Commencement Date: S. 5 on 13.4.01: Government Gazette 29.3.01 p. 523
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Industry Act 1994
Act No. 121/1994

Endnotes

Water Industry (Amendment) Act 2000, No. 66/2000

Assent Date: 8.11.00
Commencement Date: S. 10 on 9.11.00: s. 2(1); ss 3–9, 11–24 on 1.12.01: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 128) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Transport (Further Amendment) Act 2001, No. 54/2001

Assent Date: 2.10.01
Commencement Date: S. 44 on 30.6.03: s. 2(5)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Essential Services Commission Act 2001, No. 62/2001

Assent Date: 23.10.01
Commencement Date: Ss 91, 92 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 67) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Legislation (Essential Services Commission and Other Amendments) Act 2003, No. 48/2003

Assent Date: 11.6.03
Commencement Date: Ss 3, 4 on 1.1.04: Government Gazette 11.12.03 p. 3117
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Legislation (Amendment) Act 2003, No. 90/2003

Assent Date: 11.11.03
Commencement Date: Ss 8–11, 13 on 12.11.03: s. 2
Current State: This information relates only to the provision/s amending the **Water Industry Act 1994**

Water Industry (Environmental Contributions) Act 2004, No. 57/2004

Assent Date: 21.9.04
Commencement Date: 22.9.04: s. 2
Current State: All of Act in operation

Water Industry Act 1994
Act No. 121/1994

Endnotes

Essential Services Commission (Amendment) Act 2004, No. 75/2004

Assent Date: 9.11.04

Commencement Date: S. 76 on 10.11.04: s. 2

Current State: This information relates only to the provision/s
amending the **Water Industry Act 1994**

Water Industry Act 1994
Act No. 121/1994

Endnotes

3. Explanatory Details

¹ S. 22(3) (*repealed*): Section 14(2) of the **Water Acts (Amendment) Act 1996**, No. 12/1996 reads as follows:

14. Removal of power for licence to regulate fees and charges

- (2) The repeal of section 22(3), (4) and (5) of the **Water Industry Act 1994** does not affect the conditions of a licence issued before the commencement of this section.

² S. 22(4) (*repealed*): See note 1.

³ S. 22(5) (*repealed*): See note 1.

⁴ S. 50(c): The amendment proposed by section 15(1) of the **Water Acts (Amendment) Act 1996**, No. 12/1996 is not included in this publication because section 50(c) had been substituted by section 13(1) of the **Building (Amendment) Act 1996**, No. 39/1996 before this amendment came into operation.

⁵ S. 63: 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

Water Industry Act 1994
Act No. 121/1994

- (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.