

LEGISLATIVE ASSEMBLY

Read 1° 16 November 1983

(Brought in by Mr Simpson and Mr Spyker)

A BILL

To amend the *Melbourne and Metropolitan Board of Works Act 1958* generally in relation to the extent and effectiveness of the operations of the Melbourne and Metropolitan Board of Works, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. This Act may be cited as the *Melbourne and Metropolitan Board of Works (Amendment) Act 1983*. Short title

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

10 3. In this Act the *Melbourne and Metropolitan Boards of Works Act 1958* is called the Principal Act. Principal Act No. 6310.
Reprinted to No. 9427.

4. In section 3 (6) (a) of the Principal Act after the expression "vested in the Board" there shall be inserted the expression "without further or other conveyance, transfer or assignment". Subsequently amended by Nos. 9549, 9558, 9573, 9684, 9699, 9700, 9720, 9735, 9746, 9754, 9824, and 9895.

Amendment of No. 6310, s. 3.

Amendment of No. 6310, s. 39.

5. In section 39 of the Principal Act the expression commencing with “and in the case of” and ending with “appropriate trade journal” is repealed.

Amendment of No. 6310, New s. 106.

6. After section 106 of the Principal Act there shall be inserted the following section: 5

Body corporate primarily liable for water supplied to strata or cluster title subdivision.

“106A. (1) Subject to sub-section (2), where water is supplied under this Part to a strata or cluster subdivision, the body corporate shall be liable to pay for the supply of water to the subdivision.

(2) Notwithstanding sub-section (1), any rates levied under this Division upon the registered proprietor of a unit or lot or upon any other person in actual occupation of a unit or lot shall be offset against the body corporate in respect of any sums payable under sub-section (1). 10

(3) The liability of a body corporate under sub-section (1) to pay for the supply of water to a subdivision shall not relieve any other person from liability to pay such rates as may be levied upon that person under this Division. 15

(4) Unless inconsistent with the context or subject-matter, words and expressions used in this section have the same meaning as they have in the *Strata Titles Act 1967* and the *Cluster Titles Act 1974*.”.

7. In section 109 (1) of the Principal Act— 20

(a) for the words “at the premises or land in respect of which the rate charge or sum was not so paid” there shall be substituted the words “at any premises or land owned (whether wholly or partly) by him, whether or not the rate charge or sum was payable in respect of those premises or that land”; and 25

(b) after the words “cease to supply him with water” there shall be inserted the words “at those premises or that land”.

Amendment of No. 6310, s. 110.

8. In section 110 of the Principal Act—

(a) in sub-section (1) the expression “For preventing and removing nuisances on lands waters and works vested in or under the control and management of the Board;” is repealed; and 30

(b) after sub-section (2) there shall be inserted the following sub-section:

“(3) Any by-law made under this section for regulating the supply of water by the Board or for regulating the use of any water supplied by the Board— 35

(a) may confer upon the Board the power—

(i) to exempt any land or class of land from the whole or any part of any restrictions on the use of water from time to time in force and to vary 40

any such restrictions in respect of any land or class of land; and

- (ii) to exempt any use of water or class of use of water from any restrictions on the use of water from time to time in force and to vary any such restrictions in respect of any use of water or class of use of water—

subject to such terms, conditions and controls as it thinks fit; and

- (b) may confer upon the Chairman, the General Manager or the director of administration of the Board, the power to determine when any exemption or variation under paragraph (a) shall take effect or shall cease to take effect.”.

9. For section 113 of the Principal Act there shall be substituted the following section: Amendment of
No. 6310 s. 113.

“113. If any person supplied with water by the Board—

- (a) wrongfully does or causes or permits to be done anything in contravention of—

(i) any of the provisions of this Act relating to the prevention of waste, misuse, undue consumption or contamination of the water of the Board; or

(ii) any by-law made under the third paragraph of section 110 (1); or

- (b) wrongfully fails to do anything which under—

(i) any provision of this Act is required to be done to prevent the waste, misuse, undue consumption or contamination of the water of the Board; or

(ii) any by-law made under the third paragraph of section 110 (1) is required to be done to prevent the waste, misuse, undue consumption or contamination of the water of the Board—

the Board (without prejudice to any remedy which it may have against the person in respect of the wrongful action or failure) may restrict the supply of water to that person or for his use for such period or time as it thinks fit.”.

10. In section 117 of the Principal Act—

- (a) in sub-section (1)—

(i) for the expression “Any officer or other person appointed for that purpose by the Board” there shall be substituted the expression “The proper officer”; and

(ii) for the expression “waste or misuse” there shall be substituted the expression “waste, misuse, undue consumption or contamination”;

Amendment of
No. 6310, s. 117.

- (b) in sub-section (2), for the expression "If such officer or other person" there shall be substituted the expression "If the proper officer"; and
- (c) for sub-section (3), there shall be substituted the following sub-sections: 5

"(3) Any person who obstructs a proper officer in the performance of anything which the proper officer is under this section empowered to do shall be liable on conviction to a penalty of not more than 1 penalty unit.

(4) In this section "dwelling-house" means a building or any part of a building which is being used as a dwelling." 10

Amendment of No. 6310, s. 184.

11. Section 184A (1) (a) of the Principal Act is repealed.

Amendment of No. 6310, New 200.

12. After section 200 of the Principal Act there shall be inserted the following section:

Appropriation of money to the Board by Treasurer in each financial year.

"200A. (1) In each financial year the Treasurer of Victoria may for an approved purpose advance to the Board any sum or sums appropriated in any Act for that purpose. 15

(2) Notwithstanding sub-section (1), any sum so advanced to the Board shall be charged to the appropriate State Account and the liability therefor shall be borne by the State accordingly and shall not be deemed to be a liability of the Board." 20

Amendment of No. 6310, s. 213.

13. In section 213 (2) of the Principal Act—

- (a) after paragraph (b) the word "and" is repealed; and
- (b) after paragraph (c) the following expression shall be inserted:

"and 25
 (d) grant a lease or licence of any such lands to any person or body subject to such terms and conditions and for such period of time as it thinks fit."

Amendment of No. 6310, s. 233.

14. In section 233 of the Principal Act for the expression "purchased by it under this Act" (where twice occurring) there shall be substituted the expression "purchased or acquired by it under this Act or vested in it by an Order made under section 3 (6) (a) of this Act". 30

Amendment of No. 6310, s. 235

15. In section 235 of the Principal Act after the expression "under this Act" there shall be inserted the expression "(except for any land vested in it by an Order made under section 3 (6) (a) of this Act)". 35

Amendment of No. 6310, New s. 240

16. For section 240A of the Principal Act there shall be substituted the following section:

“240A. (1) The Board may make by-laws for or with respect to any matter or thing which is necessary or convenient for carrying this Act into effect, including—

General by-law making powers.

5 (a) the prevention and removal of nuisances on lands, waters and works owned by, vested in, or under the control and management of the Board;

(b) the protection of all and every part of any undertaking of the Board from trespass or injury;

10 (c) prohibiting or regulating the use of vehicles on lands and works owned by, vested in, or under the control and management of the Board;

(d) prohibiting or regulating traffic or any class or classes of traffic on lands, water and works owned by, vested in, or under the control and management of the Board; and

15 (e) generally, the care and protection of all lands waters and works owned by, vested in, or under the control and management of the Board.

(2) By-laws made under this section—

20 (a) may be general or may be restricted in operation as to time, place, vehicles, traffic, persons or circumstances whether any such time, place, vehicle, traffic, person or circumstance is determined or ascertainable before, at or after the making of the by-laws; and

25 (b) may prescribe penalties not exceeding 10 penalty units for a breach of any of the by-laws.”.

17. After section 253 of the Principal Act there shall be inserted the following section:

30 “253A. (1) A person who assaults, resists, obstructs, hinders or delays, or who incites or encourages any other person to assault resist, obstruct, hinder or delay any inspector or proper officer of the Board in the performance of his duties shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.

Amendment of No. 6310.
New s. 253A.
Offence to obstruct inspectors performing duties under this Act.

35 (2) Where a person is convicted of an offence under sub-section (1) the Court may, in addition to any penalty imposed under sub-section (1), order and reward against the person so convicted a sum sufficient to cover any damage which any inspector or proper officer of the Board sustained by such assault, resistance, obstruction, hindrance or delay and any sum so awarded be recovered in the same manner as the penalty.”.

40 18. In section 258BB (3) of the Principal Act, after the expression “upon the publication of the Order” there shall be inserted the expression “without further or other conveyance, transfer or assignment”.

Amendment of No. 6310, s. 258BB.

Amendment of
No. 6310. s. 269.

19. In section 269A of the Principal Act, after sub-section (7) there shall be inserted the following sub-section:

“(8) Any money advanced pursuant to an agreement under paragraph (f) of sub-section (2) shall not be deemed to be money borrowed by the Board pursuant to section 187 and shall not affect or limit the amount that may be borrowed pursuant to that section.”. 5

Amendment of
No. 6310. s. 276.

20. In section 276 (5) of the Principal Act, for the expression “the commencement of the *Metropolitan Drainage and Rivers Act 1923*” there shall be substituted the expression “the coming into operation of the Order which included within the metropolis for the purposes of this Part the river, creek or water-course or portion thereof for which the permit or licence was issued or granted”. 10

Amendment of
No. 6310. s. 280.

21. After section 280 (2C) of the Principal Act there shall be inserted the following sub-section:

“(2D) Notwithstanding sub-section (2B), upon application a resolution under sub-section (2A) may be made in respect of any land which is substantially uncleared and more than four hectares in area.”. 15

22. For section 289 (1) of the Principal Act there shall be substituted the following sub-sections:

“(1) The Board may consent to the diversion or appropriation of water from any river, creek, water-course, main drain, main drainage works, river improvement works or any portion thereof under the management and control of the Board under this Part subject to such terms, conditions, limitations and restrictions as it thinks fit. 20

(1A) The Port of Melbourne Authority may consent to the diversion or appropriation of water from any river, creek or water-course or portion thereof under the management and control of the Port of Melbourne Authority subject to such terms, conditions, limitations and restrictions as the Authority thinks fit. 25

(1B) A consent given under sub-section (1) or (2) may be given only to the owner or occupier of land adjacent to the river, creek, water-course, main drain, main drainage works, river improvement works or any portion thereof to which the consent relates and— 30

(a) where consent is given to an owner, shall be deemed to be given to the occupier (if any) of the land, to any successor in title to that land and to any subsequent occupier of that land; and 35

(b) where consent is given to an occupier, shall be deemed to be given to the owner of the land, to any successor in title to that land and to any subsequent occupier of that land. 40

(1C) Any terms, conditions, limitations or restrictions contained in a consent given under sub-section (1) or (2) shall bind the owner of the land, the occupier (if any) of the land, any successor in title to the land

and any subsequent occupier of the land whether or not the owner, occupier, successors in title or subsequent occupiers are given actual notice thereof.

5 (1D) A person who diverts or appropriates any water from any river, creek water-course, main drain, main drainage works, river improvement works or any portion thereof under the management and control of the Board under this Part or of the Port of Melbourne Authority—

(a) without the previous consent in writing of the Board or the Authority (as the case may be); or

10 (b) (where the consent of the Board or the Authority has been given) contrary to any terms, conditions, limitations or restrictions contained in the consent—

shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.

15 (1E) A penalty under sub-section (1) for an offence committed within an area under the management and control of the Port of Melbourne Authority may be recovered in the same manner as penalties for offences under the *Port of Melbourne Authority Act 1958* may be recovered, and when recovered shall be paid into the Port of Melbourne Fund.

20 (1F) A permit issued or licence granted under Division 2 of Part IV. of the *Water Act 1958* or any corresponding previous enactment authorizing the diversion or appropriation of water and in force immediately before the coming into operation of the Order which included within the metropolis for the purposes of this Part the river, creek or water-course or portion thereof for which the permit or licence was issued or granted shall continue in force subject to any conditions attaching to the permit or licence for the period for which it was issued or granted and shall for the purposes of this section be deemed to be the consent of the Board to the diversion or appropriation.”

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30 23. After section 289 of the Principal Act there shall be substituted the following section:

Amendment of
No. 6310. New s.
289A.

“289A. (1) The Board may grant permission to the owner or occupier of any land adjacent to any river, creek, stream or water-course to construct at the expense of such owner or occupier—

Power to Board
to permit private
works for
protection of
private lands.

35 (a) works for the protection of such lands from damage by erosion or flooding; or

(b) a weir or dam in the river, creek, stream or water-course.

(2) Any such permission may be granted subject to compliance by the owner or occupier with such conditions as the Board thinks fit relating to the nature and extent of the works, weir or dam, the standards of construction and maintenance of the works, weir or dam and the operation of the works, weir or dam and of any works associated with the works, weir or dam.

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(3) Any permission given under sub-section (1) shall be deemed to be given—

(a) where the permission is given to an owner, to the occupier (if any) of the land, to any successor in title to that land, and to any subsequent occupier of that land; and 5

(b) where the permission is given to an occupier, to the owner of the land, to any successor in title to that land, and to any subsequent occupier of that land.

(4) Any conditions contained in any permission given under sub-section (1) shall bind the owner of the land, the occupier (if any) of the land, any successor in title to the land and any subsequent occupier whether or not the owner, occupier, successors in title or subsequent occupiers are given actual notice thereof. 10

(5) Neither the Board nor the Crown shall be liable for any damage resulting from anything done or purported to be done under this section. 15

(6) The Board may by notice in writing to the owner or occupier of any such land direct that any such works, weir or dam be operated, removed or altered subject to such conditions as the Board thinks fit and within such period as is specified in the notice.

(7) Any person— 20

(a) who constructs any works or any weir or dam in, on or over the bed or banks of any such river, creek, stream or water-course as is mentioned in this section without permission granted under this section or without complying with any condition to which any such permission is subject; 25
or

(b) who fails to operate remove or alter any such works, weir or dam in accordance with a notice given to him pursuant to this section—

shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units and in the case of any offence under paragraph (b) of this sub-section shall be liable to an additional 2 penalty units for each day on which that person fails to comply with the requirements of a notice given to him under this section. 30

(8) Any permission granted under section 12 of the *Water Act* 1958 or any corresponding previous enactment and in force immediately before the coming into operation of the Order which included within the metropolis for the purpose of this Part the river, creek, stream or water-course or portion thereof for which the permission was granted 35

shall continue in force for the period for which it was granted and shall be deemed to have been granted by the Board.”.

24. Before section 290 of the Principal Act there shall be inserted the following section:

Amendment of
No. 6310. New s.
289AB.

- 5 “289AB. The Board may from time to time appoint one or more committees consisting of owners or occupiers of land adjacent to any river, creek or water-course within the metropolis with which it may consult about the appropriation or diversion of water from that river, creek or water-course.”.



