

Water Industry (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 3 May 1995

(Brought in by Mr Coleman and Mr Gude)

A BILL

to amend the **Water Industry Act 1994**, the **Water Act 1989**, the **Melbourne and Metropolitan Board of Works Act 1958**, the **Melbourne Water Corporation Act 1992** and certain other Acts and for other purposes.

Water Industry (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- 5 (a) to enable licensees under the **Water Industry Act 1994** to impose service charges in certain circumstances;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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- (b) to provide for the abolition of the Rural Water Corporation;
- (c) to provide for access to the distribution systems of licensees and Melbourne Water Corporation;
- (d) to vest certain waterways in the Crown; 5
- (e) to make provision with respect to the valuation to be used for rating purposes;
- (f) to make miscellaneous amendments to the **Water Industry Act 1994**, the **Water Act 1989**, the **Melbourne and Metropolitan Board of Works Act 1958**, the **Melbourne Water Corporation Act 1992**. 10

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent. 15
- (2) Section 14 (53) and (56) are deemed to have come into operation on 20 December 1994.
- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 20
- (4) If a provision referred to in sub-section (3) 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. 25

3. Principal Act

In this Act, the **Water Industry Act 1994** is called the Principal Act.

PART 2—AMENDMENT OF PRINCIPAL ACT

4. Service charge

(1) In the Table in section 22 (1) of the Principal Act,
before the entry relating to the water usage charge
insert—

“Water licensee Service charge Property owner
Water and sewerage
licensee”.

(2) In section 22 of the Principal Act, after sub-section
(3) **insert—**

“(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.”.

(3) In section 25 of the Principal Act, before “A” **insert**
“(1)”.

(4) In section 25 of the Principal Act, at the end of the
section **insert—**

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

(a) on land described in Schedule 1; or

(b) on land in respect of a period in respect of
which rates made and levied on it in
accordance with the provisions of Part II or
III of the MMBW Act have been paid or
are payable; or

(c) on land in respect of a period in respect of
which a fee imposed under a tariff set in

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relation to it in accordance with the provisions of Part 13 of the **Water Act 1989** has been paid or is payable; or

(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— 5

(i) the licensee otherwise than in accordance with this Division; or

(ii) an Authority.”.

(5) In section 26 (1) of the Principal Act, after “charge” **insert** “or service charge”. 10

(6) In section 26 (2) of the Principal Act, for “or any part of it” (where twice occurring) **substitute** “, service charge or any part of such a charge”.

(7) In section 32 (1) of the Principal Act, after “A” **insert** “service charge,”. 15

(8) In section 32 (2) of the Principal Act, after “a licensee” **insert** “a service charge or”.

5. Sanitary service charge

(1) In the Table in section 22 (1) of the Principal Act, after the entry relating to the sewer usage charge **insert**— 20

“Water and sewerage licensee	Sanitary service charge	Occupier of property within the metropolis within the meaning of the MMBW Act that is not rateable property within the meaning of that Act.”.	25
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(2) In section 22 of the Principal Act, before sub-section (4) **insert**— 30

“(3B) A sanitary service charge imposed by a water and sewerage licensee must be imposed at a fixed flat rate on each water closet, and each

cistern or flushing device used for any urinal, situated on the property.”.

(3) In section 25 of the Principal Act, at the end of the section **insert**—

5 ‘(3) A water and sewerage licensee may not impose a sanitary service charge on the occupier of—

(a) any building used solely for public worship; or

(b) a hospital—

10 in respect of sewerage services provided exclusively to the building or hospital.

(4) In sub-section (3) “**hospital**” means any establishment at which surgical or medical advice, aid or treatment is afforded and which is supported in whole or in part by receiving payment from the State of Victoria under the **Health Services Act 1988** or any other Act.’.

(4) In section 32 (1) of the Principal Act, before “usage charge” **insert** “sanitary service charge,”.

20 6. *Exemptions from charges*

In section 25 of the Principal Act—

(a) after “water usage charge” **insert** “or sewage disposal charge”;

(b) after “issue of the licence” **insert**—

25 “—

unless that land is occupied for commercial purposes”.

7. *New section 55A inserted*

After section 55 of the Principal Act **insert**—

30 “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.”. 5 10

8. *New section 65A inserted*

After section 65 of the Principal Act insert—

“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— 15

(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 20

(b) to which a licence granted to a person under section 51 of the **Water Act 1989** relates; or 25

(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**— 30

to be supplied to that person by means of those works.

(2) The duty owed by sub-section (1)— 35
 (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;

5 (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.

10 (3) Subject to any determination made by the Office of the Regulator-General under Part 3 of the **Office of the Regulator-General Act 1994**, 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.

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

20 **9. Power to lease land**

In section 135 of the Principal Act, after paragraph (b) insert—

25 “(ba) grant leases over its land for the purposes of conservation, recreation, leisure or tourism or, with the approval of the Minister, for any other purpose; or”.

10. Valuation date

In section 139 of the Principal Act, after sub-section (3) insert—

30 “(3A) Despite sub-section (3), all rates made and levied by Melbourne Parks and Waterways under this section after the commencement of section 10 of the **Water Industry (Amendment) Act 1995** shall be levied upon
35 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**.

- (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: 5
- (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 (c), the net annual value as shown in that valuation; 10 15
- (b) if the valuation of that land in force for the purposes of the **Local Government Act 1989** immediately before that commencement is not at 30 June 1990 levels of value—the net annual value is, subject to paragraph (c), the net annual value as shown in that valuation then in force multiplied by the valuation equalization factor applying to the area in which the land is situated; 20 25
- (c) 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 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. 30 35
- (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 40

5 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.”.

11. *Service charges*

10 In section 144 (1) of the Principal Act, for paragraph (a) **substitute—**

15 “(a) a charge for using any open space, park or waterway under its management and control for a commercial purpose or, with the consent of the Minister, a charge for using any such open space, park or waterway for any other purpose;”.

12. *New section 175A inserted*

20 In Part 6 of the Principal Act, before section 176 **insert—**

“175A. *Vesting in Crown of bed, banks and soil of certain watercourses*

25 (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—

30 (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. 5 10
- (2) Any land vested in the Crown under sub-section (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. 15
- (3) Despite anything in the **Water Act 1989** or any other Act but subject to any Order in Council made under section 110 (1) (a) or (b) of this Act, any bed, soil and banks to which sub-section (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.”. 20 25
- 13. New section 176A inserted** 30
- After section 176 of the Principal Act insert—
- “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 35

(b) to each prescribed person; and

(c) within a prescribed period.

Penalty: 10 penalty units.”.

14. Miscellaneous amendments

5 (1) In section 3 (1) of the Principal Act—

(a) after the definition of “security deposit”
insert—

10 “**service charge**” means a service charge referred to in column 2 of the Table in section 22 (1);

15 “**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;’;

(b) in the definition of “usage charge”, for “sewer usage” **substitute** “sewage disposal”.

(2) In section 5 of the Principal Act, for “Division” **substitute** “Act”.

20 (3) In section 11 (4) of the Principal Act—

(a) after paragraph (i) **insert**—

25 “(ia) requiring the licensee to provide specified information to the Minister, in the manner and form determined by the Minister, concerning the planning, construction, operation or maintenance of works;”;

(b) in paragraph (j) after “the” **insert** “planning;”;

(c) after paragraph (m) **insert**—

30 “(ma) specifying terms and conditions for the supply of water by a water headworks licensee;”.

- (4) In section 11 (6) of the Principal Act—
- (a) for “(j)” **substitute** “(c), (j), (k) (ii) (to the extent that it relates to quality and performance standards of a technical nature)”;
- (b) after “(p)” **insert** “and in relation to the variation of any such provision”. 5
- (5) In section 11 (7) of the Principal Act, after “this section” **insert** “or section 14”.
- (6) In section 17 of the Principal Act, after sub-section (1) **insert**— 10
- “(1A) Without limiting sub-section (1) and despite anything to the contrary in this Act, the Governor in Council may issue the initial licence of any kind under this Division for any area for such term and subject to such conditions as are determined by the Governor in Council and are specified in the licence.”. 15
- (7) In section 17 (2) and (3) of the Principal Act, after “(1)” **insert** “or (1A)”.
- (8) In section 19 of the Principal Act— 20
- (a) **omit** “or occupier”;
- (b) after “works” **insert** “(whether or not the owner is liable to pay a usage charge) or an occupier of any such property”.
- (9) In section 20 of the Principal Act, for sub-section (1) **substitute**— 25
- “(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.”. 30
- (10) In section 20 (2) of the Principal Act, for “served on any person bound by the contract within two weeks” 35

substitute “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”.

- 5 (11) In the Table in section 22 (1) of the Principal Act—
 (a) in column 2, for “Sewer usage” **substitute** “Sewage disposal”;
 (b) in column 3, for “section 23” **substitute** “sections 23 and 24”.
- 10 (12) In section 22 (4) (d) of the Principal Act, for “sewer usage” **substitute** “sewage disposal”.
- (13) In section 23 (1) of the Principal Act, for “sewer usage” **substitute** “sewage disposal”.
- 15 (14) In section 23 (5) of the Principal Act, for “sewer usage” **substitute** “sewage disposal”.
- (15) In section 24 (1), (2) and (10) of the Principal Act, after “water usage charge” **insert** “or sewage disposal charge”.
- 20 (16) In section 24 (6) and (8) of the Principal Act, after “water usage charges” **insert** “and sewage disposal charges”.
- (17) In section 32 (1) of the Principal Act, for “28” **substitute** “14”.
- 25 (18) In section 37 of the Principal Act—
 (a) before “There” **insert** “(1)”;
 (b) at the end of the section **insert**—
 “(2) The Secretary to the Department may engage persons with suitable qualifications and experience as consultants or technical advisers.
- 30 (3) An engagement under sub-section (2) may be on any terms and conditions the Secretary considers appropriate.
- 35 (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.”. 5
- (19) In section 38 (1) (a) of the Principal Act, after “the” **insert** “planning,”.
- (20) In section 50 of the Principal Act—
 (a) in paragraph (d), after “saline” **insert** “or other”;
 (b) paragraph (e) is **repealed**. 10
- (21) In section 52 of the Principal Act—
 (a) in sub-section (1), paragraph (g) is **repealed**;
 (b) sub-section (2) is **repealed**.
- (22) Section 55 (4) of the Principal Act is **repealed**.
- (23) In section 58 (4) of the Principal Act, at the end of paragraph (b) **insert**— 15
 “; or
 (c) there is an emergency.”.
- (24) In section 63 (2) of the Principal Act, for “connect a property” **substitute** “permit a property to be connected”. 20
- (25) In section 63 (3) (b) of the Principal Act, for “make” **substitute** “permit”.
- (26) In section 63 (4) of the Principal Act, after “licensee” (where first occurring) **insert** “(unless the licensee has agreed to permit payment of that fee to be made by a later date set by the licensee)”. 25
- (27) In section 65 (1) (a) of the Principal Act, after “services” **insert** “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”. 30

(28) In section 74 of the Principal Act, after sub-section (4) **insert**—

5 “(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.”.

10 (29) In section 75 (2) (c) of the Principal Act, for “the prescribed fee” **substitute** “any fee fixed by the licensee”.

(30) In section 75 (3) (c) of the Principal Act, for “charge” **substitute** “rate or charge (whether payable to the licensee, Melbourne Water Corporation or Melbourne Parks and Waterways)”.

15 (31) Section 76 of the Principal Act is **repealed**.

(32) In section 77 (2) of the Principal Act, for “under” **substitute** “by”.

(33) In section 85 (1) of the Principal Act, after paragraph (b) **insert**—

20 “(ba) the licensee believes that the reduction or restriction is necessary to enable it to carry out maintenance of its works; or”.

(34) In section 90 (a) of the Principal Act, after “for” (where secondly occurring) **insert** “, or consents to,”.

25 (35) In section 101 (c) of the Principal Act, for “and reuse” **substitute** “, reuse and supply”.

(36) In section 127 of the Principal Act, for “any negligence, default,” **substitute** “a wilful”.

(37) Section 146 of the Principal Act is **repealed**.

30 (38) In section 154 (1) of the Principal Act—

(a) for the definition of “chief executive officer” **substitute**—

35 “**“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;’;

(b) for the definition of “relevant date” **substitute**—

“**relevant date**”—

5

(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;

10

(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;’.

15

(39) In section 154 of the Principal Act, for sub-section (2) **substitute**—

“(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;

20

(b) fix the relevant date for the purposes of a document referred to in section 172 (1).”.

(40) In section 155 (1) of the Principal Act, after “Corporation” **insert** “or a company licensee”.

25

(41) In section 155 (2) of the Principal Act—

(a) after “Corporation” (where first occurring) **insert** “or the company licensee”;

(b) after “a statement” **insert** “or statements”;

(c) after “Corporation” (where secondly occurring) **insert** “or the former Melbourne Water property”;

30

(d) for “this section” **substitute** “the relevant statement”.

- 5
- (42) In section 155 (3) (a) of the Principal Act, after “Corporation” **insert** “or the former Melbourne Water property”.
- (43) In section 155 (5) of the Principal Act, after “Corporation” **insert** “or a company licensee”.
- (44) In section 156 (1) of the Principal Act, **omit** “of Melbourne Water Corporation”.
- 10
- (45) In section 157 of the Principal Act, **omit** “of Melbourne Water Corporation” (where twice occurring).
- (46) In section 158 (d) of the Principal Act, after “Corporation” (where twice occurring) **insert** “or the company licensee”.
- 15
- (47) In section 159 of the Principal Act, for “allocation” **substitute** “relevant allocation”.
- (48) In section 160 of the Principal Act—
- (a) after “Corporation” (where first occurring) **insert** “or a company licensee”;
- 20
- (b) in paragraph (a) after “Corporation” **insert** “or the company licensee”.
- (49) In section 162 of the Principal Act—
- (a) after “Corporation” (where first occurring) **insert** “or a company licensee”;
- 25
- (b) after “Corporation” (where secondly and thirdly occurring) **insert** “or the company licensee”.
- (50) In section 163 of the Principal Act—
- (a) after “Corporation” (where first occurring) **insert** “or a company licensee”;
- 30
- (b) in paragraph (b) after “Corporation” **insert** “or the company licensee”.
- (51) In section 165 of the Principal Act, after “Corporation” **insert** “or former Melbourne Water property”.

- (52) In section 167 (2) of the Principal Act—
- (a) after “Corporation” **insert** “or a company licensee”;
- (b) for “Act” **substitute** “Part”.
- (53) In section 168 (2) (a) of the Principal Act— 5
- (a) for “must” **substitute** “may”;
- (b) for “the financial” **substitute** “all or for any specified financial”.
- (54) In section 171 (1) of the Principal Act, after “this section” **insert** “(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)”. 10
- (55) In section 176 of the Principal Act, for “person or class of person (including a licensee or class of licensee)” **substitute** “officer of the Department, any director or officer of Melbourne Water Corporation or Melbourne Parks and Waterways, any director, member or officer of a licensee or any person employed by a licensee”. 15
20
- (56) In section 211 of the Principal Act, for “1993” **substitute** “1983”.
- (57) In Schedule 1 to the Principal Act—
- (a) in items 1, 2 and 3 after “Land” **insert** “within the metropolis within the meaning of the MMBW Act”; 25
- (b) in item 4 after “1963” **insert** “that are within the metropolis within the meaning of the MMBW Act”.

PART 3—AMENDMENT OF WATER ACT 1989 30

15. Power to give directions concerning dams

In section 80 of the **Water Act 1989**, after sub-section (3) **insert**—

5 “(3A) Without limiting any power to give directions under this section, the Governor in Council may make regulations for or with respect to regulating the planning, construction, surveillance, operation and maintenance of—

(a) any dam other than a private dam; or

(b) any private dam that has—

10 (i) a wall that is 5 metres or more high above ground level at the downstream end of the dam and a capacity of 50 megalitres or more; or

15 (ii) a wall that is 10 metres or more high above ground level at the downstream end of the dam and a capacity of 20 megalitres or more.

(3B) The regulations made under sub-section (3A) may apply both to existing dams and to proposed dams.”

16. Abolition of RWC

20 (1) In section 98 (1) (a) of the **Water Act 1989** after “Authority” insert “or Melbourne Water Corporation”.

25 (2) In section 98 (2) (a) of the **Water Act 1989** for “the affected Authorities and councils” substitute “each body affected by the Order”.

(3) In section 98 (7) of the **Water Act 1989**—

(a) for “the Authority” substitute “the body”;

(b) for “other Authority” substitute “other body”.

30 (4) In section 98 of the **Water Act 1989**, after sub-section (7) insert—

35 “(8) Despite anything to the contrary in this Act, an Order under sub-section (1) appointing Melbourne Water Corporation to take over any part of the property, rights, liabilities, obligations, powers or functions under this Act of the Rural Water Corporation or any staff of

that Corporation or providing in any way for that taking over must be made by the Governor in Council and not the Minister.”.

- (5) In section 100 (1) of the **Water Act 1989**—
- (a) in paragraph (a) for “the affected Authorities and councils” **substitute** “each body affected by the Order”; 5
- (b) after paragraph (c) **insert**—
“; and
- (d) if Melbourne Water Corporation is involved, consult with the Minister administering the **Melbourne Water Corporation Act 1992**.”. 10
- (6) In section 100 (2) of the **Water Act 1989**—
- (a) in paragraph (a) **omit** “Authorities and public statutory”; 15
- (b) in paragraph (b), after sub-paragraph (i) **insert**—
“(ia) the Minister administering the **Melbourne Water Corporation Act 1992**, if Melbourne Water Corporation is affected; and”’. 20
- (7) In section 102 of the **Water Act 1989**—
- (a) after “a council” **insert** “or Melbourne Water Corporation”;
(b) after “or council” **insert** “or Melbourne Water Corporation”. 25
- (8) Schedule 3 to the **Water Act 1989** is **repealed**.

17. New section 102A inserted

After section 102 of the **Water Act 1989** **insert**—

‘102A. Superannuation of transferred officers 30

(1) In this section—

“**actuary**” has the same meaning as in the **State Superannuation Act 1988**;

“**MMBW Fund**” means the Fund within the meaning of the MMBW Fund Regulations;

5 “**MMBW Fund Regulations**” means the Melbourne and Metropolitan Board of Works Employees’ Superannuation Fund Regulations;

S.R. No. 231/1987 as amended by S.R. Nos 2/1990, 74/1990, 137/1992, 96/1993, 235/1993, 158/1994, 164/1994 and 201/1994.

10 “**MMBW Fund Trustees**” means the Trustees within the meaning of the MMBW Fund Regulations;

15 “**transferred officer**” means an officer of the Rural Water Corporation who is, by virtue of an Order under section 98, transferred to Melbourne Water Corporation and who was, immediately before that transfer, an officer within the meaning of the **State Superannuation Act 1988** or a member within the meaning of the **State Employees Retirement Benefits Act 1979**.

20 (2) Despite Regulation A. 13 (2) (c) of the MMBW Fund Regulations, a transferred officer becomes a member of the Fund on the day on which the Order referred to in the definition of “transferred officer” in sub-section (1) takes effect.

25 (3) With the approval of the Minister, the Victorian Superannuation Board must enter into an agreement with the MMBW Fund Trustees which specifies—

30 (a) the liability of the State Superannuation Fund or the State Employees Retirement Benefits Fund (as the case requires) up to the date of transfer in respect of the entitlements

- of transferred officers as determined by an actuary appointed by the Victorian Superannuation Board; and
 - (b) the value of assets of the State Superannuation Fund or the State Employees Retirement Benefits Fund (as the case requires) equal to the liability of that Fund referred to in paragraph (a) that are to be transferred to the MMBW Fund;
 - (c) the terms and conditions which apply to the transfer of those assets to the MMBW Fund.
- (4) If an agreement under sub-section (3) is not entered into before the expiration of the period of 3 months after the commencement of this section, the Minister may determine the matters specified in that sub-section or those matters which are in dispute and the Victorian Superannuation Board and the MMBW Fund Trustees are deemed by virtue of this sub-section to have entered into an agreement containing the matters determined by the Minister.
- (5) The Victorian Superannuation Board must transfer the assets specified in the agreement to the MMBW Fund.
- (6) As soon as the assets have been transferred they form part of the MMBW Fund.
- (7) No stamp duty or other tax is chargeable under any Act in respect of anything done under this section.’.

18. Particular powers of Authorities

In section 124 of the **Water Act 1989**, after sub-section (8) insert—

- 5
- (9) The powers of an Authority include the power to require vessels to be licensed if they are used on any of its works.
- (10) The functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity incidental to its functions under this Act.
- 10
- (11) Without limiting sub-section (10), the functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity that is capable of being conveniently carried on by the use of resources that are not immediately required in carrying out the Authority's functions under this Act.
- 15
- (12) In sub-sections (10) and (11) **"business or activity"** includes the provision of consultancy and project management services.'

19. *New section 188A inserted*

20 After section 188 of the **Water Act 1989** insert—

"188A. Deemed designated waterways, etc.

For the purposes of this Division—

- 25
- (a) any waterway or any part of a waterway within the area or areas referred to in section 110 (1) (a) of the **Water Industry Act 1994** to which the Minister, by Order published in the Government Gazette, declares that this Division applies is deemed to have been declared by Melbourne Parks and Waterways under sub-section (1) to be a designated waterway;
- 30
- (b) any works or part of any works or any land of a kind referred to in sub-section (1) (b) within the area or
- 35

areas to which paragraph (a) of this section refers are deemed to have been declared by Melbourne Parks and Waterways under sub-section (1) to be designated land or works.”

5

20. *By-laws with respect to waterways*

In section 219 of the **Water Act 1989**, after sub-section (1) insert—

“(1A) Without limiting its power to make by-laws under sub-section (1), Melbourne Parks and Waterways may, in accordance with sections 160 and 161, make by-laws for or with respect to—

10

(a) the care, preservation, protection, management and use of, and the preservation of good order on, any waterway under the management and control of Melbourne Parks and Waterways;

15

(b) the removal from any waterway under the management and control of Melbourne Parks and Waterways of any abandoned or derelict vessel and the manner in which the removed vessel may be dealt with or disposed of.”

20

25

21. *Appointment of chairperson*

In Schedule 1 to the **Water Act 1989**, after clause 1 insert—

“1A. *Appointment of chairperson*

(1) The chairperson of an Authority must be appointed by the Minister.

30

(2) The Minister may appoint as chairperson any person who is a member of the Authority immediately before being

appointed as chairperson or may appoint a person as both a member and as chairperson of the Authority.

5 (3) If a vacancy arises in the office of the chairperson, the Minister must appoint a person in accordance with this clause to fill the vacancy.

(4) The chairperson holds office for the term specified by the Minister.

10 (5) The chairperson may resign by notice in writing to the Minister.”.

22. Amendments of Water Act consequential on abolition of RWC

The **Water Act 1989** is amended as follows:

15 (a) In section 3 (1)—

(i) the definition of “Corporation” is **repealed**;

(ii) in the definition of “member” **omit** “and, in the case of the Corporation, means a member of the Board of Directors of the Corporation and includes the Chairperson, the Deputy Chairperson and the Managing Director of the Board”;

20 (b) section 107 (9) is **repealed**;

(c) after section 108 (2) **insert**—

25 “(2A) An Authority that has an irrigation district may, in accordance with sections 160 and 161, make by-laws about the constitution, functions and duties of a committee established in relation to an irrigation district or part of an irrigation district.

30 (2B) By-laws made under sub-section (2A) prevail, to the extent of any inconsistency, over the provisions of sub-section (2).”;

(d) section 112 (1) is **repealed**;

35 (e) Division 6 of Part 6 is **repealed**;

- (f) in section 124 (6) for “the Corporation” **substitute** “an Authority”;
- (g) in section 129 (1) **omit** “(other than the Corporation)”;
- (h) section 129 (2) is **repealed**; 5
- (i) in section 132 (2) for “Corporation” **substitute** “relevant water authority within the meaning of the **Murray-Darling Basin Act 1993**”;
- (j) in section 160 (5) for “Corporation’s management and control” **substitute** “management and control of the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993**”; 10
- (k) section 218 (2) (a) (ii) is **repealed**;
- (l) in the definition of “Authority” in section 254 (1), **omit** “the Corporation or”. 15

PART 4—AMENDMENT OF MMBW ACT

23. *New section 68A inserted*

After section 68 of the **Melbourne and Metropolitan Board of Works Act 1958** insert— 20

“68A. *System access*

- (1) It is the duty of the Board 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 25
 - (b) to which a licence granted to a person under section 51 of the **Water Act 1989** relates; or 30
 - (c) required to be supplied to a person by the holder of a water headworks licence issued under Division 1 of

Part 2 of the **Water Industry Act 1994** or by another Authority within the meaning of Division 1 of Part 4 of the **Water Act 1989**—

5 to be supplied to that person by means of those works.

(2) The duty owed by sub-section (1)—

10 (a) is only owed if the works of the Board have sufficient available capacity to enable the water to be supplied by means of those works;

15 (b) does not limit or affect any other duty or obligation imposed on the Board by or under this or any other Act;

(c) is owed whether or not the person is a person referred to in section 68 (2).

20 (3) Subject to any determination made by the Office of the Regulator-General under Part 3 of the **Office of the Regulator-General Act 1994**, the terms and conditions on which a person is allowed to use the works of the Board as mentioned in sub-section (1) are as agreed between the Board and that person.

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

24. Rates

30 In section 98 (2) of the **Melbourne and Metropolitan Board of Works Act 1958**, after “Board” insert “or a retail licensee”.

25. New section 100B inserted

35 After section 100A of the **Melbourne and Metropolitan Board of Works Act 1958** insert—

“100B. Power to operate certain works outside metropolis

- (1) Without limiting any other power of the Board under this or any other Act, if works outside the metropolis are transferred to the Board by virtue of an Order under section 98 of the **Water Act 1989**, the Board has and may exercise or perform in respect of those works the same powers and functions that under this or any other Act it has and may exercise or perform in respect of works of the same or a similar kind within the metropolis. 5
- (2) This section has effect despite anything to the contrary in this or any other Act.”. 10
- 15

26. Municipal valuation

- (1) In section 239B of the **Melbourne and Metropolitan Board of Works Act 1958**, after sub-section (1) insert—
- “(1AA) Despite sub-section (1), all rates made and levied by the Board under this Act or any other Act after the commencement of section 26 of the **Water Industry (Amendment) Act 1995** shall be levied upon the net annual value of each rateable property as at 30 June 1990 levels of value as determined for the purposes of the **Local Government Act 1989**. 20
- (1AB) The net annual value of a rateable property as at the levels of value referred to in sub-section (1AA) shall be determined as follows: 25
- (a) if the valuation of that property in force for the purposes of the **Local Government Act 1989** immediately before the commencement of section 26 of the **Water Industry (Amendment) Act 1995** is at 30 June 1990 levels of 30
- 35

value—the net annual value is, subject to paragraph (c), the net annual value as shown in that valuation;

5 (b) if the valuation of that property in force for the purposes of the **Local Government Act 1989** immediately before that commencement is not at 30 June 1990 levels of value—the net annual value is, subject to paragraph (c), the net annual value as shown in that valuation then in force multiplied by the valuation equalization factor applying to the area in which the property is situated;

10
15 (c) if subsequent to that commencement that property is valued for the purposes of a supplementary valuation made for the purposes of this Act or the **Local Government Act 1989**—the net annual value is the net annual value 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 property is situated.

20
25 (1AC) A reference in sub-section (1AB) 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 rateable properties within that area determined as at a particular date ought to be multiplied if the net annual value of those properties is to accord with levels of value generally prevailing in that area as at 30 June 1990.”.

30
35
40 (2) In section 239B (1A) of the **Melbourne and Metropolitan Board of Works Act 1958**, after “(1)” insert “, (1AA) or (1AB)”.

27. Rate certificate

In section 239F of the **Melbourne and Metropolitan Board of Works Act 1958**—

- (a) in sub-section (1), after “Board” insert “under Part X”; 5
- (b) in sub-section (4), after “interest” (where first and secondly occurring) insert “under Part X”;
- (c) in sub-section (5), after “Board” insert “under Part X”;
- (d) sub-section (6) is **repealed**. 10

PART 5—AMENDMENT OF MELBOURNE WATER CORPORATION ACT 1992

28. Functions—incidental businesses and activities

In section 11 (1) and (2) of the **Melbourne Water Corporation Act 1992**, after “carrying on” insert “within or, with the approval of the Minister, outside Victoria,”. 15

29. New sections 30A and 30B inserted

After section 30 of the **Melbourne Water Corporation Act 1992** insert— 20

“30A. Duties of directors

- (1) A director must at all times act honestly in the performance of the functions of his or her office.
- (2) A director must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions. 25
- (3) A director or former director must not make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any 30

other person or to cause detriment to the Corporation.

5 (4) A director must not make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Corporation.

10 (5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

15
30B. Minister may bring proceedings

If a person contravenes section 30A the Minister, in the name of the Corporation, may recover from the person as a debt due to the Corporation by action in a court of competent jurisdiction either or both of the following—

20
25 (a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;

30 (b) if the Corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.”.

30. Indemnity

In section 32A of the **Melbourne Water Corporation Act 1992**, for “any negligence, default,” substitute “a wilful”.

31. Corporate plans

- (1) In section 34 (4) of the **Melbourne Water Corporation Act 1992**, after “Minister” insert “or the Treasurer”.
- (2) In section 35 of the **Melbourne Water Corporation Act 1992**— 5
- (a) after “Minister” (where first occurring) insert “and the Treasurer”;
- (b) in paragraph (f) after “Minister” insert “or the Treasurer”. 10
- (3) In sections 36 (f) and 37 (f) of the **Melbourne Water Corporation Act 1992**, after “Minister” insert “or the Treasurer”.
- (4) In section 38 of the **Melbourne Water Corporation Act 1992**, after “Minister” insert “and the Treasurer”. 15
- (5) In section 39 (1) of the **Melbourne Water Corporation Act 1992**—
- (a) after “Minister” (where first occurring) insert “and the Treasurer”; 20
- (b) after “Minister” (where secondly occurring) insert “or the Treasurer”.
- (6) In section 39 (2) of the **Melbourne Water Corporation Act 1992**—
- (a) after “Minister” (where first occurring) insert “and the Treasurer”; 25
- (b) omit “and” at the end of paragraph (c);
- (c) paragraph (d) is repealed.
- (7) In section 39 (3) of the **Melbourne Water Corporation Act 1992**, omit “and must set out the Minister’s reasons for the direction”. 30
- (8) In section 40 of the **Melbourne Water Corporation Act 1992**, after “Minister” insert “and the Treasurer”.

32. New sections 41 and 42 inserted

For section 41 of the **Melbourne Water Corporation Act 1992** substitute—

“41. Corporation must act in accordance with corporate plan

The Corporation must act only in accordance with its corporate plan (as existing from time to time) unless it has first obtained the written approval of the Minister and the Treasurer to act otherwise.

42. Treasurer may require information

The Treasurer may, in writing, require the Board to give the Treasurer such information as is specified in writing by the Treasurer.”.

PART 6—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

33. Transitional provision—abolition of RWC

(1) In this section—

“appointed day” means the day on which this section comes into operation;

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

“former body” means the Rural Water Corporation established by clause 2 (1) of Schedule 3 to the **Water Act 1989**.

(2) On the appointed day—

(a) the former body shall be abolished; and

(b) all rights, property and assets that, immediately before that day, were vested in the former body

are, by force of this sub-section, vested in the Director-General; and

- (c) all debts, liabilities and obligations of the former body existing immediately before that day shall become, by force of this sub-section, debts, liabilities and obligations of the Director-General; and 5
 - (d) the Director-General shall, by force of this sub-section, be substituted as a party to any proceedings pending in any court to which the former body was a party immediately before that day; and 10
 - (e) the Director-General shall, by force of this sub-section, be substituted as a party to any arrangement or contract entered into by or on behalf of the former body as a party and in force immediately before that day; and 15
 - (f) any reference to the former body in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever shall, so far as it relates to any period after that day and if not inconsistent with the context or subject-matter, be construed as a reference to the Director-General. 20 25
- (3) Paragraphs (b) to (f) of sub-section (2) are subject to any Order made under section 98 of the **Water Act 1989** affecting the former body that is in force on the appointed day.

34. *Transfer of certain RWC staff* 30

- (1) The Minister administering the **Water Act 1989** may, after consultation with the Managing Director of the Board of Directors of the Rural Water Corporation, determine which officers of that Corporation are to become officers under the **Public Sector Management Act 1992** as a consequence of the abolition of that Corporation by this Act. 35

5 (2) Any officer of the Rural Water Corporation in respect of whom a determination has been made under sub-section (1) shall, with effect from the date specified in the determination, become an officer under the **Public Sector Management Act 1992** on terms and conditions with respect to ordinary pay no less favourable than those of the former office and with the benefit of all leave entitlements accrued in respect of that former office.

10 (3) An officer of the Rural Water Corporation who—

(a) by virtue of a determination made under sub-section (1) becomes an officer under the **Public Sector Management Act 1992**; and

15 (b) was immediately before then a member of a scheme established by or under the **State Superannuation Act 1988** or any corresponding previous enactment—

continues, subject to the **State Superannuation Act 1988**, to be a member of that scheme.

20 **35. Transitional—appointment of chairperson**

The amendment of the **Water Act 1989** made by section 21 applies only with respect to appointments of chairpersons made after the commencement of that section.

25 **36. Residential Tenancies Act 1980**

(1) In section 82 (1) (d) of the **Residential Tenancies Act 1980**, for “sewer usage” substitute “sewage disposal”.

30 (2) In section 82 (2) (ba) of the **Residential Tenancies Act 1980**, for “sewer usage” substitute “sewage disposal”.

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37. *Weights and Measures Act 1958*

In section 6 (*a*) of the **Weights and Measures Act 1958**, after “statutory authority” insert “or any holder of a licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**”.

5

