

Melbourne Water Corporation Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 sets out definitions of some terms used in the Act.

Clause 4 provides that a question of whether a body corporate is a subsidiary of another body corporate must be determined in the same manner as it is determined under the Corporations Law of Victoria.

Clause 5 ensures that the **Melbourne Water Corporation Act 1991** prevails over any inconsistent provision in the **Melbourne and Metropolitan Board of Works Act 1958**.

PART 2—MELBOURNE WATER CORPORATION

Clause 6 provides that the Melbourne and Metropolitan Board of Works (MMBW) continues in existence under the name Melbourne Water Corporation.

Clause 7 makes provision for the Corporation to be a body corporate and to have the powers of a body corporate.

Clause 8 requires the seal of the Corporation to be kept securely and only used with the authority of the Corporation. All courts must take notice of the imprint of the Corporation's seal.

Clause 9 provides that the Corporation does not represent the Crown.

Clause 10 provides that the functions of the Corporation are those conferred under this Act, the **Melbourne and Metropolitan Board of Works Act 1958** and any other Act.

Clause 11 provides that the Corporation has the power to carry out any business or activity which is incidental to its functions.

Clause 12 requires the Corporation to perform its functions in a manner consistent with sound commercial practice where this is practical to do so.

Clause 13 provides that the Corporation has a general power to do all things that are necessary, or convenient for or incidental to, the performance of its functions.

Clause 14 provides that the Corporation has the powers of a natural person to carry out its functions including specific powers listed.

Clause 15 enables the Corporation to delegate its powers to the Board or a Director, its officers, the committees and with the Minister's approval any other person. Certain specified powers cannot be delegated.

Clause 16 enables the Corporation to establish advisory committees to advise the Corporation on any matter including matters relevant to local government or the community

generally. Clause 16 also sets out matters relating to the appointment, reporting and proceedings of committees.

PART 3—THE BOARD

Clause 17 provides that there will be a Board of Directors of the Corporation.

Clause 18 provides that the Board consists of a Chairperson, Deputy Chairperson, Managing Director and not more than six other Directors.

Clause 19 provides that all Directors including the Chairperson and Deputy Chairperson but not the Managing Director, are appointed by the Minister for terms of up to three years. Directors are eligible for re-appointment, up to a maximum of nine years. The Managing Director cannot be appointed as the Chairperson, Deputy Chairperson or Director of the Board. The Minister will determine the terms and conditions of appointment.

Clause 20 provides that the Minister must ensure that Directors appointed have, collectively, qualifications relevant to or experience in a number of fields including the business of the Corporation, public finance, engineering, commerce, banking law and environment.

Clause 21 provides for the appointment by the Board of the Managing Director, for a term of up to five years. The Chairperson, Deputy Chairperson or another Director cannot be appointed as, or act as, the Managing Director. The Managing Director is appointed on a full-time basis and holds office on terms and conditions approved by the Minister.

Clause 22 provides that when the Chairperson is unable to perform the duties of Chairperson or is absent from Victoria or the office of Chairperson is vacant, the Deputy Chairperson must act as the Chairperson.

Clause 23 provides that the Minister may appoint a Director to act as the Deputy Chairperson during a vacancy in the office of Deputy Chairperson or when the Deputy Chairperson is unable to perform the duties of office. The Minister may appoint a person to act as a Director during a vacancy in the office of such a Director or during any period when a Director is acting as Deputy Chairperson or unable to attend meetings.

Clause 24 provides that the Board may appoint a person to act as Managing Director during a vacancy in the office of Managing Director or in any case where the Managing Director is unable to perform the duties of the office. A Director cannot be appointed as the Managing Director.

Clause 25 provides that the office of Director becomes vacant if a Director fails to attend three consecutive Board meetings without approval, or becomes bankrupt or applies to take the benefit of any law for the relief of bankruptcy. Clause 25 also provides that a Director may resign in writing to the Minister. The Minister may also remove a Director, other than the Managing Director, from office. If a Director is convicted of an offence related to his or her duties as a Director or fails, without reasonable excuse, to comply with Clause 29, the Minister must remove the Director from office. Where the Director is the Managing Director, the Board must remove the Managing Director from office.

Clause 26 provides that an act or decision of the Board is valid even though there may have been a defect or irregularity in the appointment of a Director or a vacancy on the Board.

Clause 27 provides that the role of the Board is to decide the objectives, strategies and policies of the Corporation and to ensure that the Corporation performs its functions and exercises its powers in a proper, efficient and economical manner.

Clause 28 provides the Board with a power to delegate any of the Board's powers under this Act to the Managing Director. However, the Board's power of delegation cannot be delegated to the Managing Director.

Clause 29 requires a Director who has a pecuniary interest in a matter being considered by the Board to declare that interest at a meeting. The declaration must be recorded in the minutes of that meeting and the person presiding is obliged to ensure that it is recorded. If a declaration has been made, the Director must not be present during any deliberation with respect to the matter or vote on the matter unless the Board decides otherwise.

Clause 30 requires the Managing Director to give written notice to the Chairperson of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business.

Clause 31 provides for the proceedings of the Board including provisions for who presides at a meeting, the quorum, how questions are to be determined, the keeping of minutes, and the participation of Directors by means of telephone or other means. The Chairperson must hold a meeting when requested to do so by at least four directors.

Clause 32 enables the Board to make decisions on matters even though a formal meeting has not been held.

Clause 33 empowers the Corporation to engage such officers and employees as are necessary for the performance of its functions. The Corporation has the power to determine the terms and conditions of employment.

PART 4—CORPORATE PLANS

Clause 34 requires the Board to prepare a corporate plan beginning on a date determined by the Minister. The first and each subsequent plan must be for not less than three years. The Board may review and revise a corporate plan at any time, and must do so if requested by the Minister.

Clause 35 sets out the general matters that must be included in a corporate plan. This may include other information considered appropriate by the Board and other information specified by the Minister.

Clause 36 sets out the financial matters that must be included in a corporate plan. This may include other information considered appropriate by the Board and other information specified by the Minister.

Clause 37 sets out the specific matters the Board must have regard to when setting a financial target for the purposes of the corporate plan. The Minister may specify other matters not set out in Clause 37.

Clause 38 requires the Board to give the Minister a corporate plan including any revised corporate plan.

Clause 39 enables the Minister to make variations to a corporate plan within 60 days of being received from the Board. Before making a direction to vary a plan, the Minister must consult the Board. The Minister must consider certain matters when issuing a direction and must give reasons for any direction made.

Clause 40 requires the Board to notify the Minister of any matters that may affect the achievements of the Corporation's corporate plan, or a financial target under a corporate plan.

Clause 41 prevents the Corporation from making a major deviation from a corporate plan unless approved by the Minister. The Corporation must not set tariffs, rates and charges except in accordance with the corporate plan.

PART 5—ACCOUNTS AND AUDIT

Clause 42 provides that the Corporation must keep proper accounts and records. The Corporation must ensure that money is properly collected, expended and authorised, that adequate controls are maintained, that liabilities are properly authorised and that operations are efficient and must develop and maintain adequate budgeting, accounting and financial control systems.

Clause 43 requires the Corporation to prepare an annual report, in respect of each financial year, containing a report of operations and financial statements. The annual report is to be submitted to the Minister not later than 30 September each year. The report of operations must contain information as determined by the Corporation and the Minister. If a Minister gives a direction it must be included in the Corporation's annual report. The financial statements must contain information determined by the Minister and must present fairly the results of the financial transactions for the Corporation. Provisions regarding the certification of the financial statements are included. The financial statements must be audited in accordance with *Clause 44*. Annual reports must be tabled in both Houses of Parliament with seven sitting days of receipt by the Minister. If the Corporation does not submit an annual report on time, the Minister must report that failure and give reasons to Parliament. *Clause 43* does not apply if an Order is made under the **Annual Reporting Act 1983**.

Clause 44 requires that the financial statements must be audited by the Auditor-General. The powers of the Auditor-General are set out.

PART 6—GENERAL

Clause 45 enables the Minister to give the Board written directions in relation to the performance of the Corporation's functions or exercise of the Corporation's powers. The Corporation must comply with any direction given.

Clause 46 provides that the Corporation may be reimbursed for complying with *Clause 45* if the Minister so directs. The amount to be reimbursed is to be decided by the Minister with the approval of the Minister for Finance and after consultation with the Board.

Clause 47 requires the Corporation to have a public office within the City of Melbourne or any other place the Minister determines.

Clause 48 empowers the Governor in Council to make regulations for or with respect to any matter or thing required or permitted by the Act to be prescribed.

PART 7—AMENDMENT TO THE MMBW ACT

Clause 49 amends definitions in the MMBW Act in accordance with the terms used in this Act.

Clause 50 repeals Part I of the MMBW Act, except sections 32, 42, 60 and 64. The exceptions continue existing by-law making powers dealing with respect to conditions of employment, long service leave and superannuation for officers and employees of the Corporation and provisions dealing with certain works and land transferred to the MMBW.

Clause 51 declares certain lands included in the metropolis by Order in Council to be in the metropolis.

Clause 52 provides for amendments to the **Melbourne and Metropolitan Board of Works Act 1958** consequent upon the repeal of Part I of that Act. As a result of sub-clause (3), the Corporation will be able to grant rebates to a member of a class of persons according to a by-law made by the Corporation.

PART 8—AMENDMENT OF WATER ACT 1989

Clause 53 provides for the consequential amendment of the **Water Act 1989** as a result of Clause 51 and Orders extending the metropolis.

PART 9—TRANSITIONAL PROVISIONS

Clause 54 provides that the Members, including the Chairperson of the MMBW and the General Manager—MMBW, go out of office on the commencement of this Act. At the same time the Area Commissions are abolished. Other transitional arrangements are also made.

