

Water Industry Bill

EXPLANATORY MEMORANDUM

The Bill provides the first stage of structural reform of the water industry in Victoria by the establishment of a licensing system for the provision of water, water and sewerage, drainage, sewerage treatment and water headworks services. Part 2 provides for the issue of licences to corporations to undertake these functions within defined geographic areas. It is envisaged that the initial licences, to provide water and sewerage services within the Melbourne metropolis, will be granted to the companies referred to in clause 17 (1). Licences (except those issued in accordance with section 17) are to be issued by the Office of the Regulator-General and the water industry, as established by the Bill, is declared to be a regulated industry for the purpose of Part 3 of the **Office of the Regulator-General Act 1994**. Licensees are empowered to impose fees and charges for services which they supply and water and sewerage licensees may impose usage charges for water consumption and sewer usage.

Melbourne Water Corporation (“MWC”), established by the **Melbourne Water Corporation Act 1992**, continues in existence with the powers conferred on it by the **Melbourne and Metropolitan Board of Works Act 1958** (“MMBW Act”). However, MWC may not exercise any function or power conferred on a licensee, or Melbourne Parks and Waterways (Clause 197). Rates will continue to be imposed by MWC pursuant to the MMBW Act. However the Treasurer is empowered to direct MWC to make payments to the water and sewerage licensees to be appointed in the Melbourne metropolis (clause 34).

Licence conditions will contain customer contracts, specifying the terms and conditions upon which services are to be provided to customers. Licences to be issued under the Act may contain a broad range of conditions (clause 11) and technical requirements imposed on licensees are subject to supervision by inspectors appointed by the Minister (Part 2, Division 4).

Part 4 establishes a new statutory corporation to be called Melbourne Parks and Waterways (“MPW”). This statutory corporation is to be the successor in law of the State body by the same name. MPW will manage open spaces, parks and waterways for conservation, recreation and leisure purposes within a defined geographic area. It will also be responsible for the management of the hydraulic capacity and water quality of defined waterways. MPW will be empowered to make and levy a rate (Part 4, Division 5).

Part 5 provides for the transfer of assets, liabilities and staff of MWC to a person or persons nominated by the Minister. This procedure can be employed to effect transfers to licensees and MPW. Part 6 sets out certain general matters. Part 7 sets out amendments to the **Water Act 1989**. Part 8 sets out amendments to the Melbourne and Metropolitan Board of Works Act. Part 9 amends or repeals other Acts.

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 sets out the definitions for the Act.

Clause 4 provides that the Act binds the Crown.

PART 2—THE LICENSING SYSTEM

Division 1—Regulation of Water Industry

Clause 5 states that the Division is relevant legislation for the purposes of the **Office of the Regulator-General Act 1994**.

Clause 6 states the Division applies to any person including MWC.

Clause 7 sets out the objectives of the Office of the Regulator-General under the Act.

Clause 8 provides that the water industry is a regulated industry.

Clause 9 provides for application for a licence.

Clause 10 prescribes the criteria for determining applications.

Clause 11 deals with the term of and conditions which may be included in a licence.

Clause 12 makes provision for a licence charge.

Clause 13 restricts licensees to the performance of functions within the area or areas specified in the licence with special provision being made for a water headworks licence and a sewerage treatment licence.

Clause 14 deals with the variation or revocation of a licence.

Clause 15 requires the Office of the Regulator-General to publish in the Government Gazette certain details concerning the grant of a licence.

Clause 16 provides that a licence is not transferrable.

Clause 17 makes special provision for the grant of licences to three companies in the Melbourne metropolis.

Clause 18 provides that these companies do not represent the Crown.

Division 2—Customer Contracts

Clause 19 deems a customer to have entered into a customer contract with a licensee on the terms and conditions set out in the licence.

Clause 20 requires the publication of implied customer contracts.

Clause 21 provides that an express contract between a customer and a licensee prevails over an implied customer contract.

Division 3—Financial Provisions

Clause 22 specifies the fees and charges which a licensee may impose.

Clause 23 specifies the circumstances where an occupier of property is liable for water usage and sewer usage charges.

Clause 24 prescribes when a body corporate is liable to pay a water usage charge.

Clause 25 provides for exemptions from a water usage charge.

Clause 26 provides for concessions in respect of the water usage charge by regulation or on application to a licensee.

Clause 27 empowers a licensee to require the owner of a property to meet or contribute to the cost of works which will benefit the property.

Clause 28 empowers a licensee to require an owner of property to contribute to the cost of works which will increase services to the property.

Clause 29 empowers a licensee to require the owner of property to meet or contribute to the cost of works which will service the property.

Clause 30 prescribes the procedure for review of payments required that under the preceding clauses.

Clause 31 prescribes when a payment must be made.

Clause 32 states that a notice requiring payment of the usage charge or other fee must give the payee at least 28 days to pay.

Clause 33 prescribes the order of priority of payments made to a licensee and provides for resolution of disputes by the Treasurer.

Clause 34 enables the Treasurer to give directions to MWC in relation to payments to be made out of rates to the three companies which are to be issued water and sewerage licences in the Melbourne metropolis.

Clause 35 provides for adjustments in respect of the first billing period.

Division 4—Supervision and Enforcement

Clause 36 sets out definitions for the purpose of the Division.

Clause 37 provides for the appointment of inspectors.

Clause 38 sets out the powers of inspectors to enter premises, to take samples and seize things.

Clause 39 provides that an occupier who consents in writing to entry and search of his or her premises must be given a copy of the signed consent.

Clause 40 permits an inspector to use equipment necessary for the examination or processing of things.

Clause 41 provides for the use or seizure of electronic equipment.

Clause 42 requires an inspector to give copies of documents or information seized to the occupier.

Clause 43 provides for the return of seized things.

Clause 44 enables an inspector to apply to the Magistrates Court to extend the retention period.

Clause 45 empowers an inspector to require a person to give information, to produce documents or to give reasonable assistance.

Clause 46 provides for the making of copies of documents produced to an inspector.

Clause 47 permits a person to refuse to give information or produce a document on the ground that it would tend to incriminate the person.

Clause 48 prescribes the procedure for an inspector who proposes to take a sample.

Clause 49 states that certain certificates signed by the Secretary to the Department are admissible in evidence.

Division 5—Regulations

Clauses 50 to 53 provide for the making of regulations.

PART 3—FUNCTIONS, OBLIGATIONS AND POWERS OF LICENSEES

Division 1—General

Clause 54 provides that the conditions of a licence may exclude a function which would otherwise belong to the licensee.

Clause 55 makes provision for the compulsory acquisition of land on the recommendation of a licensee.

Clause 56 enables Crown Land to be placed under the management and control of a licensee.

Clause 57 provides for the surrender to the Crown of any interest of a licensee in freehold land.

Clause 58 sets out the powers of a licensee to enter land.

Clause 59 specifies the obligations of a licensee in connection with the entry onto land.

Clause 60 creates an offence of obstructing, threatening or intimidating an employee of a licensee in the exercise of the power of entry onto land.

Clause 61 provides for the creation of easements or reserves in sub-divisions of land.

Clause 62 enables a licensee to temporarily close a road.

Clause 63 controls connections to the works of a licensee.

Clause 64 enables a retail licensee to declare land to be a serviced property.

Clause 65 enables a retail licensee to require the owner of a serviced property to connect to the licensee's sewerage works or to remove an existing connection to the licensee's works.

Clause 66 prohibits a person, without the licensee's consent, from building etc. on land over which a licensee has an easement, within one metre of any works of a licensee and from moving any soil or rock which supports a licensee's works.

Clause 67 enables a licensee to require the owner of any property to remove a tree that obstructs or damages a licensee's works.

Clause 68 enables a licensee to require the owner of land to repair or carry out maintenance.

Clause 69 permits a retail licensee to serve notice on a customer, who is in contravention of the Act or regulations, to take specified action and prescribes what a licensee may do if the notice of contravention is not complied with.

Clause 70 requires a licensee that intends to do anything that will adversely affect the works of another licensee or authority to give notice to that licensee or authority.

Clause 71 empowers the licensee to give notice to another licensee or authority to alter or remove its works.

Clause 72 provides for the resolution of disputes arising between licensees or between a licensee and an authority under the preceding two clauses.

Clause 73 requires a licensee to compensate any person who has sustained any pecuniary loss as a result of the performance of the licensee's functions.

Clause 74 provides that a licensee is liable to pay damages to a person who sustains injury, damage or loss as a result of the flow of water from a licensee's works onto any land occasioned by the intentional or negligent conduct of the licensee.

Clause 75 enables a person to apply to a licensee for an information statement in relation to any land within its area.

Clause 76 requires a prescribed person to provide particulars of a disposition of any land.

Clause 77 requires a licensee to keep separate accounts concerning its affairs as licensee.

Clause 78 requires a licensee to report to the Minister, the Office of the Regulator-General and its customers.

Division 2—Water Licence

Clause 79 states that the Division applies to a licensee who is the holder of a water licence.

Clause 80 sets out the functions of a licensee.

Clause 81 enables a Council to require a licensee to fix fireplugs at the cost of the Council. No charge may be made by a licensee in respect of water for firefighting but a licensee may impose charges in respect of water taken for cleaning sewers and drains.

Clause 82 enables a licensee to enter land for the purposes of water supply protection.

Clause 83 enables a licensee in an emergency to remove any substance or thing that in the licensee's opinion is likely to affect the purity of the licensee's water supply system.

Clause 84 provides that a licensee may serve a notice on the person requiring that an activity be discontinued or any substance or thing be removed if this is necessary to protect the purity of the licensee's water supply system.

Clause 85 prescribes the circumstances where a licensee may reduce or restrict the quantity of water supplied.

Clause 86 permits the licensee to send water into any waterway etc.

Clause 87 requires a licensee to keep records of the location of all principal works.

Clause 88 requires a licensee to provide Councils with copies of records.

Division 3—Water and Sewerage Licence

Clause 89 provides that the Division applies to a licensee who is the holder of a water and sewerage licence.

Clause 90 sets out the functions of a licensee.

Clause 91 provides that Division 2 applies to a licensee who is the holder of a water and sewerage licence.

Clause 93 enables a licensee to enter land for certain purposes.

Clause 93 prohibits the discharge of anything other than sewerage or trade waste discharge in accordance with a trade waste agreement to be discharged into a sewerage system.

Clause 94 enables a licensee to apply to a court for an order with respect to the enforcement of a trade waste agreement.

Clause 95 requires a licensee to give notice before constructing a sewer.

Division 4—Drainage Services Licence

Clause 96 provides that the Division applies to a licensee who is the holder of a drainage services licence.

Clause 97 sets out the functions of a licensee.

Clause 98 enables a licensee to enter into an agreement with the owner of a property for accepting water from that property to the licensee's works or for the construction or drainage works.

Clause 99 provides that a licensee is not liable in the exercise of a function under the licence by virtue of sections 15 and 16 of the **Water Act 1989**.

Division 5—Sewerage Treatment Licence

Clause 100 provides that the Division applies to a licensee who is the holder of the sewerage treatment licence.

Clause 101 describes the functions of a licensee.

Clause 102 prohibits a person, other than a water and sewerage licensee, from causing or permitting sewage or any other thing to be discharged into a sewerage treatment system under the control and management of the licensee.

Division 6—Water Headworks Licence

Clause 103 provides that the Division applies to a licensee who is the holder of a water headworks licence.

Clause 104 sets out the functions of a licensee.

Clause 105 prescribes the persons to whom a licensee may supply water.

Clause 106 states that sections 82 to 86 apply to a licensee who is the holder of the water headworks licence.

PART 4—MELBOURNE PARKS AND WATERWAYS

Division 1—Melbourne Parks and Waterways

Clause 107 provides for the establishment of MPW.

Clause 108 sets out the objectives of MPW.

Clause 109 states that MPW is a public authority but does not represent the Crown.

Clause 110 specifies the functions and powers of MPW.

Clause 111 provides that MPW may obtain financial accommodation and invest money in accordance with the **Borrowing and Investment Powers Act 1987**.

Clause 112 permits the Minister to give directions to the Board of the MPW.

Clause 113 permits MPW to delegate any power.

Clause 114 authorises MPW to establish committees.

Clause 115 makes provision for a board of directors of MPW.

Clause 116 provides for the appointment of directors by the Governor in Council.

Clause 117 deals with the terms and conditions of appointment of directors.

Clause 118 enables the board of MPW to appoint a Chief Executive Officer.

Clause 119 deals with vacancies, resignations and removal of office of directors.

Clause 120 provides that any act or decision of the board of MPW is not invalid because of certain irregularities or vacancies.

Clause 121 sets out provisions concerning proceedings of the board.

Clause 122 enables the directors of MPW to pass resolutions without meetings.

Clause 123 requires directors to disclose interests.

Clause 124 sets out the duties of directors.

Clause 125 enables the Minister to bring proceedings against directors.

Clause 126 prohibits MPW from making a loan or giving a security to a director.

Clause 127 declares that MPW does not have the power to exempt directors from liability.

Clause 128 permits MPW to engage or employ staff.

Division 3—Corporate Plans

Clause 129 requires MPW to prepare a corporate plan each year.

Clause 130 sets out the contents of the statement of corporate intent which must be included in the corporate plan.

Clause 131 requires the board of MPW to advise the Minister of any matters which may affect the achievement of the objectives under the corporate plan or of financial targets.

Division 4—Powers with respect to Land

Clause 132 provides for the compulsory acquisition of land by MPW.

Clause 133 enables the Governor in Council to place Crown land under the management and control of MPW.

Clause 134 permits MPW to surrender to the Crown any interest of it in freehold land.

Clause 135 confers other powers on MPW concerning land.

Clause 136 gives MPW certain powers to enter onto land.

Clause 137 prescribes the obligations of MPW in relation to entry onto land.

Clause 138 prohibits a person obstructing, threatening or intimidating an officer of MPW in the exercise of the power of entry onto land.

Division 5—Financial Provisions

Clause 139 empowers MPW to make and levy a rate in relation to land.

Clause 140 provides that rates are payable by the owner of the land for the time being.

Clause 141 permits MPW to remit or defer payment of rates for people in necessitous circumstances.

Clause 142 permits MPW to enter into an agreement with a licensee with respect to the collection by that licensee of MPW rates.

Clause 143 requires the companies referred to in clause 17 (1) to collect MPW rates.

Clause 144 enables MPW to impose charges for using open spaces or for providing other services.

Clause 145 provides for the recovery of service charges.

Division 6—Miscellaneous

Clause 146 enables a person to apply to MPW for an information statement in relation to land.

Clause 147 prescribes the method of serving documents on MPW.

Clause 148 prescribes the method by which MPW may serve documents on a person.

Clause 149 enables regulations to be made concerning parks under the management and control of MPW and the removal of things from such parks.

Division 7—Transitional Provisions

Clause 150 provides that MPW is the successor in law of the State body known as Melbourne Parks and Waterways and dissolves the State body.

Clause 151 provides that MPW's reports and financial statements must include the operations of the State body within the financial year ending 30 June 1995.

Clause 152 provides that Melbourne Water Corporation's accounts for the financial year ending 30 June 1995 must not include the accounts of the State body.

Clause 153 enables the Treasurer to give directions to the board of directors of MWC in relation to payments to be made to MPW out of rates made and levied in respect of the year ending 30 June 1995.

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

Division 1—Definition

Clause 154 prescribes definitions for the purposes of the Part.

Division 2—Allocation of property

Clause 155 enables the Minister to direct MWC to transfer property, rights and liabilities of a specified kind to persons or persons nominated by the Minister. MWC must give to the Minister an allocation statement allocating property, rights and liabilities of MWC between the person or persons nominated by the Minister.

Clause 156 provides that a certificate signed by the Chief Executive Officer specifying the property, rights and liabilities of MWC specified in the certificate have been allocated under the allocation statement is conclusive evidence.

Division 3—Transfer of property

Clause 157 provides that on the relevant date all property, rights and liabilities of MWC vest in or become liabilities of the person to whom they have been allocated.

Clause 158 provides that an allocation of property subject to encumbrances has the effect of allocating property with the encumbrances.

Clause 159 deals with the value of former MWC properties.

Clause 160 provides for the substitution of parties to an agreement in accordance with an allocation statement.

Clause 161 provides that each Melbourne Water instrument has effect after the relevant date.

Clause 162 provides for substitution of a transferee for MWC in relation to litigation or arbitration proceedings.

Clause 163 for the substitution of a transferee for MWC in relation to property previously owned by MWC.

Clause 164 requires the Registrar of Titles to amend the relevant certificate of title.

Clause 165 provides that no stamp duty or other tax is chargeable in respect of anything done under this Part.

Clause 166 makes provision for documentary and other evidence.

Clause 167 declares that nothing effected by or under this Act places a person in breach of contract or in default under any Act or law.

Division 4—Financial obligations of Melbourne Water Corporation

Clause 168 requires MWC to give to the Treasurer and Minister a statement of its financial obligations allocating responsibility for financial obligations between the company and the licensees.

Clause 169 requires licensees to pay to MWC moneys to meet financial obligations to which the company licensee is responsible in accordance with an allocation statement under section 168.

Clause 170 deals with payments in respect of financial obligations where an order has been made under the **Treasury Corporation of Victoria Act 1992** and responsibility for those financial obligations has been allocated to a company licensee.

Division 5—Rights as between transferees

Clause 171 makes interim arrangements for one transferee to have access to rights and privileges allocated to another transferee.

Division 6—Staff

Clause 172 requires MWC to prepare a list of staff specifying which body will be taken to have employed the employee by virtue of section 173.

Clause 173 provides that on the appointed day an employee is to be regarded as having been employed by the new employer.

Clause 174 provides that a transferred employee can resign or be dismissed and his or her terms and conditions of employment can be changed in accordance with the law.

Clause 175 makes provision for the superannuation entitlements of transferred employees.

Clause 176 permits the Minister to delegate any power, discretion, function or authority under the Act.

Clause 177 provides that an amount recorded by a water meter is evidence of the amount of the water delivered.

Clause 178 provides that if a body corporate commits an offence, an officer of the body corporate will, in defined circumstances, also be guilty of the offence.

Clause 179 provides that prosecutions may be brought by a member of the police force or a prescribed person.

Clause 180 deals with service of documents on a licensee.

Clause 181 deals with service of documents by a licensee.

Clause 182 enables the Treasurer, on behalf of the Government of Victoria, to execute a guarantee in connection with the provision of financial accommodation to a company licensee.

Clause 183 enables regulations to provide that any act or thing 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.

Clause 184 makes provision for the making of regulations.

Clause 185 states that Schedule 2 contains savings or transitional provisions and enables regulations to be made containing provisions of a saving or transitional nature.

PART 7—AMENDMENT OF WATER ACT 1989

Clause 186 inserts further definitions in section 3 (1) of the Water Act.

Clause 187 amends Division 2 of Part 2 of the Water Act.

Clause 188 amends Division 1 of Part 4 of the Water Act.

Clause 189 amends sections 143, 288, 289, 290 and 299 of the Water Act.

Clause 190 extends certain provisions of the Water Act to MPW.

Clause 191 amends section 98 of the Water Act.

Clause 192 amends section 99 and clauses 2 and 3 of Schedule 2 to the Water Act.

Clause 193 amends section 201 of the Water Act.

Clause 194 amends section 226 of the Water Act.

Clause 195 amends sections 274 and 281 of the Water Act.

PART 8—AMENDMENT OF MMBW ACT

Clause 196 inserts certain definitions in section 3 (1) of the MMBW Act and amends the superannuation provisions contained in section 42A of that Act.

Clause 197 inserts section 4 into the MMBW Act which provides that MWC does not have a corresponding function or power in relation to an area or areas within which a licensee exercises a function or power.

Clause 198 inserts new sub-sections in section 68 of the MMBW Act requiring MWC to supply a retail licensee with water.

Clause 199 amends sections 98, 98A, 98B and 104 of the MMBW Act.

Clause 200 amends sections 147 and 149 of the MMBW Act.

Clause 201 amends section 185 (2) of the MMBW Act.

Clause 202 inserts section 186A into the MMBW Act which empowers MWC to enter into an agreement with a retail licensee with respect to the collection by that licensee on behalf of MWC of any rates, charges, interest or other moneys due to the board under this Act. Sub-section (2) also requires the three stated corporations to collect rates on behalf of MWC.

Clause 203 repeals and substitutes various provisions in the MMBW Act.

Clause 204 effects amendments to sections 242c, 247 and 248 of the MMBW Act.

Clause 205 amends sections 259, 260A, 277 and 284A of the MMBW Act.

Clause 206 repeals Part XI of the MMBW Act.

PART 9—AMENDMENTS OR REPEAL OF OTHER ACTS

Clause 207 amends the **Crown Land (Reserves) Act 1978**.

Clause 208 amends the **Wattle Park Land Act 1991**.

Clause 209 amends the **State Owned Enterprises Act 1992**.

Clause 210 amends the **Sale of Land Act 1992**.

Clause 211 amends the **Transport Act 1993**.

Clause 212 amends the **Borrowing and Investment Powers Act 1987**.

Clause 213 amends the **Residential Tenancies Act 1980**.

Clause 214 amends the **Melbourne Water Corporation Act 1992**.

Clause 215 amends the **Treasury Corporation of Victoria Act 1992**.

Schedule 1 prescribes land which is exempt from charges and rates.

Schedule 2 sets out savings and transitional provisions.