

Water (Rural Water Corporation) Bill

EXPLANATORY MEMORANDUM

Clause 1 sets out the purposes of the Act.

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

Clause 3 states that in this Act the Water Act 1989 is referred to as the Principal Act.

Clause 4 inserts a new Schedule 3 in the Principal Act—

Schedule 3 Rural Water Corporation and Regional Management Boards

Clause 1 of the Schedule sets out definitions of some terms used in the Schedule.

Clause 2 of the Schedule establishes an Authority to be known as the Rural Water Corporation. Sub-clause (2) makes provision for the Corporation to be a body corporate and to have the powers of a body corporate. Sub-clause (3) requires the seal of the Corporation to be kept securely and only used with the authority of the Corporation. Sub-clause (4) requires that all courts must take notice of the imprint of the Corporation's seal.

Clause 3 of the Schedule provides that there will be a Board of Directors of the Corporation. Sub-clause (2) provides that the Board consists of a Chairperson, Deputy Chairperson, Managing Director and not more than four other directors.

Clause 4 of the Schedule 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 5 of the Schedule 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 or economics, engineering, commerce, business management, banking, law, management of water resources and the environment.

Clause 6 of the Schedule 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 7 of the Schedule 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 8 of the Schedule 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 9 of the Schedule 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 10 of the Schedule 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. Where the Director is the Managing Director, the Board must remove the Managing Director from office. The Board may recommend to the Minister that a Director, other than the Managing Director, be removed by the Minister.

Clause 11 of the Schedule 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 12 of the Schedule provides that the role of the Board is to decide the 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 13 of the Schedule 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 14 of the Schedule provides the means by which Directors may participate in proceedings of the Board by telephone or other means.

Clause 15 of the Schedule enables the Board to make decisions on matters even though a formal meeting has not been held.

Clause 16 of the Schedule requires the Minister to convene an annual general meeting of the Corporation to be held within 90 days after tabling in Parliament of the annual report. The Minister may preside at that meeting, and senior officers of the Corporation must provide information to that meeting. Any person may question the Directors about the policies and operations of the Corporation. The Minister may also convene and preside at any other public meeting of the Corporation for the purpose of obtaining public response to the policies and operations of the Corporation.

Clause 17 of the Schedule provides that the Corporation has the powers conferred by the **Borrowing and Investment Powers Act 1987** on an authority under Schedule 2 to that Act.

Clause 18 of the Schedule enables the Corporation to licence vessels within any environmental or recreational area of the Corporation or on any of its works.

Clause 19 of the Schedule provides that the Corporation has the power to carryout within or outside Victoria any business or activity which is incidental to its functions.

Clause 20 of the Schedule provides that on the date of commencement of this Act the Rural Water Commission of Victoria is abolished and all powers, rights, property, works and assets vested in the RWCV and all functions, debts, liabilities and obligations of the RWCV become the Corporation's. Any district of the Commission becomes a district under the management and control of the Corporation. Other transitional arrangements are also made. All officers and employees of the RWCV will no longer be subject to the **Public Service Act 1974** and will be transferred to the Corporation. Sub-clause (3) appoints the Chairperson of the RWCV to the position of Chairperson of the new Corporation for the balance of the appointment and on the same terms and

conditions. Sub-clause (4) appoints the General Manager of the RWCV to the position of Managing Director of the new Corporation for the balance of the appointment and on the same terms and conditions. Sub-clauses (5), (6) and (7) provide transitional measures as a consequence of the transfer of Corporation staff out of the Public Service. They provide that existing Rural Water Commission of Victoria staff transfer to the Corporation with no loss of long service entitlements nor any change in the terms and conditions of their employment which would be disadvantageous to them.

Clause 21 of the Schedule enables the Corporation, with the approval of the Minister, to constitute as a region any part of the State and assign a name to a Regional Management Board to be set up for the region. Plans of any regions must be available for inspection at any office of the Corporation during business hours. The Corporation is also able to abolish, unite or otherwise vary regions with the approval of the Minister. The Minister is also able to abolish, unite or otherwise vary the Corporation's regions if required. The inclusion within any region of a district of another Authority or the Melbourne and Metropolitan Board of Works' area has no effect on the powers and functions of that other Authority or the MMBW.

Clause 22 of the Schedule enables the Minister to establish a regional management board for each region established under clause 22 of the Schedule. The Corporation may require a regional management board:

- to enter into a performance contract;
- to prepare and submit a business plan;
- to make variations to that business plan; and
- to perform any function delegated to it by the Corporation.

Paragraph (d) of sub-clause (2) requires the regional management board to set tariffs or other charges only in accordance with its business plan. Sub-clause (3) requires that any regional management board is subject to annual reporting and audit requirements as if it were part of the Corporation.

Clause 23 of the Schedule enables the Corporation to delegate to a regional management board or a regional general manager any power, discretion or function of the Corporation other than this power of delegation. Sub-clause (2) provides that the Corporation is not liable for anything done by a regional management board that is outside the terms of the Corporation's delegation. The Corporation's power to delegate under this clause is in addition to its powers under section 111 of the Water Act 1989.

Clause 24 of the Schedule provides that the regional management board consists of a Chairperson, Deputy Chairperson, Regional General Manager and not more than five other Directors.

Clause 25 of the Schedule provides that all Directors including the Chairperson and Deputy Chairperson but not the Regional General Manager are appointed by the Minister for terms of up to three years. Directors are eligible for reappointment, up to a maximum of nine years. The Regional General Manager cannot be appointed as the Chairperson, Deputy Chairperson or Director of the Board. The Minister will determine the terms and conditions of appointment, of the Directors other than the Regional General Manager. The Board will determine the terms and conditions of appointment of the Regional General Manager.

On the recommendation of the Chairperson of the Corporation, the Minister may appoint an officer or director of the Corporation to fill up to two positions on the board of directors of the regional management board. An officer or director of the Corporation

appointed under sub-clause (6) is not eligible to be appointed as, or act as, the Chairperson or Deputy Chairperson of a regional management board.

Clause 26 of the Schedule 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 or economics, engineering, business management, commerce, banking, law, water resource management and management of the environment.

Clause 27 of the Schedule provides for the appointment by the Board of the Regional General Manager for a term up to five years. The Chairperson, Deputy Chairperson or another Director cannot be appointed as, or act as, the regional general manager. The Regional General Manager is appointed on a full-time basis and holds office on terms and conditions approved by the Board.

Clause 28 of the Schedule 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 29 of the Schedule 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 30 of the Schedule provides that the Board may appoint a person to act as Regional General Manager during a vacancy in the office of regional general manager or in any case where the Regional General Manager is unable to perform the duties of the office. A Director cannot be appointed as the Regional General Manager.

Clause 31 of the Schedule provides that Director may resign in writing to the Minister. The Minister may also remove a Director, other than the Regional General Manager, from office. Where the Director is the Regional General Manager the Board must remove the Regional General Manager from office.

Clause 32 of the Schedule 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 33 of the Schedule provides the means by which Directors may participate in the proceedings of the Board by means of telephone or other means.

Clause 34 of the Schedule enables the Board to make decisions on matters even though a formal meeting has not been held.

Clause 35 of the Schedule enables the Minister to incorporate a regional management board.

Clause 5 amends section 127 of the Principal Act to make it clear that the Corporation or any other Authority may form a corporation, partnership or other body without the participation of any other person in that formation.

Clause 6 makes clear that an Authority that has an entitlement to take water that was granted before the commencement of Division 1 of Part 4 of the Water Act 1989 by or under an Act that was repealed before that commencement and was continued by an Act that is repealed by this Act and is further continued by this Act may apply in accordance with the Water Act 1989 to have that entitlement converted into an entitlement granted under Division 1 of Part 4 of the Water Act 1989. Sub-clause (3) makes clear the power of

the Minister, when making an Order granting a bulk entitlement, to specify the financial obligations of an Authority. Sub-clauses 4 and 5 are a consequence of amendments made in sub-clause 2.

Clause 7 deals with changes to irrigation districts. Paragraphs (a), (b) and (c) enables an Authority to submit a proposal to the Minister for an extension to an irrigation district, for that proposal to be considered and a decision to be made by the Minister under section 96 of the Act. Paragraphs (d), (e), (f) and (g) enable an Authority to unite irrigation districts, diminish the extent of, abolish or divide an irrigation district, and also enable a Minister to unite irrigation districts, diminish the extent of, abolish or divide an irrigation district under section 104 of the **Water Act 1989**. Paragraph (h) enables irrigators to petition the Minister to make an Order to abolish the Corporation. Paragraphs (j), (k) and (l) enables any Authority having an irrigation district to declare any land to be a serviced property if the land is within that irrigation district and that the Authority has made provision for irrigation, drainage and salinity mitigation.

Clause 8 amends Part 12 of the **Water Act 1989** and requires the Registrar of Titles when registering any agreement under that Part to do both or either:

dispense with the submission of any certificate or title or other document;

register the agreement or decision by recordings in the relevant folio of the Register only. The Registrar of Titles must do these things at the request of a party to an agreement.

Clause 9 declares that the jurisdiction of the Supreme Court is to be limited by sections 90 (1) and 166 of the Principal Act (as amended by this Bill) so as to prevent the bringing before the Supreme Court of certain kinds of proceeding.

Clause 10 sets out that the Act specified in the heading to an item in the Schedule (at the end of this Bill) is amended as set out in that item.

SCHEDULE CONSEQUENTIAL AMENDMENTS

Item 1 sets out the consequential amendments to the **Annual Reporting Act 1983**.

Item 2 sets out the consequential amendments to the **Borrowing and Investment Powers Act 1987**.

Item 3 sets out the consequential amendments to the **Estate Agents Act 1980**.

Item 4 sets out the consequential amendments to the **Fisheries Act 1968**.

Item 5 sets out the consequential amendments to the **Grain Elevators Act 1958**.

Item 6 sets out the consequential amendments to the **Melbourne and Metropolitan Board of Works Act 1958**.

Item 7 sets out the consequential amendments to the **Murray Darling Basin Act 1982**.

Item 8 sets out the consequential amendments to the **Petroleum Act 1958**.

*Item 9 sets out the consequential amendments to the **Public Service Act 1974.***

*Item 10 sets out the consequential amendments to the **State Electricity Commission Act 1958.***

*Item 11 sets out the consequential amendments to the **Water Act 1989.***

*Item 12 sets out the consequential amendments to the **Weights and Measures Act 1958.***