

Water Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Purpose

Clause 1 states the purpose of the Act.

Commencement

Clause 2 provides for the Act, with the exception of section 15, to come into operation on the Act receiving the Royal Assent. Section 15 is to come into operation on a day to be proclaimed because the removal of powers to prescribe fees must be coordinated with changes to the regulations and the making of any Pricing Order.

PART 2—AMENDMENT OF WATER ACT

Definitions

Clause 3 amends the definition section of the Act. A definition of "floodway area" is inserted as a consequence of the new power of the Minister to declare a "floodway area" in clause 9. The definition of "irrigation period" is amended to allow an irrigation period to be fixed by resolution instead of by by-law if the period set does not exceed 12 months.

Serviced Properties

Clause 4 amends sections 3 and 144 to provide that waterway management Authorities are exempt from the obligation to serve a notice on each landowner in their districts when declaring a property to be "serviced property".

Bulk entitlement orders

Clause 5 provides that where the Act requires a bulk entitlement order to be published in the Government Gazette it is sufficient compliance to publish a notice stating where copies of the order can be obtained.

Amendment of section 101(3)

- Clause 6 amends section 101(3) to make it clear that it continues to apply to all orders under section 98 whether or not the Authority from which the property is taken over is abolished by the orders.

New section 101A and 101B inserted

- Clause 7 inserts new sections 101A and 101B into the Act.

The new 101A clarifies that where an Authority takes over property by virtue of an order under section 98 that Authority is to be taken to be the registered proprietor of that interest in land. This applies whether or not the order was made before or after the commencement of this section.

The new 101B provides that the Registrar of Titles must on request and on delivery of any relevant instrument make any amendments necessary to the Register because of the operation of an order made under section 98. It also provides that the Registrar-General must on request and on delivery of any memorial required under the **Property Law Act 1958** make similar adjustments necessary to the records of enrolment of any Crown grant and on any memorial relating to the land.

Floodplain management

- Clause 8 enables the Minister to declare by order that a waterway management Authority has some or all of the floodplain management functions set out in section 202 in relation to its waterway management district. Prior to this amendment the Minister only had power to declare that such an Authority had the complete set of floodplain management functions.
- Clause 8 also amends section 306 to allow a delegate of the Minister under Division 4 of Part 10 to sub-delegate subject to the terms of the instrument of delegation.

Declaration of floodway

- Clause 9 gives the Minister power to declare a floodway. Such a declaration may only be made at the request of an Authority with floodplain management functions on the basis of the Authority's best estimate of the area constituting the high hazard area of the floodplain.

Water management schemes

- Clause 10 clarifies the roles of the Minister and an appointed committee in relation to water management schemes. It inserts new sub-sections (3A) and (3B) into section 215 which provide that the committee appointed under section 214 to investigate a proposal into water management may submit the water management scheme they have prepared to the Minister for his or her acceptance. The Minister may then accept, reject or modify the scheme.

Implementation of water management scheme

- Clause 11 clarifies the ability of the Minister to be able to nominate a municipal council as the body responsible for implementing a water management scheme. A council may only be so nominated with its agreement.

Interference with Authority's property

- Clause 12 removes any doubt that the unauthorised removal of a water meter is an offence under section 288 of the **Water Act 1989**.

PART 3—AMENDMENT OF WATER INDUSTRY ACT

New section 21A inserted

- Clause 13 inserts a new section 21A into the **Water Industry Act 1994** to enable the Governor in Council to regulate pricing by an Order in Council. The Order can regulate any fee or charge imposed by one of the Melbourne retail water and sewerage licensees, or any future licensee, and prices charged under the agreements by which Melbourne Water Corporation supplies the three licensees with bulk water and sewerage services. Any rate imposed by Melbourne Water Corporation can also be regulated.

Sub-section (2) provides considerable flexibility in relation to how a price is regulated.

Sub-section (3) provides that an Order has effect as if made by the Office of the Regulator-General. This means that the Office is responsible for administering the Order and enforcing any non-compliance with its terms.

The regulation of a price by an Order ceases to have effect on either the date specified in the Order or a determination being made by the Office of the Regulator-General relating to that price, provided that the determination is made after any date specified in the Order for that purpose.

An Order can also contain directions regarding the exercise by the Office of the Regulator-General of its pricing powers. At any time before price oversight is transferred to the Office, the Governor in Council can make an Order giving directions to the Office.

Sub-section (4) provides that an Order cannot be made by the Governor in Council in relation to a price or other matter if the Office of the Regulator-General has made a determination relating to that price.

Removal of power for licence to regulate fees and charges

Clause 14 removes the ability to fix fees and charges through a licence or customer contract. In the future, fees and charges are to be regulated in the same way—by Order of the Governor in Council or by a determination of the Office of the Regulator-General. The saving provisions preserves those provisions of the three retail water and sewerage licences which fix the level of certain fees.

Removal of power to prescribe certain fees

Clause 15 removes the ability to fix fees and charges by regulation. In the future, fees and charges are to be regulated in the same way—by Order of the Governor in Council or by a determination of the Office of the Regulator-General. This provision comes into operation on a day to be proclaimed so that its commencement can be coordinated with changes to the regulations and the making of any pricing Order.

New section 58 substituted

Clause 16 inserts a new section 58 dealing with the powers of an employee of a licensee or authorised person to enter land. The substantive difference between this and the earlier section is that a person is not required to give 7 days notice before entering land (but not residential premises) to investigate non-compliance with the Act. The licensee must be satisfied on reasonable grounds of that non-compliance.

The new provision also corrects some minor internal inconsistencies in the earlier provisions and clarifies that a person can enter land, subject to the notice requirements, to gain access to works.

Serviced properties

Clause 17 amends section 64 to clarify that a property which is a serviced property under the **Melbourne Metropolitan Board of Works Act 1958** can be treated as if

it had been declared to be a serviced property for the purposes of the **Water Industry Act 1994**. This removes any doubt as to the existence of a customer contract between a retail licensee and the owner and/or occupier of a property first serviced under the 1958 Act.

Power to enter land

Clause 18 amends section 82 to clarify how the provisions of section 58 apply for the purpose of entering land under section 82. Seven days notice is required unless consent has been obtained or there is an emergency.

New sections 135A and 135B inserted

Clause 19 inserts new provisions to enable Melbourne Parks and Waterways to grant leases and licences in respect of land and waterways under its management and control.

The new section 135A deals with licences. A licence can be granted in respect of any land, including Crown land and the bed and banks of a waterway (but not Crown land reserved under the **Crown Land (Reserves) Act 1978** which will continue to be management under that Act). Licences can also be granted in respect of certain boats using a waterway. The consent of the Minister is required, except in the case of licences for boats, jetties and moorings.

The new section 135B deals with leases. A lease can be granted for up to 21 years and can apply in relation to any land forming part of a waterway and which has been placed under Melbourne Parks and Waterway's management and control. This land is commonly Crown land to which the **Crown Land (Reserves) Act 1978** does not apply. Leases can be granted for any purpose and all require Ministerial approval.

Where Ministerial approval is required, it is the approval of the Minister administering the **Crown Land (Reserves) Act 1978** if Crown land is involved.

Rates

Clause 20 provides that a person can be required to pay a Melbourne Parks and Waterways' rate within 14 rather than 28 days. The billing period for a retail water and sewerage licensee and for Melbourne Water Corporation is 14 days.

Amendment of allocation statements

- Clause 21 enables corrections to be made to the original allocation statements which transferred assets and liabilities from Melbourne Water Corporation to each of the retail water and sewerage licensees and Melbourne Parks and Waterways. The allocation statements took effect on 1 January 1995.

An amendment has effect from the date the assets and liabilities were transferred but can only be made by the Minister and Treasurer if they are satisfied that the interests of third parties will not be adversely affected.

Treasurer may give guarantee

- Clause 22 enables the Treasurer to give guarantees to Treasury Corporation Victoria in respect of financial obligations of Melbourne Water Corporation allocated to a retail water and sewerage licensee under section 170.

PART 4—AMENDMENT OF MELBOURNE METROPOLITAN BOARD OF WORKS ACT

Receipt of trade waste in an emergency

- Clause 23 enables Melbourne Water Corporation to directly accept trade waste in an emergency.

Rates

- Clause 24 links the rating powers under the **Melbourne Metropolitan Board of Works Act 1958** with the provision of water supply services under the **Water Industry Act 1994**. After services have been made available by a licensee, notices are served under the 1958 Act by a retail licensee as a delegate of Melbourne Water Corporation to enable that property to be rated. Instead of serving a notice under the 1958 Act, the amendment enables an appropriate declaration to be made under the **Water Industry Act 1994**.

Rates recoverable from a mortgagee in possession

- Clause 25 enables water, sewerage and drainage rates to be recoverable from a mortgagee in possession.

Power of MWC to make and levy rates for floodplain management purposes

Clause 26 enables Melbourne Water Corporation to use revenue from a drainage rate to fund floodplain management activities carried out as a delegate of the Minister.

