

Version No. 072**Water Act 1989****Act No. 80/1989**

Version incorporating amendments as at 1 July 2004

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Water Act 1989

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Version incorporating amendments as at 1 July 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

This Act has the following purposes—

- (a) to re-state, with amendments, the law relating to water in Victoria;
- (b) to provide for the integrated management of all elements of the terrestrial phase of the water cycle;
- (c) to promote the orderly, equitable and efficient use of water resources;
- (d) to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians;
- (e) to maximise community involvement in the making and implementation of arrangements relating to the use, conservation or management of water resources;
- (f) to eliminate inconsistencies in the treatment of surface and groundwater resources and waterways;

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- (g) to provide better definition of private water entitlements and the entitlements of Authorities;
- (h) to foster the provision of responsible and efficient water services suited to various needs and various consumers;
- (i) to provide recourse for persons affected by administrative decisions;
- (j) to provide formal means for the protection and enhancement of the environmental qualities of waterways and their in-stream uses;
- (k) to provide for the protection of catchment conditions;
- (l) to replace many forms of detailed administrative supervision of Authorities with general supervision by the Minister, through approved corporate plans and express directions;
- (m) to continue in existence and to protect all public and private rights to water existing before the commencement of the relevant provisions of this Act.

S. 1(l)
amended by
No. 110/1997
s. 22(1).

2. Commencement

- (1) This Act (except sections 328 and 329) comes into operation on 1 September 1991 or an earlier day or days to be proclaimed.
- (2) Section 328 comes into operation on the day on which this Act receives the Royal Assent.
- (3) Section 329 must be taken to have come into operation on 6 July 1988.

2A. Construction of references

Until the commencement of section 154 of the **Local Government Act 1989**—

S. 2A
 inserted by
 No. 13/1990
 s. 45.

- (a) a reference to section 154 of the **Local Government Act 1989** in sections 258(1), 265, 286(2) and 287(2) and clause 6 of Schedule 5 and clause 11(2) of Schedule 8 is to be construed as a reference to section 251 of the **Local Government Act 1958**;
- (b) a reference to section 154(2)(a) of the **Local Government Act 1989** in section 258(2) is to be construed as a reference to section 251(1)(a)(ii) of the **Local Government Act 1958**;
- (c) a reference to "the provisions of the **Local Government Act 1989** about rates" in section 286(6) and clause 11(6) of Schedule 8 is to be construed as a reference to "the provisions of the **Local Government Act 1958** about rates";
- (d) a reference to "within the meaning of the **Local Government Act 1989**" in clause 2 of Schedule 6 is to be construed as a reference to "within the meaning of the **Local Government Act 1958**".

3. Definitions

(1) In this Act—

* * * * *

S. 3(1) def. of
 "Adminis-
 trative
 Appeals
 Tribunal"
 repealed by
 No. 52/1998
 s. 311(Sch. 1
 item 105.1(a)).

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s. 3

S. 3(1) def. of
 "analyst"
 amended by
 No. 110/1997
 s. 13.

"analyst" means an analyst approved by an Authority to carry out analyses on behalf of the Authority for the purposes of this Act;

"aquifer" means a geological structure or formation or an artificial land fill permeated or capable of being permeated permanently or intermittently with water;

"area of land liable to flooding" means an area that is declared by the Minister under section 205 to be an area of land liable to flooding;

"authorised", in relation to any act, means authorised (whether generally or specifically) by this or any other Act or by a licence, permit or other authority granted under this or any other Act and, in determining whether or not the construction of a dam is authorised, no account is to be taken of any direction given under section 80(1) or (2) or of the fact that any such direction has been complied with;

"authorised person" means a person authorised in writing by an Authority for the purpose of the provision in which the expression appears;

"Authority" means any person empowered to carry out any function under this Act in relation to—

- (a) floodplain management; or
- (b) irrigation; or
- (c) regional drainage; or
- (d) sewerage; or
- (e) waterway management; or

S. 3(1) def. of
 "Authority"
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.1(a)),
 49/1994
 s. 4(1)(a),
 25/2001
 s. 3(1).

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s. 3

(f) water supply—

and includes the Authorities listed in column 1 of Schedule 12, a council appointed under section 98(1)(a) and a Catchment Management Authority appointed under section 98(1)(ab);

"bore" means any bore, well or excavation or any artificially constructed or improved underground cavity used or to be used for the purpose of—

- (a) the interception, collection, storage or extraction of groundwater; or
- (b) groundwater observation or the collection of data concerning groundwater; or
- (c) the drainage or desalination of any land; or
- (d) in the case of a bore that does not form part of a septic tank system, the disposal of any matter below the surface of the ground; or
- (e) the recharge of an aquifer—

but does not include a bore that is used solely for purposes other than those specified in paragraphs (a), (b) and (d);

"building line" means a building line that is declared by an Authority under section 203(1);

"bulk entitlement"—

- (a) in relation to any Authority, means a bulk entitlement granted under Division 1 or 3 of Part 4 or referred to in paragraph (aa), (a) or (b) of section 35(2); and

S. 3(1) def. of "bulk entitlement" amended by Nos 50/1992 s. 6(1), 62/1995 s. 4(a).

S. 3(1) def. of
 "Catchment
 Management
 Authority"
 inserted by
 No. 25/2001
 s. 3(2).

S. 3(1) def. of
 "Commis-
 sion"
 substituted as
 "Corporation"
 by No.
 50/1992
 s. 10(Sch.
 item 11.1(b)),
 repealed by
 No. 65/1995
 s. 22(a)(i).

- (b) in relation to an Authority that has an irrigation district specified in column 1 of Schedule 11, means the entitlement specified in column 2 of that Schedule; and
- (c) in relation to the First Mildura Irrigation Trust, means the entitlement granted under section 71(1) of the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958** and continued under this Act;

"Catchment Management Authority" means an Authority within the meaning of the **Catchment and Land Protection Act 1994**;

"Coliban water district"—

- (a) includes any property that was, immediately before the commencement of this section, supplied with water from the Coliban system and any property that is so supplied on or after the commencement; and
- (b) does not include any property referred to in paragraph (a) that, on or after that commencement, ceases to be supplied with water from the Coliban system;

* * * * *

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s. 3

"Council" has the same meaning as in the **Local Government Act 1989**;

"dam" means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated;

S. 3(1) def. of "dam" inserted by No. 5/2002 s. 4(a).

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S. 3(1) def. of "Dandenong Valley" repealed by No. 54/1992 s. 56(a).

"department" means the Department of Natural Resources and Environment;

S. 3(1) def. of "department" amended by No. 46/1998 s. 7(Sch. 1).

"Department Head" means the Department Head (within the meaning of the **Public Sector Management and Employment Act 1998**) of the Department;

S. 3(1) def. of "Department Head" inserted by No. 76/1998 s. 29(a)(ii).

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S. 3(1) def. of "Director-General" amended by Nos 62/1995 s. 4(b), 46/1998 s. 7(Sch. 1), repealed by No. 76/1998 s. 29(a)(i).

"domestic and stock use", in relation to water, means use for—

- (a) household purposes; or
- (b) watering of animals kept as pets; or
- (c) watering of cattle or other stock; or

S. 3(1) def. of "domestic and stock use" amended by No. 5/2002 s. 4(b).

(ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1.2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or

(d) irrigation of a kitchen garden—

but does not include use for dairies, piggeries, feed lots, poultry or any other intensive or commercial use;

"domestic partner" of a person means—

(a) in sections 93 and 95—an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

(i) for fee or reward; or

(ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

(b) in section 128—a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of
"domestic
partner"
inserted by
No. 72/2001
s. 3(Sch.
item 12.1).

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"election" includes an election to fill an extraordinary vacancy;

S. 3(1) def. of "election" inserted by No. 12/1992 s. 4.

"financial year", in relation to an Authority, means the year ending 30 June, unless the Minister determines otherwise for that particular Authority;

"flood fringe area" means an area of land that is declared by an Authority under section 203(1) to be a flood fringe area;

"flood level" means a flood level that is declared by an Authority under section 203(1);

"floodway area" means an area of land that is declared by the Minister under section 205 to be a floodway area;

S. 3(1) def. of "floodway area" inserted by No. 12/1996 s. 3(a).

"flow", in relation to water, includes discharge, release, escape, percolation, seepage and passage, and includes both surface and underground flow;

"groundwater" means any water occurring in or obtained from an aquifer and includes any matter dissolved or suspended in any such water;

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S. 3(1) def. of "groundwater supply protection area" repealed by No. 5/2002 s. 4(c).

"holding" means the lands shown in any single entry in the register;

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S. 3(1) def. of
 "houseboat"
 inserted by
 No. 39/1996
 s. 11(1).

"houseboat" means any boat containing a toilet or sleeping accommodation or capable of containing enclosed or semi-enclosed sleeping accommodation;

"in-stream uses", in relation to water, includes—

- (a) the maintenance of aquatic, riparian, floodplain and wetland ecosystems; and
- (b) the maintenance of aesthetic, scientific and cultural values; and
- (c) water-based recreational activities; and
- (d) fishing for commercial purposes; and
- (e) the maintenance of water quality; and
- (f) navigation;

"irrigation district" means—

- (a) in relation to an Authority specified in column 1 of Schedule 12, the district specified in column 2 of that Schedule; and
- (b) any area declared by Order of the Minister under this Act to be an irrigation district;

S. 3(1) def. of
 "irrigation
 period"
 substituted by
 No. 12/1996
 s. 3(b).

"irrigation period" means any period fixed by by-law or (if the period does not exceed 12 months) fixed by the Authority by resolution published in a newspaper circulating generally in the area concerned, in respect of which an irrigation charge is made;

"kitchen garden" means a garden—

- (a) that is used solely in connection with a dwelling; and
- (b) no produce from which is sold; and

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- (c) in the case of a garden irrigated solely with surface water that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0.1 hectares; and
- (d) in the case of a garden irrigated with both surface water and groundwater that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0.4 hectares; and
- (e) in the case of a garden irrigated solely with groundwater, that is not bigger than 0.4 hectares; and
- (f) in the case of a garden that is part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 1.2 hectares;

"Latrobe Valley" means, subject to subsection (2), the municipal districts of the shires of Buln Buln, Mirboo, Morwell, Narracan, Rosedale, Traralgon and Warragul and the cities of Moe, Sale and Traralgon, and the Yallourn works area;

"licensed driller" means a person who holds a licence granted under section 312;

"licensee" means the holder of a licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**;

S. 3(1) def. of "licensee" inserted by No. 121/1994 s. 186(a).

"Melbourne Water" means the Melbourne Water Corporation constituted under the **Melbourne Water Corporation Act 1992**;

S. 3(1) def. of "Melbourne Water" inserted by No. 5/2002 s. 4(a).

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S. 3(1) def. of
 "member"
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.1(c)),
 65/1995
 s. 22(a)(ii).

"member" means member of an Authority, and includes the chairperson and the deputy chairperson of the Authority;

"mineral water" means groundwater which in its natural state contains carbon dioxide and other soluble matter in sufficient concentration to cause effervescence or impart a distinctive taste;

"occupier"—

- (a) in relation to any bore that is being constructed or altered, means the holder of a licence issued under section 67 in respect of the bore; and
- (b) in relation to any bore that is not being constructed or altered means—
 - (i) the holder of a licence issued under section 51 in respect of the bore; or
 - (ii) any person disposing of any matter by means of the bore in accordance with an approval given under section 76; or
 - (iii) if there is no such licensee or person, the occupier of the land on which the bore is situated;

S. 3(1) def. of
 "permissible
 annual
 volume"
 inserted by
 No. 5/2002
 s. 4(a).

"permissible annual volume", in relation to an area, means the volume specified by the Minister under section 22A;

"person" includes a body or association (corporate or unincorporated) and a partnership;

"pollute", in relation to any water, means to alter (directly or indirectly) the physical, thermal, chemical, biological or radioactive properties of the water so as to make the water—

- (a) less fit for any beneficial purpose for which it is, or may reasonably be expected to be, used; or
- (b) harmful or potentially harmful to—
 - (i) the health, welfare or safety of human beings; or
 - (ii) animals, birds, wildlife, fish or other aquatic life; or
 - (iii) plants or other vegetation; or
 - (iv) other organisms;

"private dam" means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated but does not include—

S. 3(1) def. of "private dam" amended by No. 121/1994 s. 186(b).

- (a) anything owned or operated by a public statutory body; or
- (b) any works of an Authority or a licensee; or
- (c) a channel, drain or pipe; or
- (d) a bore;

"public statutory body" includes a council;

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S. 3(1) def. of
 "Regional
 Management
 Board"
 inserted by
 No. 50/1992
 s. 10(Sch.
 item 11.1(d)),
 repealed by
 No. 49/1994
 s. 4(1)(b).

S. 3(1) def. of
 "registration
 licence"
 inserted by
 No. 5/2002
 s. 4(a).

S. 3(1) def. of
 "serviced
 property"
 amended by
 Nos 121/1994
 s. 186(c),
 12/1996
 s. 4(1).

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"register" means the register of lands within an
 irrigation district that is kept by an Authority
 under section 230;

"registration licence" means a licence issued
 under section 51(1A);

"secretary", in relation to an Authority, means
 the secretary appointed by the Authority
 under section 89(3);

"septic tank system" means a system for the
 bacterial, biological, chemical or physical
 treatment of sewage, and includes all tanks,
 beds, sewers, drains, pipes, fittings,
 appliances and land used in connection with
 the system;

"serviced property" means—

- (a) a property in respect of which a notice
 under section 144(1) or 179(3) of this
 Act or section 64(1) of the **Water
 Industry Act 1994** is published, on and
 from the date specified in the notice; or

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- (c) a property in respect of which, before the commencement of this section, a notice under section 162, 207(1) or 207A(1) of the **Water Act 1958** had been published; or
 - (d) a property that was, immediately before the commencement of this section, a sewered property under the **Sewerage Districts Act 1958**; or
 - (e) a property in respect of which, before the commencement of this section, a rate had been levied under section 76 or 163 of the **Water Act 1958**; or
 - (f) a property that was, immediately before the commencement of this section, supplied with water from the Coliban system; or
 - (g) a property that was, immediately before the commencement of this section, within the Koo Wee Rup or Loch Garry flood protection district;
- "sewage"** means any human excreta or domestic waterborne waste, whether untreated or partially treated, but does not include trade waste;
- "sewer"** means any pipe, channel, tunnel or other conduit which is constructed or provided for the conveyance of sewage or trade waste and is vested in or owned by an Authority;
- "sewerage district"** means—
- (a) in relation to an Authority specified in column 1 of Schedule 12, the district specified in column 3 of that Schedule; and
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S. 3(1) def. of
 "spouse"
 inserted by
 No. 72/2001
 s. 3(Sch.
 item 12.1).

S. 3(1) def. of
 "State
 observation
 bore"
 inserted by
 No. 5/2002
 s. 4(a).

S. 3(1) def. of
 "Tribunal"
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.1(b)).

- (b) any area declared by Order of the Minister under this Act to be a sewerage district;

"spouse" of a person means a person to whom the person is married;

"State observation bore" means a bore constructed at any time, whether before or after the commencement of section 4(a) of the **Water (Irrigation Farm Dams) Act 2002**, by or on behalf of the department that is used or intended to be used to monitor the level, quantity or quality of groundwater;

"trade waste" means—

- (a) any waterborne waste (other than sewage) which is suitable, according to the criteria of an Authority, for discharge into the Authority's sewerage system; or
- (b) any other matter which is declared by a by-law made under this Act to be trade waste;

"Tribunal" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

"water" means water, whether or not it contains impurities;

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"water district" means—

- (a) in relation to an Authority specified in column 1 of Schedule 12, the district specified in column 5 of that Schedule; and
- (b) any area declared by Order of the Minister under this Act to be a water district;

"water supply protection area" means an area declared to be a water supply protection area by an Order made under section 27(1);

S. 3(1) def. of "water supply protection area" inserted by No. 5/2002 s. 4(a).

"waterway" means¹—

- (a) a river, creek, stream or watercourse; or
- (b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
- (c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or
- (d) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or

- (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or
- (e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or
- (f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or
- (g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip;

"waterway management district" means—

- (a) in relation to an Authority specified in column 1 of Schedule 12, the district specified in column 4 of that Schedule; and
- (b) any area declared by Order of the Minister under this Act to be a waterway management district;

"works" includes—

- (a) reservoirs, dams, bores, channels, sewers, drains, pipes, conduits, fire plugs, machinery, equipment and apparatus, whether on, above or under land; and

S. 3(1) def. of
"works"
amended by
No. 5/2002
s. 4(d).

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(b) works described in section 10, whether on, above or under land; and

(c) fencing;

"Yallourn works area" has the same meaning as in Part III of the **State Electricity Commission Act 1958**.

(1A) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Natural Resources and Environment is changed, the reference in the definition of "department" and "Department Head" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(1A)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 76/1998
s. 29(b).

(2) The Minister may, by notice published in the Government Gazette—

(a) declare any area to be included in the Latrobe Valley; and

(b) declare any area to be excluded from the Latrobe Valley.

(3) For the purposes of the definition of "domestic partner" in sub-section (1)—

S. 3(3)
inserted by
No. 72/2001
s. 3(Sch.
item 12.2).

(a) in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case;

(b) a person is not a domestic partner of another person only because they are co-tenants.

4. Power to declare lake, lagoon, swamp or marsh

- (1) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette, declare a collection of water (other than water collected and contained in a private dam or a natural depression on private land) to be a lake, lagoon, swamp or marsh.
- (2) The Minister must not recommend to the Governor in Council the making of a declaration under sub-section (1) unless—
 - (a) the Minister is satisfied that—
 - (i) the declaration has been applied for by a person who, if the collection of water was a lake, lagoon, swamp or marsh, would have the right to take and use water from it under section 8(1); and
 - (ii) the applicant has caused notice of the application to be published in a newspaper circulating generally in the area in which the water is situated; and
 - (iii) the applicant has caused notice of the application to be given or sent by post to—
 - (A) the owner and occupier of the land on which the water is situated; and
 - (B) the council in whose municipal district the water is situated; and
 - (C) the responsible authority in relation to a planning scheme for the area in which the water is situated; and

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- (b) the Minister has considered any submissions made on the application within the period of 60 days after the publication or giving of notice of the application under paragraph (a)(ii) or (a)(iii), whichever is the later.
 - (3) The Minister may require further information with respect to an application to be provided by the applicant or an Authority.
 - (4) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette at the same time as a declaration under sub-section (1), require a person who—
 - (a) owns land on which the declared collection of water is situated; or
 - (b) who will benefit from the declaration—
to pay the amount of compensation specified in the Order to another person who—
 - (c) owns land on which the declared collection of water is situated; or
 - (d) will suffer detriment from the declaration.
 - (5) A copy of an Order made under sub-section (4) must be given or sent by post to any Authority or person affected by the Order.
 - (6) A person whose interests are affected by a decision of the Governor in Council to make an Order under sub-section (1) or (4) may apply to the Tribunal for review of the decision.
 - (7) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the
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S. 4(6)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.2).

S. 4(7)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.2).

decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

5. Certain provisions to bind Crown

The following provisions of this Act bind the Crown not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities—

- (a) sections 12, 15 and 16;
- (b) section 23;
- (c) section 63;
- (d) sections 75, 76, 78, 79, 80(3), 80(4) and 81;
- (e) sections 141, 143, 145, 148(1), 149, 150, 151, 153 and 154;
- (f) section 178;
- (g) sections 194, 195, 200, 208 and 218;
- (h) sections 265, 268 to 270 and 281;
- (i) sections 288 to 290.

6. Interstate groundwater agreements to prevail over Act

- (1) Every power, discretion, function, authority and duty of the Minister, the Authority and the Tribunal under this Act must be construed subject to—
 - (a) the **Groundwater (Border Agreement) Act 1985** and the agreement approved by that Act; and
 - (b) the **Murray-Darling Basin Act 1993** and the agreement approved by that Act.

S. 6(1)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.3),
 substituted by
 No. 5/2002
 s. 5(1).

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| (2) A purported exercise of a power, discretion, function, authority or duty by the Minister, an Authority or the Tribunal is of no effect to the extent that it is inconsistent with an agreement referred to in sub-section (1). | S. 6(2)
amended by
Nos 52/1998
s. 311(Sch. 1
item 105.3),
5/2002
s. 5(2)(a)(b). |
| (3) An agreement referred to in sub-section (1) prevails over a right to take or to use water conferred by or under this Act, other than section 7(1), 8(1) or 8(4)(c). | S. 6(3)
inserted by
No. 5/2002
s. 5(3). |
| (4) The Minister, an Authority or the Tribunal, in exercising a power, discretion, function, authority or duty under this Act, must not act in a manner detrimental to or inconsistent with the operation of an agreement referred to in sub-section (1). | S. 6(4)
inserted by
No. 5/2002
s. 5(3). |
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PART 2—RIGHTS AND LIABILITIES

Division 1—Rights

7. Continuation of the Crown's rights to water

- (1) The Crown has the right to the use, flow and control of all water in a waterway and all groundwater².
- (2) Subject to sub-section (3), the right of the Crown to the use, flow and control of all water referred to in sub-section (1) is not diminished by the fact that—
 - (a) by or under this or any other Act rights to water are conferred on other persons; or
 - (b) under this Act the Minister may issue licences for the taking or use of water; or
 - (c) under this or any other Act approval may be given for works or activities that affect the use, flow or control of water.
- (3) The Crown must not exercise a right conferred by sub-section (1) so as to limit a right to water conferred on any other person by section 8(1)(b), (c) or (d) or section 8(4)(c).

8. Continuation of private rights to water

- (1) A person has the right to take water, free of charge, for that person's domestic and stock use from a waterway or bore to which that person has access—
 - (a) by a public road or public reserve; or
 - (b) because that person occupies the land on which the water flows or occurs; or

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- (c) in the case of a waterway, because that person occupies land adjacent to it and the bed and banks of the waterway have remained the property of the Crown by virtue of section 385 of the **Land Act 1958**³ or any corresponding previous enactment; or
 - (d) subject to section 33C, in the case of a bore, because that person occupies it.
- (2) If required to do so by the regulations, a person taking water under sub-section (1) must give the Minister, in accordance with the regulations, written notice of the amount taken.
- (3) A person has the right to use—
 - (a) water taken by that person from a waterway or bore under a right conferred by sub-section (1); or
 - (b) while it is within the waterway or bore, water which that person has the right to take under sub-section (1).
- (4) A person has the right to use—
 - (a) water taken or received by that person in accordance with a licence or other authority issued to that person under this Act or any corresponding previous enactment; or
 - (b) water lawfully taken or received by that person from the works of an Authority or of any other person; or
 - (c) rainwater or other water that occurs or flows (otherwise than in a waterway or bore) on land occupied by that person or, with the permission of the other person, on land occupied by another person.

S. 8(1)(d)
 amended by
 No. 5/2002
 s. 6(1).

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S. 8(5A)
 inserted by
No. 5/2002
s. 6(2).

S. 8(6)(d)
 amended by
No. 5/2002
s. 6(3).

- (5) Water referred to in sub-section (4)(c) may be used for any purpose and on any land.
- (5A) Sub-sections (4)(c) and (5) do not apply to the use, other than domestic and stock use, of water from a spring or soak or water from a private dam (to the extent that it is not rainwater supplied to the dam from the roof of a building).
- (6) A right conferred by this section is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
 - (a) this Act; or
 - (b) any other Act or in any permission or authority granted under any other Act; or
 - (c) the conditions of a licence issued under this Act; or
 - (d) the prescriptions contained in an approved management plan drawn up under Division 3 of Part 3 for a water supply protection area.
- (7) The rights to water conferred by or under this Act on a person who has an interest in land replace any rights⁴—
 - (a) to take or use water; or
 - (b) to obstruct or deflect the flow of water⁵; or
 - (c) to affect the quality of any water; or
 - (d) to receive any particular flow of water; or
 - (e) to receive a flow of water of any particular quality—

that the person might otherwise have been able to enforce against the Crown or any other person because of, or as an incident to, that interest.

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- (8) This section does not authorise any act or omission that may—
- (a) cause any water to be polluted; or
 - (b) obstruct the flow of any water in a waterway; or
 - (c) erode or otherwise damage the surrounds of any waterway.

9. Authority rights to water

- (1) An Authority within the meaning of Division 1 of Part 4 has the right to take the amounts of water that are made available to it—
- (a) under a bulk entitlement granted under that Division or Division 3 of Part 4 or under Part 11; or S. 9(1)(a) amended by No. 62/1995 s. 6(1).
 - (b) under any entitlement to take water granted under any corresponding previous enactment and continued by this Act; or
 - (c) in the case of the Melbourne and Metropolitan Board of Works, under the **Melbourne and Metropolitan Board of Works Act 1958**; or S. 9(1)(c) amended by No. 62/1995 s. 11.
 - (d) under any other entitlement, licence or right under this Act. S. 9(1)(d) inserted by No. 62/1995 s. 11.
- (2) An Authority referred to in sub-section (1) has the right to use water taken by it under a right conferred by sub-section (1)—
- (a) in the case of an Authority referred to in paragraph (a) or (b) of the definition of "Authority" in section 34, for any purpose connected with the exercise of its functions under this Act or the **Local Government Act 1989**, as the case requires; S. 9(2)(a) amended by No. 62/1995 s. 9(1).

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S. 9(2)(c)
 substituted by
 No. 130/1993
 s. 122(Sch. 4
 item 17.1),
 amended by
 Nos 53/1994
 s. 34(Sch. 1
 item 11.1),
 110/1994
 s. 41(Sch. 1
 item 11.1),
 56/1995 s. 65,
 substituted by
 No. 69/2000
 s. 65(1).

- (b) in the case of the Melbourne and Metropolitan Board of Works, for any purpose connected with the exercise of its functions under the **Melbourne and Metropolitan Board of Works Act 1958**;
- (c) in the case of SEC, VENCORP, a distribution company, a transmission company or a generation company within the meaning of the **Electricity Industry Act 2000**, for any purpose connected with the exercise of its functions or powers;
- (d) in the case of an Authority referred to in paragraph (e) or (f) of the definition of "Authority" in section 34, for any public purpose;
- (e) in the case of water taken under an entitlement granted under Part 11 or any corresponding previous enactment, for any purpose connected with the exercise of its functions under that Part.
- (3) The right conferred by sub-section (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
 - (a) this Act; or
 - (b) any other Act; or
 - (c) the conditions attached to the bulk entitlement.

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10. Right to construct or operate works

- (1) An Authority or any other person may, in accordance with this Act, construct or operate works for, or which may result in—
 - (a) the drainage of any land; or
 - (b) the collection, storage, taking, use or distribution of any water; or
 - (c) the obstruction or deflection of the flow of any water.
- (2) The right conferred by sub-section (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—
 - (a) this Act; or
 - (b) any other Act; or
 - (c) the provisions of a licence issued, or entitlement granted, under this or any other Act.

11. Allocation of water right on subdivision

- (1) If—
 - (a) at the commencement of this section a right is conferred on a person by section 8(1)(b) or (c) to take water from a waterway because that person occupies land on which the water flows or occurs or land adjacent to the waterway; and
 - (b) on or after that commencement that land is subdivided—

only the person who occupies one of the subdivided lots has, after the subdivision, the right conferred by that section.

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- (2) The subdivided lot the occupier of which has the right to take water from the waterway, must—
 - (a) have the waterway flowing or occurring on it; or
 - (b) be adjacent to the waterway.
- (3) The Minister may, on the application of the subdivider, exempt a subdivision from sub-sections (1) and (2) and allocate the right or part of it to all or any of the subdivided lots.
- (4) The Minister may require an applicant under sub-section (3) to give notice of the application in any manner specified by the Minister.
- (5) A notice given under sub-section (4) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.
- (6) The Minister may appoint a panel of persons to consider submissions made on an application under sub-section (3).
- (7) Sub-sections (2) to (6) of section 50 apply to a panel appointed under sub-section (6) as if the reference in sub-section (3) of that section to a notice given under section 49(2) were a reference to a notice given under sub-section (4) of this section.
- (8) In considering an application under sub-section (3), the Minister must have regard to—
 - (a) the report of any panel appointed under sub-section (6); and
 - (b) the matters mentioned in paragraphs (b) to (l) of section 40(1) as if the reference in paragraph (e) to the applicant were a reference to the occupiers of the subdivided lots; and

S. 11(8)(b)
 amended by
 No. 5/2002
 s. 7(1).

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(c) any other matter that the Minister thinks fit to have regard to.

(9) In considering an application under sub-section (3), the Minister must give effect to an approved management plan for any relevant water supply protection area.

S. 11(9)
 inserted by
 No. 5/2002
 s. 7(2).

12. Authorisation may be conditional⁶

(1) An Authority, a public statutory body or any other person that has power under this or any other Act to authorise or permit any activity, or any change in the use of land, that may affect the existing drainage regime—

(a) must make the authorisation or permission subject to any conditions that, in the opinion of the Authority, body or other person, are required to ensure the conservation of waterways, wetlands and aquifers; and

(b) may withhold the authorisation or permission until any works are carried out, or any measures undertaken (including the payment of compensation), that are required by the Authority, body or other person for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.

(2) In sub-section (1), "**drainage regime**" means all physical and hydrological circumstances that may affect drainage in a catchment, including the use of land but not including any circumstances arising from works that are unlawfully carried out or from any unlawful use of the land.

(3) The failure of an Authority, a public statutory body or other person to comply with sub-section (1)(a) does not invalidate any authorisation or permission granted by that Authority, body or other person.

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13. Minister's power to qualify rights

- (1) In this section "**qualify**" includes suspend, reduce, increase and otherwise alter.
- (2) The Minister may, in accordance with this section, qualify any rights to water conferred by any provision of this Division other than section 7(1) or 8(4)(c).
- (3) A qualification may only be made if the Minister has under this section declared that a water shortage exists in the area or supply system concerned.
- (4) The Minister may declare that a water shortage exists in an area or supply system if he or she is of the opinion that the volume or quality of water available in the area or system to satisfy the rights is or will shortly be inadequate for any reason.

Division 2—Liabilities

14. Application

Sections 15 and 16 apply whether the taking, using, polluting, constructing, maintaining, operating or interfering occurred before or after the commencement of this section.

15. Civil liability for unauthorised taking or use of water or for unauthorised works⁷

- (1) A person who—
 - (a) takes water in an unauthorised manner or in unauthorised quantities; or
 - (b) uses water in an unauthorised manner or for an unauthorised purpose; or
 - (c) pollutes water, whether or not authorised to do so; or

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(d) constructs, maintains or operates any unauthorised works—

and by that act causes injury to any other person or damage to the property (whether real or personal) of any other person or causes any other person to suffer economic loss is liable to pay damages to that other person in respect of that injury or damage.

- (2) Paragraph (c) of sub-section (1) does not apply to the discharge of saline matter in accordance with by-laws made under section 160(1)(d) of this Act or regulations made under section 50(d) of the **Water Industry Act 1994** and all other necessary authorisations.
- (3) Paragraph (d) of sub-section (1) does not apply to any injury, damage or loss to which section 16 applies.

S. 15(2)
 amended by
 No. 121/1994
 s. 187(a).

16. Liability arising out of flow of water etc.⁸

- (1) If—
- (a) there is a flow of water from the land of a person onto any other land; and
 - (b) that flow is not reasonable; and
 - (c) the water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

the person who caused the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

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- (2) If—
- (a) a person interferes with a reasonable flow of water onto any land or by negligent conduct interferes with a flow of water onto any land which is not reasonable; and
 - (b) as a result of that interference water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

the person who interfered with the flow is liable to pay damages to that other person in respect of that injury, damage or loss.
- (3) If the person who caused, or interfered with, the flow (as the case requires)—
- (a) is the servant of another person and acted in the course of the servant's employment; or
 - (b) is the agent of another person and acted within the scope of the agent's authority—
- that other person is liable to pay damages in respect of the injury, damage or loss.
- (4) The existence of a liability under sub-section (3) does not extinguish the liability of the servant or agent under sub-section (1) or (2), as the case requires.
- (5) If the causing of, or the interference with, the flow (as the case requires) was given rise to by works constructed or any other act done or omitted to be done on any land at a time before the current occupier became the occupier of the land, the current occupier is liable to pay damages in respect of the injury, damage or loss if the current occupier has failed to take any steps reasonably
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available to prevent the causing of, or the interference with, the flow (as the case requires) being so given rise to.

- (6) The existence of a liability under sub-section (5) extinguishes the liability under sub-section (1) of the person who caused the flow or the liability under sub-section (2) of the person who interfered with the flow (as the case requires).

17. Protection from liability⁹

- (1) A person does not incur any civil liability in respect of any injury, damage or loss caused by water to which section 16 or 157 of this Act or section 74 of the **Water Industry Act 1994** applies except to the extent provided by this Act.
- (2) Sections 15 and 16 do not create any liability in respect of a flow of water from the works (including any dam) of an Authority in the exercise of a function under Part 8, Division 2, 3 or 5 of Part 10 or Part 11 or any corresponding previous enactment or of a licensee in the exercise of a function under its licence.
- (3) Nothing in this section takes away from the power of a court to make an order against a person under section 86 of the **Sentencing Act 1991** with respect to an offence under the **Environment Protection Act 1970**.

S. 17(1)
amended by
No. 121/1994
s. 187(b)(c).

S. 17(2)
amended by
No. 121/1994
s. 187(d).

S. 17(3)
amended by
No. 62/1995
s. 44(1).

18. Liability for damage caused by escape of water from private dam

Nothing in section 17 extinguishes the liability at common law of the owner of a private dam for any damage caused by the escape of water from that dam.

19. Jurisdiction of Tribunal

S. 19(1)
amended by
Nos 121/1994
s. 187(e),
52/1998
s. 311(Sch. 1
item 105.4(a)
(i)(ii)) (as
amended by
No. 101/1998
s. 22(1)(p)).

- (1) The Tribunal has jurisdiction in relation to all causes of action (other than any claim for damages for personal injury) arising under sections 15(1), 16, 17(1) and 157(1) of this Act or at common law in respect of the escape of water from a private dam.

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S. 19(2)
amended by
No. 62/1991
s. 40(2),
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.4(b)).

- (3) In exercising jurisdiction conferred by sub-section (1), the Tribunal—
 - (a) may by order, whether interim or final, grant an injunction (including one to prevent an act that has not yet taken place) if it is just and convenient to do so; or
 - (ab) may make an order for payment of a sum of money awarding damages in the nature of interest; or
 - (b) may make an order that is merely declaratory.

S. 19(3)(ab)
inserted by
No. 90/2003
s. 3(1).

S. 19(3A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.5).

- (3A) Nothing in sub-section (3) takes away from or affects the Tribunal's powers under section 123 or 124 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 19(4)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.6(a)),
new s. 19(4)
inserted by
No. 90/2003
s. 3(2).

- (4) In awarding damages in the nature of interest, the Tribunal may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate that it considers appropriate.

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- (5) The Tribunal may in respect of any works that give rise to a cause of action of a kind referred to in sub-section (1) make any order with respect to—

S. 19(5)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.6(b)).

- (a) compensation for damage to land; or
- (b) the continuation, removal or modification of works; or
- (c) payment of the costs of the removal or modification of works—

that it considers appropriate.

* * * * *

S. 19(6)(7)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.6(c)).

- (8) Nothing in this section prevents a person from bringing before a court a claim for damages for personal injury based on a cause of action of a kind referred to in sub-section (1).

- (9) In determining a cause of action arising under section 15(1), 16, 17(1) or 157(1) of this Act the Tribunal must apply to the questions of causation and remoteness of damage the same tests as a court would apply to those questions in an action based on negligence.

S. 19(9)
amended by
Nos 121/1994
s. 187(f),
52/1998
s. 311(Sch. 1
item 105.6(d)).

- (10) Subject to sub-section (8), a proceeding based on a cause of action of a kind referred to in sub-section (1) must not be brought otherwise than before the Tribunal.

S. 19(10)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.6(e)).

20. Matters to be taken into account in determining whether flow is reasonable or not reasonable

- (1) In determining whether a flow of water is reasonable or not reasonable, account must be taken of all the circumstances including the following matters—

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- (a) whether or not the flow, or the act or works that caused the flow, was or were authorised;
 - (b) the extent to which any conditions or requirements imposed under this Act in relation to an authorisation were complied with;
 - (c) whether or not the flow conforms with any guidelines or principles published by the Minister with respect to the drainage of the area;
 - (d) whether or not account was taken at the relevant time of the likely impact of the flow on drainage in the area having regard to the information then reasonably available about the cumulative effects on drainage of works and activities in the area;
 - (e) the uses to which the lands concerned and any other lands in the vicinity are put;
 - (f) the contours of the lands concerned;
 - (g) whether the water which flowed was—
 - (i) brought onto the land from which it flowed; or
 - (ii) collected, stored or concentrated on that land; or
 - (iii) extracted from the ground on that land—
 and if so, for what purpose and with what degree of care this was done;
 - (h) whether or not the flow was affected by any works restricting the flow of water along a waterway;
 - (i) whether or not the flow is likely to damage any waterway, wetland or aquifer.
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- (2) In taking account of the matters specified in sub-section (1), greater weight must be attached to the matters specified in paragraphs (a), (b), (c) and (d) than to the other specified matters.
- (3) An Authority that has a waterway management function in the area to which a proceeding before the Tribunal relates may make a submission to the Tribunal on the matters specified in paragraphs (c), (d) and (i) of sub-section (1).

S. 20(3)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.7).

21. Matters to be taken into account with respect to public works

S. 21
 amended by
 No. 121/1994
 s. 187(g).

If the Crown, an Authority, a licensee or a public statutory body is the owner or has the management and control of any works which interfere, or may interfere, with the reasonable flow of water, in determining whether those works should be continued, removed or modified, account must be taken of all the circumstances including the following matters—

- (a) the circumstances, state of scientific knowledge and knowledge of local conditions at the time the works were constructed;
- (b) the nature and position of the works;
- (c) the likely effects and costs of continuing, removing or modifying the works;
- (d) the nature of any interest in land affected by the works and the effect on that interest of continuing, removing or modifying the works.

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**PART 3—ASSESSMENT OF AND ACCOUNTING FOR
WATER**

Division 1—Role of Minister

22. Role of Minister

- (1) The Minister—
 - (a) must make sure that a continuous program of assessment of the water resources of the State is undertaken; and
 - (b) subject to and in accordance with this Act, may allocate the available water resources.
- (2) The water resources assessment program must provide for the collection, collation, analysis and publication of information about—
 - (a) the availability of water; and
 - (b) the disposal of wastewater (including trade waste, sewage and saline water); and
 - (c) the use and re-use of water resources; and
 - (d) floodwaters; and
 - (e) drainage and waterway management; and
 - (f) water quality (including salinity); and
 - (g) in-stream uses of water; and
 - (h) anything else that the Minister decides is appropriate.
- (3) Water may be allocated by the Minister under—
 - (a) a bulk entitlement granted to an Authority under Division 1 or 3 of Part 4; or
 - (b) a licence to take and use water issued under section 51; or

S. 22(3)(a)
amended by
No. 62/1995
s. 6(2).

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- (c) a licence for in-stream use of water issued under section 52.
- (4) An Authority that has an irrigation district specified in column 1 of Schedule 11 has, subject to section 223(3), a bulk entitlement for that district to the amount of water specified in column 2 of that Schedule.
- (5) The First Mildura Irrigation Trust has a bulk entitlement equal to the entitlement granted to it under section 71(1) of the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958** and continued under this Act.
- (6) Despite any other provision in this Act, the Minister may, by Order published in the Government Gazette, set rules with respect to adjustment of volumes to be applied to transfers, whether permanent or temporary, of—
- (a) bulk entitlements, or parts of bulk entitlements; or
 - (b) licences issued under section 51; or
 - (c) water rights under Part 11; or
 - (d) water offered for sale under section 222(1)(c)—
- and may amend or revoke an Order so made.

S. 22(6)
inserted by
No. 62/1995
s. 31.

Division 1A—Permissible Annual Volumes

Pt 3 Div. 1A
(Heading and
s. 22A)
inserted by
No. 5/2002
s. 8.

22A. Permissible annual volume for an area

S. 22A
inserted by
No. 5/2002
s. 8.

- (1) The Minister may from time to time, by Order published in the Government Gazette, declare, in respect of an area specified in the Order, that the total volume of water, whether surface water,

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groundwater or both, which may be taken in the area, whether used in that area or elsewhere, under this or any other Act during a period of 12 months commencing on 1 January must not exceed the volume specified in the Order.

(2) If—

- (a) an annual reserve volume of groundwater has been specified for the area under section 49A of the **Groundwater Act 1969**; or
- (b) a prescription has been made under section 62(1) of the **Groundwater Act 1969** of the maximum total amounts of water to be extracted per annum from all licensed bores within the area—

a volume specified in an Order under sub-section (1) of this section must not affect the volume referred to in paragraph (a) and must not be less than the amounts referred to in paragraph (b).

- (3) The Minister may make an Order under sub-section (1) on the Minister's initiative or at the request of an Authority.
- (4) In this section, "**area**" includes a sub-surface stratum of land or geological formation.

Division 2—Water Resources Assessment Program

23. Powers of Minister in relation to assessment program¹⁰

- (1) The Minister may do anything that is necessary or convenient to be done for or in connection with, or as incidental to, the undertaking of the water resources assessment program including (but not limited to) the following—
 - (a) carrying out surveys and holding inquiries;

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- (b) measuring and recording the flow of water in—
 - (i) waterways; and
 - (ii) other areas in which water collects;
 - (c) investigating groundwater;
 - (d) monitoring the physical, chemical and bacteriological quality of water;
 - (e) investigating the effect of climatic conditions on the occurrence and quality of water;
 - (f) investigating the interaction between groundwater and surface water;
 - (g) monitoring the flows of receiving waters for drainage, sewage and trade waste;
 - (h) establishing and maintaining works.
- (2) For the purposes of the water resources assessment program the Minister may—
- (a) purchase or compulsorily acquire any land that is required for the establishment of works or State observation bores; or
 - (b) subject to section 24, authorise a person to enter any land and drill for groundwater; or
 - (c) require any person (including a public statutory body) taking part in the program or otherwise collecting information of a kind referred to in section 22(2)—
 - (i) to keep records of all information collected; and
 - (ii) to give the Minister copies of those records on request; or

S. 23(2)(a)
amended by
No. 5/2002
s. 9(1).

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- (d) direct any Authority—
- (i) to collect and record information of a kind referred to in section 22(2) that is related to the Authority's functions; and
 - (ii) to provide that information to the Minister in any form that the Minister requires.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Division and for that purpose—
- (a) this Division is the special Act; and
 - (b) the Minister is the Authority.
- (4) Section 74 of the **Land Acquisition and Compensation Act 1986** applies to an entry on land under sub-section (2)(b).
- (5) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any works established under sub-section (1)(h).
- Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.
- For a subsequent offence, 40 penalty units or imprisonment for 6 months.
- (6) A person who is guilty of an offence under sub-section (5) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.

S. 23(5)
 inserted by
 No. 5/2002
 s. 9(2).

S. 23(6)
 inserted by
 No. 5/2002
 s. 9(2).

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24. Drilling for groundwater

- (1) Before entering under section 23(2)(b) land of a type specified in column 1 of the Table, an authorised person must obtain the consent of the person specified in column 2 of the Table in relation to that land.

TABLE

Column 1	Column 2
Land owned by a public statutory body	The owner of the land
Land that is a road	The person responsible for maintaining the road
Land that is reserved either temporarily or permanently under section 4 of the Crown Land (Reserves) Act 1978	The Minister administering the Conservation, Forests and Lands Act 1987
Land that is leased under section 134 or 151E of the Land Act 1958	
Land in respect of which a licence has been granted under section 138 or 401 of the Land Act 1958	"

- (2) As soon as possible after entering under section 23(2)(b) unoccupied Crown land, an authorised person must notify the Department Head of the entry.

S. 24(2)
amended by
No. 76/1998
s. 29(c).

25. Giving of information to Minister

- (1) A person must comply with a requirement of the Minister under section 23(2)(c).

Penalty: 10 penalty units.

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- (2) Except with the permission of the person who gave a copy of the record to the Minister, the Minister must not disclose to any person any information contained in a copy of a record given to him or her under section 23(2)(c).

26. Reports on assessment program

A report on the water resources assessment program must be included in each annual report of the Department.

Division 3—Water Supply Protection Areas

27. Declaration of water supply protection area

- (1) The Minister, on the Minister's initiative or on an application from a person referred to in sub-section (3), may, by Order published in the Government Gazette, declare an area to be a water supply protection area.
- (2) An area may be declared under sub-section (1) to be a water supply protection area for the protection of the groundwater resources in the area or the surface water resources in the area or both.

S. 26
amended by
Nos 50/1992
s. 10(Sch.
item 11.2),
49/1994
s. 5(1)(a).

Pt 3 Div. 3
(Heading and
ss 27–32)
amended by
Nos 49/1994
s. 10(a),
62/1995 s. 37,
86/1995
s. 4(a)(b),
110/1997 s. 14,
52/1998 s. 311
(Sch. 1
items 105.8,
105.9),
substituted by
5/2002 s. 10.

S. 27
substituted by
No. 5/2002
s. 10.

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- (3) An application for a declaration under sub-section (1) may be made by—
- (a) a person authorised to use groundwater or surface water under this Act; or
 - (b) an Authority that—
 - (i) holds a bulk entitlement; or
 - (ii) uses groundwater; or
 - (iii) supplies water; or
 - (c) a body that has responsibilities under any Act relating to the conservation or management of water, or of land—
- in the area concerned or in an area where the water supply is affected by the taking and use of groundwater or surface water (as the case requires) in the area concerned.
- (4) The Minister may only make a declaration under sub-section (1) if—
- (a) the Minister has first caused notice of the proposed declaration to be—
 - (i) published in a newspaper circulating generally in the area concerned; and
 - (ii) given by post to the relevant persons listed in sub-section (5); and
 - (b) the Minister has considered any submissions made within 60 days after the publication or giving of notice of the proposed declaration under sub-paragraph (i) or (ii) of paragraph (a), whichever is the later.
- (5) For the purposes of sub-section (4)(a)(ii) the relevant persons are—
- (a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and
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- (b) the Minister administering the **Planning and Environment Act 1987**; and
 - (c) any Authority exercising a function under Part 8 or 11 in the area concerned; and
 - (d) any Authority that holds a bulk entitlement to water from a source in the area concerned; and
 - (e) any public statutory body which the Minister considers may be directly affected by the declaration; and
 - (f) any council in whose municipal district the area concerned is wholly or partly situated; and
 - (g) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.
- (6) If an application under sub-section (1) is made for a declaration, the publication or giving notice of the proposed declaration is to be at the expense of the applicant.
 - (7) The Minister may require further information with respect to the proposed declaration to be provided by the applicant for the declaration or any Authority with a function under this Act in the area concerned.
 - (8) The Minister must make a decision whether to declare an area to be a water supply protection area within 60 days after the period of 60 days referred to in sub-section (4)(b).
 - (9) If the Minister decides to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.
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- (10) If the Minister decides not to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.
- (11) The Minister must cause a declaration under sub-section (1) to be laid before each House of Parliament within 5 sitting days of that House after it is made.

28. Amendment or abolition of water supply protection area

S. 28
substituted by
No. 5/2002
s. 10.

- (1) The Minister may, by a subsequent Order published in the Government Gazette, amend the boundaries of, or abolish, a water supply protection area.
- (2) Section 27 applies (with any necessary modifications) to an Order under sub-section (1) as if it were a declaration under section 27(1).

29. Consultative committee

S. 29
substituted by
No. 5/2002
s. 10.

- (1) If the Minister makes a declaration under section 27(1), the Minister must appoint a consultative committee to prepare a draft management plan for the area that is the subject of the declaration.
- (2) The following provisions apply with respect to the membership of a consultative committee appointed under this section—
 - (a) the Minister must make sure that, so far as is possible—
 - (i) all relevant interests are fairly represented on the committee;
 - (ii) the membership consists of persons who have knowledge or experience in the matters to be covered in the management plan;

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- (b) at least one half of the membership must consist of persons who are owners or occupiers of land in the area concerned appointed after consultation by the Minister with bodies representative of those persons;
 - (c) any public statutory body which the Minister considers to be directly affected by the declaration must, after consultation by the Minister with it, be represented on the committee.
- (3) Unless the area that is the subject of the declaration is wholly within an urban area, the persons referred to in sub-section (2)(b) must be farmers who own or occupy farming land in the area, appointed by the Minister after consultation with the Victorian Farmers Federation.
- (4) Section 318(2) to (6) applies to a consultative committee appointed under this section.

30. Guidelines for preparation of draft management plans

- (1) The Minister may prepare guidelines for the preparation of a draft management plan for an area that is the subject of a declaration under section 27(1).
- (2) The Minister may from time to time amend or revoke any guidelines prepared under sub-section (1).
- (3) The Minister, as soon as practicable after preparing, amending or revoking guidelines under this section must give the relevant consultative committee—
 - (a) a copy of the guidelines or the amendment;
or
 - (b) notice of the revocation of the guidelines.

S. 30
substituted by
No. 5/2002
s. 10.

Water Act 1989
Act No. 80/1989

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s. 31

31. Preparation of draft management plan

S. 31
substituted by
No. 5/2002
s. 10.

- (1) A consultative committee appointed under section 29 must, within 18 months after its appointment—
 - (a) prepare a draft management plan in accordance with any guidelines prepared by the Minister under section 30; and
 - (b) make the draft management plan available for comment by interested persons.
- (2) If the consultative committee does not prepare a draft management plan within the period referred to in sub-section (1), the Minister may—
 - (a) from time to time extend the time within which the draft management plan may be prepared and made available for comment by interested persons; or
 - (b) prepare the draft management plan.
- (3) If, under sub-section (2), the Minister prepares the draft management plan, the Minister must make that plan available for comment by interested persons.

32. Overlapping management plans to be taken into account

S. 32
substituted by
No. 5/2002
s. 10.

In preparing a draft management plan for an area declared to be a water supply protection area, the consultative committee must take into account any other draft or approved management plan that applies to the area or part of the area under this Division.

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Part 3—Assessment of and Accounting for Water

s. 32A

S. 32A
inserted by
No. 5/2002
s. 10.

32A. Management plan

- (1) The object of a management plan is to make sure that the water resources of the relevant water supply protection area are managed in an equitable manner and so as to ensure the long-term sustainability of those resources.
- (2) A management plan may relate to groundwater resources, surface water resources or both in the relevant water supply protection area.
- (3) A management plan may prescribe for the relevant water supply protection area or any part of that area—
 - (a) requirements for metering, monitoring and accounting for groundwater or surface water or both; or
 - (b) requirements to notify the Authority that has the duty of administering and enforcing the plan of the taking of groundwater from any specified bore or group of bores under a right conferred by section 8(1); or
 - (c) requirements for the location, capacity and operation of private dams which are—
 - (i) not licensed under section 51; and
 - (ii) not for domestic and stock use; or
 - (d) restrictions or prohibitions on the issue of licences under section 51 or 67; or
 - (e) restrictions or prohibitions on the renewal of registration licences; or
 - (f) restrictions to be imposed on the taking of groundwater from any specified bore, group of bores or aquifer, if necessary to prevent—
 - (i) a specified maximum groundwater table decline being exceeded; or

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- (ii) a relevant permissible annual volume being exceeded; or
 - (g) restrictions to be imposed on the taking of surface water at any location specified in the area, if necessary to ensure that—
 - (i) specified flows at any particular time or for any particular circumstances are maintained; or
 - (ii) the permissible annual volume for the area is not exceeded; or
 - (h) restrictions to be imposed on the supply of groundwater by an Authority that takes groundwater from a source in the area or part; or
 - (i) conditions relating to the protection of the environment, including the riverine and riparian environment; or
 - (j) conditions relating to payment for the amount of groundwater taken and used from any specified bore or group of bores under a right conferred by section 8(1); or
 - (k) conditions to which licences issued under section 51 are to be subject; or
 - (l) without derogating from rights to water for domestic and stock use conferred by section 8, conditions to which licences issued under section 67 are to be subject; or
 - (m) conditions to which licences issued under section 51 to take and use groundwater or surface water, and transferred under section 62, are to be subject, including a condition relating to the maximum volume of water which may be taken and used under the transferred licence; or
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- (n) the maximum volume of water that may be retained—
 - (i) in each private dam on a particular lot in a plan of subdivision in the area concerned; or
 - (ii) in all private dams on every lot in a plan of subdivision in the area concerned; or
- (o) any matter relevant to the object of the management plan or its implementation.
- (4) A draft management plan may make a recommendation to the Minister as to the total volume of water that should be declared to be the permissible annual volume for the area concerned.
- (5) A draft management plan must name the Authority which is to have the duty of administering and enforcing the plan if it is approved.
- (6) The Minister may—
 - (a) approve a draft management plan; or
 - (b) refuse to approve a draft management plan.
- (7) The Minister must cause—
 - (a) notice of the approval or refusal (as the case requires) of a draft management plan to be published and given in accordance with section 27(4)(a); and
 - (b) if the draft management plan is refused, the reasons for the refusal to be published with that notice.
- (8) The Minister must cause an approved management plan to be laid before each House of Parliament within 5 sitting days of that House after it is approved under sub-section (6).

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s. 32A

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- (9) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an approved management plan as if the approved management plan were a statutory rule within the meaning of that Act.
 - (10) An approved management plan may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.
 - (11) An approved management plan is binding on every person (including every public statutory body) except to the extent that the Minister otherwise specifies by notice published in the Government Gazette.
 - (12) On the approval of a draft management plan that prescribes a requirement, restriction or condition to which a licence issued under section 51 or 67 is to be subject, every licence issued under section 51 or 67, whether issued before or after the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, is deemed to be subject to that requirement, restriction or condition, despite anything to the contrary specified in the licence or any condition that is prescribed or fixed or imposed by the Minister under section 56 or 71 (as the case requires) in relation to the licence.
 - (13) A person must not contravene an approved management plan.

Penalty: 20 penalty units.

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Part 3—Assessment of and Accounting for Water

s. 32B

s. 32B
inserted by
No. 5/2002
s. 10.

32B. Administration and enforcement of management plan

- (1) The Authority that has the duty of administering and enforcing an approved management plan may—
 - (a) direct that any specified works be carried out or any specified equipment be installed; or
 - (b) order the removal of any specified works (other than a private dam) or the discontinuance of any specified action—
 if, in the opinion of the Authority, it is necessary to do so in order to secure compliance with the plan.
- (2) A person whose interests are affected by a decision of an Authority under sub-section (1) to give a direction or make an order may apply to the Tribunal for review of the decision.
- (3) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (4) A person must not contravene a direction given or order made by an Authority under sub-section (1).

Penalty: 20 penalty units.

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s. 32C

32C. Report on administration and enforcement of management plan

S. 32C
inserted by
No. 5/2002
s. 10.

- (1) The Authority that has the duty of administering and enforcing an approved management plan must prepare a report in respect of its activities in carrying out its duties in relation to the plan—
 - (a) for the period commencing on the day the management plan is approved and ending on 30 June next following; and
 - (b) from then on, for each year ending on 30 June or for such other period of time requested by the Authority and approved by the Minister.
- (2) The Authority must, on or before 30 September in each year, give a copy of the report to—
 - (a) the Minister; and
 - (b) every Catchment Management Authority whose catchment and land protection region is wholly or partly in the area.

32D. Public availability of report

S. 32D
inserted by
No. 5/2002
s. 10.

An Authority that has prepared a report in accordance with section 32C must, as soon as practicable after giving a copy of the report to the Minister—

- (a) make a copy of the report available for inspection, during business hours, free of charge at the offices of the Authority; and
- (b) publish a notice of that availability in a newspaper circulating generally in the area to which the approved management plan applies.

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s. 32E

s. 32E
inserted by
No. 5/2002
s. 10.

32E. Certain plans deemed to be approved management plans

- (1) Despite anything to the contrary in this Division but subject to this section, the Minister may approve a plan for the management of surface water resources that has been prepared or partly prepared by or for the department for a particular area before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**.
- (2) Before approving a plan as a management plan under sub-section (1), the Minister may—
 - (a) review or revise the plan; or
 - (b) appoint an advisory committee to assist in developing or completing the plan.
- (3) An advisory committee is to consist of such persons as the Minister thinks fit.
- (4) The Minister must not approve the plan unless the Minister is satisfied that the plan complies with section 32A(1) to (5).
- (5) On the approval by the Minister of a plan under sub-section (1)—
 - (a) the particular area to which the plan relates is deemed to be a water supply protection area for the protection of surface water resources; and
 - (b) the plan is deemed to be an approved management plan for the surface water resources of the relevant water supply protection area and may be amended or revoked in accordance with this Division.

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s. 32F

32F. Compensation in certain circumstances

S. 32F
inserted by
No. 5/2002
s. 10.

- (1) The owner and occupier of any works is entitled to be paid, by the person specified by the consultative committee that prepared the plan, or specified by the Minister in a plan referred to in section 32E, compensation for any loss suffered or expenses sustained as a result of—
 - (a) being directed under section 32B(1)(a) to carry out works or install equipment; or
 - (b) being ordered under section 32B(1)(b) to remove works.
- (2) If as a result of the enforcement of an approved management plan a benefit is conferred on one person and a detriment is suffered by another person, the second-mentioned person is entitled to be paid by the first-mentioned person compensation for the detriment suffered.
- (3) The amount of compensation payable under sub-section (1) or (2) is as agreed by the parties or, in the absence of agreement, as determined by the Authority that has the duty of administering and enforcing the plan, and that amount may be enforced as a debt in a court of competent jurisdiction.
- (4) A person whose interests are affected by a decision—
 - (a) of an Authority under sub-section (3) as to the amount of compensation payable; or
 - (b) of a consultative committee or the Minister under sub-section (1)—
 - (i) that a specified person must pay compensation; or

S. 32F(4)
substituted by
No. 48/2003
s. 12(1).

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s. 32G

(ii) that no compensation is payable—
may apply to the Tribunal for review of the
decision.

- (5) An application for review must be made within
28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and
Administrative Tribunal Act 1998**, the
person requests a statement of reasons for the
decision, the day on which the statement of
reasons is given to the person or the person is
informed under section 46(5) of that Act that
a statement of reasons will not be given.

**32G. Amendment or revocation of approved management
plan**

- (1) The Minister may amend or revoke an approved
management plan.
- (2) The Minister may only amend or revoke an
approved management plan if—
 - (a) the Minister has caused notice of the
proposed amendment or revocation to be
published and given in accordance with
section 27(4)(a); and
 - (b) the Minister has considered any submissions
made on the proposed amendment or
revocation within 60 days after the
publication or giving of notice of it in
accordance with section 27(4)(a)(i) or (ii),
whichever is the later; and
 - (c) in the case of a proposed amendment of the
plan, the Minister has appointed a
consultative committee to advise on the that
amendment.

S. 32G
inserted by
No. 5/2002
s. 10.

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s. 32H

- (3) Sections 29 and 31 apply in the case of a proposed amendment to an approved management plan with any necessary modifications, and as if in those sections—
- (a) a reference to a consultative committee appointed for the preparation of a draft management plan were a reference to a consultative committee appointed under this section for the amendment of the plan; and
 - (b) a reference to a draft management plan were a reference to the proposed amendment of the plan.

32H. Plan must be available for inspection

S. 32H
inserted by
No. 5/2002
s. 10.

The following must keep a copy of an approved management plan (as amended from time to time) available at their offices for any person to inspect during office hours free of charge—

- (a) any Authority exercising a function under this Act in the area concerned;
- (b) any council in whose municipal district the area concerned is wholly or partly situated;
- (c) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.

Division 4—Water Shortages

33. Qualification of rights in a water shortage

- (1) In this section "**qualify**" has the same meaning as in section 13.
- (2) If under section 13 the Minister declares that a water shortage exists in an area or supply system, he or she may, subject to sub-section (6), temporarily qualify all or any of the rights to take

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s. 33

water from that area or system conferred by any provision (except section 7(1) or 8(4)(c)) of Division 1 of Part 2 by—

- (a) giving notice of the qualification to the person or persons affected; or
 - (b) causing notice of it to be published in a newspaper generally circulating in the area that is the subject of the declaration or the area served by the supply system that is the subject of the declaration.
- (3) For the purposes of this Division regulations that are not inconsistent with this section may be made under this Act to—
- (a) classify rights to take water; and
 - (b) assign a priority to each of those classes—
- and, subject to sub-section (6), any qualification under this Division of water rights must be made in accordance with the priority of the class of right concerned.
- (4) Without limiting sub-section (3), the regulations classifying rights may do so according to—
- (a) the source from which under the right water is to be taken; or
 - (b) in the case of a right to take water from a bore, the depth of the bore.
- (5) Subject to sub-section (3), any qualification under this Division of water rights must apply to all rights in the same proportion unless the Minister is of the opinion that the circumstances are so extreme as to justify some other basis.

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s. 33

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- (6) The Minister must not under this Division qualify—
- (a) the right of a person under section 8(1) to take water from a waterway or bore for domestic and stock use (not including use for irrigation of a kitchen garden) unless all other rights of any kind to take water from that waterway or bore are also similarly qualified; or
 - (b) the right of a person to take water from a waterway or bore in accordance with a licence issued under section 51 unless all other similar rights to take water from that waterway or bore that are of a lower priority are also similarly qualified; or
 - (c) a right in order to increase an Authority's bulk entitlement if the Minister is of the opinion that the principal cause of the Authority's need for an increased entitlement is—
 - (i) a decision or decisions made by the Authority; or
 - (ii) the failure of the Authority to take steps reasonably available to it to prevent a water shortage; or
 - (d) the right of a person to use water in accordance with a licence issued under section 52 unless the Minister has consulted the licensee about the qualification.
- (7) Despite anything to the contrary in this section, the water rights of the owners or occupiers of land planted with fruit trees, vines or other like plants may be qualified in a lesser proportion than the water rights of the owners or occupiers of land planted or sown with plants cultivated for a single year's crop only.
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s. 33A

Pt. 3 Div. 5
(Heading and
ss 33A–33D)
inserted by
No. 5/2002
s. 11.

S. 33A
inserted by
No. 5/2002
s. 11.

S. 33B
inserted by
No. 5/2002
s. 11.

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- (8) A notice given or published under sub-section (2) may specify the criteria according to which the Minister determined the qualification.

Division 5—State Observation Bores

33A. Power to enter land

- (1) The Minister, or a person authorised in writing by the Minister for the purpose, may enter, in accordance with sub-section (2), any land on which a State observation bore is located for the purpose of—
- (a) carrying out observations (including taking water samples); or
 - (b) operating, maintaining, altering or decommissioning the bore.
- (2) The power of entry under sub-section (1) may be exercised—
- (a) in the case of Crown land, at any time; or
 - (b) in the case of land other than Crown land, between 7 a.m. and 7 p.m. or, during an emergency, at any time.

33B. Compensation

- (1) The Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A, must cause as little damage and inconvenience as possible in the performance of his or her functions under this Division.

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s. 33C

- (2) The Minister is liable to compensate any person who has—
 - (a) sustained any pecuniary loss; or
 - (b) incurred any expense—

as a direct, natural and reasonable consequence of the performance of a function under this Division by the Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A.
- (3) The Minister is not liable to compensate a person for consequential loss.
- (4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.

33C. Right to take water for domestic and stock use from a State observation bore

S. 33C
inserted by
No. 5/2002
s. 11.

A person may only exercise the right conferred by section 8(1)(d) in relation to a State observation bore if the person first obtains the written permission of the Minister.

33D. Offence to interfere etc. with State observation bore

S. 33D
inserted by
No. 5/2002
s. 11.

- (1) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any State observation bore.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

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Part 3—Assessment of and Accounting for Water

s. 33D

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- (2) A person who is guilty of an offence under sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.
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Part 4—Allocation of Water

s. 34

PART 4—ALLOCATION OF WATER

Division 1—Bulk Entitlements

34. Definition and disallowance

(1) In this Division "**Authority**" means—

(a) any person empowered to carry out any function under this Act in relation to water supply or irrigation; or

S. 34(1)(a)
 amended by
 No. 62/1995
 s. 9(2).

(ab) a person holding a water licence or a water and sewerage licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**; or

S. 34(1)(ab)
 inserted by
 No. 121/1994
 s. 188(a).

(b) any council that supplies water under the **Local Government Act 1989**; or

(c) Melbourne Water Corporation; or

S. 34(1)(c)
 substituted by
 No. 121/1994
 s. 188(b).

(d) the State Electricity Commission of Victoria;
 or

(da) VENCorp; or

S. 34(1)(da)
 inserted by
 No. 130/1993
 s. 122(Sch. 4
 item 17.2),
 amended by
 Nos 53/1994
 s. 34(Sch. 1
 item 11.2),
 110/1994
 s. 41(Sch. 1
 item 11.2),
 substituted by
 No. 69/2000
 s. 65(2)(a).

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s. 34

S. 34(1)(db)
inserted by
No. 130/1993
s. 122(Sch. 4
item 17.2),
substituted by
No. 69/2000
s. 65(2)(a).

(db) a transmission company within the meaning
of the **Electricity Industry Act 2000**; or

S. 34(1)(dc)
inserted by
No. 130/1993
s. 122(Sch. 4
item 17.2),
repealed by
No. 69/2000
s. 65(2)(a).

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S. 34(1)(dd)
inserted by
No. 53/1994
s. 34(Sch. 1
item 11.3),
amended by
No. 69/2000
s. 65(2)(b).

(dd) a distribution company within the meaning
of the **Electricity Industry Act 2000**; or

S. 34(1)(de)
inserted by
No. 110/1994
s. 41(Sch. 1
item 11.3),
amended by
No. 69/2000
s. 65(2)(b).

(de) a generation company within the meaning of
the **Electricity Industry Act 2000**; or

(e) the Minister administering the
Conservation, Forests and Lands Act 1987; or

(f) the Minister administering the **Planning and Environment Act 1987**.

S. 34(2)
amended by
Nos 62/1995
s. 7(a),
12/1996
s. 5(1).

(2) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an Order made under this Division or Division 3 by the Minister or Governor in Council as if the Order were a statutory rule within the meaning of that Act that had been laid before each House of Parliament on the day on which the Order, or a notice stating the

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s. 35

place where copies of the Order can be obtained, was published in the Government Gazette.

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|---|--|
| <p>(3) An Order referred to in sub-section (2) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the Subordinate Legislation Act 1994.</p> | <p>S. 34(3)
amended by
No. 62/1995
s. 7(b).</p> |
| <p>(4) Disallowance under sub-section (3) is deemed to be disallowance by Parliament for the purposes of the Subordinate Legislation Act 1994.</p> | <p>S. 34(4)
amended by
No. 62/1995
s. 7(c).</p> |
| <p>(5) It is sufficient compliance with the requirements of sections 42(1)(c), 42(5)(b), 44(1), 47(4)(b), 47C(10)(b)(i) and (ii) and 64C(1)(b)(i) and (ii) for an Order to be published in the Government Gazette if a notice is published in the Government Gazette stating the place where copies of the Order can be obtained.</p> | <p>S. 34(5)
inserted by
No. 12/1996
s. 5(2).</p> |

35. Application of Division

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|---|--|
| <p>(1) An Authority may only be granted a bulk entitlement to water in accordance with the provisions of this Division or Division 3.</p> | <p>S. 35(1)
amended by
No. 62/1995
s. 6(3).</p> |
| <p>(2) An Authority that has an entitlement to take water—</p> | |
| <p style="padding-left: 20px;">(aa) that was granted before the commencement of this Division 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; or</p> | <p>S. 35(2)(aa)
inserted by
No. 50/1992
s. 6(2).</p> |
| <p style="padding-left: 20px;">(a) that was granted before the commencement of this Division by or under an Act that is repealed by this Act and is continued by this Act; or</p> | |

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Part 4—Allocation of Water

- (b) that is granted by or under an Act that is not repealed by this Act—

may apply in accordance with section 47 to have that entitlement converted into an entitlement granted under this Division.

36. Application for bulk entitlement

- (1) An Authority may apply to the Minister for the grant of a bulk entitlement to—
- (a) water in a waterway (including the River Murray); or
 - (b) groundwater; or
 - (c) water in any works of another Authority; or
 - (d) water in any works of Melbourne Water Corporation; or
 - (e) water in any works of a person holding a water licence, a water and sewerage licence or a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**; or
 - (f) any other water to which an Authority has access.
- (2) An application must—
- (a) be made in a form and manner approved by the Minister; and

S. 36(1)(c)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.3),
 121/1994
 s. 188(c),
 62/1995
 s. 10(a).

S. 36(1)(d)
 inserted by
 No. 121/1994
 s. 188(c).

S. 36(1)(e)
 inserted by
 No. 121/1994
 s. 188(c),
 amended by
 Nos 62/1995
 s. 10(b),
 86/1995 s. 5.

S. 36(1)(f)
 inserted by
 No. 62/1995
 s. 10(b).

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s. 36

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- (b) contain—
- (i) particulars of—
 - (A) the maximum amounts of water in any specified period or periods; or
 - (B) the timing and level of flow—
to which an entitlement is being sought; and
 - (ii) particulars of the source from which the water being sought is to come; and
 - (iii) particulars of the matters referred to in paragraphs (b) to (l) of section 40(1) and in section 40(2); and
 - (iv) any other particulars that are prescribed; and
- (c) be accompanied by the prescribed application fee.
- (3) The Minister must forward a copy of an application to—
- (a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and
 - (b) the Minister administering the **Planning and Environment Act 1987**; and
 - (c) any public statutory body which the Minister considers may be directly affected by the application.
- (4) For the purposes of this section, "**waterway**" includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.
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S. 36(2)(b)(iii)
 amended by
 No. 5/2002
 s. 12.

Water Act 1989
Act No. 80/1989

Part 4—Allocation of Water

37. Referral to Governor in Council

The Minister may refer an application under section 36(1) to the Governor in Council for determination.

38. Advertisement etc. of application

- (1) This section applies to an application—
 - (a) under section 36(1) for the grant of a bulk entitlement; or
 - (b) under section 44 for the amendment of a bulk entitlement; or
 - (c) under section 46 for approval of the transfer of a bulk entitlement; or
 - (d) under section 47 for the conversion of an existing entitlement.
- (2) The Minister or Governor in Council (as the case requires) may do either or both of the following—
 - (a) himself or herself give notice of an application to which this section applies in any manner that he or she thinks fit or require the applicant to do so in any manner specified by the Minister or Governor in Council (as the case requires);
 - (b) by notice served on the applicant require the applicant—
 - (i) to provide the further information specified in the notice within the period specified in the notice; or
 - (ii) to participate in an investigation specified in the notice designed to enable the Minister or Governor in Council (as the case requires) to assess the likely effects of granting the

S. 38(2)
 amended by
 No. 62/1995
 s. 18(a).

S. 38(2)(a)
 amended by
 No. 62/1995
 s. 18(b).

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application and to bear all of the cost of that investigation or the part of that cost specified in the notice.

- (3) A notice given under paragraph (a) of sub-section (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

39. Appointment of panel

- (1) The Minister or Governor in Council (as the case requires) may appoint a panel of persons to consider submissions made on an application under section 36(1).
- (2) Subject to anything specified by the Minister or Governor in Council when appointing the panel, a panel may regulate its own proceedings.
- (3) If submissions on the application have not been invited by a notice given under section 38(2)(a), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.
- (4) The Minister or Governor in Council (as the case requires) must make sure that any person that receives a copy of the application under section 36(3) is informed of—
 - (a) the appointment of a panel under sub-section (1); and
 - (b) that person's right to make a submission on the application.
- (5) After considering—
 - (a) all submissions referred or made to it; and
 - (b) any further information provided under section 38(2)(b)(i); and

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- (c) the results of any investigation carried out under section 38(2)(b)(ii)—

the panel must report its findings to the Minister or Governor in Council (as the case requires) within the period specified by him or her.

- (6) The panel may include in its report any recommendations that it thinks fit.
- (7) A member of a panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

40. Matters to be taken into account

- (1) In considering an application under section 36(1), the Minister or Governor in Council (as the case requires) must have regard to the following matters—
- (a) the report of any panel appointed under section 39(1);
 - (b) the existing and projected availability of water in the area;
 - (ba) the permissible annual volume, if any, for the area;
 - (c) the existing and projected quality of water in the area;
 - (d) any adverse effect that the allocation or use of water under the entitlement is likely to have on—
 - (i) existing authorised uses of water; or
 - (ii) a waterway or an aquifer; or
 - (iii) the drainage regime within the meaning of section 12(1);

S. 40
 amended by
No. 5/2002
s. 13(2) (ILA
s. 39B(1)).

S. 40(1)(ba)
 inserted by
No. 5/2002
s. 13(1)(a).

S. 40(1)(d)(iii)
 amended by
No. 5/2002
s. 13(1)(b)(i).

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- (ii) the findings of, or any evidence given or submission made to, any relevant investigation or inquiry held under any Act or held by any Committee of the Cabinet, government department or public statutory body whether or not under an Act;
 - (o) any other matter that the Minister or Governor in Council thinks fit to have regard to.
- (2) In considering an application under section 36(1), the Minister or Governor in Council (as the case requires) must give effect to an approved management plan for any relevant water supply protection area.

41. Application to be deferred in certain circumstances

If—

- (a) a notice is published under section 27(4)(a)(i); and
- (b) an application is subsequently made under section 36(1) in respect of groundwater in an area that is the subject of the proposed declaration—

the Minister or Governor in Council (as the case requires) must defer consideration of the application until either—

- (c) an Order is made under section 27(1); or
- (d) a notice is published under section 27(10).

S. 40(2)
 inserted by
 No. 5/2002
 s. 13(2).

S. 41(a)
 amended by
 No. 5/2002
 s. 14(a).

S. 41(d)
 amended by
 Nos 62/1995
 s. 44(2),
 5/2002
 s. 14(b).

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42. Determination of application

- (1) The Minister or Governor in Council (as the case requires) may deal with an application under section 36(1) in any of the following ways—
 - (a) refuse it;
 - (b) give preliminary approval to it;
 - (c) approve it and grant the entitlement by Order published in the Government Gazette.
- (2) The Minister or Governor in Council (as the case requires) must not approve an application under sub-section (1)(c) unless he or she considers that the allocation of water under the entitlement is not likely to have any significant impact in terms of the matters required to be considered and given effect to under section 40.
- (3) If the Minister or Governor in Council gives preliminary approval to an application under sub-section (1)(b), he or she must make sure that—
 - (a) everyone who made a submission on the application is notified of the giving of preliminary approval; and
 - (b) a notice of the giving of preliminary approval is published in a newspaper circulating generally in the area concerned.
- (4) A notice published under sub-section (3)(b) must—
 - (a) set out the prescribed particulars of the application; and
 - (b) set out particulars of the place or places at which a copy or summary of the application and the preliminary approval may be inspected; and

S. 42(2)
amended by
No. 5/2002
s. 15.

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- (c) advise that any interested person may request a summary of the preliminary approval in the manner specified in the notice; and
 - (d) invite written comments on the preliminary approval to be made within 60 days or any longer period that is specified in the notice; and
 - (e) advise that anyone who so requests will be notified of the final outcome of the application.
- (5) After considering all written comments made on the preliminary approval in response to a notice published under sub-section (3)(b), the Minister or Governor in Council (as the case requires) must decide to—
- (a) refuse the application; or
 - (b) approve the application and grant the entitlement by Order published in the Government Gazette.
- (6) If the Minister or Governor in Council refuses an application under sub-section (5)(a), he or she must make sure that a notice of the refusal is published in a newspaper circulating generally in the area concerned.

43. Order granting entitlement

An Order granting an entitlement under this Division may specify in relation to the entitlement granted all or any of the following—

- (a) a means of quantifying the amount of water, whether by volume or by reference to the level of flow at a specified point or by reference to a share of flow or storage or by any other means or combination of means, and if the amount of water is quantified by

S. 43(a)
amended by
No. 62/1995
s. 12(a).

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reference to a share of storage, then by reference, for example, to—

- (i) the volumetric share of system capacity available to the Authority;
 - (ii) the share of inflow to the storage available to the Authority;
 - (iii) the volumetric share of releases from the storage available to the Authority;
 - (iv) the seepage and evaporative loss adjustments to be debited to the Authority;
 - (v) the share of inflow to be credited to the Authority when its share of storage capacity does not allow it to receive its full share of inflow;
- (b) if the amount of water is quantified by reference to a share of flow, then by reference, for example, to the share of flow past a specified point; S. 43(b)
amended by
No. 62/1995
s. 12(b).
 - (ba) if the amount of water is part of the bulk entitlement of another Authority, the circumstances in which that other Authority may exercise powers under section 141; S. 43(ba)
inserted by
No. 62/1995
s. 19.
 - (bb) if the amount of water includes amounts in respect of licences under section 51, the total amount attributable to those licences; S. 43(bb)
inserted by
No. 62/1995
s. 19.
 - (c) the obligations of the storage operator and the resource manager; S. 43(c)
amended by
No. 86/1995
s. 6.
 - (d) whether and, if so, in what manner and to what extent the entitlement is transferable;

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S. 43(e)
 amended by
 No. 50/1992
 s. 6(3).

- (e) the financial obligations of the Authority (which may include the making of payments to another Authority or to the holder of a licence issued under section 51 or 52);
- (f) water accounting procedures (which may include the granting of credits to the Authority in respect of water returned to the source);
- (g) a requirement that the Authority provide, install and maintain at its own expense metering equipment approved by the Minister;
- (h) a requirement that the Authority carry out at its own expense a metering program approved by the Minister for the purpose of providing the Minister with the type of information specified in the Order at the times and in the form and manner specified in the Order;
- (i) any other matter that the Minister or Governor in Council (as the case requires) thinks fit to specify, which may include conditions relating to—
 - (i) if appropriate, the protection of the waterway or aquifer;
 - (ii) the returning of water to the source;
 - (iii) the protection of the environment, including the riverine and riparian environment;
 - (iv) the implementation of the conservation policy of the Government.

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43A. Appointment of storage operators and resource managers

S. 43A
 inserted by
 No. 86/1995
 s. 7.

- (1) The Minister may, in respect of each bulk entitlement granted under this Division or Division 3, appoint, by instrument, an Authority or any other persons as—
 - (a) a storage operator; or
 - (b) a resource manager—
 on the terms and conditions specified in the instrument of appointment.
- (2) A person appointed under sub-section (1) holds office for the term specified by the Minister.

44. Amendment of entitlement by Order

S. 44(1)
 amended by
 Nos 50/1992
 s. 6(4),
 62/1995
 s. 14(a)–(c).

- (1) A bulk entitlement granted or transferred to an Authority under this Division or Division 3 or an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) may be amended (including by the consolidation of the whole or part of the bulk entitlement with another bulk entitlement) by an Order made by the Minister or Governor in Council (as the case requires) and published in the Government Gazette.
- (2) An entitlement may only be amended under sub-section (1) on the application of—
 - (a) the Authority holding the entitlement; or
 - (b) another Authority with the support of another Minister.
- (3) The provisions of this Division relating to the procedure to be followed with respect to an application for the grant of an entitlement apply, with any necessary modifications, with respect to an application for the amendment of an entitlement.

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45. Minor amendment of entitlement by notice

- (1) A bulk entitlement granted to an Authority under this Division may be amended by notice given by the Minister to the holder of the entitlement.
- (2) An entitlement may only be amended under subsection (1) if the holder of the entitlement has applied to the Minister for the amendment and the amendment is necessary because of—
 - (a) a mistake in the description of any element of the entitlement; or
 - (b) a minor variation arising from practical operations.

46. Transfer of entitlement

- (1) A bulk entitlement held by an Authority under this Division may, in accordance with this section, be transferred in whole or in part to one or more other Authorities.
- (2) A transfer may be either permanent or temporary.
- (3) An Authority that holds an entitlement under this Division may apply to the Minister for approval of the transfer.
- (4) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by any prescribed application fee.

S. 46(1)
amended by
No. 62/1995
s. 13(1)(a)–(c).

S. 46(3)
amended by
No. 62/1995
s. 13(2)(a)(b).

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| <p>(5) In considering an application the Minister may have regard to any of the matters mentioned in section 40(1) and, without limiting the discretion of the Minister, may refuse to approve the transfer if, in the opinion of the Minister, the transfer is likely to have any adverse effect referred to in section 40(1)(d) or (g).</p> | <p>S. 46(5)
amended by
Nos 62/1995
s. 13(3),
5/2002
s. 16(1)(a)(b).</p> |
| <p>(5A) In considering an application, the Minister must give effect to an approved management plan for any relevant water supply protection area.</p> | <p>S. 46(5A)
inserted by
No. 5/2002
s. 16(2).</p> |
| <p>(6) If an application is made, the Minister may, subject to sub-section (7)—</p> <p style="padding-left: 40px;">(a) refuse to approve the transfer; or</p> <p style="padding-left: 40px;">(b) approve the transfer on any condition that could have been specified in an Order granting the entitlement under section 43(i).</p> | <p>S. 46(6)(a)
amended by
No. 62/1995
s. 13(4).</p> <p>S. 46(6)(b)
amended by
No. 62/1995
s. 13(4).</p> |
| <p>(7) The Minister must not deal with an application in a way that is inconsistent with anything specified in the Order granting the entitlement under section 43(d).</p> | |
| <p>(8) For the purposes of transfers under this section, an Authority has power to sell a bulk entitlement, or part of a bulk entitlement—</p> <p style="padding-left: 40px;">(a) at auction; or</p> <p style="padding-left: 40px;">(b) by inviting tenders; or</p> <p style="padding-left: 40px;">(c) in any other manner that it thinks fit.</p> | <p>S. 46(8)
inserted by
No. 62/1995
s. 13(5).</p> |
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S. 46(9)
 inserted by
 No. 62/1995
 s. 13(5).

(9) If—

- (a) an Authority decides to sell the whole or part of a bulk entitlement under this section; and
- (b) the proposed transfer is to be permanent—
 the Authority must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—
- (c) declaring that the bulk entitlement, or a part of the bulk entitlement, is available for purchase; and
- (d) giving details of the method by which the bulk entitlement or part is to be sold.

S. 46A
 inserted by
 No. 62/1995
 s. 28.

46A. Temporary transfer of bulk entitlement to irrigators

- (1) An Authority holding a bulk entitlement may, in accordance with this section, transfer the whole or part of the entitlement to a person who is—
 - (a) the owner or occupier of a holding in an irrigation district; or
 - (b) the holder of a licence under section 51.
- (2) A transfer may only be made with the approval of the Authority whose works will be used to supply the water or, if there is no such Authority, the Minister.
- (3) A transfer takes effect subject to the prescribed terms and conditions and to any other terms and conditions of which notice is given to the parties by the Authority referred to in sub-section (2) or the Minister when the transfer is approved.
- (3A) A transfer may be either permanent or temporary¹².

S. 46A(3A)
 inserted by
 No. 86/1995
 s. 8(1).

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- (3B) A permanent transfer may only be made with the approval of the Minister¹³. S. 46A(3B)
inserted by
No. 86/1995
s. 8(1).
- (3C) The Minister may approve a permanent transfer only if the Minister is satisfied that the entitlement, or part of the entitlement, to be transferred is surplus to the obligations of the Authority to supply water¹⁴. S. 46A(3C)
inserted by
No. 86/1995
s. 8(1).
- (4) A temporary transfer takes effect for the period agreed between the parties but not exceeding¹⁵— S. 46A(4)
amended by
No. 86/1995
s. 8(2).
- (a) if the transfer is approved during an irrigation period, the remainder of that irrigation period; and
 - (b) if the transfer is approved between irrigation periods, the duration of the next irrigation period after the transfer is approved.
- (5) Subject to this Act, the Authority referred to in sub-section (2) must supply to the land of the transferee any volume of water the right to which is the subject of the transfer.
- (6) An application for the approval by an Authority or the Minister of a transfer must—
- (a) be made in the prescribed form and manner; and
 - (b) contain any information that is prescribed; and
 - (c) be accompanied by the prescribed fee, if any.
- (7) For the purposes of transfers under this section, an Authority has power to sell a bulk entitlement, or part of a bulk entitlement—
- (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner that it thinks fit.
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S. 46A(8)
inserted by
No. 86/1995
s. 8(3).

(8) If¹⁶—

- (a) an Authority decides to sell the whole or part of a bulk entitlement under this section; and
- (b) the proposed transfer is to be permanent—
the Authority must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—
- (c) declaring that the bulk entitlement, or a part of the bulk entitlement, is available for purchase; and
- (d) giving details of the method by which the bulk entitlement or part is to be sold.

(9) Following a permanent transfer under this section¹⁷—

- (a) the Authority must apply for the amendment of its bulk entitlement in accordance with section 44 or 45; and
- (b) if the purchaser is the owner or occupier of a holding in an irrigation district, the Authority must ensure that details of the sale are given to the Authority that has the irrigation district for entry in the register of lands kept under section 230.

S. 46B
inserted by
No. 62/1995
s. 28.

46B. Temporary transfer to person outside Victoria

- (1) An Authority holding a bulk entitlement may, in accordance with this section, transfer for a period not exceeding 12 months the whole or part of that entitlement to a person outside Victoria.
- (2) A transfer may only be made with the approval of the Minister.
- (3) An Authority may apply to the Minister for approval under sub-section (2).

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- (4) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by the prescribed fee, if any.
- (5) The Minister may refuse to approve a transfer if the Minister considers that the transfer is likely to have any adverse effect referred to in section 40(1)(d) or (g).
- (6) Subject to sub-section (7), the Minister may—
 - (a) refuse to approve the transfer; or
 - (b) approve the transfer on any condition that could have been specified in an Order granting the bulk entitlement under section 43(i).
- (7) The Minister must not deal with an application in a way that is inconsistent with anything specified in the Order granting the entitlement under section 43(d).
- (8) For the purposes of transfers under this section, an Authority has power to sell a bulk entitlement, or part of a bulk entitlement—
 - (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner that it thinks fit.
- (9) Section 46(9) applies to a proposed sale of the whole or part of a bulk entitlement under this section as if it were a permanent transfer.

S. 46B(5)
 amended by
 No. 5/2002
 s. 17.

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47. Conversion of existing entitlements

- (1) An Authority that has an entitlement to take water referred to in paragraph (aa), (a) or (b) of section 35(2) may apply to the Minister to have the whole or part of that entitlement converted into an entitlement or two or more entitlements granted under this Division.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain particulars of the entitlement held by the applicant; and
 - (c) be accompanied by any prescribed application fee.
- (3) The Minister must forward a copy of an application to any entitlement holder whom the Minister considers may be directly affected by the application.
- (4) After considering any comments made on the application by an entitlement holder to whom the Minister forwarded a copy of the application, the Minister may deal with an application in any of the following ways—
 - (a) refuse it;
 - (b) approve it (with or without modification) and by Order published in the Government Gazette in accordance with section 43 convert the whole or part of the entitlement into an entitlement or two or more entitlements granted under this Division.
- (5) Without limiting sub-section (4)(b), a modification under that sub-section may provide for the granting of a reduced or increased entitlement.

S. 47(1)
amended by
Nos 50/1992

s. 6(5),
121/1994
s. 188(d),
62/1995
s. 15(1).

S. 47(4)(b)
amended by
Nos 121/1994

s. 188(d),
62/1995
s. 15(2),
22/1999
s. 3(1).

S. 47(5)
inserted by
No. 22/1999
s. 3(2).

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47A. Compliance with terms of bulk entitlement

S. 47A
inserted by
No. 62/1995
s. 16.

- (1) An Authority (other than an Authority referred to in paragraph (a), (b), (c), (e) or (f) of section 34(1)) must comply with the specifications of an Order granting an entitlement to it under this Division or Division 3.
- (2) An Authority which contravenes sub-section (1) is guilty of an offence against this Act and liable to a penalty of not more than 200 penalty units and in the case of a continuing offence to a daily penalty of not more than 80 penalty units for each day the offence continues after conviction or after service by or on behalf of the Minister of notice of contravention of this section.
- (3) The Minister may, by notice in writing to an Authority which contravenes sub-section (1), require the Authority to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Minister, to remedy the contravention.
- (4) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Minister, the Minister may—
 - (a) cause to be carried out any works and take any other action the Minister decides is necessary to remedy the contravention, and recover reasonable costs from the Authority on which the notice was served; and
 - (b) cause to be removed or disconnected any works of the Authority in relation to which the contravention occurs, and recover reasonable costs from the Authority on which the notice was served; and

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- (c) apply to a court for an injunction restraining the Authority on which the notice was served from contravening the notice.

47B. Minister may request application

- (1) The Minister may request an Authority, by notice in writing to the Authority, to make an application under section 36 or 47.
- (2) If the Authority fails to make the application requested under sub-section (1) within 2 months after the request the Minister may give notice to the Authority that the Minister intends—
 - (a) to grant a bulk entitlement under this Division to the Authority; or
 - (b) to convert the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division.
- (3) After giving notice in accordance with sub-section (2), the Minister may prepare a proposed Order in accordance with section 43.
- (3A) A proposed Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may propose the granting of a reduced or increased entitlement.
- (4) The Minister must give notice of the proposed Order in any manner that the Minister thinks fit.
- (5) A notice given under sub-section (4) may invite submissions on the proposed Order to be made in the manner specified in the notice within the period specified in the notice.

S. 47B
 inserted by
 No. 62/1995
 s. 16.

S. 47B(2)
 amended by
 No. 22/1999
 s. 3(3).

S. 47B(3)
 amended by
 No. 86/1995
 s. 9.

S. 47B(3A)
 inserted by
 No. 22/1999
 s. 3(4).

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- (6) If the proposed Order converts the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division, the Minister must—
- (a) forward a copy of the proposed Order to any entitlement holder whom the Minister considers may be directly affected by the proposed Order; and
 - (b) consider any comments made on the proposed Order by an entitlement holder to whom the Minister forwarded a copy.
- (7) After considering any submissions or comments made on the proposed Order, the Minister may, by Order published in the Government Gazette—
- (a) grant the bulk entitlement under this Division; or
 - (b) convert the whole or part of the entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements granted under this Division—
- as the case may be.
- (7A) An Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may provide for the granting of a reduced or increased entitlement.
- (8) The provisions of this section apply despite any other provisions of this Division.

S. 47B(7A)
inserted by
No. 22/1999
s. 3(5).

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s. 47C
 inserted by
 No. 62/1995
 s. 16.

47C. Conversion of licences or water rights to bulk entitlement

- (1) An Authority may acquire, by permanent transfer, a licence under section 51 or water rights made available under section 222(1)(b) for the purpose of conversion to a bulk entitlement held by the Authority, in accordance with sub-section (10).
- (2) Unless the Minister determines otherwise, an Authority must not use any licences or water rights for the purpose of bulk water supply until they have been converted to a bulk entitlement in accordance with this section.
- (3) An Authority intending to acquire such licences or water rights for the purpose of conversion to a bulk entitlement must apply to the Minister to set the terms and conditions of conversion.
- (4) An application under sub-section (3) must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by the prescribed fee, if any.
- (5) On an application under sub-section (3), the Minister may do either or both of the following—
 - (a) give notice of the application in any manner that the Minister thinks fit or require the applicant to do so in any manner specified by the Minister;

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- (b) by notice served on the applicant require the applicant—
- (i) to provide the further information specified in the notice within the period specified in the notice; or
 - (ii) to participate in an investigation specified in the notice designed to enable the Minister to assess the likely effects of granting the application and to bear all of the cost of that investigation or the part of that cost specified in the notice.
- (6) A notice given under sub-section (5)(a) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.
- (7) In considering an application under this section, the Minister may have regard to any matter referred to in paragraphs (a) to (o) of section 40(1). **S. 47C(7)**
amended by
No. 5/2002
s. 18(1).
- (7A) In considering an application under this section, the Minister must give effect to an approved management plan for any relevant water supply protection area. **S. 47C(7A)**
inserted by
No. 5/2002
s. 18(2).
- (8) The Minister may set any terms and conditions of a conversion to a bulk entitlement that the Minister thinks fit or refuse to allow the conversion.
- (9) A transfer for the purpose of conversion to a bulk entitlement may only be made—
- (a) after consultation between the parties to the proposed transfer; and
 - (b) in accordance with this section and section 62 or 226, as the case may be, with any necessary modifications.
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- (10) If a licence or water rights in respect of a holding are transferred permanently to an Authority the Minister, on application by the Authority and in accordance with the terms and conditions set by the Minister under sub-section (8)—
- (a) in the case of a licence, must quantify the entitlement to take and use water in accordance with the licence; and
 - (b) may either—
 - (i) if the Authority holds a bulk entitlement, by Order published in the Government Gazette, amend the entitlement to add the amount determined under paragraph (a) or the amount of water that is specified in the register in respect of the holding; or
 - (ii) by Order published in the Government Gazette, grant to the Authority a bulk entitlement for the amount or amounts referred to in sub-paragraph (i); and
 - (c) must revoke the licence, if any.
- (11) For the purpose of this section, the Governor in Council may make regulations for or with respect to fixing fees payable to the Minister for processing an application to set terms and conditions of conversion to a bulk entitlement.

47D. Minister may sell unallocated water

- (1) If—
- (a) an entitlement to take water has been converted, whether before or after the commencement of section 11 of the **Water (Further Amendment) Act 1995**, in accordance with section 47; and

S. 47D
 inserted by
No. 86/1995
 s. 10.

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- (b) the entitlement is in respect of water in a storage which on 1 January 1995 was owned by the Rural Water Corporation; and
 - (c) there is water in the storage that is not allocated to the converted entitlement; and
 - (d) the Minister has determined that the flow of water out of the storage is adequate to protect the environment, including the wetland, riverine and riparian environment—
- the Minister may, by notice published in the Government Gazette, declare that an amount of water is unallocated water.
- (2) If the Minister has made a declaration under sub-section (1), the Minister—
 - (a) may by notice published in a newspaper circulating generally in the area concerned, declare that the unallocated water is available for purchase by any person holding the qualifications specified in the notice on the terms and conditions specified in the notice; and
 - (b) must consult with the Authority responsible for delivery of the water before determining the terms and conditions of sale.
 - (3) A declaration under sub-section (2)(a) must—
 - (a) specify a means referred to in section 43(a) of quantifying the amount of water; and
 - (b) specify the adjustment, if any, of volumes to be applied to the transfer; and
 - (c) specify that, if unallocated water is to be converted to a bulk entitlement after sale, the sale is void if the Order granting the bulk entitlement is disallowed by the Parliament under section 34; and
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- (d) give details of the method by which the unallocated water is to be sold, whether at auction or by inviting tenders or in any other manner that the Minister thinks fit.
- (4) A transfer under this section is permanent.
- (5) Following a transfer under this section, the Minister must do any or all of the following as is appropriate in the circumstances—
 - (a) grant a bulk entitlement to the purchaser by Order published in the Government Gazette;
 - (b) amend a bulk entitlement held by the purchaser in accordance with section 44 or 45;
 - (c) issue a licence under section 51 to the purchaser;
 - (d) ensure that details of the sale are given to the relevant Authority for entry in the register of lands kept under section 230.

48. Register of entitlements

- (1) The Department Head must cause a register to be kept of all entitlements (as amended or transferred from time to time) granted under this Division or Division 3.
- (2) The register must be made available at the office of the Department Head for any person to inspect during office hours free of charge.

Division 2—Licences

49. Advertisement etc. of application

- (1) This section applies to an application—
 - (a) under section 51 for the issue of a licence to take and use water; or

S. 48(1)
 amended by
 Nos 62/1995
 s. 6(4),
 76/1998
 s. 29(d).

S. 48(2)
 amended by
 No. 76/1998
 s. 29(d).

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- (b) under section 52 for the issue of a licence for the in-stream use of water; or
 - (c) under section 58(1) for the renewal of a licence referred to in paragraph (a) or (b); or
 - (d) under section 62(3) for approval of the transfer of a licence referred to in paragraph (a) or (b).
- (2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.
 - (3) A notice given under sub-section (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

50. Appointment of panel

- (1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 49 applies.
- (2) Subject to anything specified by the Minister when appointing the panel, a panel may regulate its own proceedings.
- (3) If submissions on the application have not been invited by a notice given under section 49(2), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.
- (4) After considering all submissions referred or made to it, the panel must report its findings to the Minister within the period specified by him or her.
- (5) The panel may include in its report any recommendations that it thinks fit.

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- (6) A member of a panel is entitled to be paid any fees and allowances fixed by the Governor in Council.

51. Licence to take and use water

- (1) A person may apply to the Minister for the issue of a licence to take and use—
- (a) water from a waterway (including the River Murray); or
 - (b) groundwater; or
 - (ba) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
 - (c) water from any works of an Authority; or
 - (d) water from any works of a person holding a water licence, a water and sewerage licence or a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994**.
- (1A) During the period commencing on 1 July 2002 and ending on 30 June 2003, a person may apply, without payment of an application fee, to the Minister for the issue of a registration licence to take and use—
- (a) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a

S. 51(1)(ba)
inserted by
No. 5/2002
s. 19(1).

S. 51(1)(c)
amended by
Nos 50/1992
s. 10(Sch.
item 11.4),
49/1994
s. 5(1)(b),
substituted by
No. 86/1995
s. 11.

S. 51(1)(d)
inserted by
No. 86/1995
s. 11.

S. 51(1A)
inserted by
No. 5/2002
s. 19(2) (as
amended by
No. 6/2002
s. 4(1)).

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- building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
- (b) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use.
- (1B) Sub-section (1A) only applies, in relation to a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—
- (a) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
- (b) water from the dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use for which a licence under sub-section (1)(a) is not in force—
- as the case may be.
- (1C) Nothing in this section requires a person to hold a licence issued under this section to re-use water that—
- (a) is stored in a dam that complies with design criteria specified by the Minister under section 80A; and
- (b) does not exceed the volume determined in accordance with the formula specified by the Minister under section 80A; and
- (c) is supplied to the person under a licence issued under this section, under section 124(7) or in accordance with section 222.

S. 51(1B)
 inserted by
 No. 5/2002
 s. 19(2) (as
 amended by
 No. 6/2002
 s. 4(1)).

S. 51(1C)
 inserted by
 No. 5/2002
 s. 19(3).

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S. 51(2)
amended by
No. 5/2002
s. 19(4)(a).

(2) An application under this section must—

- (a) be made in a form and manner approved by the Minister; and
- (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
- (ba) in the case of an application under sub-section (1)(ba) or (1A) in relation to a spring or soak or dam by a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—
 - (i) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
 - (ii) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use—as the case may be, set out the maximum volume of water to be used by the applicant in each year during the period of the licence, determined in accordance with the criteria specified by Order under section 52A; and
- (c) be accompanied by the application fee, if any, fixed by the Minister for that type of application.

S. 51(2)(ba)
inserted by
No. 5/2002
s. 19(4)(b).

S. 51(2)(c)
amended by
No. 110/1997
s. 17(1),
substituted by
No. 5/2002
s. 19(4)(c).

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- (3) After consultation with the Minister administering the **Conservation, Forests and Lands Act 1987**, a licence issued under this section may include authority to enter on any Crown land other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** and to install and operate works on that land for the purpose of raising water to be taken and used under the licence.
- (4) An authority granted under sub-section (3) does not remove the need to apply for any licence that is necessary under Part 5.
- (5) The licensee is liable to compensate any person who suffers any pecuniary loss as a direct, natural and reasonable consequence of the exercise of an authority granted under sub-section (3).
- (6) The amount of compensation payable is as agreed by the parties or, in the absence of agreement, as determined by the Tribunal.
- (7) For the purposes of this section, "**waterway**" includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 51(3)
amended by
No. 35/1998
s. 21(1).

S. 51(6)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.10).

51A. Surrender of registration licence

- (1) The holder of a registration licence may, during the term of the licence, surrender the licence to the Minister and apply, without payment of an application fee, for the issue of a licence under section 51(1)(a) or (ba).
- (2) Sections 51B and 51C do not apply to an application made under sub-section (1).

S. 51A
inserted by
No. 5/2002
s. 20.

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- (3) On an application made under sub-section (1), the Minister must issue, within 14 days after the application is made, a licence under section 51(1)(a) or (ba), as the case may be, for the same maximum volume of water to be used in each year during the period of the licence as that which applied to the registration licence formerly held by the applicant.
- (4) A registration licence surrendered under sub-section (1) is deemed to continue in operation until the issue of a licence under section 51(1)(a) or (ba) in accordance with sub-section (3).

S. 51B
inserted by
No. 5/2002
s. 21.

51B. Application to go to certain bodies

The Minister must, without delay, give a copy of an application under section 51 in respect of a dam, whether or not on a waterway, to—

- (a) the Department Head; and
- (b) the relevant Catchment Management Authority; and
- (c) Melbourne Water, if the dam is or will be located in an area over which Melbourne Water has power under Part 10 of the **Melbourne and Metropolitan Board of Works Act 1958**; and
- (d) any Authority holding a bulk entitlement that may be affected by the approval of the application.

S. 51C
inserted by
No. 5/2002
s. 21.

51C. Bodies must consider application

- (1) Within 30 days after receipt of an application referred to a body under section 51B, the body—
 - (a) must consider the application; and
 - (b) may advise the Minister in writing that—
 - (i) it does not object to the issue of a licence; or

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- (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
- (iii) it objects to the issue of the licence on any specified ground; and
- (c) may give to the Minister its comments on the application.
- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 51B, the Minister may proceed to determine the application.

52. Licence for in-stream use of water

- (1) An application may be made to the Minister by another Minister or a person nominated by another Minister for the issue of a licence for the in-stream use of water in—
 - (a) a waterway (including the River Murray); or
 - (b) any works of an Authority that has, after the commencement of section 5(1) of the **Water (Further Amendment) Act 1994**, a district described in a column of item 102 of Schedule 12.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain—
 - (i) particulars of the rate or level of flow that is required; and
 - (ii) particulars of the location at which the water is required; and

S. 52(1)(b)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.5),
 49/1994
 s. 5(1)(c).

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s. 52A

S. 52(2)(c)
 amended by
 No. 110/1997
 s. 17(2).

S. 52A
 inserted by
 No. 5/2002
 s. 22.

S. 53
 amended by
 No. 5/2002
 s. 23(2) (ILA
 s. 39B(1)).

(iii) particulars of the time or times at which the water is required to be used; and

(iv) any other particulars that are prescribed; and

(c) be accompanied by any application fee fixed by the Minister.

(3) Nothing in this section requires anyone to hold a licence issued under this section for any in-stream use of water whatsoever.

52A. Criteria to determine maximum volume of water use for certain licence applications

The Minister may, by Order published in the Government Gazette, specify the criteria for determining the maximum volume of water to be used each year during the period of—

- (a) a registration licence; or
- (b) a licence issued under section 51(1)(ba), in respect of a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use.

53. Matters to be taken into account

(1) In considering an application under section 51 or 52, the Minister must have regard to the following matters—

- (a) the report of any panel appointed under section 50;

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| <p>(ab) any advice and comments received within the period of 30 days referred to in section 51C(1);</p> | <p>S. 53(1)(ab) inserted by No. 5/2002 s. 23(1)(a).</p> |
| <p>(b) the matters mentioned in paragraphs (b) to (m) of section 40(1);</p> | <p>S. 53(1)(b) amended by No. 5/2002 s. 23(1)(b).</p> |
| <p>* * * * *</p> | <p>S. 53(1)(c)(d) repealed by No. 5/2002 s. 23(1)(c).</p> |
| <p>* * * * *</p> | <p>S. 53(1)(da) inserted by No. 62/1995 s. 8, repealed by No. 5/2002 s. 23(1)(c).</p> |
- (e) any other matter that the Minister thinks fit to have regard to.
- (2) In considering an application under section 51 or 52, the Minister must give effect to—
- (a) any relevant Order under section 52A; and
 - (b) any relevant Order made by the Governor in Council under section 49A of the **Groundwater Act 1969** specifying an annual reserve volume of groundwater; and
 - (c) any relevant prescription made under section 62(1) of the **Groundwater Act 1969** in respect of a groundwater conservation area declared under section 61 of that Act; and
 - (d) any water resource management plan for the area approved under section 64A; and
 - (e) an approved management plan for any relevant water supply protection area.
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s. 54

S. 54
amended by
No. 5/2002
s. 24(2) (ILA
s. 39B(1)).

S. 54(1)(a)
amended by
No. 5/2002
s. 24(1)(a).

S. 54(1)(b)
substituted by
No. 5/2002
s. 24(1)(b).

S. 54(1)(d)
amended by
No. 5/2002
s. 24(1)(c).

S. 54(2)
inserted by
No. 5/2002
s. 24(2).

54. Minister to defer application in certain circumstances

(1) If—

- (a) a notice is published under section 27(4)(a)(i); and
- (b) a relevant application is subsequently made under—
 - (i) section 51 or 52 in respect of an area that is the subject of the proposed declaration; or
 - (ii) section 62 for approval of the permanent transfer of a licence issued under section 51 or 52 into or within that area—

the Minister must defer consideration of the application until either—

- (c) an Order is made under section 27(1); or
- (d) a notice is published under section 27(10).

(2) If—

- (a) an Order is made under section 27(1); and
- (b) no management plan for the area has been approved under section 32A(6)—

the Minister must defer consideration of a relevant application—

- (c) under section 51 or 52 in respect of the area;
or

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- (d) under section 62 for approval of the permanent transfer of a licence issued under section 51 or 52 into or within the area—

until notice of the approval or refusal of a draft management plan has been published under section 32A(7).

- (3) This section does not apply to—

S. 54(3)
 inserted by
 No. 5/2002
 s. 24(2).

- (a) an application for a registration licence; or
- (b) an application for a licence under section 51(1)(a) or (ba) on the surrender of a registration licence; or
- (c) an application under section 62 for approval of the transfer of a licence issued under section 51 if the application arises as a result of the transfer or conveyance of land on which the water is taken or used under the licence.

- (4) For the purposes of this section, a relevant application in relation to an area proposed to be declared or declared as a water supply protection area—

S. 54(4)
 inserted by
 No. 5/2002
 s. 24(2).

- (a) for the protection of the groundwater resources, is an application relating to groundwater; and
- (b) for the protection of the surface water resources, is an application relating to surface water; and
- (c) for the protection of both groundwater resources and surface water resources, is an application relating to either groundwater or surface water—

made on or after the commencement of section 24 of the **Water (Irrigation Farm Dams) Act 2002**.

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55. Determination of application

S. 55(1)
 amended by
 No. 5/2002
 s. 25(1).

(1) Subject to section 51A, the Minister may either refuse an application under section 51 or 52 or approve it and issue a licence under that section.

S. 55(2)
 amended by
 No. 5/2002
 s. 25(1)(2).

(2) Subject to section 51A, the Minister must refuse the application if, in his or her opinion, the allocation or use of water under the licence would be in conflict with an approved management plan for any relevant water supply protection area.

S. 55(2A)
 inserted by
 No. 5/2002
 s. 25(3).

(2A) If an application under section 51 relates to a State observation bore, the Minister must refuse the application if, in the Minister's opinion, the exercise of rights under the proposed licence will or may interfere with the function of the bore as a State observation bore.

S. 55(2B)
 inserted by
 No. 5/2002
 s. 25(4).

(2B) Subject to section 51A, the Minister must refuse an application under section 51 if, in the Minister's opinion, the allocation or use of water under the licence will or may result in the permissible annual volume for the area for that year or a future year being exceeded.

(3) Without limiting sub-section (1), the Minister may refuse the application if, in his or her opinion, the applicant should instead have applied for the grant of a bulk entitlement to water under Division 1.

56. Conditions of licence

(1) A licence issued under section 51 or 52 is subject to—

(a) any conditions that are prescribed or fixed by the Minister relating to—

(i) the protection of a waterway or an aquifer; or

(ii) the purposes for which the water may be used; or

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- (iii) in the case of a licence issued under section 51, the maximum amounts of water which may be taken in particular periods or circumstances; or
- (iv) in the case of a licence issued under section 51, payment for the amount of water used; or
- (v) the protection of the environment, including the riverine and riparian environment; or
- (vi) the conservation policy of the Government; or
- (vii) the efficient use of water resources; or
- (viii) if appropriate, the proper management of the waterway and its surrounds or of the aquifer; or
- (ix) the drainage regime within the meaning of section 12(1); or
- (x) the manner in which the licensee is to compensate any person whose existing authorised use of water may be adversely and materially affected by the allocation or use of water under the licence; or
- (xi) the protection or control of in-stream uses; or
- (xii) in the case of a licence issued under section 51, the installation and use of measuring devices or pumps; and
- (xiii) notification of change of ownership of land on which water is taken under a licence issued under section 51(1A); and

S. 56(1)(a)(xiii)
inserted by
No. 5/2002
s. 26(1).

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S. 56(1)(b)
 amended by
 No. 69/1993
 s. 4.

(b) in the case of a licence issued under section 51 to take and use mineral water, the payment of a surcharge of 1·5 cents per litre for each litre of mineral water taken and used under the licence in a period specified in the licence; and

(c) any other conditions that the Minister thinks fit and specifies in the licence.

(2) Compensation under sub-section (1)(a)(x) may be financial or may be constituted by the making available of, or granting of access to, water.

(3) Unless sooner revoked or cancelled, a licence issued under section 51(1) or 52 remains in force for the period (not exceeding 15 years) specified in the licence but may be renewed under section 58.

(3A) Unless sooner revoked, cancelled or surrendered, a licence issued under section 51(1A) remains in force for an unlimited period.

(4) If—

(a) a transfer under section 226 to a person outside any irrigation district is approved; and

(b) the relevant waterway is in a water resource management area and subject to a water resource management plan approved for the area—

then, despite sub-section (3), a licence under section 51(1) may be issued, subject to any special conditions determined by the Minister, to the transferee for a period longer than 15 years or for an unlimited period.

S. 56(3)
 amended by
 No. 5/2002
 s. 26(2).

S. 56(3A)
 inserted by
 No. 5/2002
 s. 26(3).

S. 56(4)
 inserted by
 No. 62/1995
 s. 32(1),
 amended by
 No. 5/2002
 s. 26(4).

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- (5) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use groundwater for purposes associated with an open cut coal mine, the licence may, despite sub-section (3), be issued for a period exceeding 15 years (but not exceeding 30 years) specified in the licence, subject to any special conditions determined by the Minister.
- S. 56(5)
inserted by
No. 79/1995
s. 34,
amended by
No. 69/2000
s. 65(3).
- (6) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use water for purposes associated with the operation of a hydro-electric power station, the licence may, despite sub-section (3), be issued for a period exceeding 15 years (but not exceeding 40 years) specified in the licence, subject to any special conditions determined by the Minister.
- S. 56(6)
inserted by
No. 35/1997
s. 29,
amended by
No. 69/2000
s. 65(3).

57. Sale of licence by Minister

- (1) Instead of issuing a licence on an application under section 51(1) or 52 the Minister may, after having considered the matters mentioned in section 53, sell a licence—
- (a) at auction; or
- (b) by inviting tenders; or
- (c) in any other manner that he or she thinks fit.
- (2) If the Minister decides to sell a licence under sub-section (1), he or she must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—
- (a) declaring that the licence is available for purchase by any person holding the qualifications specified in the notice; and
- S. 57(1)
amended by
No. 5/2002
s. 27(a).

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- (b) giving details of the method by which the licence is to be sold; and
- (c) specifying the conditions to which the licence will be subject and the period for which it is capable of remaining in force.

- (3) For the purposes of this Act a licence sold under sub-section (1) must be treated as if it had been issued to the purchaser on application by the purchaser under section 51(1) or 52 (as the case requires).

58. Renewal of licence

- (1) The holder of a licence issued under section 51(1) or 52 may, before the expiry of the licence, apply to the Minister for the renewal of the licence.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by the application fee, if any, fixed by the Minister for that kind of licence.
- (3) In considering an application for the renewal of a licence issued under section 51(1) or 52, the Minister must have regard to the matters mentioned in section 53 and must renew the licence unless, in the opinion of the Minister, there are good reasons not to do so.

S. 57(3)
 amended by
 No. 5/2002
 s. 27(b).

S. 58(1)
 amended by
 No. 5/2002
 s. 28(1).

S. 58(2)(c)
 amended by
 No. 110/1997
 s. 17(3),
 substituted by
 Nos 5/2002
 s. 28(2),
 48/2003
 s. 12(2).

S. 58(3)
 amended by
 No. 5/2002
 s. 28(3).

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- (4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 56(1).
- (5) A licence issued under section 51(1) or 52 may be renewed—
 - (a) for a period not exceeding 15 years; or
 - (b) subject to any special conditions determined by the Minister, for a period of 15 years or longer or for an unlimited period.
- (6) A licence issued under section 51(1) or 52 may be renewed under this section from time to time.

S. 58(5)
amended by
No. 5/2002
s. 28(4).

S. 58(6)
amended by
No. 5/2002
s. 28(4).

59. Amendment of licence

- (1) The Minister may amend a licence issued under section 51 to take and use water to the extent necessary to ensure compliance with an approved management plan for any relevant water supply protection area.
- (1A) If a licence under section 51 to take and use any water referred to in that section has been issued or renewed for an unlimited period, the Minister may amend the conditions to which the licence is subject to the extent necessary to ensure compliance with an approved water resource management plan not less than 15 years after its issue or renewal or the last amendment, whichever is the latest.
- (2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

S. 59(1)
amended by
No. 5/2002
s. 29.

S. 59(1A)
inserted by
No. 62/1995
s. 32(2).

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60. Revocation of licence

- (1) The Minister may revoke a licence issued under section 51 or 52 if—
 - (a) in the opinion of the Minister there has been a failure to comply with any condition to which the licence is subject; or
 - (b) in the case of a licence relating to works, in the opinion of the Minister the works are being operated contrary to the provisions of this Act.
- (2) The Minister must give at least 3 months' written notice of the revocation to the licensee and must specify in the notice the reasons for the revocation.

61. Surrender of licence

- (1) A licensee may surrender to the Minister a licence issued under section 51 or 52.
- (2) The Minister may refund to the licensee all or part of any charge paid by the licensee in respect of a licence surrendered under sub-section (1).

62. Transfer of licence

- (1) A licence issued under section 51 or 52 (other than a registration licence) may, in accordance with this section, be transferred to another person.
 - (2) A transfer may be either permanent or temporary.
- (2AA) On the transfer or conveyance of land on which water is taken under a registration licence, the registration licence is deemed to be transferred to the successor in title of that land.

S. 60(1)(b)
amended by
No. 5/2002
s. 30(a)(b).

S. 62(1)
amended by
No. 5/2002
s. 31(1).

S. 62(2AA)
inserted by
No. 5/2002
s. 31(2).

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- (2A) If the Minister approves, a permanent or temporary transfer of a licence under section 51 may be made to the owner or occupier of land outside Victoria.
- S. 62(2A)
inserted by
No. 62/1995
s. 23(1),
amended by
No. 110/1997
s. 15(1).
- (3) A licensee may apply to the Minister for approval of the transfer of the licence.
- (3A) Without limiting sub-section (5), the Minister may approve a transfer referred to in sub-section (2A), having regard to the effect of the transfer on usage of water, the impact of subsidies and any other matter that the Minister considers relevant.
- S. 62(3A)
inserted by
No. 62/1995
s. 23(2).
- (4) An application must—
- (a) be made in a form and manner approved by the Minister; and
- (b) contain any information that—
- (i) is prescribed; or
- (ii) is required by the Minister; and
- (c) be accompanied by any application fee fixed by the Minister.
- S. 62(4)(c)
amended by
No. 110/1997
s. 17(4).
- (5) In considering an application, the Minister may have regard to the matters mentioned in section 53.
- (6) If an application is made the Minister may—
- (a) refuse to approve the transfer of the licence; or
- (b) subject to sub-section (9), approve the transfer of the licence and may, in addition, amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence
- S. 62(6)(b)
amended by
No. 62/1995
s. 23(3).
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subject to any condition to which it could not have been made subject under section 56(1).

- (7) A licence may be transferred under this section even if the water is to be used in an irrigation district.
- (8) For the purposes of transfers under this section, the holder of a licence under section 51 has power to sell the licence—
 - (a) at auction; or
 - (b) by inviting tenders; or
 - (c) in any other manner that the holder thinks fit.
- (9) A transfer to the owner or occupier of land outside Victoria takes effect subject to any terms and conditions determined by the Minister by Order published in the Government Gazette, either generally or in a particular case.

63. Offence¹⁸

- (1) A person must not take or use water from—
 - (a) a waterway (including the River Murray); or
 - (b) a bore—

unless authorised to do so by or under this or any other Act.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

- (1A) A person must not take or use—
 - (a) water from a spring or soak; or

S. 62(8)
 inserted by
 No. 62/1995
 s. 23(4).

S. 62(9)
 inserted by
 No. 62/1995
 s. 23(4).

S. 63(1)
 amended by
 No. 90/2003
 s. 4(1).

S. 63(1A)
 inserted by
 No. 5/2002
 s. 32(1),
 amended by
 No. 90/2003
 s. 4(1).

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(b) water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore)—

for a use other than domestic and stock use, unless authorised to do so by or under this Act or any other Act.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

(2) A person who is guilty of an offence under sub-section (1) or (1A) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—

S. 63(2)
 amended by
 Nos 5/2002
 s. 32(2)(a),
 90/2003
 s. 4(2).

(a) after service of a notice of contravention on the person under section 151; or

(b) if no notice of contravention is served, after conviction.

(3) For the purposes of sub-sections (1) and (1A), "**waterway**" includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 63(3)
 amended by
 No. 5/2002
 s. 32(2)(b).

(4) If, at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002**, a person was taking and using water from a spring or soak or water from a dam not on a waterway, sub-section (1A) does not apply to that person in respect of that spring or soak or dam until 1 July 2003.

S. 63(4)
 inserted by
 No. 5/2002
 s. 32(3) (as
 amended by
 No. 6/2002
 s. 4(2)).

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S. 64
amended by
No. 52/1998
s. 311(Sch. 1
items 105.11,
105.12) (ILA
s. 39B(1)).

S. 64(g)
amended by
No. 62/1995
s. 32(3).

64. Review of decisions

- (1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision by the Minister—
 - (a) under section 55(1) to refuse an application under section 51 or 52; or
 - (b) under section 55(1) to approve an application under section 51 or 52; or
 - (c) under section 56(1) to make a licence subject to any condition; or
 - (d) under section 58 to refuse an application for the renewal of a licence; or
 - (e) under section 58 to approve an application for the renewal of a licence; or
 - (f) under section 58 to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or
 - (g) under section 59(1) or (1A) to amend a licence; or
 - (h) under section 60(1) to revoke a licence; or
 - (i) under section 62(6)(a) to refuse to approve the transfer of a licence; or
 - (j) under section 62(6)(b) to approve the transfer of a licence; or
 - (k) under section 62(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject.

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s. 64A

- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 64(2)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.12).

Division 3—Water Resource Management Areas

Pt 4 Div. 3
 (Heading and
 ss 64A–64E)
 inserted by
 No. 62/1995
 s. 5.

64A. Water resource management plan

S. 64A
 inserted by
 No. 62/1995
 s. 5.

- (1) The Minister may require a water resource management plan to be prepared for an area by an Authority within the meaning of Division 1 or an Authority exercising a function under Part 8, 10 or 11, dealing with any matters relating to licences issued under section 51 for that area.
- (2) The Authority, at its own expense, must cause notice of the plan to be published and given in accordance with section 27(4)(a)(i) and (ii).
- (3) The Authority must—
 - (a) consider any submissions made on the plan within 60 days after the publication or giving of notice of the plan, whichever is the later; and
 - (b) after making any changes it considers necessary, recommend the plan to the Minister.

S. 64A(2)
 amended by
 No. 5/2002
 s. 33(1).

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s. 64B

S. 64A(4)
amended by
No. 5/2002
s. 33(2).

- (4) The Minister, having regard to the matters referred to in paragraphs (b) to (m) of section 40(1) and giving effect to an approved management plan for any relevant water supply protection area, may—
- (a) approve a plan, subject to any conditions that the Minister thinks fit; or
 - (b) refuse to approve a plan.

S. 64B
inserted by
No. 62/1995
s. 5.

64B. Water resource management area

If the Minister approves under section 64A a water resource management plan for an area, the Minister may, by Order published in the Government Gazette, declare the area to be a water resource management area.

S. 64C
inserted by
No. 62/1995
s. 5.

64C. Grant or amendment of bulk entitlement

- (1) If a water resource management area is declared under section 64B, the Minister may—
- (a) quantify all existing entitlements to take and use water in the area in accordance with licences issued under section 51; and
 - (b) either—
 - (i) if the Authority referred to in section 64A(1) has an existing bulk entitlement for the area, by Order published in the Government Gazette, amend the bulk entitlement to add the amount determined under paragraph (a); or
 - (ii) by Order published in the Government Gazette, grant to the Authority a bulk entitlement for the amount determined under paragraph (a).

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s. 64D

- (2) Sections 43, 44, 45, 46, 46A, 46B and 47C apply to a bulk entitlement granted or amended under this Division as if it were granted or amended under Division 1.

64D. Authority to administer area

S. 64D
 inserted by
 No. 62/1995
 s. 5.

- (1) The Governor in Council, on the recommendation of the Minister, may, by Order, direct that an Authority holding a bulk entitlement granted or amended under this Division may exercise any power of the Minister under Division 2 (except section 62(9)) in respect of the water resource management area.
- (2) If an Authority exercises a power referred to in sub-section (1), the Authority may only exercise it subject to—
- (a) the water resource management plan approved for the area; and
 - (b) the conditions, if any, of the bulk entitlement; and
 - (c) the conditions, if any, imposed by the Governor in Council.
- (3) Where the exercise by the Minister of a power referred to in sub-section (1) is dependent on the opinion, belief or state of mind of the Minister in relation to a matter, an Authority referred to in an Order made under sub-section (1) may exercise the power on the opinion, belief or state of mind (as the case requires) of the Authority in relation to that matter.

64E. Review by Tribunal

S. 64E
 inserted by
 No. 62/1995
 s. 5,
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.13).

- (1) A person whose interests are affected by a decision referred to in section 64(a) to (k) by an Authority in the exercise of its power under section 64D may apply to the Tribunal for review of the decision.

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s. 64F

- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 4—Periodic Amendment of Entitlements

64F. Records and reports of transfers

- (1) An Authority which is a party to or approves or has notice of—
- (a) a transfer, whether permanent or temporary, under section 46A or 62; or
 - (b) a temporary transfer under section 224 or 224A; or
 - (c) a permanent transfer under section 47D, 226 or 226AA; or
 - (d) a conversion to a bulk entitlement under section 47C—

must cause a record in the form approved by the Minister to be kept of each transfer or conversion.

Pt 4 Div. 4
(Heading and
ss 64F, 64G)
inserted by
No. 62/1995
s. 29.

S. 64F
inserted by
No. 62/1995
s. 29.

S. 64F(1)(a)
amended by
No. 86/1995
s. 12(1)(a).

S. 64F(1)(b)
amended by
No. 86/1995
s. 12(1)(b).

S. 64F(1)(c)
amended by
Nos 86/1995
s. 12(1)(c),
110/1997
s. 15(2).

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s. 64G

- (2) An Authority must provide to the Minister, if the Minister so requires, a report of transfers or conversions referred to in sub-section (1) containing information specified by the Minister.

64G. Periodic amendment of bulk entitlement

If the Minister considers it appropriate, having regard to a report required under section 64F(2) with respect to permanent transfers under section 46A, 47D, 62, 226 or 226AA or conversions under section 47C, the Minister may amend a bulk entitlement of an Authority by notice given by the Minister to the holder of the entitlement.

S. 64G
inserted by
No. 62/1995
s. 29,
amended by
Nos 86/1995
s. 12(2),
110/1997
s. 15(3)(a)(b).

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Part 4A—Delivery of Interstate Water

s. 64H

Pt 4A
(Heading and
ss 64H, 64I)
inserted by
No. 62/1995
s. 30.

S. 64H
inserted by
No. 62/1995
s. 30.

PART 4A—DELIVERY OF INTERSTATE WATER

64H. Temporary supply of interstate water

- (1) The holder of a licence under section 51 or the owner or occupier of a holding within an irrigation district may, in accordance with this section and the by-laws made under section 64I, apply to an Authority for approval to use the works of the Authority for the temporary supply of water to the applicant by an owner or occupier of land outside Victoria.
- (2) An application under sub-section (1) must be accompanied by the prescribed fee, if any.
- (3) An Authority may give approval for the use of its works for such temporary supply subject to the prescribed terms and conditions and to any other terms and conditions of which notice is given to the parties by the Authority when the approval is given.
- (4) An approval given under this section expires—
 - (a) if the application is approved during an irrigation period, on the expiry of that irrigation period;
 - (b) if the application is approved between irrigation periods, on the expiry of the next irrigation period after the application is approved.

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Part 4A—Delivery of Interstate Water

s. 64I

64I. By-laws about temporary supply of interstate water

S. 64I
inserted by
No. 62/1995
s. 30.

- (1) An Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to the use of the Authority's works for the temporary supply of water under section 64H.
- (2) Without limiting sub-section (1), by-laws may—
 - (a) prescribe procedures for applications for approval; and
 - (b) fix any fees payable to the Authority for processing and approving an application; and
 - (c) fix any fees payable to the Authority for the use of the Authority's works for the temporary supply of water; and
 - (d) set limits on the use of works for the temporary supply of water under section 64H; and
 - (e) prescribe any other terms and conditions in relation to an approval under section 64H.

PART 5—WORKS

Division 1—General

65. Advertisement etc. of application

- (1) This section applies to an application—
 - (a) under section 67 for the issue of a licence to construct, alter, operate, remove or decommission works, a bore or a private dam; or
 - (b) under section 72(1) for the renewal of a licence referred to in paragraph (a); or
 - (c) under section 74(3) for approval of the transfer of a licence referred to in paragraph (a); or
 - (d) under section 76(1) for approval to dispose of any matter underground by means of a bore.
- (2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.
- (3) A notice given under sub-section (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

66. Appointment of panel

- (1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 65 applies.
- (2) Sub-sections (2) to (6) of section 50 apply to a panel appointed under sub-section (1) as if the reference in sub-section (3) of that section to a notice given under section 49(2) were a reference to a notice given under section 65(2).

S. 65(1)(a)
 amended by
 No. 5/2002
 s. 34(a)(b).

Division 2—Licence to Construct Works, etc.

67. Licence to construct works etc.

- (1) An Authority or any other person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission—

S. 67(1)
 amended by
No. 5/2002
 s. 35(1).

- (a) any works on a waterway (including the River Murray), including works to deviate (temporarily or permanently) a waterway; or
- (b) a bore.

- (1A) A person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission a private dam, other than on a waterway, that—

S. 67(1A)
 inserted by
No. 5/2002
 s. 35(2).

- (a) has 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
- (b) has 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; or
- (c) has a wall that is 15 metres or more high above ground level at the downstream end of the dam, regardless of the capacity; or
- (d) is a dam belonging to a prescribed class of dams.

- (2) An application must—

- (a) be made in a form and manner approved by the Minister; and
- (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and

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s. 67A

S. 67(2)(c)(i)
 amended by
 No. 110/1997
 s. 17(5).

S. 67(2)(c)(ii)
 amended by
 No. 5/2002
 s. 35(3).

S. 67(2)(c)
 (ii)(A)
 amended by
 No. 35/1998
 s. 21(2).

S. 67A
 inserted by
 No. 5/2002
 s. 36.

(c) be accompanied by—

(i) any application fee fixed by the Minister; and

(ii) if the land on which the works are, or are proposed to be, situated—

(A) is not Crown land (other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**); and

(B) is not occupied by the applicant—
 the written consent of the occupier.

67A. Application to go to certain bodies

The Minister must, without delay, give a copy of an application under section 67 in respect of a dam, whether or not on a waterway, to—

- (a) the Department Head; and
- (b) the relevant Catchment Management Authority; and
- (c) the relevant Council; and
- (d) Melbourne Water, if the dam is or will be located in an area over which Melbourne Water has power under Part 10 of the **Melbourne and Metropolitan Board of Works Act 1958**; and
- (e) any Authority holding a bulk entitlement that may be affected by the approval of the application.

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s. 67B

67B. Bodies must consider application

S. 67B
 inserted by
 No. 5/2002
 s. 36.

- (1) Within 30 days after receipt of an application referred to a body under section 67A, the body—
 - (a) must consider the application; and
 - (b) may advise the Minister in writing that—
 - (i) it does not object to the issue of a licence; or
 - (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
 - (iii) it objects to the issue of the licence on any specified ground; and
 - (c) may give to the Minister its comments on the application.
- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 67A, the Minister may proceed to determine the application.

68. Matters to be taken into account

S. 68
 amended by
 Nos 49/1994
 s. 10(b),
 5/2002
 s. 37(a).

In considering an application under section 67, the Minister must—

- (a) have regard to the report of any panel appointed under section 66; and
- (ab) have regard to any advice and comments received within the period of 30 days referred to in section 67B(1); and
- (b) have regard to any adverse effect that the exercise of rights under the licence is likely to have—
 - (i) on the drainage regime within the meaning of section 12(1); or
 - (ii) on in-stream uses of water; or

S. 68(ab)
 inserted by
 No. 5/2002
 s. 37(b).

S. 68(ba)
inserted by
No. 5/2002
s. 37(c).

S. 68(bb)
inserted by
No. 5/2002
s. 37(c).

S. 68(c)
amended by
No. 36/1992
s. 21(2),
substituted by
No. 5/2002
s. 37(d).

S. 68(d)
inserted by
No. 36/1992
s. 21(2),
amended by
No. 5/2002
s. 37(e).

S. 68(e)
inserted by
No. 5/2002
s. 37(f).

S. 69(1)
amended by
No. 5/2002
s. 38(1).

- (iii) otherwise on the aquifer or on the flow of water within the waterway, including effects on the land that forms the waterway or its surrounds; or
- (iv) on the implementation of the conservation policy of the government; and

(ba) have regard to the matters mentioned in paragraphs (b) to (n) of section 40(1); and

(bb) give effect to an approved management plan for any relevant water supply protection area; and

(c) consider the likely effects of the escape of water from the works; and

(d) have regard to whether the site of the proposed works is within a heritage river area or natural catchment area within the meaning of the **Heritage Rivers Act 1992** and whether there is any restriction on the use of the area under that Act; and¹⁹

(e) have regard to any other matter that the Minister thinks fit.

69. Determination of application

- (1) The Minister may either refuse an application under section 67 or approve it and issue a licence under that section.
- (2) The Minister must defer consideration of the application pending the determination of any related application under Part 4.

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(3) The Minister must refuse the application if—

(a) a related application under Part 4 is refused;
 or

(b) the application relates to works to deviate, in the opinion of the Minister, a waterway in a major way and the Department Head does not consent to the issue of a licence.

S. 69(3)(b)
 amended by
 No. 76/1998
 s. 29(e).

(4) Neither the Minister nor the Crown is liable to pay damages in respect of any injury, damage or loss caused by the flow of water from works authorised to be constructed, altered, operated, removed or decommissioned by a licence issued under section 67.

S. 69(4)
 amended by
 No. 5/2002
 s. 38(2).

70. Other permits etc. still necessary

The issue of a licence under section 67 does not remove the need to apply for any authorisation or permission necessary under any other Act with respect to anything authorised by the licence.

71. Conditions on which licence may be issued

(1) A licence issued under section 67 is subject to—

(a) the prescribed conditions; and

(ab) a condition requiring payment of any annual charge fixed by the Minister in accordance with section 74A; and

S. 71(1)(ab)
 inserted by
 No. 5/2002
 s. 39(a).

(b) any other conditions that the Minister thinks fit relating to—

(i) the standard of construction, dimensions and any other feature of the works and any associated works; or

(ii) the future maintenance and operation of the works and any associated works and the date on which operation of those works may commence; or

- (iii) the date of commencement of the works and the notice required to be given of that commencement; or
- (iv) the submission of reports on the carrying out of the work; or
- (v) the qualifications required to be held by persons undertaking, designing, constructing or operating the whole or any part of the work; or
- (vi) the protection of the environment, including the riverine and riparian environment; or
- (vii) the implementation of the conservation policy of the government; or
- (viii) in the case of works on a waterway, additional works or measures to be undertaken for—
 - (A) the protection and enhancement of in-stream uses of water; or
 - (B) the protection of the waterway and its surrounds; or
 - (C) the maintenance of flow in the waterway; or
 - (D) the maintenance of the drainage regime within the meaning of section 12(1); or
- (ix) in the case of works for the storage of water within a waterway, steps to be taken to maintain the availability of water to satisfy other entitlements; or
- (ixa) without limiting sub-paragraph (ix), in the case of any dam, whether or not on a waterway—

S. 71(1)(b)(ixa)
 inserted by
 No. 5/2002
 s. 39(b).

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- (A) surveillance of the dam, including surveillance by the Minister or a person holding one or more qualifications approved by the Minister and engaged by the licensee; or
 - (B) the procedures for management of dam safety; or
 - (C) the procuring of water, by transfer or otherwise, for every year that the dam is in operation; or
 - (x) in the case of a bore—
 - (A) additional works or measures to be undertaken for the protection of the aquifer or for the maintenance of flow; or
 - (B) requiring samples of materials excavated from the bore and of water encountered in the bore to be taken and given to a specified Authority; or
 - (C) requiring all or any part of the works to be carried out by, or under the direction of, a licensed driller; and
 - (c) without derogating from rights to water for domestic and stock use conferred by section 8, any other conditions that the Minister thinks fit and specifies in the licence.
- (2) A licence issued under section 67 remains in force for the period specified in the licence but, if necessary, may be renewed under section 72.

S. 71(1)(b)
(x)(C)
amended by
No. 5/2002
s. 39(c).

S. 71(1)(c)
inserted by
No. 5/2002
s. 39(d).

S. 72(2)(c)
amended by
No. 110/1997
s. 17(6).

72. Renewal of licence

- (1) The holder of a licence issued under section 67 may, before the expiry of the licence, apply to the Minister for the renewal of the licence.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by any application fee fixed by the Minister.
- (3) In considering an application for the renewal of a licence issued under section 67, the Minister must have regard to the matters mentioned in section 68.
- (4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 71(1).
- (5) A licence may be renewed for a period determined by the Minister or for an unlimited period.
- (6) A licence may, if necessary, be renewed under this section from time to time.

73. Amendment of licence

- (1) The Minister may amend a licence issued under section 67 to the extent necessary to ensure compliance with an approved management plan for any relevant water supply protection area.

S. 73(1)
amended by
No. 5/2002
s. 40(1).

Water Act 1989
Act No. 80/1989
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s. 74

- (1A) Within 12 months after the commencement of section 40 of the **Water (Irrigation Farm Dams) Act 2002**, the Minister may amend a licence in respect of a private dam issued under section 67 before that commencement to impose conditions referred to in section 71(1)(b)(ixa) if—
- (a) the dam has the dimensions referred to in paragraph (a), (b) or (c) of section 67(1A); or
 - (b) the dam belongs to a class of dams prescribed under section 67(1A)(d).
- (1B) The Minister may amend a licence in respect of a private dam issued under section 67 to include conditions relating to the management of dam safety.
- (2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

S. 73(1A)
 inserted by
 No. 5/2002
 s. 40(2).

S. 73(1B)
 inserted by
 No. 5/2002
 s. 40(2).

74. Transfer of licence

- (1) A licence issued under section 67 may, in accordance with this section, be transferred to another person.
- (2) A transfer may be either permanent or temporary.
- (3) A licensee may apply to the Minister for approval of the transfer of the licence.
- (4) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and

s. 74A

S. 74(4)(c)
amended by
No. 110/1997
s. 17(7).

(c) be accompanied by any application fee fixed by the Minister.

(5) In considering an application, the Minister may have regard to the matters mentioned in section 68.

(6) If an application is made, the Minister may—

(a) refuse to approve the transfer of the licence; or

(b) approve the transfer of the licence and may, in addition, amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 71(1).

S. 74A
inserted by
No. 5/2002
s. 41.

74A. Annual charge for surveillance etc.

The Minister may fix an annual charge in respect of—

(a) a licence to operate a dam referred to in section 67(1A); or

(b) a licence amended under section 73(1A)—

by reference to the surveillance of the dam, the procedures for management of dam safety or any other operations or work required for the dam.

75. Offences²⁰

(1) A person who—

(a) obstructs or interferes with a waterway; or

(b) constructs, alters, operates, removes or decommissions any works on a waterway; or

S. 75(1)(b)
amended by
No. 5/2002
s. 42(1).

Water Act 1989
Act No. 80/1989
 Part 5—Works

s. 75

(c) obstructs or interferes with any works on a waterway; or

(d) erodes or otherwise damages the surrounds of a waterway—

without being authorised to do so by or under this or any other Act is guilty of an offence.

(1A) A person who constructs, alters, operates, removes or decommissions a private dam referred to in section 67 without being authorised to do so by or under this or any other Act is guilty of an offence.

S. 75(1A)
 inserted by
 No. 5/2002
 s. 42(2).

(2) A person who—

(a) constructs, deepens, enlarges or alters a bore; or

(b) interferes with, damages or destroys a bore or ancillary works—

without being authorised to do so by or under this or any other Act is guilty of an offence.

(3) A person who—

(a) performs work on a bore that is necessary—

(i) to prevent the immediate waste, misuse or pollution of groundwater; or

(ii) for the purpose of obtaining water for domestic and stock use; and

(b) gives notice to the Minister of the work within 7 days after starting it—

is not guilty of an offence under sub-section (2).

(4) If a licence is issued under section 67 to construct or alter any works and the licence is subject to any condition relating to the future maintenance or operation of the works, a person who operates the works without complying with that condition is guilty of an offence.

S. 75(4)
 substituted by
 No. 5/2002
 s. 42(3).

S. 75(5)
inserted by
No. 5/2002
s. 42(4) (as
amended by
No. 6/2002
s. 4(3)).

- (5) Sub-section (1A) does not apply until 1 July 2003 in relation to a dam which exists immediately before the commencement of section 42(4) of the **Water (Irrigation Farm Dams) Act 2002**.

Division 3—Underground Disposal

76. Power of Minister to approve underground disposal²¹

- (1) A person may apply to the Minister for approval to dispose of any matter underground by means of a bore.
- (2) An application must—
 - (a) be made in a form and manner approved by the Minister; and
 - (b) contain any information that—
 - (i) is prescribed; or
 - (ii) is required by the Minister; and
 - (c) be accompanied by any application fee fixed by the Minister.
- (3) In considering an application the Minister must have regard to the report of any panel appointed under section 66.
- (4) The Minister may by notice in writing to the applicant—
 - (a) approve the application subject to any conditions that he or she thinks fit and specifies in the notice; or
 - (b) refuse to approve the application and specify the reasons for that refusal.

S. 76(2)(c)
amended by
No. 110/1997
s. 17(8).

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Act No. 80/1989

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s. 77

- (5) The Minister must not approve an application in respect of a disposal which, in the opinion of the Minister, would cause the pollution of any groundwater or be detrimental to any aquifer or bore.
- (5A) The Minister must not approve an application in respect of a disposal by means of a State observation bore if, in the opinion of the Minister, the disposal would interfere with the function of the bore as a State observation bore.
- (6) A person who disposes of any matter underground by means of a bore without approval under this section is guilty of an offence²².

S. 76(5A)
 inserted by
 No. 5/2002
 s. 43.

77. Other permits etc. still necessary

The approval of an application under section 76 in respect of a disposal does not remove the need to apply for any authorisation or permission necessary under any other Act with respect to the disposal.

Division 4—Directions

78. Power of Minister to give directions²³

- (1) The Minister may, by notice in writing, direct the occupier of any works on a waterway or of a bore—
 - (a) to operate or alter those works in compliance with the conditions specified in the notice; or
 - (b) to take the measures specified in the notice, being measures that the Minister thinks necessary—
 - (i) to secure compliance with this Act or the conditions of any licence granted under this Act; or

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- (ii) to prevent the waste, misuse or pollution of water.
- (2) Any condition of a licence issued under section 67 relating to works that is inconsistent with a direction given by the Minister under sub-section (1) is of no effect to the extent that it is inconsistent.
- (3) The Minister may, by notice in writing, direct the occupier of any works to which this sub-section applies to remove those works.
- (4) Sub-section (3) applies to—
 - (a) works on a collection of water declared by the Governor in Council to be a lake, lagoon, swamp or marsh under section 4 if the works were constructed before the making of the declaration; and
 - (b) works constructed before the commencement of this sub-section on a waterway that immediately before that commencement was not a water-course within the meaning of Part II of the **Water Act 1958**; and
 - (c) works constructed on a waterway on or after that commencement in contravention of this Act.
- (5) The occupier of works or of a bore must comply with any direction given under sub-section (1) or (3).

Penalty applying to this sub-section: 20 penalty units.

79. Power of Minister to give direction to bore occupier²⁴

- (1) If a bore that is not used or intended to be used for the collection or extraction of groundwater or the disposal of any matter is found to be capable of being used for any such purpose, the occupier of

the bore must immediately notify the Minister of that fact.

Penalty applying to this sub-section: 10 penalty units.

- (2) The Minister may direct an occupier who is required to give notice under sub-section (1) to take any measures that the Minister thinks necessary or desirable to ensure that the groundwater resources of the State are protected and conserved.
- (3) The occupier of a bore must comply with any direction given under sub-section (2).

Penalty applying to this sub-section: 10 penalty units.

80. Power to give directions concerning dams

- (1) The Minister may, by notice in writing—
 - (a) direct the owner of any private dam to make specified improvements to the dam, to take specified measures to keep the dam under surveillance or to remove the dam; or
 - (b) direct the proposed owner of any proposed private dam to resite the dam or to build it to specified standards or not to build the dam—

if the Minister decides that the dam or proposed dam is, or is likely to be, hazardous to life or property because of its location or proposed location or the nature of its construction or proposed construction.

- (2) The Governor in Council may—
 - (a) direct the owner of any dam other than a private dam to make specified improvements to the dam, to take specified measures to keep the dam under surveillance or to remove the dam; or

S. 80(1)
 amended by
 No. 5/2002
 s. 44(1)(a).

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s. 80

- (b) direct the proposed owner of any proposed dam other than a private dam to resite the dam or to build it to specified standards or not to build the dam—

if the Governor in Council decides that the likely effects of a flow of water from the dam or proposed dam warrant the giving of that direction.

- (3) The owner of a dam or the proposed owner of a proposed dam must comply with any direction given under sub-section (1) or (2)²⁵.

Penalty applying to this sub-section: 20 penalty units.

S. 80(3A)
inserted by
No. 65/1995
s. 15,
amended by
No. 5/2002
s. 44(1)(b).

- (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 any dam or class of dams.

* * * *

S. 80(3A)(a)(b)
repealed by
No. 5/2002
s. 44(1)(b).

S. 80(3B)
inserted by
No. 65/1995
s. 15.

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

S. 80(3C)
inserted by
No. 5/2002
s. 44(2).

- (3C) Without limiting sub-section (3A), the regulations made under that sub-section may provide for any matter that may be the subject of conditions under section 71.

* * * *

S. 80(4)
repealed by
No. 5/2002
s. 44(3).

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- (5) A notice giving a direction under sub-section (1) must contain details of the circumstances that, in the opinion of the Minister, warrant the giving of the direction.
- (6) The giving or not giving of directions under this section does not make the Minister or the Crown liable in respect of a flow of water from a dam.

80A. Design criteria etc. for re-use dams

S. 80A
 inserted by
 No. 5/2002
 s. 45.

The Minister may, by Order published in the Government Gazette, specify—

- (a) design criteria for private dams for the re-use of water; and
- (b) a formula to determine the maximum volume of water that may be re-used each year by a person by means of such dams.

81. Power of Minister to carry out works²⁶

- (1) If—
 - (a) a person fails to carry out the work necessary to comply with a direction given under this Division within the time specified in the direction; or
 - (b) it appears to the Minister to be necessary for work to be carried out urgently on any works on a waterway or any bore to prevent the waste, misuse or pollution of water—

the Minister may carry out the work and recover its reasonable cost from the occupier of the works or bore as a civil debt recoverable summarily.
- (2) As soon as possible after the work is carried out under sub-section (1) the Minister must give the occupier written notice of—
 - (a) the work carried out; and
 - (b) the cost of that work.

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Act No. 80/1989

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S. 81(3)
inserted by
No. 5/2002
s. 46.

S. 81(4)
inserted by
No. 5/2002
s. 46.

S. 81(5)
inserted by
No. 5/2002
s. 46.

S. 81(6)
inserted by
No. 5/2002
s. 46.

S. 81(7)
inserted by
No. 5/2002
s. 46.

- (3) Any costs incurred by the Minister under this section are a charge on the land.
- (4) Land is so charged when the Minister deposits with the Registrar of Titles a certificate under seal describing the land to be charged and stating the amount of the charge.
- (5) The Registrar of Titles must make in the Register a recording of the certificate lodged under this section.
- (6) The Minister must notify the land owner in writing that—
 - (a) the certificate has been deposited under this section; and
 - (b) the land is charged with the amount stated in the notice.
- (7) When an amount due is paid or recovered the Registrar of Titles must, if so required by the Minister, delete the recording of the charge from the Register or make a recording in the Register of the payment or recovery of the charge.

82. Compensation

- (1) The owner and occupier of any works is entitled to be paid compensation for any loss suffered or expenses sustained as a result of—
 - (a) being directed under section 78(1)(a) to alter works referred to in section 78(4)(b); or
 - (b) being directed under section 78(3) to remove works referred to in section 78(4)(a) or (b).

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s. 83

- (2) Compensation payable under sub-section (1) must be paid as follows—
 - (a) compensation payable under paragraph (a) must be paid by an Authority specified by the Minister;
 - (b) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(a) must be paid by the person ordered by the Governor in Council to pay compensation under section 4(4);
 - (c) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(b) must be paid by an Authority specified by the Minister.
- (3) The amount of compensation payable under sub-section (1) is as agreed by the parties or, in the absence of agreement, as determined by the Authority or other person responsible for its payment.

Division 5—Review of Decisions

83. Review of decisions

- | | |
|---|--|
| <ol style="list-style-type: none"> (1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision by the Minister— | <p>S. 83(1)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.14).</p> |
| <ol style="list-style-type: none"> <ol style="list-style-type: none"> (a) under section 69(1) to refuse an application under section 67; or | <p>S. 83(1)(a)
amended by
No. 5/2002
s. 47(a).</p> |
| <ol style="list-style-type: none"> <ol style="list-style-type: none"> (b) under section 69(1) to approve an application under section 67; or | <p>S. 83(1)(b)
amended by
No. 5/2002
s. 47(b).</p> |

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S. 83(1)(g)
 amended by
 No. 5/2002
 s. 47(c).

S. 83(2)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.14).

- (c) under section 71(1) to make a licence subject to any condition; or
 - (d) under section 72 to refuse an application for the renewal of a licence; or
 - (e) under section 72 to approve an application for the renewal of a licence; or
 - (f) under section 72(4) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or
 - (g) under section 73(1), (1A) or (1B) to amend a licence; or
 - (h) under section 74(6)(a) to refuse to approve the transfer of a licence; or
 - (i) under section 74(6)(b) to approve the transfer of a licence; or
 - (j) under section 74(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or
 - (k) under section 76(4)(a) to approve an application under section 76(1); or
 - (l) under section 76(4)(b) to refuse to approve an application under section 76(1); or
 - (m) to give a direction under section 78(1) or (3);
 - (n) to give a direction under section 79(2);
 - (o) to give a direction under section 80(1).
- (2) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision under section 82(3) by an Authority or other person responsible for the payment of compensation as to the amount of compensation payable.

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Act No. 80/1989
 Part 5—Works

s. 84

(2A) An application under sub-section (1) or (2) for review must be made within 28 days after the later of—

S. 83(2A)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.15).

- (a) the day on which the decision is made;
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

(3) The State of South Australia may apply to the Tribunal for review of a decision by the Minister under clause 29(5) of the Border Groundwaters Agreement (a copy of which is set out in the Schedule to the **Groundwater (Border Agreement) Act 1985**).

S. 83(3)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item
 105.16(a)).

(4) An application under sub-section (3) may be made at any time within the period of 30 days after the Minister of the State of South Australia is notified of the decision under the clause referred to in that sub-section.

S. 83(4)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item
 105.16(b)).

Division 6—Penalties

84. Penalties

(1) A person who is guilty of an offence under—

- (a) section 75; or
- (b) section 76(6)—

is liable for a first offence to a penalty of not more than 20 penalty units or to imprisonment for not more than 3 months and for a subsequent offence to a penalty of not more than 40 penalty units or to imprisonment for not more than 6 months.

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s. 84

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- (2) A person who is guilty of an offence referred to in sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out in that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.
-

PART 6—AUTHORITIES

Division 1—Authorities in general

85. Members of Authorities

Schedule 1 has effect with respect to the members of an Authority, except to the extent that a Schedule that is expressed to apply to a particular Authority contains provisions that are inconsistent with Schedule 1.

S. 85
amended by
Nos 50/1992
s. 10(Sch.
item 11.6),
49/1994
s. 4(1)(c).

86. Proceedings of Authorities

- (1) Schedule 2 has effect with respect to the proceedings of an Authority, except to the extent that a Schedule that is expressed to apply to a particular Authority contains provisions that are inconsistent with Schedule 2.
- (2) Subject to this Act, an Authority may regulate its own proceedings, and may, by resolution, adopt rules to govern procedures at its meetings.

* * * * *

S. 86(3)
inserted by
No. 50/1992
s. 10(Sch.
item 11.7),
repealed by
No. 49/1994
s. 4(1)(d).

87. Election of members

- (1) In this section and any other provisions of this Act dealing with the election of members, if a district under the management and control of an Authority is not subdivided into electoral districts, a reference to an electoral district of an Authority must be read as a reference to the whole of the Authority's district.

S. 87(2)
amended by
No. 25/1991
s. 3.

S. 87(7)
substituted by
No. 12/1992
s. 5.

Water Act 1989
Act No. 80/1989
Part 6—Authorities

- (2) If the Minister in the Order constituting or restructuring an Authority provides for the election of any members of that Authority by persons who are enrolled on the voters' rolls for the electoral districts of the Authority, the Minister may, by that Order or by another Order, direct that the members must be elected as prescribed.
- (3) Every person who is enrolled on a voters' roll under the **Local Government Act 1989** for an electoral district of an Authority is, unless this Act or the regulations provide otherwise in relation to the particular Authority, entitled without application to be enrolled on the voters' roll for that electoral district.
- (4) At an election of members of an Authority a person who is enrolled on the voters' roll for an electoral district of the Authority is entitled to one vote in respect of each electoral district of that Authority for which that person is enrolled.
- (5) Subject to sub-section (6) and to any regulations made under sub-section (7), a person who is enrolled on the voters' roll for an electoral district of an Authority must vote at every election of members for the electoral district for which that person is enrolled.
- (6) Sub-section (5) does not require an owner or occupier of a property whose principal place of residence is outside the electoral district for which the person is enrolled, to vote at an election of members in respect of that electoral district.
- (7) The Governor in Council may make regulations for or with respect to the holding of elections for, and the filling of vacancies in, the offices of members including, but not limited to, regulations for or with respect to—

-
- (a) enrolment for and voting at elections;
 - (b) the compilation of voters' rolls;
 - (c) the provision by an Authority of a copy of a voters' roll on payment of a fee of a specified amount;
 - (d) the date on which ordinary elections are to be held;
 - (e) the calling of nominations;
 - (f) requiring a refundable nomination fee of a specified amount to be paid by candidates;
 - (g) providing for pre-poll voting in person;
 - (h) providing for postal voting;
 - (i) providing for the registration of how-to-vote cards with the returning officer;
 - (j) prohibiting the printing, publishing, handing out, distribution or otherwise making available of a how-to-vote card that was required to be registered with the returning officer but was not;
 - (k) the maintenance of order at polling places and the removal of persons from them;
 - (l) providing for preferential voting at elections;
 - (m) the counting of votes;
 - (n) the method of determining the result of an election;
 - (o) the holding of an inquiry into an election at the request of any person or persons who dispute its validity or are dissatisfied with its conduct;
 - (p) requiring a fee of a specified amount to be paid by any person or persons who request the holding of an inquiry into an election;
-

S. 87(8)
 inserted by
 No. 12/1992
 s. 5,
 substituted by
 No. 23/2002
 s. 205.

S. 87(9)
 inserted by
 No. 12/1992
 s. 5.

- (q) generally, all matters necessary for the proper conduct of elections.
- (8) Without limiting section 324, regulations made under sub-section (7) may include regulations based on the **Electoral Act 2002** and on regulations made under that Act with any alterations and adaptations that, in the opinion of the Governor in Council, are necessary.
- (9) Regulations made under sub-section (7) must not provide for election by the quota-preferential or any other method of proportional representation.

88. Councillors as members

- (1) A member of an Authority who is to be elected by a council must, subject to sub-section (2), be a councillor of that council who is elected by a majority of the councillors of that council.
- (2) A member of an Authority that has a waterway management district who is to be elected by a council need not be a councillor of that council but must be elected by a majority of the councillors of that council.
- (3) If—
 - (a) all members for the time being of a council are members of an Authority; or
 - (b) members for the time being of a council who represent particular ridings or wards are members of an Authority—

the successors of those people in the office of councillor are, subject to this Act and without any other appointment, members of the Authority.

89. Employment and conditions of officers of Authorities

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|--|--|
| <p>(1) An Authority may employ, on terms and conditions fixed by the Authority, any officers it considers necessary for the carrying out of its functions.</p> | <p>S. 89(1)
 amended by
 No. 46/1998
 s. 7(Sch. 1).</p> |
| <p>(2) A person employed under sub-section (1) is entitled to be paid any remuneration or allowances that the Authority determines.</p> | <p>S. 89(2)
 amended by
 No. 46/1998
 s. 7(Sch. 1).</p> |
| <p>(3) An Authority must employ one of its officers to be its secretary.</p> | <p>S. 89(3)
 amended by
 No. 46/1998
 s. 7(Sch. 1).</p> |
- (4) An officer of an Authority must not, without permission from the Authority—
- (a) engage in any business; or
 - (b) engage in the private practice of any profession or trade; or
 - (c) hold any office in any corporation, other than a municipal council; or
 - (d) engage in any employment other than that connected with the duties of office.
- (5) Permission given by an Authority may be subject to terms and conditions.
- (6) An officer who has been employed by an Authority for 10 years is entitled in accordance with the regulations to be granted by the Authority 3 months' long service leave with pay in respect of that 10 years' service and 1½ months' long service leave with pay in respect of each additional 5 years of completed service.
- (7) The Governor in Council may, in accordance with section 324, make regulations for or with respect to long service leave, including but not limited to the following—

- (a) entitlements on retirement, death or termination of service;
 - (b) when long service leave may be taken;
 - (c) prohibiting an officer on long service leave from taking other employment for hire or reward;
 - (d) the nature of the service, and the computation of the period of the service, that entitles an officer to long service leave;
 - (e) the method of computing pay for long service leave;
 - (f) requiring Authorities to establish funds for the purpose of making payments in relation to long service leave;
 - (g) regulating the transfer of amounts from those funds;
 - (h) regulating agreements between Authorities;
 - (i) requiring the exchange of information between Authorities;
 - (j) regulating agreements between Authorities and other persons.
- (8) Any person who, in accordance with the regulations, enters into an agreement about long service leave with an Authority is empowered to enter into that agreement and may do anything necessary or convenient for giving effect to the agreement.

90. Immunity

- (1) Nothing done or omitted to be done by a member or an officer of an Authority in good faith in the exercise or purported exercise of a power or the discharge or purported discharge of a duty under this Act or the regulations subjects him or her personally to any civil liability²⁷.

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(2) Any liability that would, but for sub-section (1), attach to a person attaches instead to the Authority of which that person is a member or an officer.

(3) In sub-sections (1) and (2), "**Authority**" after the commencement of section 7 of the **Water Legislation (Essential Services Commission and Other Amendments) Act 2003** does not include—

- (a) a Regional Urban Water Authority; or
- (b) a Rural Water Authority—

within the meaning of section 4A of the **Water Industry Act 1994**.

(4) Sub-sections (1) and (2) as in force before the commencement of section 7 of the **Water Legislation (Essential Services Commission and Other Amendments) Act 2003** continue to apply in respect of anything done or omitted to be done by a person who as at that commencement—

- (a) is a member of an Authority for the remainder of the current term of that member in good faith in the exercise or purported exercise of a power or the discharge of a duty under this Act or the regulations whether before or after that commencement; or
- (b) was a member of an Authority in good faith in the exercise or purported exercise of a power or the discharge of a duty under this Act or the regulations before that commencement.

S. 90(3) inserted by No. 50/1992 s. 10(Sch. item 11.8), repealed by No. 49/1994 s. 4(1)(e), new s. 90(3) inserted by No. 48/2003 s. 7.

S. 90(4) inserted by No. 48/2003 s. 7.

s. 91

S. 91
 amended by
 No. 50/1992
 s. 10(Sch.
 item 11.9(a)).

91. Improper use of information by members and officers

- (1) A member or an officer of an Authority must not make improper use of information acquired by virtue of that person's position as a member or an officer—
 - (a) to gain directly or indirectly any pecuniary advantage for himself or herself or for any other person; or
 - (b) with intent to cause detriment to the Authority, irrespective of whether detriment was caused.

Penalty: 20 penalty units.

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S. 91(2)
 inserted by
 No. 50/1992
 s. 10(Sch.
 item 11.9(b)),
 repealed by
 No. 49/1994
 s. 4(1)(f).

* * * *

S. 91A
 inserted by
 No. 50/1992
 s. 10(Sch.
 item 11.10),
 repealed by
 No. 49/1994
 s. 4(1)(g).

92. Effect of pecuniary interests

- (1) A member who has a pecuniary interest in any matter in which the Authority is concerned must—
 - (a) if the member is present at a meeting of the Authority or any of its committees at which the matter is to be considered, disclose the nature of the interest immediately before the consideration; or

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- (b) if the member is aware that the matter is to be considered at a meeting of the Authority or any of its committees at which the member does not intend to be present, disclose the nature of the interest to the secretary of the Authority before the meeting is held.
- (2) The member—
- (a) may stay in the meeting during any consideration of the matter; and
 - (b) may take part in the discussion; and
 - (c) must not move or second a motion on a question relating to the matter; and
 - (d) must leave the meeting while any vote is taken on a question relating to the matter; and
 - (e) may, when notified by the chairperson that the vote has been declared, return to the meeting.
- (3) If a member discloses an interest under subsection (1), a statement showing—
- (a) that the disclosure was made; and
 - (b) the nature of the matter and the nature of the disclosed interest; and
 - (c) whether any vote was taken on a question relating to the matter and, if so, whether the member was present while the vote was taken; and
 - (d) whether the member left the meeting at any time during consideration of the matter and, if so, at what stage the member left—
- must—
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- (e) in the case of a disclosure made at or before a meeting of the Authority, be included in the minutes of the meeting; and
 - (f) in the case of a disclosure made at or before a meeting of a committee, be recorded by the committee and presented to, and included in the minutes of, the next ordinary meeting of the Authority.
- (4) A person must not fail to comply with sub-section (1) or (2).
- Penalty: 20 penalty units.
- (5) It is a defence to a charge under sub-section (4) for the person charged to prove that he or she did not know—
- (a) that he or she had a pecuniary interest in the matter; or
 - (b) that a matter in which he or she had a pecuniary interest was considered or to be considered at the meeting.
- (6) The Magistrates' Court has jurisdiction over a charge under this section even though title to land may be genuinely in question.
- (7) A charge may not be filed for an offence under this section more than 3 years after the commission of the alleged offence.
- (8) The Minister may, by notice in writing to the Authority, remove any disability imposed by this section in any case if so many of the members of the Authority are affected that the Minister decides that the transaction of the business of the Authority would be held up.

- (9) The Minister's power includes power to remove, either indefinitely or for a specified time, any disability that would otherwise attach to a member, or class of members, because of any interests, and in respect of any matters, that the Minister specifies.

93. What constitutes a pecuniary interest

- (1) In this section "**shares**" includes stock, and "**share capital**" must be read accordingly.
- (2) A member does not have a pecuniary interest to which section 92 applies in relation to a matter only because that member has an interest in the matter—
- (a) as a person who receives a service from the Authority and in common with other persons who receive a service from the Authority; or
 - (b) as a person who is, or may become, entitled to an allowance or other payment under this Act, if the maximum amount of the allowance or payment, or the rate at which the amount is to be calculated, is fixed under this Act; or
 - (c) as a member of a club or other association (incorporated or not) that is conducted primarily for charitable, benevolent, recreational or community purposes; or
 - (d) as a member of an employers' or employees' association; or
 - (e) as a person to whom the Authority offers, or proposes to offer, goods and services which are, or are proposed to be, offered generally by the Authority on the same terms and conditions as to that member; or

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- (f) as a person who receives a service from the Authority, or as a resident of a district under the control of the Authority, who may be required by the Authority to make any payment that other persons who receive that service, or other residents of the district, may be required by the Authority to make.
 - (3) Unless sub-section (4) provides otherwise, a person has a pecuniary interest in a matter if—
 - (a) the person or his or her nominee is a member of a company or other body which has a pecuniary interest in the matter; or
 - (b) the person is the sole proprietor, a partner, a director or an employee of a person who has a pecuniary interest in the matter.
 - (4) Sub-section (3) does not apply—
 - (a) to membership of any body (incorporated or not) which results from an appointment or nomination made by the Authority; or
 - (b) to membership or directorship of any body (incorporated or not) if the member or director has no beneficial interest in any capital or income of the body.
 - (5) If a member of an Authority has a pecuniary interest in a matter only because he or she has a beneficial interest in the shares of a body, and if the total nominal value of those shares is not more than \$2000 or 1 per cent of the total nominal value of the issued share capital of the body (whichever is less), section 92 does not preclude the member from taking part in the consideration of the matter.
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- (6) If the share capital of a body is of more than one class, sub-section (5) does not apply if the total nominal value of all the shares of any one class in which the member has a beneficial interest is more than 1 per cent of the total nominal value of the issued share capital of that class of the body.
- (7) The interest of a member's spouse or domestic partner must, if known to the member, be taken to be an interest of the member for the purposes of this section.
- (8) Nothing in section 92 precludes any person from taking part in the consideration of, or voting on—
 - (a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from any fund of the Authority or from any other money belonging to the Authority; or
 - (b) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 92(8).

S. 93(7)
 substituted by
 No. 72/2001
 s. 3(Sch.
 item 12.3).

94. Effect of conviction for offence against section 92

- (1) A member of an Authority who is convicted of an offence against section 92 or any corresponding previous enactment is not capable of being or continuing to be a member of an Authority for 7 years after that conviction, unless—
 - (a) on application by the person convicted, the court by which he or she is convicted; or
 - (b) a court hearing an appeal under sub-section (2)—

thinks it is appropriate in the circumstances to reduce or waive the period of disqualification.

- (2) A person may, within 6 months after a decision on an application under sub-section (1)(a), appeal from that decision—
 - (a) if the person was convicted by the Magistrates' Court—to the County Court; and
 - (b) in any other case—to the Supreme Court.
- (3) An appeal is by way of re-hearing of the application, and the court may do anything that it would be entitled to do if the appeal were an appeal against the sentence imposed on the conviction giving rise to the disqualification.
- (4) The decision of the court on an appeal is final.

95. Register of interests

- (1) In this section—

"nominated officer" means any senior officer of an Authority nominated by the Authority;

"return period", in relation to the ordinary return of a member of an Authority or a nominated officer, means—

 - (a) if the last return of the member or nominated officer was a primary return, the period between the date of the primary return and the next 30 June; or
 - (b) if the last return of the member or nominated officer was an ordinary return, the period between the date of the ordinary return and the next 30 June.
- (2) A person who becomes a member of an Authority must within 30 days after becoming a member submit a primary return in the prescribed form to the secretary of the Authority.

Penalty: 20 penalty units.

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- (3) If a person is re-appointed on completion of his or her term of office as a member, the member need not submit a new primary return.
 - (4) If an Authority has resolved that nominated officers must submit returns—
 - (a) nominated officers must within 30 days after the resolution; and
 - (b) any person who becomes a nominated officer after the resolution must within 30 days after his or her appointment as a nominated officer—

submit a primary return in the prescribed form to the secretary of the Authority.

Penalty: 20 penalty units.

- (5) A member or a nominated officer must, on or before 31 July each year, submit an ordinary return in the prescribed form to the secretary of the Authority.

Penalty: 20 penalty units.

- (6) A member or a nominated officer must disclose the following information in the primary return as at the date of the primary return—
 - (a) the name of any company or other body, corporate or unincorporate, in which he or she held an office whether as a director or otherwise;
 - (b) the information referred to in paragraphs (b), (c), (d) and (f) of sub-section (7).

Penalty: 20 penalty units.

- (7) A member or a nominated officer must disclose in an ordinary return the following information in relation to the return period—

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- (a) if he or she has held an office, whether as director or otherwise, in any company or body, corporate or unincorporate—the name of the company or body;
- (b) the name or description of any company, partnership, association or other body in which he or she holds a beneficial interest which exceeds in value \$2000;
- (c) the address or description of any land in the district of the Authority or in a district which adjoins that Authority's district in which he or she has any beneficial interest other than by way of security for any debt;
- (d) a concise description of any trust—
 - (i) in which he or she holds a beneficial interest; or
 - (ii) of which he or she is a trustee and in which a person related to him or her by blood or marriage holds a beneficial interest;
- (e) particulars of any gift of \$2000 or more in value received by him or her from a person other than a relative; and
- (f) any other substantial interest, whether of a pecuniary nature or not, of the person, or of a relative of which interest the person is aware and which the person ought reasonably to consider might appear to raise a material conflict between his or her private interest and his or her public duty as a member or nominated officer.

Penalty: 20 penalty units.

S. 95(7)(e)
 amended by
 No. 72/2001
 s. 3(Sch.
 item 12.4(a)).

S. 95(7)(f)
 amended by
 No. 72/2001
 s. 3(Sch.
 item 12.4(b)).

Water Act 1989
Act No. 80/1989
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- (7A) In this section "**relative**" of a member or nominated officer includes a domestic partner, or relative of a domestic partner, of the member or nominated officer.
- (8) If a member or a nominated officer has already submitted one or more ordinary returns he or she must disclose in any subsequent ordinary return any change in the information disclosed in the last return and any additional information of the kind set out in paragraphs (a) to (f) of sub-section (7) required to be disclosed, but he or she is not required to disclose any information already disclosed in a previous return.
- Penalty: 20 penalty units.
- (9) An Authority must—
- (a) maintain a register of the interests of members and, where required, nominated officers; and
 - (b) enter in the register all the information given in the returns.
- (10) An Authority must allow a person to inspect the register if that person applies, in writing and in accordance with the regulations, to the Authority to do so.
- (11) The register may be inspected at the principal office of the Authority during normal office hours.
- (12) An Authority must take all reasonable steps to make sure that a person who has not applied does not have access to, and is not permitted to inspect, the register or any return.
- (13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

S. 95(7A)
 inserted by
 No. 72/2001
 s. 3(Sch.
 item 12.5).

Penalty: 20 penalty units.

- (14) A person employed by an Authority must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Authority, or make use of that information for any purpose other than the discharge of his or her official duties under this Act.

Penalty: 20 penalty units.

- (15) An Authority must—
- (a) retain the returns of a member or a nominated officer for 3 years after the person has ceased to be a member or a nominated officer; and
 - (b) at the end of that period, destroy the returns.
- (16) As soon as practicable after a person ceases to be a member or a nominated officer, the Authority must delete the entries relating to that person from the register.
- (17) A member who is also a councillor under the **Local Government Act 1989** and who complies with section 81 of that Act is not guilty of an offence against this section.

Division 2—Authorities and Districts

96. New water, sewerage and waterway management systems

- (1) If a council proposes, or two or more councils jointly propose, to have water supply, sewerage or waterway management works constructed for the whole or any part of its or their municipal district or districts, the council or councils may submit the proposal to the Minister.

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Act No. 80/1989
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(2) If an Authority (other than a council) proposes—

- (a) to set up a new water, sewerage or waterway management district; or
- (b) to extend its existing water, sewerage, waterway management or irrigation district—

S. 96(2)(b)
 amended by
 No. 50/1992
 s. 7(a).

the Authority may, subject to sub-sections (3) and (4), submit the proposal to the Minister.

(3) An Authority must not submit a proposal for a new or extended water, sewerage or waterway management district if the area to be covered is within the area of interest²⁸ of another Authority.

(4) An Authority must not submit a proposal for—

- (a) a new or extended sewerage district unless the area to be covered is within the Authority's water district; and
- (b) a new or extended waterway management district unless the area to be covered is within the catchment for the Authority's water district—

unless the Minister in writing exempts the Authority's proposal from the operation of this sub-section.

(5) The Minister may exempt an Authority which submits a proposal for an extended water, sewerage, waterway management or irrigation district from any provisions of sub-section (6), (7) (other than paragraph (c)(i)) or (8).

S. 96(5)
 amended by
 No. 50/1992
 s. 7(b).

(5A) The Minister may exempt an Authority which submits a proposal to set up a new waterway management district from complying with sub-section (7)(a)(ii).

S. 96(5A)
 inserted by
 No. 25/2001
 s. 4.

(6) A proposal must be in the form required by any guidelines issued by the Minister.

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- (7) The Authority or council making the proposal must—
- (a) give notice of the proposal to—
 - (i) all councils that are affected by the proposal; and
 - (ii) any person which the Authority or council reasonably believes may be affected or to which it is directed by the Minister to give notice; and
 - (b) make the proposal available for inspection free of charge at its office during its office hours; and
 - (c) publish a notice of the proposal—
 - (i) at least once every week for 3 consecutive weeks in a newspaper circulating generally in the area to which the proposal relates; and
 - (ii) in the Government Gazette, after all other notices under this sub-section have been given or published.
- (8) A notice under sub-section (7) must state that—
- (a) submissions on the proposal are invited; and
 - (b) a submission should set out the grounds for any objection raised in it; and
 - (c) submissions must be received by the Authority or council within 1 month after the publication of the notice in the Government Gazette.
- (9) If any submissions are made within one month after publication in the Government Gazette of the notice of the proposal, the Authority must consider them and, if it decides to proceed with the proposal, it must notify the Minister of its
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decision and send copies of the submissions to the Minister.

- (10) The Minister may refuse the proposal or approve it, with or without any changes.
- (11) If the Minister approves a proposal, with or without any changes, the Minister must give effect to the approval by making an Order published in the Government Gazette which—
 - (a) declares a new water, sewerage or waterway management district and nominates a council or an Authority to manage and control it; or
 - (b) extends an existing water, sewerage, waterway management or irrigation district.

S. 96(11)(b)
 amended by
 No. 50/1992
 s. 7(c).

97. New irrigation districts

- (1) The Minister may, on application by an Authority, declare a new irrigation district.
- (2) A declaration must be by Order which—
 - (a) is published in the Government Gazette; and
 - (b) specifies that the existing Authority is appointed to manage and control the new district.
- (3) A declaration must not be made until a bulk entitlement has been granted under Part 4 for the proposed new district.

98. New and restructured Authorities

- (1) The Minister may, by Order published in the Government Gazette—
 - (a) appoint a council or an existing Authority or Melbourne Water Corporation; or

S. 98(1)(a)
 amended by
 No. 65/1995
 s. 16(1).

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S. 98(1)(ab)
 inserted by
 No. 25/2001
 s. 5.

(ab) appoint a Catchment Management Authority;
 or

(b) constitute a new Authority—

to take over any part or the whole of the property, rights, liabilities, obligations, powers and functions under this Act of one or more Authorities, and any staff of those Authorities, and may by that Order or another Order published in the Government Gazette provide for that taking over in any way that the Minister thinks fit.

(2) An Order must not be made under sub-section (1) unless—

S. 98(2)(a)
 amended by
 No. 65/1995
 s. 16(2).

(a) the Minister has agreed the terms and conditions with each body affected by the Order; or

S. 98(2)(b)
 amended by
 No. 121/1994
 s. 191(1).

(b) the Order will not result in the transfer of works from a council (other than works used by that council in performing its functions or exercising its powers under this Act).

S. 98(3)
 substituted by
 No. 121/1994
 s. 191(2).

(3) The Minister may, by Order published in the Government Gazette, transfer to an Authority—

(a) works used by a council in performing its functions or exercising its powers under any Act other than this Act; or

(b) works vested in any other public statutory body by or under any Act other than this Act.

(4) An Order must not be made under sub-section (3) unless—

(a) the Minister has agreed the terms and conditions with the affected Authorities and public statutory bodies; and

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- (b) the Minister is satisfied that appropriate provision has been made in relation to—
- (i) the disposition of the works; and
 - (ii) the rights and liabilities of the public statutory body; and
 - (iii) the manner of repayment of any money borrowed by the public statutory body in respect of the works.
- (5) The making of an Order under sub-section (3) vests the works in the Authority to which they are transferred, on and from the date specified in the Order.

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S. 98(6)
 amended by
 No. 54/1992
 s. 56(b)(i)(ii),
 repealed by
 No. 110/1997
 s. 16(1).

- (7) Any by-law that was made by an Authority the whole or part of whose property, rights, liabilities, obligations, powers or functions is affected by an Order made under sub-section (1) and that is in force immediately before the making of that Order must, so far as it relates to the property, rights, liabilities, obligations, powers or functions so affected, be taken to be a by-law made by the body taking over the property, rights, liabilities, obligations, powers or functions of the other body under that Order and has effect accordingly.
- (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

S. 98(7)
 inserted by
 No. 49/1994
 s. 8(a),
 amended by
 No. 65/1995
 s. 16(3)(a)(b).

S. 98(8)
 inserted by
 No. 65/1995
 s. 16(4).

made by the Governor in Council and not the Minister.

99. Provisions about new and restructured Authorities

- (1) The Order constituting a new Authority or restructuring an existing Authority may specify its membership.
- (2) An Authority may have members of the following types—
 - (a) people elected in accordance with section 87;
 - (b) people who are councillors for the time being of a council whose district is wholly or partly within the Authority's district, in accordance with section 88;
 - (c) people who are elected in accordance with section 88 by a council whose district is wholly or partly within the Authority's district;
 - (d) people who are appointed by the Minister on any criteria specified in the Order constituting the Authority or an Order amending that Order.
- (3) In appointing people as members of an Authority, the Minister must have regard to the need for the Authority to have as members people with expertise or qualifications relevant to the performance of its functions and the exercise of its powers.
- (3A) The Order constituting a new Authority or restructuring an existing Authority must specify that the chairperson of the Authority is to be appointed by the Minister²⁹.

S. 99(1)
amended by
No. 69/1993
s. 5(a).

S. 99(3)
substituted by
No. 69/1993
s. 5(b).

S. 99(3A)
inserted by
No. 121/1994
s. 192(1).

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- (4) If any members of an Authority that is—
- (a) constituted; or
 - (b) appointed to manage and control a new district; or
 - (c) allocated the management and control of an existing district—
- by an Order are to be elected, the Minister must—
- (d) subject to sub-section (5), specify in that Order the electoral districts of the Authority and the boundaries of those electoral districts; and
 - (e) specify in that Order the terms of the elected members.
- (5) If interim members of the Authority are appointed in accordance with section 103, the Minister may specify the electoral districts and their boundaries in a later Order.
- (6) A new Authority constituted by an Order is a body corporate and the Order must assign to it a corporate name.
- (7) A new Authority—
- (a) must have a common seal; and
 - (b) may sue and be sued in its corporate name; and
 - (c) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (d) is capable of doing and suffering anything that a body corporate may by law do and suffer, and that is necessary or expedient for performing its functions and exercising its powers.
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(8) The Minister may, by Order published in the Government Gazette—

- (a) change the corporate name of an Authority;
or
- (b) make any provision that could have been made in an Order constituting the Authority—

whether the Authority was constituted under this Act or any corresponding previous enactment.

(9) Nothing in this section empowers the Minister to constitute or restructure a council or a Catchment Management Authority.

100. Pre-requisites for restructuring or transferring Orders

(1) Before an Order referred to in section 98(2)(b) may be made the Minister must—

- (a) advise each body affected by the Order in writing of the reasons for the decision; and
- (b) make sure that a copy of the reasons is laid before both Houses of the Parliament; and
- (c) if a council is involved, consult with the Minister administering the **Local Government Act 1989**; and
- (d) if Melbourne Water Corporation is involved, consult with the Minister administering the **Melbourne Water Corporation Act 1992**; and
- (e) if a Catchment Management Authority is involved, consult with the Minister administering the **Catchment and Land Protection Act 1994**.

S. 99(9)
amended by
No. 25/2001
s. 6.

S. 100(1)(a)
amended by
No. 65/1995
s. 16(5)(a).

S. 100(1)(c)
amended by
No. 65/1995
s. 16(5)(b).

S. 100(1)(d)
inserted by
No. 65/1995
s. 16(5)(b),
amended by
No. 25/2001
s. 7(a).

S. 100(1)(e)
inserted by
No. 25/2001
s. 7(a).

(2) Before an Order to which section 98(2)(a) or (3) applies may be made—

(a) the affected bodies must apply for the Order to the Minister in the form directed by the Minister and with any information that the Minister requires; and

S. 100(2)(a)
 amended by
 No. 65/1995
 s. 16(6)(a).

(b) the Minister must consult with—

(i) the Minister administering the **Local Government Act 1989**, if a council is affected; and

(ia) the Minister administering the **Melbourne Water Corporation Act 1992**, if Melbourne Water Corporation is affected; and

S. 100(2)(b)(ia)
 inserted by
 No. 65/1995
 s. 16(6)(b).

(ib) the Minister administering the **Catchment and Land Protection Act 1994**, if a Catchment Management Authority is affected; and

S. 100(2)(b)(ib)
 inserted by
 No. 25/2001
 s. 7(b).

(ii) the Minister responsible for any other public statutory body from which works vested in that body by or under any other Act are to be transferred by the Order—

and must make any alterations that the Minister, after that consultation, considers should be made to the application.

(3) The Minister must not make an Order under section 98 by which—

(a) works are transferred; or

(b) a new district is allocated—

to a council if those works are or that district is not wholly within the council's municipal district, without the written consent of—

S. 100(3)(a)
 re-numbered
 as s. 100(3)(c)
 by No.
 22/1999
 s. 7(a).

S. 100(3)(b)
 re-numbered
 as s. 100(3)(d)
 by No.
 22/1999
 s. 7(b).

S. 101(2)(d)
 amended by
 No. 62/1995
 s. 42.

(c) the Minister administering the **Local Government Act 1989**; and

(d) the council and any other council from which all or part of the works or district will be transferred.

101. Effect of Order under section 98

- (1) An Order under section 98 as a result of which an Authority is left without functions may abolish that Authority.
- (2) On the day an Order abolishing an Authority comes into operation—
 - (a) the members of the abolished Authority go out of office; and
 - (b) all rights, property and assets that, immediately before that day, were vested in the abolished Authority are by force of this section vested in the successor Authority to which works are transferred by the Order; and
 - (c) all debts, liabilities and obligations of the abolished Authority existing immediately before that day become, by force of this section, debts, liabilities and obligations of the successor Authority; and
 - (d) the successor Authority is, by force of this section, substituted as a party to any proceedings pending in any court or tribunal to which the abolished Authority was a party immediately before that day; and

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s. 101A

- (e) the successor Authority is, by force of this section, substituted as a party to any arrangement or contract entered into by or on behalf of the abolished Authority and in force immediately before that day; and
 - (f) any reference to the abolished Authority in any Act, proclamation, Order, regulations, agreement or other document whatsoever must, 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 successor Authority.
- (3) An Order under section 98 (whether or not the Authority from which the property is taken over is abolished by the Order) does not make defective any legal proceedings by or against the Authority from which the transfer is made, and any legal proceedings that might have been started or continued against that Authority in relation to anything transferred under the Order may be started or continued against the Authority to which the transfer was made.

S. 101(3)
 amended by
No. 12/1996
 s. 6.

101A. Interests in land

- (1) Without prejudice to the generality of this Act and despite anything to the contrary in any other Act or law, if, immediately before the coming into operation of an Order under section 98 (whether made before or after the commencement of section 7 of the **Water Acts (Amendment) Act 1996**), an Authority, in relation to property affected by the Order, was the registered proprietor of, or entitled to be registered as the proprietor of, an interest in land under the **Transfer of Land Act 1958** or had claimed an interest in land under the **Transfer of Land Act 1958** by lodging a caveat under that Act, then on and after that coming into operation—

S. 101A
 inserted by
No. 12/1996
 s. 7.

s. 101B

S. 101A(2)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.1).

S. 101B
 inserted by
 No. 12/1996
 s. 7.

S. 101B(2)(3)
 repealed by
 No. 85/1998
 s. 24(Sch
 item 66.2).

- (a) the body taking over that property by virtue of the Order is to be taken to be the registered proprietor of that interest in land or to be the caveator, as the case requires; and
 - (b) that body has the same rights and remedies in respect of that interest as the Authority from which that property was taken over had.
- (2) The chief executive officer (by whatever name called) of a body taking over property by virtue of an Order under section 98 must, at the request of the Registrar of Titles, give to him or her a certificate signed by the chief executive officer certifying that property specified in the certificate is property that has been taken over by that body by virtue of an Order under section 98 with effect from the coming into operation of that Order.
 - (3) This section has effect whether or not the Authority from which the property is taken over is abolished by the Order under section 98.

101B. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of an Order under section 98.

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102. Transfer of officers

An officer of an Authority who is, by virtue of an Order under section 98, transferred to another Authority, a council, a Catchment Management Authority or Melbourne Water Corporation becomes, subject to the Order, an officer of that other Authority, council, Catchment Management Authority or Melbourne Water Corporation holding an office corresponding to that held by the person in the Authority immediately before the Order takes effect, on terms and conditions no less favourable than those of the former office and with the benefit of all rights accrued in respect of that former office.

S. 102
 amended by
 Nos 65/1995
 s. 16(7)(a)(b),
 25/2001
 s. 8(a)(b).

102A. Superannuation of transferred officers

(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;

"MMBW Fund Regulations" means the Melbourne and Metropolitan Board of Works Employees' Superannuation Fund Regulations;

"MMBW Fund Trustees" means the Trustees within the meaning of the MMBW Fund Regulations;

"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**.

S. 102A
 inserted by
 No. 65/1995
 s. 17.

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

103. Interim members

- (1) The Minister may, by the Order constituting an Authority, provide that on and after the Order comes into operation the people specified in the Order are interim members of the Authority.
- (2) The interim members of an Authority must be all or any of the members of any Authority or body abolished by the Order constituting the Authority, together with any other people specified in the Order.

104. Changes to districts

- (1) An Authority may, by resolution published in the Government Gazette—
 - (a) unite any 2 or more—
 - (i) water districts; or
 - (ii) sewerage districts; or
 - (iii) waterway management districts; or

S. 104(1)(a)(iii)
 amended by
 No. 50/1992
 s. 7(d).

- (iv) irrigation districts—

S. 104(1)(a)(iv)
 inserted by
 No. 50/1992
 s. 7(d).

that are under the management and control of the Authority; or

Water Act 1989
Act No. 80/1989

Part 6—Authorities

s. 104

S. 104(1)(b)
amended by
No. 50/1992
s. 7(e).

S. 104(1)(c)
amended by
No. 50/1992
s. 7(e).

S. 104(1)(d)
amended by
No. 50/1992
s. 7(e).

S. 104(3)(a)(iii)
amended by
No. 50/1992
s. 7(f).

S. 104(3)(a)(iv)
inserted by
No. 50/1992
s. 7(f).

S. 104(3)(b)
amended by
No. 50/1992
s. 7(g).

- (b) diminish the extent of the Authority's water district, sewerage district, waterway management district or irrigation district; or
 - (c) abolish any water district, sewerage district, waterway management district or irrigation district of the Authority that is no longer operating; or
 - (d) divide the Authority's water district, sewerage district, waterway management district or irrigation district into 2 or more districts.
- (2) An Authority must not make a resolution referred to in sub-section (1) unless it has, once a week for 3 consecutive weeks before the resolution is made, published notice of the proposed resolution in a newspaper circulating generally in the area to be affected by the resolution.
- (3) The Minister may, by Order published in the Government Gazette—
- (a) unite any 2 or more—
 - (i) water districts; or
 - (ii) sewerage districts; or
 - (iii) waterway management districts; or
 - (iv) irrigation districts—
- that are under the management and control of the same Authority; or
- (b) diminish the extent of an Authority's water district, sewerage district, waterway management district or irrigation district; or

Water Act 1989
Act No. 80/1989
 Part 6—Authorities

s. 105

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- (c) on the request of an Authority, abolish a water district, sewerage district, waterway management district or irrigation district of the Authority; or
- (d) divide an Authority's water district, sewerage district, waterway management district or irrigation district into 2 or more districts—
- and may by that or any other Order—
- (e) provide for any adjustment to areas affected by the Order or by a resolution under subsection (1); and
- (f) make any changes to the membership of an Authority affected by the Order or resolution; and
- (g) determine any other matter as a result of the Order or resolution—
- that the Minister considers desirable.

105. Abolition of Authorities

- (1) This section applies to a council only in respect of its functions as an Authority under this Act.
- (1A) This section applies to a Catchment Management Authority only in respect of its functions as an Authority under this Act.
- (2) The Minister may, by Order published in the Government Gazette, abolish an Authority and provide for the disposition of its works and property.
- (3) The Minister must not make an Order under subsection (2) unless—
- (a) a petition is delivered by a majority of the persons subject to a tariff within the relevant water, sewerage, waterway management or irrigation district or districts to the Minister requesting the abolition of the Authority; or

s. 106

S. 105(3)(b)
 amended by
 No. 54/1992
 s. 56(c)(i).

S. 105(4)
 inserted by
 No. 54/1992
 s. 56(c)(ii),
 amended by
 No. 25/2001
 s. 9(2).

- (b) the Authority has no functions to perform, whether as a result of an Order made by the Governor in Council under section 3 of the **Melbourne and Metropolitan Board of Works Act 1958** or otherwise.
- (4) If the Minister makes an Order under subsection (2) which abolishes an Authority to which Schedule 6 or 7 applies, the Minister must, by that Order, omit that Schedule.

106. Areas of interest

- (1) The Minister may, at the request of an Authority, by Order published in the Government Gazette—
 - (a) declare an area of land outside a water, sewerage or waterway management district to be an area of interest in relation to that district; and
 - (b) specify the Authority which manages and controls the water, sewerage or waterway management district as the body responsible in the future for carrying out any water supply, sewerage or waterway management functions and exercising any water supply, sewerage or waterway management powers in relation to the land in the area of interest.
- (2) The Minister must not make the Order unless—
 - (a) the Authority requesting it—
 - (i) has given notice of the proposed Order at least 30 days before its making to any public statutory body which the Authority considers may be affected by it; and

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- (ii) has published notice of the proposed Order in a newspaper circulating generally in the area to be affected by the Order; and
 - (b) the Minister is satisfied that all public statutory bodies which may be affected by the proposed Order have been adequately consulted about it.
 - (3) If an area of interest is declared in respect of a water, sewerage or waterway management district, only the Authority which has the management and control of that district may—
 - (a) in the case of a water district, carry out any water supply functions (other than irrigation functions) or exercise any water supply powers (other than irrigation powers) in relation to that area of interest; and
 - (b) in the case of a sewerage district, carry out any sewerage functions or exercise any sewerage powers in relation to that area of interest; or
 - (c) in the case of a waterway management district, carry out any waterway management functions or exercise any waterway management powers in relation to that area of interest.
 - (4) If an area of interest in relation to a particular function has been granted to an Authority, no other Authority may be appointed by an Order under this Division to manage and control a district related to that function that is wholly or partly within that area of interest.
 - (5) An area of interest granted to an Authority must be taken to be part of the Authority's district for the purposes of any referral under the **Planning and Environment Act 1987**.
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Division 3—Environmental and Recreational Areas

107. Environmental and recreational areas

- (1) The Minister may, at the request of the Authority, make an Order published in the Government Gazette which declares—

- (a) land which is owned or controlled by the Authority; or
- (b) subject to the consent of any other public statutory body, land which is within the water district, sewerage district, waterway management or irrigation district of the Authority, or which is significant to the exercise of a function of the Authority but which is owned or controlled by the public statutory body—

to be an environmental area or a recreational area under the management and control of the Authority for the period specified in the Order.

- (2) An Authority that is given the management and control of any environmental or recreational area comprising land formerly owned or controlled by a public statutory body, in relation to the management and control of that area—

- (a) has all the powers and is subject to all the obligations of the public statutory body in relation to that area; and
- (b) may continue and complete any act or thing of a continuing nature commenced in relation to that area by the public statutory body; and
- (c) is the successor in law of the public statutory body; and

S. 107(1)(b)
 amended by
 No. 50/1992
 s. 7(i).

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- (d) must, so long as it has the management and control of the area, administer and manage any personal property that was used in connection with the area by the public statutory body immediately before the making of the Order giving the management and control of the area to the Authority.
- (3) An Authority that has the management and control of any environmental or recreational area has the following functions—
- (a) to improve the area;
 - (b) to provide and arrange services and facilities in the area;
 - (c) to control land use in the area.
- (4) Subject to sub-section (2)(d), an Authority is under no duty to exercise its functions under sub-section (3).
- (5) An Authority that has the management and control of any environmental or recreational areas may, in accordance with sections 160 and 161, make by-laws applying to any or all of those areas for the following purposes—
- (a) the control, management and use of the land, services and facilities in the area;
 - (b) the protection of the land, services and facilities;
 - (c) the protection of people in the area from injury or nuisance;
 - (d) the conservation and preservation of flora, fauna and habitat;
 - (e) the control of the introduction of any new flora or fauna to the area;
 - (f) the control of the numbers of any flora or fauna in the area.
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- (6) The Governor in Council may make regulations for or with respect to—
- (a) the granting of leases or licences by an Authority for activities carried on in, or things introduced into, any environmental or recreational area; and
 - (b) the charging of fees for those leases or licences and for any other service or facility in the area, including fees for entering the area and for occupying any part of it; and
 - (c) the powers of the Authority in relation to the removal of any unregistered or abandoned motor vehicle from the area and its subsequent sale, including provisions about—
 - (i) notice of removal; and
 - (ii) surrender of the motor vehicle to its owner or an agent of the owner; and
 - (iii) sale of the motor vehicle; and
 - (iv) the circumstances in which clear title to the motor vehicle passes on sale; and
 - (v) disposal of the proceeds of sale; and
 - (vi) protection of the Authority from liability in relation to payments of the proceeds of sale; and
 - (vii) any other matter that the Governor in Council decides to be appropriate.
- (7) Despite anything in any other Act, if an environmental area or a recreational area is declared, any public statutory body may make contributions out of any money legally available to that body, for or towards the cost of improving the area or providing or maintaining services in it.
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- (8) Any revenue collected (whether before or after the commencement of this sub-section) in relation to any environmental or recreational area forms part of the fund of the Authority that has the management and control of the area.

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S. 107(9) amended by No. 49/1994 s. 8(b), repealed by No. 65/1995 s. 22(b).

107A. Limitation of exercise of powers under this Division

S. 107A inserted by No. 79/1995 s. 35.

- (1) An Authority must not exercise its functions or powers under this Division in a manner which is inconsistent with any provision of an Order granting a declared bulk water entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

- (2) In sub-section (1)—

"declared bulk water entitlement" means a bulk water entitlement in respect of which a declaration under section 185(3) has been made;

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S. 107A(2) def. of "generation company" amended by No. 69/2000 s. 65(4), repealed by No. 11/2002 s. 3(Sch. 1 item 66.1).

Division 4—Committees

108. Committees established by Authorities

- (1) An Authority may establish—
 - (a) a committee to advise the Authority on any matter referred by the Authority; and
 - (b) a committee to exercise any power or perform any function, authority or discretion delegated to it by the Authority.
- (2) The following provisions apply to committees—
 - (a) an Authority may at any time remove from office a member of a committee and must provide in writing to the member the reasons for the removal;
 - (b) a member of a committee is not subject to the **Public Sector Management and Employment Act 1998** only because he or she is a member;
 - (c) a committee may act despite any vacancy in its membership;
 - (d) subject to this Act and any rules made under paragraph (e), a committee may regulate its own proceedings;
 - (e) an Authority may, by resolution, make rules, with which committees must comply, about—
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings;
 - (f) the Minister by notice published in the Government Gazette may declare that a committee is a corporation, and may dissolve a corporation of that sort in the same way;

S. 108(2)(b)
 amended by
 Nos 86/1995
 s. 14, 46/1998
 s. 7(Sch. 1).

- (g) an Authority must obtain the Minister's consent before it delegates any of its powers, functions, authorities or discretions to a committee of which any members are not members or officers of the Authority;
 - (h) the Minister may specify rules of procedure for the exercise of a delegated power by a committee referred to in paragraph (g) and any purported exercise of that delegated power by such a committee otherwise than in accordance with those rules is void.
- (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. S. 108(2A)
inserted by
No. 65/1995
s. 22(c).
- (2B) By-laws made under sub-section (2A) prevail, to the extent of any inconsistency, over the provisions of sub-section (2). S. 108(2B)
inserted by
No. 65/1995
s. 22(c).
- (3) If the Minister consents, a member of a committee is entitled to be paid any fees and allowances fixed by the Governor in Council.
- (4) A committee established by an Authority is subject to the requirements of Part 13 about annual reports and audits as if it were a part of the Authority.

109. Incorporated committees

- (1) If the Minister declares a committee to be a corporation under section 108(2)(f), then on the publication of the notice in the Government Gazette—
- (a) the committee specified in the notice is a body corporate by the name assigned to it in the notice, with perpetual succession and a common seal, and is by that name capable in law of suing and being sued and, subject to

- this Act, of holding, acquiring and disposing of personal property; and
- (b) the powers, functions, discretions and authorities of that committee, whether conferred or imposed by this Act or otherwise, must be taken to be conferred or imposed on the corporation alone; and
 - (c) the duties, liabilities, responsibilities and obligations imposed on that committee are transferred to the corporation; and
 - (d) the corporation becomes the successor in law of that committee.
- (2) The common seal of a corporation constituted under section 108(2)(f) must be kept in the custody that the corporation directs, and must not be used except as authorised by the corporation.
- (3) All courts must take judicial notice of the common seal of a corporation constituted under section 108(2)(f) affixed to any document and, until the contrary is proved, must presume that it was duly affixed.
- (4) If the Minister declares a corporation to be dissolved under section 108(2)(f), then on the publication of the notice in the Government Gazette—
- (a) the members who constituted the corporation specified in the notice constitute the committee of the environmental or recreational area; and
 - (b) the powers, functions, discretions and authorities of the corporation specified in the notice must be taken to be conferred or imposed on that committee; and

- (c) the duties, liabilities, responsibilities and obligations imposed on the corporation specified in the notice are transferred to that committee; and
- (d) that committee becomes the successor in law of the corporation specified in the notice.
- (5) A committee declared to be a corporation under section 108(2)(f)—
 - (a) consists of the members who constituted the committee immediately before the publication in the Government Gazette of the notice declaring the committee to be a corporation; and
 - (b) is subject to all the provisions of this Act and the regulations relating to committees.

110. Union of committees

- (1) On the recommendation of an Authority, the Minister may, by notice published in the Government Gazette, unite any two or more committees of the Authority, transfer the management and control of any environmental or recreational area to the united committee and do anything else necessary or convenient as a consequence.
- (2) On the publication of a notice—
 - (a) the committees united by the notice, including an incorporated committee, are abolished; and
 - (b) the powers, functions, authorities and discretions of the committees united by the notice are conferred on the united committee; and

s. 110A

- (c) the duties, liabilities, responsibilities and obligations imposed on the committees united by the notice are transferred to the united committee; and
- (d) the united committee is the successor in law of the committees united by the notice.

Division 4A—Customer Dispute Resolution

Pt 6 Div. 4A
(Heading and
s. 110A)
inserted by
No. 59/2000
s. 6.

S. 110A
inserted by
No. 59/2000
s. 6.

110A. Customer dispute resolution

- (1) An Authority must on or before a date to be determined by the Treasurer enter into a customer dispute resolution scheme approved by the Office of the Regulator-General established under the **Office of the Regulator-General Act 1994**.
- (2) A dispute resolution scheme provided for in accordance with this section is in addition to and not in derogation of any right of review a person may have under this Act.
- (3) In approving a dispute resolution scheme the Office of the Regulator-General must have regard to—
 - (a) the need to ensure that the scheme is accessible to and that there are no cost barriers to persons using the scheme; and
 - (b) the need to ensure that the scheme is independent of the members of the scheme; and
 - (c) the need for the scheme to be fair and be seen to be fair; and

- (d) the need to ensure that the scheme will publish decisions and information about complaints received by the scheme so as to be accountable to the members of the scheme and the persons using the scheme; and
 - (e) the need for the scheme to undertake regular reviews of its performance to ensure that its operation is efficient and effective.
- (4) This section only applies to an Authority that has a water district or a sewerage district or an irrigation district.

Division 5—General

111. Delegation by Authority

- (1) An Authority may, by instrument under its common seal, delegate to—
- (a) a member or an officer of the Authority by name or to the holder of an office within the Authority; or
 - (b) (subject to section 108(2)(g)) any committee established by the Authority under this Act; or
 - (c) with the Minister's consent, any other person—
- any power, discretion or function of the Authority, other than—
- (d) this power of delegation; and
 - (e) any power to make by-laws; and

* * * * *

S. 111(1)(f)
repealed by
No. 86/1995
s. 13.

- (g) any other power that is prescribed for the purposes of this section.

s. 112

- (2) An Authority is not liable for anything done by a committee that is outside the terms of the Authority's delegation to the committee.

112. Appointment of an administrator

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S. 112(1)
 amended by
 No. 50/1992
 s. 10(Sch.
 item 11.11),
 repealed by
 No. 65/1995
 s. 22(d).

- (2) If an Authority fails or refuses to comply with a direction under section 307, the Governor in Council may, by Order published in the Government Gazette, appoint an administrator to take over the functions of the Authority for a period, not more than 12 months, specified in the Order.

- (3) The Order—

- (a) if the Authority is not a council or Catchment Management Authority, may—
 (i) suspend the Authority; or
 (ii) dismiss its members and provide, if necessary, for elections to be held for new members; and

- (b) if the Authority is a council, may suspend any functions of the council under this Act; and

- (ba) if the Authority is a Catchment Management Authority, may suspend any functions of the Catchment Management Authority under this Act; and

- (c) must set out reasons for the actions proposed in it; and

S. 112(3)(a)
 amended by
 No. 25/2001
 s. 10(a).

S. 112(3)(ba)
 inserted by
 No. 25/2001
 s. 10(b).

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- (d) must be laid by the Minister before both Houses of Parliament within 5 sitting days of each House after it is made; and
 - (e) may give the administrator all powers necessary to carry out the functions and duties of the appointment.
- (4) In exercising the powers of his or her appointment, an administrator is subject to the same restrictions as the Authority that he or she is replacing.
 - (5) Any defect in relation to the appointment of the administrator does not invalidate that appointment or anything done by the administrator.
 - (6) On the expiry of a suspension declared in an Order made under sub-section (3)(a)(i) the Governor in Council must—
 - (a) reinstate the members whose terms have not expired to their offices and fix a date for any election necessary to fill any vacancy in the office of a member whose term has expired; or
 - (b) dismiss the Authority's members and provide for an election to be held for new members.
 - (7) The administrator goes out of office—
 - (a) if any members are reinstated, at the time of that reinstatement; and
 - (b) if all the members are dismissed—
 - (i) at the declaration of the poll for the election of new members; or
 - (ii) on the appointment of new members—
as the case requires.
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113. Certificates of qualification

The Governor in Council may make regulations for or with respect to—

- (a) the qualifications required to be held by any person who holds a specific office or position in an Authority; and
- (b) the accreditation of any person who holds a specific office or position in an Authority; and
- (c) the establishment, membership and procedure of a body which may issue accreditations and hold any examinations and tests it considers necessary for that purpose; and
- (d) prescribing fees to be paid for the issue or renewal of certificates of accreditation.

Division 6—Validation of Appointment, etc. of Certain Authorities

Pt 6 Div. 6
 (Heading and
 ss 114, 115)
 amended by
 Nos 50/1992
 s. 10(Sch.
 items 11.12–
 11.16),
 49/1994
 s. 4(1)(h)(i),
 repealed by
 No. 65/1995
 s. 22(e)³⁰, new
 Pt 6 Div. 6
 (Heading and
 ss 114, 115)
 inserted by
 No. 39/1998
 s. 12.

114. Effect of certain Orders made by Minister

- (1) An instrument referred to in column 1 of Table A in Schedule 3 purportedly made by the Minister on 23 June 1997 has, and is deemed always to have had, the same force and effect as it would have had if—

S. 114
 inserted by
 No. 39/1998
 s. 12.

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- (a) the body specified in column 2 of that Table had been an existing Authority within the meaning of section 98(1)(a) at the time the instrument was purportedly made; and
 - (b) the instrument had, with effect from 1 July 1997, allocated to the body specified in column 2 of that Table the management and control of the waterway management district specified in column 3 of that Table; and
 - (c) section 99(3A) had not been enacted and the instrument had, when purportedly made, not specified that the chairperson of the body specified in column 2 of that Table was to be appointed by the Minister; and
 - (d) all the requirements of Division 2, that would have been required to be complied with in the case of an Order having the force and effect that the instrument has and is deemed to have always had by force of this section, had been complied with in respect of it.
- (2) An instrument referred to in column 1 of Table B in Schedule 3 purportedly made by the Minister on 23 June 1997 has, and is deemed always to have had, the same force and effect as it would have had if—
- (a) the body specified in column 2 of that Table had been an Authority within the meaning of sections 198(1)(b)(i) and 201(1)(b)(i) at the time the instrument was purportedly made; and
 - (b) the waterway management district of that body, with effect from 1 July 1997, were the district specified in column 3 of that Table.
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S. 115
 inserted by
 No. 39/1998
 s. 12.

115. Validation of actions of certain Authorities

- (1) Anything done or purported to have been done under this Act, before the commencement of section 12 of the **Catchment and Land Protection (Amendment) Act 1998**, by a body referred to in column 2 of Table A in Schedule 3 that would have been validly done had section 12 of that Act been in operation at the time at which the thing was done or purported to have been done, has and is deemed always to have had, the same force and effect as it would have had if that section had been in operation at the time at which the thing was done or purported to have been done.
- (2) Without limiting sub-section (1), that sub-section applies with respect to the following—
 - (a) the setting of a tariff or development tariff;
 - (b) the imposition of a fee on a property under a tariff or development tariff or the altering of the amount of such a fee;
 - (c) the setting or imposition of a fee, charge or rate of interest;
 - (d) the requirement of a payment or contribution from any person;
 - (e) the declaration of any land to be a serviced property for the purposes of this Act;
 - (f) the obtaining of financial accommodation, issuing of bonds, notes or other securities or mortgaging of revenue in accordance with Division 4 of Part 13;
 - (g) the recovery of any money;
 - (h) the selling of any property, or the causing of any property to be transferred, under section 278;

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- (i) the purchase or compulsory acquisition of any land, entry on any land or dealing with any land;
 - (j) the carrying out of any works or closing to traffic of any road or part of a road for that purpose;
 - (k) the giving of a consent or other authorisation or making of an application, request or requirement under this Act;
 - (l) the making of any by-laws, passing of any resolution, giving of any notice or service of any document;
 - (m) the delegation of any power, discretion, function, authority or duty;
 - (n) the declaration under section 188(1) of a designated waterway or designated land or works;
 - (o) the closing under section 193 of access to the whole or any part of a designated waterway or designated land or works;
 - (p) the declaration under section 203(1) of a flood level, flood fringe area or building line.
- (3) The exercise of a function under this Act by a body referred to in column 2 of Table A in Schedule 3, whether before or after the commencement of section 12 of the **Catchment and Land Protection (Amendment) Act 1998**, is not invalid only because it was or is exercised outside the region for which that body is established under the **Catchment and Land Protection Act 1994** and within the region for which another such body is established under the **Catchment and Land Protection Act 1994**.
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s. 115A

Pt 6 Div. 6A
 (Heading
 and ss 115A–
 115C)
 inserted by
 No. 25/2001
 s. 11.

S. 115A
 inserted by
 No. 25/2001
 s. 11.

S. 115B
 inserted by
 No. 25/2001
 s. 11.

Division 6A—Transfer of Certain Districts and Validation of Actions

115A. Definitions

In this Division—

"Constitution of the Lower Murray Region Water Authority Order" means the Constitution of the Lower Murray Region Water Authority Order 1995, published in the Government Gazette on 1 February 1995;

"Lower Murray Region Water Authority" means the Authority constituted by the Constitution of the Lower Murray Region Water Authority Order;

"Sunraysia Water Board" means the Sunraysia Water Board constituted by Order in Council under section 8 of the **Water and Sewerage Authorities (Restructuring) Act 1983** and published in the Government Gazette on 27 June 1984.

115B. Retrospective transfer of certain water districts to Lower Murray Region Water Authority

The Constitution of the Lower Murray Region Water Authority Order has, and is deemed always to have had, the same force and effect as it would have had if—

- (a) the Order had appointed the Lower Murray Region Water Authority to take over the whole of the property, rights, liabilities, obligations, powers and functions of the Sunraysia Water Board in respect of the Koondrook Urban District, the Murrabit Urban District, the Nyah Urban District, the

Nyah West Urban District and the Woorinen Urban District, and had allocated those districts to the Lower Murray Region Water Authority; and

- (b) all the requirements of Division 2 that would have been required to be complied with in the case of an Order having the force and effect that the Constitution of the Lower Murray Region Water Authority Order has, and is deemed always to have had, by force of this section, had been complied with respect to it.

115C. Validation of actions of Lower Murray Region Water Authority in relation to certain water districts

S. 115C
 inserted by
 No. 25/2001
 s. 11.

- (1) Anything done or purported to have been done under this Act, before the commencement of section 11 of the **Water (Amendment) Act 2001** by the Lower Murray Region Water Authority that would have been validly done had that section been in operation at the time at which the thing was done or purported to have been done, has, and is deemed always to have had, the same force and effect as it would have had if that section had been in operation at the time at which the thing was done or purported to have been done.
- (2) Without limiting the generality of sub-section (1), that sub-section applies with respect to the following—
 - (a) the setting of a tariff or development tariff;
 - (b) the imposition of a fee on a property under a tariff or development tariff or the altering of the amount of such a fee;
 - (c) the setting or imposition of a fee, charge or rate of interest;

- (d) the requirement of a payment or contribution from any person;
- (e) the declaration of any land to be a serviced property for the purposes of this Act;
- (f) the obtaining of financial accommodation, issuing of bonds, notes or other securities or mortgaging of revenue in accordance with Division 4 of Part 13;
- (g) the recovery of any money;
- (h) the selling of any property, or the causing of any property to be transferred, under section 278;
- (i) the purchase or compulsory acquisition of any land, entry on any land or dealing with any land;
- (j) the carrying out of any works or closing to traffic of any road or part of a road for that purpose;
- (k) the giving of a consent or other authorisation or making of an application, request or requirement under this Act;
- (l) the making of any by-laws, passing of any resolution, giving of any notice or service of any document;
- (m) the delegation of any power, discretion, function, authority or duty.

Division 7—Other Particular Authorities

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S. 116
repealed by
No. 110/1997
s. 16(2).

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S. 117
 repealed by
 No. 54/1992
 s. 56(d).

118. First Mildura Irrigation Trust

- (1) Schedule 6 applies to the First Mildura Irrigation Trust.
- (2) The provisions of this Act (including Schedule 1 and Schedule 2 but not including any Schedule that is expressed to apply to a specific Authority other than the First Mildura Irrigation Trust) apply to the First Mildura Irrigation Trust to the extent that they are not inconsistent with Schedule 6.
- (3) Nothing in Schedule 6 prevents the application of Division 2 of Part 6 to the First Mildura Irrigation Trust.

119. Geelong and District Water Board

- (1) Schedule 7 applies to the Geelong and District Water Board.
- (2) The provisions of this Act (including Schedule 1 and Schedule 2 but, subject to sub-section (3), not including any Schedule that is expressed to apply to a specific Authority other than the Geelong and District Water Board) apply to the Geelong and District Water Board to the extent that they are not inconsistent with Schedule 7.

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S. 119(3)
 repealed by
 No. 110/1997
 s. 16(3).

- (4) Nothing in Schedule 7 prevents the application of Division 2 of Part 6 to the Geelong and District Water Board.

S. 119(4)
 amended by
 No. 110/1997
 s. 16(4).

s. 120

S. 120
 repealed by
 No. 110/1997
 s. 16(5),
 new s. 120
 inserted by
 No. 48/2003
 s. 8.

120. Central Gippsland Region Water Authority

- (1) Schedule 8 applies to the Central Gippsland Region Water Authority.
- (2) The provisions of this Act (including Schedule 1 and 2 but not including any Schedule that is expressed to apply to a specific Authority other than the Central Gippsland Region Water Authority) apply to the Central Gippsland Region Water Authority to the extent that they are not inconsistent with Schedule 8.
- (3) Nothing in Schedule 8 prevents the application of Division 2 of Part 6 to the Central Gippsland Region Water Authority.

121. Validation of actions of Central Gippsland Region Water Authority in relation to waste

Anything done or purported to have been done under this Act by the Central Gippsland Region Water Authority before the commencement of section 8 of the **Water Legislation (Essential Services Commission and Other Amendments) Act 2003** that would have been validly done had that section been in operation has, and is deemed always to have had, the same force and effect as it would have had if that section had been in operation.

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S. 122
 repealed by
 No. 110/1997
 s. 16(6).

PART 7—GENERAL POWERS

123. Powers of Authorities

- (1) An Authority has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions, including any function delegated to it.
- (2) No other provision of this Act that confers a power on an Authority limits sub-section (1).

124. Particular powers of Authorities

- (1) The powers of an Authority that has a water supply district include the powers set out in Part 8.
- (2) The powers of an Authority that has a sewerage district include the powers set out in Part 9.
- (3) The powers of an Authority that has a waterway management district include any of the powers set out in any Division of Part 10 that applies to that Authority.
- (4) The powers of an Authority that has an irrigation district include the powers set out in Part 11.
- (5) An Authority is not obliged to perform any function conferred by this Act, unless this Act expressly provides otherwise.
- (6) It is a function of an Authority to construct, complete, operate and maintain any works of water supply, drainage or salinity mitigation for which funding is provided to it under any other Act or which, under any other Act, it is authorised or directed to construct, complete, operate or maintain.

S. 124(6)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.17),
 49/1994
 s. 5(1)(d),
 65/1995
 s. 22(f).

Water Act 1989
Act No. 80/1989

Part 7—General Powers

s. 125

S. 124(7)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.18),
 49/1994
 s. 5(1)(e).

- (7) It is a function of an Authority, subject to this Act, to supply water from its works to any person by agreement.

S. 124(8)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.19),
 49/1994
 s. 5(1)(f)(i)(ii),
 5/2002 s. 48.

- (8) In deciding whether to make an agreement to supply water, an Authority must have regard to the matters specified in section 40(1)(b) to (m), with any necessary modifications, and to any other matter that the Authority thinks fit to have regard to.

S. 124(9)
 inserted by
 No. 65/1995
 s. 18.

- (9) The powers of an Authority include the power to require vessels to be licensed if they are used on any of its works.

S. 124(10)
 inserted by
 No. 65/1995
 s. 18.

- (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.

S. 124(11)
 inserted by
 No. 65/1995
 s. 18.

- (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.

S. 124(12)
 inserted by
 No. 65/1995
 s. 18.

- (12) In sub-sections (10) and (11) "**business or activity**" includes the provision of consultancy and project management services.

125. Accountability of Authorities

An Authority must perform its functions and exercise its powers subject to any direction given by the Minister under section 307.

Water Act 1989
Act No. 80/1989

Part 7—General Powers

s. 126

126. Contracts and agreements

- (1) The power of an Authority to enter into contracts includes power to agree or contract with another Authority, a government department or any other public statutory body with respect to—
 - (a) the exercise by the Authority and the other party of their respective functions; or
 - (b) the carrying out or providing by either party for the other party of any works or services; or
 - (c) the use or joint use by the Authority and the other party of their respective facilities or the services of their respective staff.
- (2) An Authority may, at the request of any person and at the expense of that person—
 - (a) carry out, repair or alter any works; or
 - (b) carry out any survey or investigation; or
 - (c) do anything else—

connected with or incidental to the functions of the Authority.
- (3) An Authority may, with the Minister's approval, contract to provide to any person any works or services that are not connected with or incidental to any function of the Authority.

127. Commercial ventures

- (1) An Authority may, with the approval of the Minister—
 - (a) form or participate in the formation of a corporation, trust, partnership or other body; or
 - (b) subscribe for or otherwise acquire, and hold and dispose of, shares in or debentures or other securities of a corporation; or

S. 127(1)(a)
amended by
No. 50/1992
s. 5(a).

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Act No. 80/1989

Part 7—General Powers

- (c) become a member of a company limited by guarantee; or
 - (d) subscribe for or otherwise acquire, and hold and dispose of, units in a trust; or
 - (e) acquire, and hold and dispose of, an interest in a partnership or other body; or
 - (f) carry on or engage in any business transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority; or
 - (g) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person carrying on or engaged in, or about to carry on or engage in, any business or transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority.
- (2) An Authority must include in its annual report a report of—
- (a) the activities of any body formed by or in the formation of which the Authority participates under sub-section (1)(a); and
 - (b) any business transaction carried on or engaged in by the Authority under sub-section (1)(f); and
 - (c) the activities carried out by any partnership or under any arrangement entered into by the Authority under sub-section (1)(g).

S. 127(2)(a)
 amended by
 No. 50/1992
 s. 5(b).

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Act No. 80/1989

Part 7—General Powers

s. 128

128. Accident insurance

- | | |
|--|---|
| <p>(1) An Authority may enter into a contract to insure a member of the Authority or the spouse or domestic partner of a member of the Authority against accidents arising out of or in the course of—</p> <p style="margin-left: 40px;">(a) in the case of a member, the performance of his or her functions as a member; or</p> <p style="margin-left: 40px;">(b) in the case of the spouse or domestic partner of a member, accompanying the member in the performance of his or her functions as a member; or</p> <p style="margin-left: 40px;">(c) in the case of a member, his or her travelling by a reasonably direct route between his or her home and any other place, if the travelling is undertaken solely for the purpose of his or her performing at that other place his or her functions as a member; or</p> <p style="margin-left: 40px;">(d) in the case of the spouse or domestic partner of a member, travelling with the member in the circumstances described in paragraph (c).</p> | <p>S. 128(1) amended by No. 72/2001 s. 3(Sch. item 12.6(a)).</p> |
| <p>(2) If an Authority enters into such a contract with respect to its members or the spouses or domestic partners of its members generally, each member for the time being or his or her spouse or domestic partner must individually be taken to be insured under the terms of the policy in all respects as if he or she had personally entered into a policy of accident insurance on those terms, to have effect for so long as the member concerned remains a member.</p> | <p>S. 128(2) amended by No. 72/2001 s. 3(Sch. item 12.6(a)(b)).</p> |

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S. 128(3)
amended by
Nos 50/1992
s. 10(Sch.
item 11.20),
49/1994
s. 4(1)(j).

- (3) In this section, "**member**", in relation to an Authority, includes member of a committee established by the Authority.

129. Intellectual property

S. 129(1)
amended by
Nos 50/1992
s. 10(Sch.
item 11.21),
65/1995
s. 22(g).

- (1) An Authority may, with the approval of the Minister—
- (a) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights; or
 - (b) assign or grant licences in respect of those intellectual property rights, with or without charge; or
 - (c) enter into agreements and arrangements for the commercial exploitation of intellectual property rights.

* * * * *

S. 129(2)
amended by
No. 50/1992
s. 10(Sch.
item 11.22),
repealed by
No. 65/1995
s. 22(h).

130. Acquisition of land

- (1) An Authority may purchase or compulsorily acquire any land which is or may be required by the Authority for or in connection with, or as incidental to, the performance of its functions or the achievement of its objects.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
- (a) the **Water Act 1989** is the special Act; and
 - (b) the acquiring Authority is the Authority; and

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- (c) "**land**" includes—
- (i) any land that—
 - (A) is actually comprised by measurement in the land described in the Crown grant of the land; and
 - (B) forms part of the bed and banks of a watercourse; and
 - (C) is declared to remain the property of the Crown by section 385 of the **Land Act 1958**; and
 - (ii) strata above or below the surface of land and easements and rights to use land or strata above or below the surface of land.
- (3) If an Authority acquires any right in the nature of an easement or purporting to be an easement, that right must be taken to be an easement even though there is no land vested in the Authority which is benefited or capable of being benefited by that right.
- (4) If any land to be acquired by an Authority is held by a licensee or lessee of the Crown, the Authority must notify the Department Head of its intention to acquire the land, and must include in the notice a description of the land.
- (5) If a Crown grant is issued to any person of the land out of which, in respect of which or over which any land or easement has been compulsorily acquired, the land or easement so acquired must be taken to be exempted from the grant, and remains vested in the Authority.

S. 130(4)
 amended by
 No. 76/1998
 s. 29(e).

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S. 130(6)
 amended by
 No. 76/1998
 s. 29(e).

- (6) If any land acquired by an Authority is Crown land other than that referred to in sub-section (4), the Authority must, as soon as practicable after the acquisition, notify the Department Head of the acquisition.

131. Management of Crown land

- (1) The Governor in Council may, on the recommendation of the Minister and the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**, by Order published in the Government Gazette, declare that the Crown land specified in the Order is, subject to any conditions specified in the Order, placed under the management and control of the Authority specified in the Order.
- (2) The Governor in Council may, at any time and without compensation, by Order published in the Government Gazette, resume any Crown land specified in the Order that was by an Order under sub-section (1) placed under the management and control of an Authority and that is required for any public purpose or for any public highway.
- (3) An Authority may, at any time, subject to the approval of the Governor in Council, surrender to the Crown any Crown land that was, by an Order under sub-section (1), placed under the management and control of the Authority.
- (4) Any Crown land that is surrendered under sub-section (3) becomes, by virtue of that surrender, unalienated Crown land.

132. Other dealings with land

- (1) An Authority may, for or in connection with, or as incidental to, the performance of its functions—
 - (a) obtain a lease or licence over land; or
 - (b) exchange any land for any other land; or

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- (c) grant leases and licences; or
 - (d) grant easements over its land; or
 - (e) sell any land by public auction or public tender; or
 - (f) in accordance with any guidelines issued by the Minister, sell any land by private treaty.
- (2) If the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993** sells by private treaty or leases any land acquired by it at or near Lake Dartmouth for or in connection with the Dartmouth township or works for the construction of Dartmouth Reservoir, it must make any payments that the Minister determines to any public statutory body towards the cost of providing or maintaining services in the land.

S. 132(2)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.23),
 65/1995
 s. 22(i).

133. Power to enter land

- (1) An officer of an Authority or an authorised person may, subject to sub-section (4), enter any land for the purpose of—
- (a) reading a meter installed under section 142 or any corresponding previous enactment; or
 - (b) inspecting and measuring any septic tank system; or
 - (c) inspecting any works, or making any test, to find out whether this Act, the regulations and the by-laws of the Authority are being complied with; or
 - (d) carrying out any other function under this Act.
- (2) An officer of an Authority or an authorised person may, subject to sub-section (4) and after the Authority has given 7 days' notice in writing to the occupier, enter any land and carry out on that land

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any works that the Authority is empowered to carry out.

- (3) An Authority need not give the notice required by sub-section (2)—
 - (a) if the occupier consents to the entry and the carrying out of the works; or
 - (b) in an emergency.
- (4) An officer or authorised person must not, despite sub-sections (1) and (2), enter land that is used primarily for residential purposes except between 7.30 a.m. and 6 p.m. unless—
 - (a) the Authority has reasonable grounds for believing that this Act, the regulations or the Authority's by-laws are not being complied with by the occupier; or
 - (b) the occupier consents.

134. Obligations in relation to entry of land

- (1) In exercising the powers given by section 133, an officer or authorised person must—
 - (a) cause as little harm and inconvenience as possible; and
 - (b) not stay on the land for any longer than is reasonably necessary; and
 - (c) remove from the land on completing the works all plant, machinery, equipment, goods or temporary buildings brought onto the land by the officer or authorised person, other than anything that the owner or occupier of the land agrees may be left there; and
 - (d) leave the land as nearly as possible in the condition in which he or she found it; and

(e) co-operate as much as possible with the owner and occupier of the land.

(2) An Authority is not liable for nuisance or any other injury done, in exercising the powers given by section 133, to the land or residence of the person whose land is entered under that section.

135. Powers under Land Acquisition and Compensation Act 1986

The powers conferred by section 133 are in addition to powers conferred by the **Land Acquisition and Compensation Act 1986**.

136. Subdivisional easements and reserves

(1) If a proposal for subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may require the creation of easements or reserves, or both, for the use of the Authority for any of the following purposes—

- (a) pipelines or ancillary purposes;
- (b) channels;
- (c) carriageways;
- (d) waterway management;
- (e) drainage.

(2) The creation of an easement or a reserve for a purpose specified in sub-section (1) gives the Authority for whose use it is created the rights prescribed in relation to an easement or reserve created for that purpose.

137. Closing of roads

(1) An Authority may temporarily close to traffic a road, or any part of it, if it is necessary to do so for the carrying out of any works on the road, road reserve, footpath, nature strip or median strip.

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- (2) The Authority must give notice to the person responsible for maintaining the road—
 - (a) in writing 5 days before the closure, unless a shorter time is agreed by that person; or
 - (b) in an emergency, as soon as possible after the closure.

138. Ownership of works

- (1) Unless sub-section (2) applies, any works—
 - (a) that were, immediately before the commencement of this section, owned by an Authority; or
 - (b) that are, at that commencement, in the process of being constructed by an Authority; or
 - (c) that are, after that commencement, acquired, constructed or in the process of being constructed by an Authority—
 are owned by that Authority.
- (2) Works that are constructed by an Authority on behalf of another public body or of the owner or occupier of land are not owned by the Authority if this Act provides, or the parties agree, that the works are not owned by the Authority.

139. Abandonment of major works

- (1) An Authority must not abandon or decommission any of its major works without the approval of the Minister.
- (2) The Minister may issue guidelines as to what are "major works" for the purposes of sub-section (1).

S. 139(1)
 amended by
 No. 5/2002
 s. 49.

140. Preparation and inspection of plans

- (1) An Authority must make sure that plans of its districts are available for inspection at its offices.
- (2) Those plans—
 - (a) must be kept up to date; and
 - (b) must show the works of the Authority in the amount of detail that the Authority considers necessary.

141. Authority may reduce, restrict or discontinue water supply³¹

- (1) An Authority may reduce or restrict the quantity of water supplied to any person, or discontinue the supply of water to any person, if—
 - (a) the Authority is, because of a shortage of water or for any other unavoidable cause, unable to supply the quantity of water which would otherwise be supplied to the person; or
 - (b) the Authority believes that the reduction, restriction or discontinuance is necessary to avoid future water shortages; or
 - (c) any private works for the supply of water to the person—
 - (i) are, in the opinion of the Authority, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 150 and not complied with by the time specified or allowed under that section; or
 - (ii) do not, in the opinion of the Authority, comply with the regulations; or

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- (d) the person contravenes this Act, the regulations or the Authority's by-laws in relation to the misuse of water supplied to the person by the Authority; or
 - (e) the person contravenes this Act, the regulations or the Authority's by-laws in relation to the taking of water; or
 - (f) the person refuses entry to an authorised officer who intends to exercise powers conferred by or under this Act to investigate any suspected contravention referred to in paragraph (d) or (e); or
 - (g) the person refuses or fails to pay any money due to the Authority for the supply of water to the person.
- (2) An Authority must reduce the supply of water under sub-section (1)(a) or (b) to all persons in the same proportion unless the Minister is of the opinion that the circumstances are so extreme as to justify some other basis.
 - (3) An Authority that reduces, restricts or discontinues the supply of water to a person may reduce or waive any amount of money payable to it for the supply of water to the person.
 - (4) An Authority that reduces, restricts or discontinues the supply of water to a person in accordance with this section is not liable to any claim or demand in respect of the reduction, restriction or discontinuance.
 - (5) An Authority that restricts or discontinues the supply of water to a person under sub-section (1)(c), (d), (e), (f) or (g) may charge a fee for removing the restrictor or recommencing that supply.

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s. 142

- (6) An Authority may reduce or restrict the quantity of water supplied to a person or discontinue the supply of water to a person under sub-section (1)(c), (d), (e), (f) or (g) if it decides that the required circumstances exist, whether or not it has been proved to the satisfaction of a court that those circumstances do exist.
- (7) A person may apply to the Tribunal for review of the Authority's decision to discontinue the supply of water to the person under sub-section (1)(d) or (e). S. 141(7)
amended by
No. 52/1998
s. 311(Sch. 1
item 105.17).
- (8) An application for review must be made within 28 days after the later of— S. 141(8)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.18).
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

142. Water meters

- (1) An Authority may—
 - (a) provide or install, and maintain, a meter on any land to measure the amount of water supplied by the Authority to any land; and
 - (b) position the meter on the land as it considers appropriate.
- (2) If an Authority believes that a meter on any land connected to its system is functioning inaccurately, the Authority may compute the quantity of water supplied to the land during a specific period—

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S. 143
 amended by
 No. 121/1994
 s. 189(1)(a).

- (a) by having regard to the quantity of water delivered to the land in any previous or subsequent period or periods, or the quantity of water delivered to any similar property during the period concerned; or
- (b) in any other way that is prescribed.
- (3) A meter provided or installed by an Authority remains the property of that Authority.

143. Waste and misuse of water supply³²

- (1) A person who receives a supply of water must not—
 - (a) after receiving a warning notice from an Authority, deliberately cause or negligently allow the water to be wasted, misused or excessively consumed; or
 - (b) if the water is supplied by agreement for a specific purpose, use the water for a different purpose; or
 - (c) if the water is supplied for domestic and stock purposes, use the water for a different purpose.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (d) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or
- (e) if no notice of contravention is served, after conviction of the person for the offence.

S. 143(1)(d)
 amended by
 No. 121/1994
 s. 189(1)(b).

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- (2) In this section "**Authority**" includes licensee.

S. 143(2)
inserted by
No. 121/1994
s. 189(1)(c).

144. Serviced properties

- (1) An Authority may, by notice in writing, declare any land to be a serviced property for the purposes of this Act if—

- (a) in the case of land within a water district, the Authority has made provision for water supply services to the land; or
- (b) in the case of land within a sewerage district, the Authority has made provision for sewerage services to the land; or
- (c) the land is within the Authority's irrigation district and the Authority has made provision for irrigation of the land or for drainage or salinity mitigation services; or
- (d) the land is within the Authority's waterway management district and the Authority has made provision for regional drainage or floodplain management services that are of direct benefit to that land;

S. 144(1)(c)
amended by
No. 50/1992
s. 7(j).

S. 144(1)(d)
amended by
Nos 50/1992
s. 7(k)(i),
65/1999
s. 3(1).

* * * * *

S. 144(1)(e)
repealed by
No. 50/1992
s. 7(k)(ii).

- (2) A notice under sub-section (1) must be—

- (a) served on the owner of the land; and

S. 144(2)(a)
amended by
Nos 12/1996
s. 4(2),
65/1999
s. 3(2).

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- (b) published in a newspaper circulating generally in the area concerned; and
- (c) sent to any council that is likely to be affected.
- (3) An Authority must make sure that a copy of the notice is available for inspection at its offices.
- (4) The notice must—
 - (a) define the locality to which it applies; and
 - (b) in the case of land within a water district or a sewerage district, specify the services available; and
 - (c) generally identify the properties to which the services are available, or which are within the waterway management district and which are directly benefited by regional drainage or floodplain management services provided by the Authority, or which are within the irrigation district and for which the Authority has made provision for irrigation, drainage or salinity mitigation services; and
 - (d) fix a date on and from which the land must be taken to be a serviced property for the purposes of this Act.

S. 144(4)(c)
 amended by
 Nos 50/1992
 s. 7(l), 65/1999
 s. 3(3).

145. Control over connections^{33, 34}

- (1) A person must not, without an Authority's consent, cause or permit—
 - (a) any works to be connected to the works of the Authority; or
 - (b) the alteration or removal of any works that are connected to the works of the Authority; or

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- (c) anything to be discharged into the works of the Authority.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (d) after service of a notice of contravention on the person under section 151; or
- (e) if no notice of contravention is served, after conviction of the person for the offence.
- (2) An application for the Authority's consent must be made in the manner determined by the Authority, and must be accompanied by any fee fixed by by-law and any plans and other information that the Authority requires.
- (3) The Authority may—
- (a) refuse its consent; or
- (b) consent; or
- (c) consent subject to any terms and conditions it thinks fit.
- (4) A person who causes or permits anything referred to in sub-section (1) to be done must make sure that it is done in accordance with any terms and conditions subject to which the Authority gave its consent.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for that consent.

146. Diversion into works of an Authority

A person must not, without the consent of an Authority, divert any surface water from one catchment to another catchment from where it may drain, directly or indirectly, into any works of the Authority.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day for which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

147. Notice to connect

- (1) An Authority may, by notice to the owner of a serviced property, require the owner—
 - (a) to connect the property to the Authority's works; or
 - (b) to remove any existing connection between that property and the Authority's works; or
 - (c) to carry out any work that the Authority considers necessary for the provision of the service—

within the time specified in the notice, or any longer time allowed by the Authority.

- (2) An Authority may, by notice to the owners of a group of properties, require the owners to connect the properties by a combined connection to the Authority's works within the time specified in the notice, or any longer time allowed by the Authority.
- (3) A notice under sub-section (1) or (2) must be served on the owner of each property required to be connected.
- (4) The owner of a property to which a notice applies must comply with the notice within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

- (5) If an owner of a property to which a notice applies does not comply with the notice within the time specified, or any longer time allowed by the Authority, the Authority may—
 - (a) do the things the owner was required by the notice to do; and

- (b) recover from the owner its reasonable costs of doing so, other than costs that are prescribed to be the responsibility of the Authority.

148. Structures over works

- (1) A person must not, without an Authority's consent, cause or permit³⁵—
 - (a) any structure to be built, or any filling to be placed, on land over which—
 - (i) an easement exists in favour of the Authority; or
 - (ii) an easement exists for water supply, sewerage or drainage purposes; or
 - (b) any structure to be built, or any filling to be placed, within 1 metre laterally of any works of the Authority; or
 - (c) any structure to be built above or below any area prohibited by paragraph (b); or
 - (d) any soil, rock or other matter that supports, protects or covers any works of the Authority to be removed.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (e) after service of a notice of contravention on the person under section 151; or
- (f) if no notice of contravention is served, after conviction of the person for the offence.

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- (2) An application for the Authority's consent must be made in the manner determined by the Authority, and must be accompanied by any plans and other information that the Authority requires.
 - (3) The Authority may—
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions it thinks fit.
 - (4) A person who, with the consent of an Authority, causes or permits anything referred to in subsection (1) to be done must make sure that the thing is done in accordance with any terms and conditions subject to which the Authority gave its consent.
- Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.
- For a subsequent offence, 40 penalty units or imprisonment for 6 months.
- For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for the consent.
-

149. Removal of trees³⁶

- (1) An Authority may, by notice in writing, require the owner of any property to remove any tree on that property if the Authority reasonably decides that the tree is obstructing or damaging the Authority's works or that it is likely to obstruct or damage them.
- (2) If the tree required to be removed is not on land over which—
 - (a) an easement exists in favour of the Authority; or
 - (b) an easement exists for water supply, sewerage or drainage purposes—

the Authority must, subject to sub-section (7), pay appropriate compensation to the owner of the property in accordance with Part 5 of the **Land Acquisition and Compensation Act 1986**.
- (3) The owner may, within 7 days after receiving a notice to remove a tree, object to the Authority.
- (4) An Authority must take into account any objection made to it.
- (5) If the owner refuses or fails to comply with the notice—
 - (a) within the time specified in the notice; or
 - (b) if the owner has objected, within 7 days after he or she receives notice from the Authority that the objection is not upheld; or
 - (c) within any longer time allowed by the Authority—

the Authority may, after giving 21 days' notice of its intention to do so, remove the tree and recover from the owner the reasonable costs of the removal.

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- (6) The Authority may recover from the owner the cost of any repairs to the Authority's works that are necessary to repair the damage caused by a tree that is removed by the owner or the Authority after service of a notice under sub-section (1).
- (7) An Authority is not liable to pay compensation for the removal of a tree that is planted after the completion of the works of the Authority that are obstructed, damaged or at risk.
- (8) An owner may apply to the Tribunal for review of a decision by an Authority not to uphold the owner's objection to a notice to remove a tree. S. 149(8) substituted by No. 52/1998 s. 311(Sch. 1 item 105.19).
- (9) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given. S. 149(9) inserted by No. 52/1998 s. 311(Sch. 1 item 105.19).

150. Notice to repair³⁷

- (1) An Authority may, by notice in writing to the owner of land, require the owner to repair or carry out maintenance on, within the time specified in the notice or any longer time allowed by the Authority, any works on that land or that connect the land to the works of the Authority or that are necessary for any service provided to the land by the Authority.

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S. 150(1A)
 inserted by
 No. 39/1996
 s. 11(2).

- (1A) However, an Authority may not require an owner of land to do any repair or maintenance work that a plumbing inspector could, under Part 12A of the **Building Act 1993**, require a plumber to do under a rectification notice or the owner to do under a plumbing notice or order.
- (2) If land is connected to the works of the Authority by a combined connection, a notice to repair may be served on any or all of the owners of that land.
- (3) An owner on whom a notice to repair is served must comply with the notice within the time specified in it, or any longer time allowed by the Authority.
 Penalty: 20 penalty units.
- (4) If a notice to repair is not complied with within the time specified in it, or any longer time allowed by the Authority, the Authority may carry out the required repairs and recover its reasonable costs from each owner on whom the notice was served, other than costs that are prescribed to be the responsibility of the Authority.

151. Notice of contravention³⁸

- (1) An Authority may, by notice in writing to a person who contravenes—
 - (a) this Act, the regulations or the Authority's by-laws; or
 - (b) a requirement made by the Authority under this Act; or
 - (c) a condition of a licence issued under this Act; or

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- (d) a prescription of an approved management plan for a water supply protection area—

S. 151(1)(d)
amended by
No. 5/2002
s. 50.

require that person, or the owner of any property in relation to which the contravention occurs, to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Authority, to remedy the contravention.

- (2) A person on whom a notice of contravention is served must make sure that the notice is complied with within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

- (3) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Authority, the Authority may—
- (a) carry out any works and take any other action it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served; and
 - (b) remove or disconnect any service to the property in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served; and
 - (c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice.

152. Notice of intention to affect works

- (1) An Authority that intends to do anything that will affect the works of another Authority or a public statutory body must, except in an emergency or with the consent of that Authority or public statutory body to a shorter period, give 14 days' notice of its intention to that other Authority or public statutory body.
- (2) If the other Authority or public statutory body notifies the Minister of its objection to the proposal, the matter must be resolved in accordance with section 154.
- (3) An Authority that, in an emergency, affects the works of another Authority or a public statutory body must, as soon as practicable after the works are affected, notify the other Authority or public statutory body.
- (4) This section does not apply to the closure of a road, or any part of it, under section 137.

153. Notice to alter or remove works³⁹

- (1) An Authority that intends to do anything that affects the works of another Authority or a public statutory body may, by notice in writing, require the other Authority or public statutory body to alter or remove those works in the way, and within the time, specified in the notice.
- (2) If the other Authority or public statutory body notifies the Minister of its objection to the notice, the matter must be resolved in accordance with section 154.

154. Determination of disputes⁴⁰

- (1) The Minister may determine any dispute that arises between Authorities over a notice under section 152 or 153 and that determination is binding on the parties and is final.
- (2) The Minister may refer to the Governor in Council any dispute that arises between an Authority and any other public statutory body (other than another Authority) over a notice under section 152 or 153, and that determination of the Governor in Council is binding on the parties and is final.
- (3) A determination under this section may include the allocation or apportionment of costs.

155. Compensation for damage

- (1) An Authority must cause as little damage and inconvenience as possible in the performance of its functions.
- (2) An Authority is liable, unless this Act specifically provides otherwise, to compensate any person who has—
 - (a) sustained any pecuniary loss; or
 - (b) incurred any expense—
 as a direct, natural and reasonable consequence of the performance of the Authority's functions.
- (3) An Authority is not liable to compensate a person for consequential loss.
- (4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.
- (5) This section does not apply to any injury, damage or loss to which section 157 applies.

156. Authority may send water into waterway etc.

- (1) An Authority may send water into any waterway, works or natural channel which crosses any land.
- (2) An Authority with functions under Part 8 and Part 11 which exercises its powers under sub-section (1) must—
 - (a) construct and maintain any bridge or other crossing made necessary by the introduction of the water; or
 - (b) if alternative access is available to the land, pay compensation to the owner of the land.
- (3) The obligation of the Authority to maintain any crossing under sub-section (2)(a) ceases if any area of land connected by the crossing to any other land ceases at any time to be owned by the person who, at that time, owns that other land.
- (4) The owner of the land may apply to the Tribunal for review of the decision of the Authority as to—
 - (a) the number, type and position of any crossings to be constructed; or
 - (b) the amount of compensation to be paid.
- (5) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 156(4)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.20).

S. 156(5)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.21).

157. Liability of Authorities arising out of flow of water⁴¹

(1) If—

(a) as a result of intentional or negligent conduct on the part of an Authority in the exercise of a function under Part 8, Division 2, 3 or 5 of Part 10, or Part 11 or any corresponding previous enactment, a flow of water occurs from its works onto any land; and

(b) the water causes—

(i) injury to any other person; or

(ii) damage to the property (whether real or personal) of any other person; or

(iii) any other person to suffer economic loss—

the Authority is liable to pay damages to that other person in respect of that injury, damage or loss.

(2) If it is proved in a proceeding brought under sub-section (1) that water has flowed from the works of an Authority onto any land, it must be presumed that the flow occurred as a result of intentional or negligent conduct on the part of the Authority unless the Authority proves on the balance of probabilities that it did not so occur.

(3) For the purposes of a proceeding brought under sub-section (1)—

(a) a flow of water is to be taken to have occurred as a result of intentional conduct on the part of an Authority if the flow—

(i) was designed or intended by the Authority; or

(ii) inevitably and without intervening cause resulted from the exercise of a power by the Authority; and

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- (b) in determining whether or not a flow of water occurred as a result of negligent conduct on the part of an Authority, account must be taken of all the circumstances including any omission or failure, in the planning, design, construction, maintenance or operation of the works, to provide reasonable standards of capacity or efficiency or exercise reasonable care or skill having regard to the following matters—
- (i) the state of scientific knowledge and knowledge of local conditions at any relevant time;
 - (ii) the nature and situation of the works;
 - (iii) the service to be provided by the works;
 - (iv) the circumstances and cost of—
 - (A) the works; and
 - (B) the maintenance and operation of the works; and
 - (C) works which it would have been necessary to construct to avoid the occurrence of any relevant injury, damage or loss.
- (4) The following provisions apply with respect to a proceeding brought under sub-section (1)—
- * * * * *
- (b) the proportion (if any) of the responsibility of the Authority for the injury, damage or loss must be assessed and only that proportion of the assessed damages must be awarded against the Authority;

S. 157(4)(a)
 repealed by
 No. 52/1998
 s. 311(Sch. 1
 item 105.22).

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- (c) in assessing damages in respect of damage to property or economic loss the measure of damages is the direct pecuniary injury to the person bringing the proceeding by the loss of something of substantial benefit accrued or accruing and does not include remote, indirect or speculative damage;
- (d) if damages are assessed in the proceeding in respect of any continuing cause of action, they may, in addition to being assessed down to the time of assessment, be assessed in respect of all future injury, damage or loss and, if so, the Authority is not liable to pay any further damages in respect of that injury, damage or loss;

* * * * *

**S. 157(4)
 (e)–(g)
 repealed by
 No. 52/1998
 s. 311(Sch. 1
 item 105.22).**

- (h) a person, not being a party, in whose favour a determination is made may enforce the determination by the same means as if the person were a party.

158. Information statements

- (1) Any person may apply to an Authority for an information statement in relation to any land that is within a district of the Authority or its area of interest.
- (2) An application must—
 - (a) be in writing; and
 - (b) be in a form approved by the Authority; and
 - (c) be accompanied by the fee fixed by the Authority for applications under this section; and

**S. 158(2)(c)
 amended by
 No. 110/1997
 s. 18.**

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- (d) state the name and address of the applicant; and
 - (e) contain a description sufficient to identify the land in relation to which the information statement is required.
- (3) An Authority to which an application is made must issue to the applicant a statement that gives details of the following things in relation to the described land arising from the performance of any of the Authority's functions under this or any other Act—
- (a) any encumbrance affecting the land, other than—
 - (i) an encumbrance that would be disclosed by search at the Office of Titles or the Office of the Registrar-General; and
 - (ii) a matter required to be included in any other statement or certificate under this Act;
 - (b) any works that are required to be carried out (whether deferred by the Authority or not) or any matters that are outstanding and in respect of which the Authority has served any notice, made any resolution, exercised any discretion or entered into any agreement under this Act;
 - (c) any relevant tariff or other charge, including any amounts outstanding.
- (4) The Authority may also include in the statement any other information concerning the land that the Authority in its absolute discretion considers relevant.
- (5) The statement must be signed by a person who is authorised by the Authority to do so.
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- (6) The Authority does not incur any liability in respect of any information that it provides in good faith under sub-section (4).

159. 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
- (b) to each prescribed person; and
- (c) within a prescribed period.

Penalty: 10 penalty units.

160. By-laws

- (1) An Authority may, subject to section 161, make by-laws for or with respect to—
- (a) the management, protection and use of all lands, waterways and works under the Authority's management and control; and
 - (b) the management, protection and use of environmental and recreational areas under the Authority's management and control; and
 - (c) sanitary drainage plans held by water authorities, including—
 - (i) the lodging of plans of sanitary drains as they appear after they have been installed or altered; and
 - (ii) specifying the details that the plans must contain; and
 - (iii) the providing of the copies of the plans; and
 - (iv) fixing fees for the lodging, copying and viewing of the plans;

S. 160(1)(c)
substituted by
No. 39/1996
s. 12(1).

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- (d) (in the case of an Authority authorised by the Minister to do so) prescribing standards for any saline matter (whether in liquid form or not) that may be discharged—
 - (i) into works under its control; or
 - (ii) into any waterway; or
 - (iii) onto any place from which it may enter into—
 - (A) any works under the control of the Authority; or
 - (B) any waterway; or
 - (C) any aquifer; or
 - (D) any bore; and
 - (e) (in the case of an Authority authorised by the Minister to do so) regulating or prohibiting the clearing of land within 20 metres of a channel which is under the control of the Authority; and
 - (f) generally prescribing anything that is authorised or required to be prescribed by by-laws or that is necessary or convenient for performing the functions of the Authority under this Act.
- (2) A power conferred by this Act to make by-laws may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
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- (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
 - (3) By-laws made under this Act may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the by-laws to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to adopt any model by-law issued by the Minister; or
 - (d) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method
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formulated, issued, prescribed or published by any person whether—

- (i) wholly or partially or as amended by the by-laws; or
 - (ii) as formulated, issued, prescribed or published at the time the by-laws are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
- (e) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
- (f) so as to provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the by-laws, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (g) so as to impose a penalty for a contravention of the by-laws, not exceeding 20 penalty units and, in the case of a continuing offence, an additional penalty not exceeding 5 penalty units for each day on which the offence continues—
- (i) after service of a notice of contravention on the person under section 151; or
 - (ii) if no notice of contravention is served, after conviction of the person for the offence.
- (4) By-laws made under this Act may prescribe a fee by reference to a number (whether whole or fractional) of charge units and that fee may be determined by multiplying the number of charge

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units by a number of dollars fixed by resolution of the Authority.

- (5) For the purposes of sub-section (1) land acquired for the purposes of the **Murray-Darling Basin Act 1982** or for the purposes of works carried out or to be carried out under that Act or under any agreement ratified by that Act must be taken to be under the management and control of the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993**.
- (6) References in sub-section (5) to the **Murray-Darling Basin Act 1982** include references to any corresponding previous enactment.

S. 160(5)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.24),
 65/1995
 s. 22(j).

161. Approval, notice and availability of by-laws

- (1) A by-law made by an Authority under section 160 has no effect until—
 - (a) it is approved by the Minister, other than in the case of a by-law that adopts a model by-law issued by the Minister and does nothing else; and
 - (b) notice of the making of the by-law has been published—
 - (i) in the Government Gazette; and
 - (ii) in a newspaper circulating generally in the area concerned.
- (2) A notice under sub-section (1)(b) must state—
 - (a) the contents, or a summary of the contents, of the by-law; and
 - (b) that a copy of the by-law may be inspected, free of charge, at the office of the Authority during business hours.

S. 161A
 inserted by
 No. 79/1995
 s. 36.

S. 161A(2)
 def. of
 "generation
 company"
 amended by
 No. 69/2000
 s. 65(5),
 repealed by
 No. 11/2002
 s. 3(Sch. 1
 item 66.2).

(3) The Authority must make sure that—

- (a) a copy of the by-law is available for inspection as stated in the notice; and
- (b) copies of the by-law are available for purchase by members of the public.

161A. Limitation of exercise of powers under this Part

(1) An Authority must not exercise its functions or powers under this Part in a manner which is inconsistent with any provision of an Order granting a declared bulk water entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

(2) In sub-section (1)—

"declared bulk water entitlement" means a bulk water entitlement in respect of which a declaration under section 185(3) has been made;

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PART 8—WATER SUPPLY

162. Application of this Part

This Part applies to an Authority that has a water district.

163. Functions of Authorities

- (1) An Authority that has a water district has the following functions—
 - (a) to provide, manage, operate and protect water supply systems, including the collection, storage, treatment, transfer and distribution of water;
 - (b) to identify community needs relating to water supply and to plan for the future needs of the community relating to water supply;
 - (c) to develop and implement programs for the conservation and efficient use of water;
 - (d) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to water supply;
 - (e) to educate the public about any aspect of water supply.
- (2) An Authority must perform its functions in an environmentally sound way, having regard to the need to preserve aspects which have landscape and fauna and flora values.

164. Exercise of functions of Authority outside its district

- (1) An Authority may, subject to sub-section (2), exercise its functions outside its district, including outside the State.
- (2) An Authority must not provide a service outside its district without the approval of the Minister.

165. Fire plugs and free water

- (1) A council may require an Authority that has a water district situated wholly or partly within the council's municipal district to fix fire plugs to any of the works of the Authority within the water district in suitable locations for the supply of water for fire-fighting purposes.
- (2) A council must meet the costs of providing, installing, marking and maintaining all fire plugs that the council requires under sub-section (1) to be installed in its municipal district.
- (3) An Authority may provide, install, mark and maintain any extra fire plugs that it thinks necessary or that are requested by a landowner, either at its own cost or at the cost of the landowners benefited by them.
- (4) An Authority must—
 - (a) keep all fire plugs in its water district in working order; and
 - (b) provide conspicuous markers for fire plugs supplied by it; and
 - (c) make sure that at all times water is available without charge from fire plugs in its water district for cleaning sewers and drains, unless the water is unavailable due to a shortage of water or another unavoidable cause, or due to repairs.

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- (5) Sub-section (4)(a) does not require an Authority to make sure that water pressure is adequate for fire fighting.

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S. 166
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.25),
 49/1994
 s. 4(1)(k),
 repealed by
 No. 46/2003
 s. 59(1).⁴²

167. Power to enter land for water supply protection

- (1) An officer of an Authority or an authorised person may enter any land for the purposes of water supply protection.
- (2) Sections 133 and 134 apply in relation to the entry of land under sub-section (1) as if that entry were made under section 133(1).

168. Immediate action for water supply protection

An Authority may, immediately and without notice, remove from—

- (a) any land that is adjacent to any waterway or works forming part of the Authority's water supply system; or
- (b) any water in or adjacent to any such waterway or works—

any substance or thing that is, in the Authority's opinion, likely to affect the purity of the Authority's water supply system.

169. Notice of contravention for water supply protection

- (1) Subject to sub-section (2), an Authority may, by notice in writing to any person, require—
 - (a) that an activity carried out on any land owned or occupied by that person be discontinued; or
 - (b) the removal of any substance or thing—
 if the carrying out of the activity, or the presence of the substance or thing, is, in the opinion of the Authority, likely to affect the purity of the Authority's water supply system.
- (2) A notice under sub-section (1) may not require the discontinuance of any activity or the removal of any substance or thing if the carrying out of the activity or the presence of the substance or thing is specifically authorised by or under this or any other Act.
- (3) Section 151 applies to a notice under sub-section (1) as if it were a notice of contravention under section 151(1).

170. Body corporate primarily liable for water supplied to subdivision

- (1) A body corporate of a subdivision to which water is supplied under this Part is liable to pay any fees imposed under a tariff—
 - (a) fixed according to the extent of use of water supply service, in respect of the land affected by the body corporate; and
 - (b) in respect of the common property, or any part of the common property, affected by the body corporate.

S. 170(1)
 substituted by
 No. 48/1991
 s. 74(1).

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|---|--|
| <p>(1A) Instead of requiring a body corporate to pay any fees imposed under a tariff referred to in sub-section (1), an Authority may apportion the amount for which the body corporate would otherwise be liable between the lots affected by it, on the basis of—</p> <p style="padding-left: 40px;">(a) the number of lots affected by it; or</p> <p style="padding-left: 40px;">(b) the lot liability of each lot affected by it—</p> <p style="padding-left: 40px;">and the owners of each lot to which an amount is apportioned are liable to pay it accordingly.</p> | <p>S. 170(1A)
 inserted by
 No. 48/1991
 s. 74(2).</p> |
| <p>(1B) A body corporate may request an Authority to use lot liability when apportioning amounts under sub-section (1A).</p> | <p>S. 170(1B)
 inserted by
 No. 48/1991
 s. 74(2).</p> |
| <p>(1C) The request must—</p> <p style="padding-left: 40px;">(a) be in writing;</p> <p style="padding-left: 40px;">(b) give details of lot liability for each lot affected by the body corporate.</p> | <p>S. 170(1C)
 inserted by
 No. 48/1991
 s. 74(2).</p> |
| <p>(1D) A body corporate that makes a request under sub-section (1B) must give written notice to an Authority of any change in lot liability of any lot affected by it as soon as possible after the change occurs.</p> | <p>S. 170(1D)
 inserted by
 No. 48/1991
 s. 74(2).</p> |
| <p>(1E) If requested to do so in accordance with this section, an Authority must use the lot liability method in apportioning an amount to which a body corporate would otherwise be liable in respect of amounts payable for the year following the year in which the request is made and each subsequent year, and may base the apportionment on information given to it by the body corporate under this section.</p> | <p>S. 170(1E)
 inserted by
 No. 48/1991
 s. 74(2).</p> |
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S. 170(1F)
 inserted by
 No. 48/1991
 s. 74(2).

(1F) If a subdivision has more than one body corporate and the Authority considers it impracticable to determine how much water is supplied to the land affected by each body corporate it may—

- (a) under sub-section (1), treat one of those bodies corporate as being the only body corporate for the subdivision; and
- (b) under sub-section (1A), apportion the amount for which that body corporate would otherwise be liable between all the lots in the subdivision.

S. 170(2)
 amended by
 No. 48/1991
 s. 74(3)(a)(b).

(2) Any fees imposed under a tariff on the owner of a lot affected by a body corporate (other than a lot used primarily for residential purposes) must be offset against the amount for which the body corporate is liable under sub-section (1).

S. 170(2A)
 inserted by
 No. 48/1991
 s. 74(4).

(2A) Any amount for which an owner of a lot is liable under sub-section (1A) must be offset against the amount for which the body corporate affecting that lot is liable under sub-section (1).

(3) The liability imposed by sub-section (1) does not relieve any other person from liability to pay the fees imposed under a tariff on, and the charges payable by, that person.

(4) Terms used in this section have the same meaning as in the **Subdivision Act 1988**.

S. 170A
 inserted by
 No. 90/2003
 s. 6.

170A. Preparation and adoption of permanent water saving plan

(1) An Authority must prepare a permanent water saving plan and submit that plan to the Minister for approval on or before the date specified by the Minister.

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- (2) The Minister may, by notice served on the Authority, give directions or issue guidelines concerning the form of, and the information to be contained in, such a plan.
 - (3) In preparing a plan, an Authority must—
 - (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
given or issued by the Minister under sub-section (2).
 - (4) Without limiting sub-section (2), a plan must contain a Schedule setting out restrictions or prohibitions on the use of water in any area, or a specified part of any area, in respect of which the Authority has the function of providing a water supply system.
 - (5) Without limiting sub-section (4), a restriction may require a use of water to be approved by a specified person or a specified class of person.
 - (6) Before submitting a plan to the Minister under sub-section (1), an Authority must ensure that a notice in accordance with sub-section (7) is published in the Government Gazette and a newspaper circulating generally in any area capable of being affected by the plan.
 - (7) A notice must—
 - (a) summarise the restrictions and prohibitions proposed by the plan;
 - (b) specify where a copy of the proposed plan can be obtained;
 - (c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under sub-section (6)) as is specified in the notice.
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S. 170B
 inserted by
No. 90/2003
s. 6.

- (8) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any variations to the proposed plan that the Authority thinks fit are made, before the proposed plan is submitted to the Minister under sub-section (1).
- (9) An Authority must adopt a plan as approved by the Minister under sub-section (1).

170B. Variation of plan

- (1) An Authority may at any time, in accordance with this section, make any variations to an adopted permanent water saving plan that it thinks fit.
- (2) Before making any variation to an adopted plan, an Authority must submit the proposed variation to the Minister for approval.
- (3) The Minister may at any time, by notice served on the Authority, require an Authority to review a permanent water saving plan and submit a revised plan to the Minister for approval on or before the date specified by the Minister.
- (4) In preparing a variation to an adopted plan or a revised plan, an Authority must—
 - (a) comply with any written directions; and
 - (b) have regard to any written guidelines—
 given or issued by the Minister under section 170A(2) concerning the form of, and the information to be contained in, a permanent water saving plan.
- (5) Except with the approval of the Minister, before submitting a proposed variation or revised plan to the Minister under sub-section (2) or (3), an Authority must ensure that a notice in accordance with sub-section (6) is published in the Government Gazette and a newspaper circulating

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generally in any area capable of being affected by the proposed variation or revised plan.

- (6) A notice must—
 - (a) summarise the proposed variation or revised plan;
 - (b) specify where a copy of the proposed variation or revised plan can be obtained;
 - (c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under sub-section (5)) as is specified in the notice.
- (7) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any changes to the proposed variation or changes to the proposed revised plan that the licensee thinks fit are made, before the proposed variation or revised plan is submitted to the Minister under sub-section (2) or (3).
- (8) An Authority must vary a permanent water saving plan, or adopt a revised permanent water saving plan, as approved by the Minister under sub-section (2) or (3).

170C. Major deviations from plan

- (1) An Authority must not make a major deviation from a permanent water saving plan.
- (2) The Minister may issue guidelines as to what are major deviations for the purposes of sub-section (1).

S. 170C
 inserted by
 No. 90/2003
 s. 6.

s. 170D

S. 170D
 inserted by
 No. 90/2003
 s. 6.

170D. Copy of plan

- (1) The permanent water saving plan of an Authority at any time is that plan adopted in accordance with section 170A or 170B(8), as varied under section 170B at that time.
- (2) An Authority must ensure that an up to date copy of its permanent water saving plan is available at its offices during business hours for inspection on request.

S. 170E
 inserted by
 No. 90/2003
 s. 6.

170E. Implementation of plan

- (1) An Authority must implement immediately—
 - (a) a permanent water saving plan adopted by the Authority in accordance with section 170A or 170B(8);
 - (b) a variation to an adopted permanent water saving plan referred to in paragraph (a).
- (2) Implementation involving the imposition or removal of restrictions or prohibitions on the use of water in an area may be effected by the Authority publishing a notice in the Government Gazette and a newspaper circulating generally in the area specifying—
 - (a) the restrictions or prohibitions imposed or being substituted or removed; and
 - (b) the area to which they apply or applied; and
 - (c) the time from which they apply or cease to apply, not being earlier than the latest day on which the notice is published.

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- (3) A person cannot be convicted of an offence against section 170F in respect of a contravention of a restriction or prohibition on the use of water contained in a permanent water saving plan if prior to the relevant time notice of the particular restriction or prohibition had not been published in accordance with sub-section (2).

170F. Contravention of plan

S. 170F
inserted by
No. 90/2003
s. 6.

- (1) A person who receives a supply of water from an Authority must not, after receiving a warning notice from the Authority, contravene a restriction or prohibition on the use of that water contained in a permanent water saving plan of the Authority.

Penalty: For a first offence, 10 penalty units;
 For a subsequent offence, 20 penalty units.

- (2) A person who is guilty of an offence under sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 2 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—
- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction.

Note: Section 296(1) sets out who may prosecute an offence under sub-section (1).

s. 170G

S. 170G
 inserted by
 No. 90/2003
 s. 6.

170G. Inconsistency

- (1) If there is an inconsistency between a restriction or prohibition in a by-law and a permanent water saving plan applying to a person who receives a supply of water from an Authority, the person must comply with the restriction or prohibition in the by-law.
- (2) A restriction or prohibition in a permanent water saving plan is of no effect to the extent of that inconsistency.

S. 171
 amended by
 No. 90/2003
 s. 5 (ILA
 s. 39B(1)).

171. By-laws

- (1) An Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to—
 - (a) regulating, restricting or prohibiting the use of water, either generally or for any specific purpose; and
 - (b) providing for the publication of notices announcing any restrictions or prohibitions; and
 - (c) prescribing ways of measuring water supply by meter or other measuring device, including ways of calculating water use by reading a meter after the ending of the charging period; and
 - (d) prescribing ways of determining the quantity of water supplied to land, other than by a meter or other measuring device; and
 - (e) prohibiting any act which could cause wastage of water; and

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- (f) regulating or prohibiting any activity that—
 - (i) is carried out within 40 metres of works or waterways forming part of the Authority's water supply system; and
 - (ii) may affect that system; and
 - (g) prohibiting people who are not entitled to water supply from using water from the Authority's works; and
 - (h) regulating or prohibiting the access to or use of land and works under the management and control of the Authority; and
 - (i) regulating the use of water for fire-fighting purposes; and
 - (j) any other matter or thing for which it is necessary or convenient for the Authority to make by-laws.
- (2) A penalty imposed for a contravention of a by-law made under sub-section (1)(a) must not exceed—
- (a) for a first offence, 40 penalty units or imprisonment for 3 months; and
 - (b) for a subsequent offence, 80 penalty units or imprisonment for 6 months—
- and, in the case of a continuing contravention, an additional penalty not exceeding 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units)—
- (c) after service of a notice of contravention on the person under section 151; or
 - (d) if no notice of contravention is served, after conviction of the person for the offence.

S. 171(2)
inserted by
No. 90/2003
s. 5.

s. 171A

S. 171A
inserted by
No. 48/2002
s. 75.

171A. Limitation on power to make by-laws

- (1) This section applies as from the relevant prescribed date for the water industry under the **Utility Meters (Metrological Controls) Act 2002**.
- (2) As from the relevant prescribed date, an Authority must not exercise the power to make by-laws under section 160, 161 or 171 to make by-laws which are inconsistent with the **Utility Meters (Metrological Controls) Act 2002** or regulations made under that Act.
- (3) Any by-law whether made before or after the relevant prescribed date is invalid to the extent that it is inconsistent with the **Utility Meters (Metrological Controls) Act 2002** or regulations made under that Act.

PART 9—SEWERAGE

172. Application of this Part

- (1) This Part (other than section 179) applies to an Authority that has a sewerage district.
- (2) Section 179 applies to all Authorities.

173. Functions of Authorities

- (1) An Authority that has a sewerage district has the following functions—
 - (a) to provide, manage and operate systems for the conveyance, treatment and disposal of sewage and, if the Authority so decides, of trade waste;
 - (b) to identify community needs relating to sewerage services and to plan for the future needs of the community relating to sewerage services;
 - (c) to develop and implement programs for the recycling and reuse of treated waste water;
 - (d) to investigate, promote and conduct research into any matter which relates to its functions, powers and duties in relation to sewerage services;
 - (e) to educate the public about any aspect of sewerage.
- (2) An Authority must perform its functions in an environmentally sound way, having regard to the need to preserve aspects which have landscape and fauna and flora values.

174. Exercise of functions of Authority outside its district

- (1) An Authority may, subject to sub-section (2), exercise its functions outside its district, including outside the State.
- (2) An Authority must not provide a service outside its district without the approval of the Minister.

175. New works

- (1) Subject to sub-section (4), at least 14 days before starting construction of any sewer an Authority must—
 - (a) serve a notice on each owner or occupier of land which will be affected by the proposed construction; and
 - (b) publish a notice in a newspaper circulating generally in the area concerned—

which contains a statement of the Authority's intention to construct the sewer, information about where and when a copy of the plan of the works for the sewer may be inspected, and notice that submissions are invited within 14 days after publication.

- (2) A person who objects to the proposed construction may, within 14 days after the date of publication of the notice, make a submission to the Authority, and the Authority must, before starting construction, consider any submissions received.
- (3) The Authority may construct the sewer—
 - (a) after considering any submissions; or
 - (b) if no submissions are received, 14 days after the date of publication of the notice.

- (4) If the Authority has the consent in writing of each owner or occupier who would be affected by the construction of a sewer, it may construct the sewer without following the procedure specified in sub-sections (1) to (3).

176. Compensation not payable in certain cases

- (1) Despite any other provision, an Authority is not liable to pay compensation for damage caused in the course of works to provide a sewer that the Authority decides is necessary for the proper sewerage of allotments of land, unless that damage is to buildings and is not repaired by the Authority.
- (2) Sub-section (1) applies only to land—
- (a) that is subdivided in such a way that the allotments abut each other, back to back or side to back, without any right of way between them; and
 - (b) in relation to which the sewer is underground and close to the boundary of an allotment.

177. Testing etc. of waste

- (1) A person authorised by an Authority to do so may—
- (a) at any reasonable time, but in an emergency at any time, enter land and—
 - (i) measure flows of trade waste; or
 - (ii) take samples of any trade waste that is to be received by the Authority or of any matter used or produced in a process involving trade waste, and analyse those samples; or

- (iii) inspect any fittings, private works and works ancillary to them that are used or provided for conveying trade waste to the Authority's sewerage system; and
- (b) require any person to supply any information relating to any trade waste that is to be received by the Authority or any matter used or produced in a process involving trade waste.
- (2) Powers conferred by sub-section (1) are in addition to any other powers of an Authority.
- (3) A person must not disclose any information supplied to the person as required under sub-section (1)(b) unless that disclosure is made—
 - (a) to the Authority; or
 - (b) for the purposes of legal proceedings; or
 - (c) with the consent of the person who supplied the information.

Penalty: 20 penalty units.

178. Protection of sewers⁴³

- (1) A person must not cause or permit anything other than—
 - (a) sewage; or
 - (b) trade waste discharged in accordance with a trade waste agreement—

to be discharged into the sewerage system of an Authority.

Penalty: 200 penalty units and, for a continuing offence, an additional penalty of 80 penalty units for each day on which the offence continues—

- (c) after service of a notice of contravention on the person under section 151; or

- (d) if no notice of contravention is served, after conviction of the person for the offence.
- (2) Sub-section (1) does not apply to or in relation to a discharge that occurs in circumstances that constitute an offence against the **Environment Protection Act 1970**.

179. Special sewerage services

- (1) Despite section 96(1) and (2), an Authority or a council may submit a proposal to the Minister for the declaration of a sewerage district within which the Authority or council has not constructed or maintained any works and does not, at the time the proposal is submitted, intend to do so.
- (2) Section 96(3) to (8) applies to a proposal under sub-section (1) as if it were a proposal under section 96(1).
- (3) The Authority with the management and control of a sewerage district declared following the submission of a proposal under sub-section (1) may, by notice in writing, declare any land within that district to be a serviced property for the purposes of this Act.
- (4) Section 144(2) and (3) apply to a notice under sub-section (3) as if it were a notice under section 144(1).
- (5) An Authority may impose a fee under a tariff on a property that is a serviced property by virtue of a notice under sub-section (3), in relation to any service provided by the Authority under section 180, 183 or 184.

180. Septic tank permit applications

- (1) A council that receives an application for a permit for a septic tank system in respect of land within an Authority's sewerage district or area of interest must forward a copy of the application to the Authority, if the Authority has lodged with the council a standing written request for referral of those applications.
- (2) The Environment Protection Authority must forward any applications it receives for a permit for a septic tank system in respect of land within an Authority's sewerage district or area of interest if the Authority has lodged with the Environment Protection Authority a standing written request for referral of those applications.
- (3) The Authority must, within 21 days after the copy of the application is forwarded to it, notify the council or the Environment Protection Authority (as appropriate) of—
 - (a) the location of the sewer nearest to the land; and
 - (b) the availability of works to service the land; and
 - (c) any requirements with which the council or the Environment Protection Authority must comply.
- (4) The council and the Environment Protection Authority must comply with any requirement of the Authority in relation to the application that is notified to the council or the Environment Protection Authority within 21 days after the application is forwarded to the Authority.
- (5) The council or the Environment Protection Authority must not make a decision in relation to an application within 21 days after the copy is forwarded to the Authority.

181. By-laws about trade waste

- (1) An Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to any of the following—
 - (a) regulating or prohibiting the discharge of any trade waste into its sewers;
 - (b) prescribing the terms and conditions to be included in agreements for the receipt and disposal of trade waste by the Authority, including the grounds on which the Authority may disconnect the service;
 - (c) prescribing the method of charging and the charges for the Authority's costs of inspecting, measuring, monitoring and testing any trade waste and other matter under an agreement under this Part for the receipt of trade waste;
 - (d) prescribing any waste as trade waste for the purposes of this Part;
 - (e) prescribing the information to be provided to the Authority by any person whose trade waste an Authority agrees to receive;
 - (f) imposing penalties for the contravention by a person of any terms or conditions of a trade waste agreement.
- (2) A penalty imposed under sub-section (1)(f) must not exceed 200 penalty units and, in the case of a continuing contravention, an additional penalty of 80 penalty units for each day on which the offence continues—
 - (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.

- (3) Nothing in this section requires an Authority to accept the discharge of trade waste into its sewers otherwise than in accordance with an agreement under this Part for the receipt of trade waste.

182. Enforcement of agreement

Whether or not proceedings are instituted for the contravention of any terms or conditions of a trade waste agreement, an Authority may apply to a court for an order with respect to the enforcement of the agreement.

183. Powers in relation to septic tanks

- (1) An Authority may inspect and measure existing septic tank systems within its sewerage district.
- (2) An Authority may, by notice in writing served on the owner of land which is within its sewerage district and on which there is a septic tank system, require the owner to carry out in relation to that septic tank system any repairs or maintenance specified in the notice.
- (3) The carrying out of any repairs or maintenance required by an Authority under sub-section (2) does not relieve the owner from the duty to comply with the **Environment Protection Act 1970** and the **Health Act 1958**.
- (4) If a septic tank system is on land owned by more than one person, a notice under sub-section (2) may be served on any or all of the owners of that land.
- (5) Section 150(3) and (4) apply to a notice under sub-section (2) as if it were a notice under section 150(1).

184. By-laws about private works and septic tank systems

- (1) An Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to any of the following—
 - (a) regulating works or apparatus within its district that are part of any private works or of a septic tank system;
 - (b) requiring—
 - (i) the regular maintenance and cleaning of those works or apparatus; and
 - (ii) the payment of a fee for any maintenance or cleaning of those works or apparatus that is carried out by or on behalf of the Authority;
 - (c) prohibiting septic tank discharge within its district without the consent of the Authority;
 - (d) imposing penalties for contravention of the by-laws.
- (2) A penalty imposed for a contravention of a by-law made under sub-section (1)(c) must not exceed—
 - (a) for a first offence, 20 penalty units or imprisonment for 3 months; and
 - (b) for a subsequent offence, 40 penalty units or imprisonment for 6 months—
 and, in the case of a continuing contravention, an additional penalty of 5 penalty units for each day on which the offence continues—
 - (c) after service of a notice of contravention on the person under section 151; or
 - (d) if no notice of contravention is served, after conviction of the person for the offence.

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Part 10—Waterway Management

s. 185

PART 10—WATERWAY MANAGEMENT

Division 1—Preliminary

185. Application of this Part

(1) This Part applies to—

- (a) an Authority that has a waterway management district (in respect of Division 2, and in respect of Divisions 3, 4 and 5 to the extent provided in those Divisions); and
- (b) an Authority appointed by the Minister (in respect of Division 6); and

S. 185(1)(b)
 amended by
 No. 121/1994
 s. 190(1).

S. 185(1)(c)
 inserted by
 No. 121/1994
 s. 190(1),
 repealed by
 No. 66/2000
 s. 25.

* * * * *

(2) For the purposes of this Part, "**water management**" means the management of waterways, drainage or floodplains.

(3) The Governor in Council may, by Order published in the Government Gazette, declare a bulk entitlement to water in a designated waterway held by a generation company within the meaning of the **Electricity Industry Act 2000** to be a declared bulk entitlement for the purposes of this Part.

S. 185(3)
 inserted by
 No. 56/1995
 s. 66(1),
 amended by
 No. 69/2000
 s. 65(6).

186. Exercise of functions of Authorities

(1) An Authority must not exercise its functions under Divisions 2, 3 and 4 outside its district, unless the Minister approves otherwise.

S. 186
 amended by
 No. 121/1994
 s. 190(2)(a).

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(1A) An Authority must not exercise its functions or powers under this Part (including its powers to make by-laws under section 219) in a manner which is inconsistent with any provision of an Order granting a declared bulk entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

S. 186(1A)
inserted by
No. 56/1995
s. 66(2).

* * * * *

S. 186(2)(3)
inserted by
No. 121/1994
s. 190(2)(b),
repealed by
No. 66/2000
s. 26.

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187. Application of Division

S. 187
amended by
No. 121/1994
s. 190(3)(a).

(1) This Division applies to an Authority that has a waterway management district.

S. 187(1)
amended by
Nos 121/1994
s. 190(3)(b),
66/2000
s. 27(1).

* * * * *

S. 187(2)
inserted by
No. 121/1994
s. 190(3)(c),
repealed by
No. 66/2000
s. 27(2).

188. Designated waterways and designated land or works

(1) An Authority may—

(a) declare a waterway within its district or any part of a waterway within its district to be a designated waterway; or

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- (b) declare any of the following within its district to be designated land or works—
 - (i) any works or part of any works in or over which water occasionally flows, whether in a defined, naturally occurring channel or not;
 - (ii) any land which—
 - (A) abuts a waterway; or
 - (B) is within 20 metres of a waterway—
 and which is significant, whether because of its use or otherwise, for the stability, conservation or functioning of the waterway.
- (2) A declaration under sub-section (1) must be made by notice in writing which—
 - (a) is published in the Government Gazette; and
 - (b) is published in a newspaper circulating generally in the area in which the designated waterway or the designated land or works is or are located; and
 - (c) adequately describes the designated waterway or the designated land or works; and
 - (d) specifies the Authority having the management and control of the designated waterway or the designated land or works; and
 - (e) specifies the waterway management district of that Authority.
- (3) The Authority making a declaration must send a copy of the notice to every public statutory body that may have an interest in the waterway declared to be a designated waterway or in the designated land or works.

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- (4) A person whose interests are affected by a decision of an Authority to make a declaration under sub-section (1)(b) may apply to the Tribunal for review of the decision.

S. 188(4) substituted by No. 52/1998 s. 311(Sch. 1 item 105.23).
- (4A) An application for review must be made within 28 days after the later of—

S. 188(4A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.23).

 - (a) the day on which the declaration is published in the Government Gazette;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the declaration, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (5) The Authority may, if a declaration is revoked, specify in the notice of the revoking declaration any Authority to which the management and control of the designated waterway or the designated land or works is transferred.

* * * *

S. 188A inserted by No. 65/1995 s. 19, repealed by No. 66/2000 s. 28.

189. Functions of Authorities

An Authority that has a waterway management district has the following functions in relation to designated waterways and designated land or works within that district—

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- (a) to identify and plan for State and local community needs relating to the use and to the economic, social and environmental values of land and waterways;
- (b) to develop and to implement effectively schemes for the use, protection and enhancement of land and waterways;
- (c) to investigate, promote and research any matter related to its functions, powers and duties in relation to waterway management;
- (d) to educate the public about any aspect of waterway management.

190. Performance of functions

An Authority must perform its functions in an environmentally sound way.

191. Formation of catchment co-ordination groups

An Authority must participate, where possible, in forming and consulting with catchment co-ordination groups, and must, where consistent with the functions of the Authority and with the rest of this Act, act on the advice of such a group in performing its functions.

192. Catchment co-ordination groups

- (1) A catchment co-ordination group may consist of representatives of—
 - (a) authorities, licensees, public statutory bodies or government departments that have responsibilities for the management, use or protection of land or water in the area; and
 - (b) authorities, licensees, public statutory bodies or government departments that have planning functions in the area.

S. 192(1)(a)
 amended by
 No. 121/1994
 s. 190(4).

S. 192(1)(b)
 amended by
 No. 121/1994
 s. 190(4).

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- (2) A catchment co-ordination group must include representatives of all relevant community interests.

193. Closing of access by Authorities

- (1) Subject to this section, an Authority may close, permanently or for a specified period, the access of people, animals or vehicles to the whole or any part of a designated waterway or designated land or works.
- (2) The Authority must not close any access to—
- (a) any Authority, licensee or public statutory body that needs access in order to carry out its functions; or S. 193(2)(a) amended by No. 121/1994 s. 190(5).
 - (b) any person who needs access in order to exercise rights under a licence under Part 4 or 5; or S. 193(2)(b) amended by No. 56/1995 s. 66(3).
 - (c) any person who holds a declared bulk entitlement. S. 193(2)(c) inserted by No. 56/1995 s. 66(3).
- (3) The Authority must not close the access of the owner to any land referred to in section 188(1)(b)(ii) unless the owner has consented to the closure or the Tribunal has, on the application of the Authority, dispensed with the need to obtain the owner's consent. S. 193(3) amended by No. 52/1998 s. 311(Sch. 1 item 105.24).
- (4) The Authority must not apply to the Tribunal under sub-section (3) unless the Authority has made reasonable attempts to obtain the owner's consent and that consent has been refused or withheld. S. 193(4) amended by No. 52/1998 s. 311(Sch. 1 item 105.24).

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S. 193(5)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.24).

S. 193(7)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.25).

S. 193(7A)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.25).

S. 193(8)
 amended by
 No. 121/1994
 s. 190(6).

S. 194(1)
 amended by
 Nos 121/1994
 s. 190(7),
 56/1995
 s. 66(4).

- (5) The Tribunal must not under sub-section (3) make an order dispensing with the need to obtain an owner's consent unless it is satisfied that the closure of access to the owner is necessary to ensure the stability, conservation or functioning of the waterway.
- (6) The Authority must—
 - (a) publish, 1 month before closing any access, a notice of its intention in a newspaper circulating generally in the area; and
 - (b) consider any submissions received as a result of that notice.
- (7) A person whose interests are affected by a decision of an Authority to close access under this section may apply to the Tribunal for review of the decision.
- (7A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (8) This section does not apply to the closure of roads under section 137 of this Act or section 62 of the **Water Industry Act 1994**.

194. Works that interfere with designated land or works⁴⁴

- (1) A person other than a licensee, the holder of a declared bulk entitlement or a public statutory body must not, without the Authority's consent or any other authorisation under this Act, cause or

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permit works to be undertaken which interfere, or are likely to interfere, with designated land or works or the quality, quantity or flow of water in designated land or works within an Authority's waterway management district.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (2) A licensee, holder of a declared bulk entitlement or public statutory body that intends to undertake works of a kind referred to in sub-section (1) must, before undertaking the works, notify the Authority of its intention and take into account any comments made by the Authority.
- (3) Section 154 applies to any dispute that arises between a licensee, holder of a declared bulk entitlement or public statutory body and an Authority over the undertaking of works of a kind referred to in sub-section (1) as if that dispute were over a notice under section 152 or 153.

S. 194(2)
 amended by
 Nos 121/1994
 s. 190(8),
 56/1995
 s. 66(5).

S. 194(3)
 amended by
 Nos 121/1994
 s. 190(9),
 56/1995
 s. 66(5).

S. 194(4)
 inserted by
 No. 121/1994
 s. 190(10),
 repealed by
 No. 66/2000
 s. 29(1).

* * * * *

195. Control over connections and discharges⁴⁵

S. 195(1)
 amended by
 No. 121/1994
 s. 190(11).

- (1) A person other than a licensee or a public statutory body must not, without an Authority's consent, cause or permit—
- (a) any drainage works to be connected to or discharge (whether directly or indirectly) into a designated waterway or designated land or works; or
 - (b) the alteration or removal of any drainage works that are connected to or that discharge into a designated waterway or designated land or works—

within the Authority's waterway management district.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
 - (b) if no notice of contravention is served, after conviction of the person for the offence.
- (2) A licensee or public statutory body that intends to do anything specified in sub-section (1) must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority.

S. 195(2)
 amended by
 No. 121/1994
 s. 190(12).

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- (3) Section 154 applies to any dispute that arises between a licensee or public statutory body and an Authority over the doing of anything specified in sub-section (1) as if that dispute were over a notice under section 152 or 153.

S. 195(3)
amended by
No. 121/1994
s. 190(13).

* * * * *

S. 195(4)
inserted by
No. 121/1994
s. 190(14),
repealed by
No. 66/2000
s. 29(2).

196. Owner finance

- (1) An Authority may require the owner of any property in its waterway management district to meet or contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions for that district.
- (2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under sub-section (1) as if it were a requirement under section 268(1).

* * * * *

S. 196(3)
inserted by
No. 121/1994
s. 190(15),
repealed by
No. 66/2000
s. 29(3).

197. Finance for increased use of services

- (1) An Authority may require the owner of a property in its waterway management district to contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions for that district if the use of those works increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.

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- (2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under subsection (1) as if it were a requirement under section 269(1).

* * * *

S. 197(3) inserted by No. 121/1994 s. 190(16), repealed by No. 66/2000 s. 29(4).

Division 3—Regional Drainage

198. Application of Division

- (1) This Division applies to—

* * * *

S. 198(1)(a) repealed by No. 54/1992 s. 56(f), new s. 198(1)(a) inserted by No. 121/1994 s. 190(17)(b), repealed by No. 66/2000 s. 30(1).

- (b) any Authority—

- (i) that has a waterway management district; and
(ii) to which the Minister, by Order, declares that this Division applies.

* * * *

S. 198(2) inserted by No. 121/1994 s. 190(17)(c), repealed by No. 66/2000 s. 30(2).

199. Functions of Authorities

- (1) An Authority has the following functions—
 - (a) to provide, operate and protect drainage systems, including the drainage of water into all designated waterways and all designated land or works within its district and, with the consent of the Minister, the drainage of water from that district into any waterway outside that district;
 - (b) to develop and implement programs for the protection and enhancement of instream uses;
 - (c) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to drainage;
 - (d) to educate the public about any aspect of drainage.
- (2) An Authority must perform its functions in an environmentally sound way.

200. Control over diversion of drainage water⁴⁶

- (1) A person must not, without an Authority's consent, cause or permit the diversion of drainage waters into the Authority's district from outside that district.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of notice of contravention on the person under section 151; or

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S. 200(2)
amended by
No. 121/1994
s. 190(18).

S. 200(3)
amended by
No. 121/1994
s. 190(19).

S. 200(4)
inserted by
No. 121/1994
s. 190(20),
repealed by
No. 66/2000
s. 31.

S. 201
amended by
No. 49/1994
s. 6(a).

S. 201(1)(a)
repealed by
No. 54/1992
s. 56(g).

(b) if no notice of contravention is served, after conviction of the person for the offence.

(2) A licensee or public statutory body that intends to do anything specified in sub-section (1) must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority.

(3) Section 154 applies to any dispute that arises between a licensee or public statutory body and an Authority over the doing of anything specified in sub-section (1) as if that dispute were over a notice under section 152 or 153.

* * * * *

Division 4—Floodplain Management

201. Application of Division

(1) This Division applies to—

* * * * *

(b) any Authority—

(i) that has a waterway management district; and

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- (ii) that the Minister, by Order, declares to have the functions, or any specified functions, of an Authority under this Division—

S. 201(1)(b)(ii) substituted by No. 12/1996 s. 8(1).

in relation to the Authority's waterway management district; and

- (c) the Minister, in relation to any other area.

S. 201(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.26), 49/1994 s. 6(b), 121/1994 s. 193.

- (2) In this Division "**Authority**", in relation to any area to which sub-section (1)(c) applies, means the Minister.

S. 201(2) inserted by No. 49/1994 s. 6(c).

202. Floodplain management functions

S. 202 amended by No. 12/1996 s. 8(2).

An Authority has the following functions or such of those functions as are specified in the Order under section 201(1)(b)(ii), as the case requires—

- (a) to find out how far floodwaters are likely to extend and how high they are likely to rise;
- (b) to declare flood levels and flood fringe areas;
- (c) to declare building lines;
- (d) to control developments that have occurred or that may be proposed for land adjoining waterways;
- (e) to develop and implement plans and to take any action necessary to minimise flooding and flood damage;
- (f) to provide advice about flooding and controls on development to local councils, the Secretary to the Department of Infrastructure and the community.

S. 202(f) amended by No. 46/1998 s. 7(Sch. 1).

S. 203(1)
amended by
No. 12/1996
s. 8(3).

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203. Declarations by Authorities

- (1) An Authority that has the functions referred to in section 202(b) and (c) may declare—
 - (a) a flood level in relation to a specified area; or
 - (b) a flood fringe area; or
 - (c) a building line in relation to either side of a designated waterway or of designated land or works.
- (2) Notice of intention to make a declaration under sub-section (1) must—
 - (a) be published in the Government Gazette; and
 - (b) be published in a newspaper circulating generally in the area concerned; and
 - (c) state that any person may, within 6 weeks after the date of notice, make a submission to the Authority.
- (3) An Authority must, before making a declaration, consider any submissions received under sub-section (2).
- (4) The Authority may revoke or vary a declaration and must publish notice of any revocation or variation in the same way as the original declaration was published.

204. Adoption of flood level

- (1) In making a declaration under section 203(1), an Authority may adopt a flood level, a flood fringe area or a building line which, in its opinion, is the best estimate, based on the available evidence, of a flood event which has a probability of occurrence of 1 per cent in any one year.
- (2) Despite any other provision, an Authority may designate a flood level that allows a risk of flooding to exist in the use of lands.

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205. Declarations by the Minister

- | | |
|---|---|
| <p>(1) The Minister may, by Order published in the Government Gazette, declare any area to be an area of land liable to flooding or to be a floodway area.</p> | <p>S. 205(1)
amended by
No. 12/1996
s. 9(1).</p> |
| <p>(2) A declaration may only be made—</p> | |
| <p>(a) at the request of an Authority to which this Division applies and that has the functions referred to in section 202(a), (b) and (c); and</p> | <p>S. 205(2)(a)
amended by
No. 12/1996
s. 8(4).</p> |
| <p>(b) in the case of a declaration of an area to be an area of land liable to flooding, on the basis of flood levels declared by the Authority under section 203 or, where flood levels have not been declared, on the basis of the Authority's best estimate of the area liable to flooding from a flood event which has a probability of occurrence of 1 per cent in any one year; and</p> | <p>S. 205(2)(b)
amended by
No. 12/1996
s. 9(2)(3).</p> |
| <p>(c) in the case of a declaration of an area to be a floodway area, on the basis of the Authority's best estimate of the area constituting the high hazard area of the floodplain comprising active flow paths or storage areas or both.</p> | <p>S. 205(2)(c)
inserted by
No. 12/1996
s. 9(3).</p> |
| <p>(3) Before requesting a declaration, an Authority must—</p> | |
| <p>(a) notify any council or public statutory body that functions in the area of its intention; and</p> | |
| <p>(b) notify the owners of land within the area of its intention, and advise them that they may, within 6 weeks after the date of the notice, make a submission to the Authority.</p> | |
| <p>(4) An Authority must, before requesting a declaration, consider any submissions received under sub-section (3).</p> | |

S. 206(1)(c)
 amended by
 No. 46/1998
 s. 7(Sch. 1).

206. Notice of declarations

- (1) As soon as practicable after an Order is published in the Government Gazette under section 205, the Authority that requested the making of the Order must—
 - (a) publish notice of the Order in a newspaper circulating generally in the area affected; and
 - (b) notify any council or public statutory body that functions in the area; and
 - (c) notify the Secretary to the Department of Infrastructure and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration; and
 - (d) notify the owners of land in the area.
- (2) A responsible authority referred to in sub-section (1)(c) must, in relation to any planning scheme, have regard to the particulars of the declaration.
- (3) A council or other public statutory body that has power to do so must prevent land uses that are inconsistent with any identified flood hazards.

207. Review of declarations

- (1) A person who is aggrieved by a declaration, revocation or variation under section 203 or a declaration under section 205 may apply, within 1 month after publication of the declaration, revocation or variation, to the Minister for review.
- (2) The Minister must notify the applicant of his or her decision on the application.
- (3) Sub-section (1) does not apply if the person is aggrieved by a variation that was made at the direction of the Minister as a result of an earlier application by that person.

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208. Control of works and structures⁴⁷

- (1) A person other than a public statutory body must not, without the Authority's consent (being an Authority to which this Division applies and that has the function referred to in section 202(d) or (e))—

S. 208(1)
 amended by
 No. 12/1996
 s. 8(5).

- (a) cause or permit the undertaking or erection, within an area of land declared to be liable to flooding or declared to be a floodway area, of works or structures that may have the effect of—

S. 208(1)(a)
 amended by
 No. 12/1996
 s. 9(4).

- (i) controlling or mitigating floodwaters;
or
- (ii) discharging stormwater; or
- (iii) excluding tidal water; or
- (iv) concentrating or diverting floodwater or stormwater; or

- (b) cause or permit the undertaking or erection of works or structures between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (c) after service of a notice of contravention on the person under section 151; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

S. 208(2)
amended by
No. 12/1996
s. 8(6).

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- (2) A public statutory body that intends to undertake works or erect structures of a kind referred to in sub-section (1)(a) or in a place referred to in sub-section (1)(b) must, before undertaking the works or erecting the structures, notify the Authority (being an Authority to which this Division applies and that has the function referred to in section 202(d) or (e)) of its intention and take into account any comments made by the Authority.
- (3) Sections 153 and 154 apply to the determination of a dispute between a public statutory body and an Authority as if a notification under sub-section (2) were a notice under section 153(2).
- (4) If works or structures are undertaken or erected in contravention of this section, the Authority may, by notice in writing to the owner of the affected land, require the owner to demolish or modify the works or structures as specified in the notice.
- (5) An owner must comply with the notice within 14 days after service.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

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- (6) If an owner fails to comply with the notice within 14 days, or if there is an emergency, the Authority may—
- (a) enter the land and carry out the demolition or modification specified in the notice; and
 - (b) recover its costs of doing so as a debt due to it from the owner of the land.

209. Removal of existing works and structures

- (1) An Authority to which this Division applies and that has the function referred to in section 202(d) or (e) may, by notice in writing to the owner of the affected land, require the owner to allow the Authority to enter the land and demolish or modify any works or structures that—
 - (a) are within an area liable to flooding or a floodway area, or between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared; and

S. 209(1) amended by No. 12/1996 s. 8(7).
 - (b) existed at the time of the declaration of the area liable to flooding or of the floodway area or of the building line.

S. 209(1)(b) amended by No. 12/1996 s. 9(6).
- (2) An owner on whom a notice under sub-section (1) is served may, within 60 days after service, apply to the Tribunal for review of the decision of the Authority to demolish or modify the works or structures.

S. 209(2) amended by No. 52/1998 s. 311(Sch. 1 item 105.26).
- (3) The Authority may—
 - (a) if no application is made under sub-section (2), after 60 days after the service of the notice; and

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- (b) if an application is made, after determination of the application in favour of the Authority—

carry out the demolition or modification.

S. 210
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.26).

210. Compensation

In determining an application under section 209(2), the Tribunal may make any order for the payment of compensation that it thinks appropriate.

211. Indemnities

An Authority is not liable for any loss or damage sustained, directly or indirectly, as a result of a declaration under section 203 or an Order under section 205.

S. 212
 amended by
 No. 12/1996
 s. 9(7).

212. Availability of information

An Authority must make sure that information about any flood levels, flood fringe areas, building lines and areas of land declared to be liable to flooding or to be floodway areas is readily available for inspection by the public, free of charge, during business hours.

Division 5—Water Management Schemes

213. Functions of the Minister

The Minister has the following functions in relation to water management schemes throughout the State—

- (a) to cause assessment and investigations connected with water resources and the environment in connection with waterways to be undertaken;
- (b) to cause schemes for the improved management of waterways, drainage and floodplains to be prepared and implemented;

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- (c) to develop public education programs for promoting broad community awareness of the role of waterway management authorities in the overall resource conservation and development in Victoria.

214. Investigations

- (1) The Minister may, if he or she decides that an investigation in relation to water management should be carried out, publish in the Government Gazette and in a newspaper circulating generally in the affected area a notice which—
 - (a) states the intention of the Minister to appoint a community-based committee to carry out the investigation; and
 - (b) briefly describes the proposal to be investigated; and
 - (c) describes the general area affected by the proposal.
- (2) The following provisions apply with respect to the membership of a committee appointed under this section—
 - (a) more than one half of the membership must consist of persons who are owners or occupiers of land in the affected area;
 - (b) any council whose municipal district is wholly or partly within the affected area must be represented on the committee;
 - (c) any public statutory body which the Minister considers to be directly affected by the proposal must be represented on the committee;
 - (d) the Minister must make sure that, so far as possible, all relevant interests (including environmental interests) are fairly represented on the committee.

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- (3) The Minister must give the committee sufficient resources to enable it to carry out the investigation.
- (4) Sub-sections (2) to (6) of section 318 apply to a committee appointed under this section.
- (5) The committee must carry out an investigation in accordance with the terms of the notice.
- (6) In carrying out an investigation, the committee must consult with all public statutory bodies that function in the area affected by the proposal.
- (7) A committee performing functions under this section, section 215 or section 216 performs those functions as the delegate of the Minister.

215. Water management schemes⁴⁸

- (1) When it has completed an investigation into a proposal the committee may prepare a water management scheme for the area affected by the proposal.
- (2) When it has prepared a water management scheme the committee must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice which—
 - (a) states that the scheme has been prepared; and
 - (b) states where the scheme is available for inspection; and
 - (c) states the nature of the scheme and a description of it; and
 - (d) if the scheme provides for the execution of works, calls for all people affected by the proposed works to make submissions to the committee within 6 weeks after the date of publication in the Government Gazette.

S. 215(2)(d)
 amended by
 No. 12/1996
 s. 10(1).

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|---|---|
| <p>(3) The committee may modify the scheme as a result of any submission made in response to the notice.</p> | <p>S. 215(3)
amended by
No. 12/1996
s. 10(2).</p> |
| <p>(3A) The committee may submit the scheme to the Minister for his or her acceptance.</p> | <p>S. 215(3A)
inserted by
No. 12/1996
s. 10(3).</p> |
| <p>(3B) The Minister may—</p> <ul style="list-style-type: none"> (a) accept the scheme as submitted by the committee; or (b) reject the scheme; or (c) modify the scheme and accept the scheme as so modified. | <p>S. 215(3B)
inserted by
No. 12/1996
s. 10(3).</p> |
| <p>(4) The Minister must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice—</p> <ul style="list-style-type: none"> (aa) that states whether the scheme has been accepted or rejected; | <p>S. 215(4)
amended by
No. 12/1996
s. 10(4)(a).</p> |
| <ul style="list-style-type: none"> (a) if the scheme has been accepted, that states that no modifications have been made to the scheme; or (b) if modifications have been made, that gives details of the modifications. | <p>S. 215(4)(aa)
inserted by
No. 12/1996
s. 10(4)(b).</p> <p>S. 215(4)(a)
amended by
No. 12/1996
s. 10(4)(c).</p> |
| <p>(5) A person whose interests are affected by a decision of the Minister under sub-section (3B) may apply to the Tribunal for review of the decision.</p> | <p>S. 215(5)
amended by
No. 12/1996
s. 10(5),
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.27).</p> |

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S. 215(6)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.27).

- (6) An application for review must be made within 28 days after the later of—
- (a) the day on which the relevant notice is published under sub-section (4);
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

216. Approval of schemes

S. 216(1)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.28).

- (1) At least 6 weeks after the notice required by section 215(2) is published, and after any applications to the Tribunal have been determined, the Minister may by Order published in the Government Gazette and in a newspaper circulating generally in the area affected—
 - (a) declare the scheme to be an approved scheme; and
 - (b) nominate the Authorities or, with its or their agreement, the council or councils responsible for implementing the scheme.

S. 216(1)(b)
 amended by
 No. 12/1996
 s. 11(1).

S. 216(2)
 amended by
 Nos 12/1996
 s. 11(2),
 46/1998
 s. 7(Sch. 1).

- (2) After an Order has been published, an Authority or council nominated in the Order must notify the Secretary to the Department of Infrastructure and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the scheme.
- (3) A responsible authority referred to in sub-section (2) must, in relation to any planning scheme, have regard to the provisions of the approved scheme.

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- (4) Any area that benefits from or is affected by the scheme may be identified in the Order as an area for which the Authority may, in accordance with Part 13, impose fees under a tariff or require contributions from other Authorities or councils under Part 13 to fund the scheme.
- (5) The period (if limited) for which the tariff may be imposed must be specified in the Order.

217. Removal or modification of works

The Authority or council responsible for implementing a water management scheme approved under section 216 may apply to the Tribunal under Division 2 of Part 2 for an Order with respect to the removal or modification of any works that—

- (a) cause a flow of water which is not reasonable, or interfere with a reasonable flow; and
- (b) are identified in that scheme—

whether or not the Authority or council owns the land on which those works are situated.

S. 217
 amended by
 Nos 12/1996
 s. 11(3),
 52/1998
 s. 311(Sch. 1
 item 105.28).

Division 6—Drainage Courses

218. Drainage courses⁴⁹

- (1) Subject to sub-section (2), the Minister may declare any area of land along which water flows (whether continuously, intermittently or occasionally) or any designated works referred to in section 188(1) to be a drainage course⁵⁰.

S. 218(1)
 amended by
 No. 62/1995
 s. 36(1).

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S. 218(2)(a)(ii)
amended by
No. 50/1992
s. 10(Sch.
item 11.27),
repealed by
No. 65/1995
s. 22(k).

- (2) The Minister must not make a declaration unless—
- (a) an application has been made to the Minister by—
 - (i) any Authority or public statutory body that is responsible for any drainage or related functions in that vicinity; or
 - * * * * *
 - (b) the applicant has—
 - (i) published, in the Government Gazette and in a newspaper circulating generally in the area concerned, a notice stating the terms of the application and advising that submissions are invited within 6 weeks after the publication of the notice; and
 - (ii) sent a copy of the notice to any relevant council, to the owner or occupier of any land in the vicinity and to the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**; and
 - (c) the Minister has considered any submissions received within 6 weeks after publication of the notice.
- (3) A declaration under sub-section (1) must be made by notice in writing which—
- (a) is published in the Government Gazette; and

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- (b) is published in a newspaper circulating generally in the area in which the drainage course is located; and
 - (c) adequately describes the drainage course; and
 - (d) specifies the Authority or public statutory body having the management and control of the drainage course.
- (4) The Minister must—
 - (a) send a copy of the notice to every Authority or public statutory body that may have an interest in the land or works declared to be a drainage course⁵¹; and S. 218(4)(a)
amended by
No. 62/1995
s. 36(2).
 - (b) notify the Secretary to the Department of Infrastructure and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration. S. 218(4)(b)
amended by
No. 46/1998
s. 7(Sch. 1).
- (5) The Minister may, by notice in writing in accordance with sub-section (3), revoke a declaration, wholly or in part—
 - (a) on application by any person or body referred to in sub-section (2)(a); and
 - (b) if the Minister is satisfied that the whole or any part of the area subject to the declaration should no longer be subject to it.
- (6) Section 207 applies to a declaration under sub-section (1) or a revocation under sub-section (5) as if it were a declaration under section 203.
- (7) The Authority or public statutory body must act in accordance with a management plan for the drainage course that is approved by the Minister, and a responsible authority referred to in sub-section (4) must, in relation to any planning

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scheme, have regard to the particulars of the declaration.

- (8) The Authority or public statutory body having the management and control of the drainage course may at any time by notice in writing to the owner or occupier of any land in the drainage course (or, with the consent of the Minister, to any other public statutory body) require the owner or occupier or the other public statutory body—
 - (a) to remove anything obstructing or interfering with the flow of water in the drainage course; or
 - (b) to carry out any works that are reasonably necessary to control that flow; or
 - (c) to maintain any structure or works in the drainage course in such a condition so as not to obstruct or interfere with that flow.
- (9) A person whose interests are affected by a decision of the Authority or public statutory body to make a requirement under sub-section (8) may apply to the Tribunal for review of the decision.
- (9A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the requirement is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the requirement, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 218(9)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.29).

S. 218(9A)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.29).

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(10) A public statutory body must—

- (a) comply with a requirement of the kind referred to in sub-section (8)(a) or (b) within 1 month after the making of the requirement, or any longer period that the Authority or public statutory body making the requirement allows; and
- (b) comply with a requirement of the kind referred to in sub-section (8)(c).

Penalty: 20 penalty units.

(11) An owner or occupier of land in a drainage course must—

- (a) comply with a requirement of the kind referred to in sub-section (8)(a) or (b)—
 - (i) if there has been no application for review under sub-section (9)—within one month after the expiry of the time during which the person is entitled to apply, or any further period that the Authority or public statutory body allows; and
 - (ii) if there has been an unsuccessful application—within one month after the disallowance of the application, or any further period that the Authority or public statutory body allows; and
- (b) comply with a requirement of the kind referred to in sub-section (8)(c)—
 - (i) if there has been no application for review under sub-section (9)—as from the expiry of the time during which the person is entitled to apply; and

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- (ii) if there has been an unsuccessful application—as from the disallowance of the application.

Penalty: 20 penalty units.

- (12) A person must not, except in accordance with a requirement made under sub-section (8) or with the consent of the Authority or public statutory body in any manner interfere with or obstruct the flow of water in a drainage course.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

- (a) after service of a notice of contravention on the person under section 151; or
- (b) if no notice of contravention is served, after conviction of the person for the offence.

- (13) If an Authority or a public statutory body has refused to consent to an interference with or obstruction of the flow of water in a drainage course, the person seeking the consent may, within 60 days after being notified of the refusal, apply to the Tribunal for review.
- (14) An Authority or a public statutory body may, subject to the expiry of any relevant period referred to in sub-section (10) or sub-section (11), enter into and remain on the drainage course for the purpose of doing anything that an owner or occupier of land in the drainage course or a public

S. 218(13)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.30).

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statutory body has failed to do in compliance with a notice under sub-section (8).

- (15) Any costs or expenses incurred by an Authority or a public statutory body in exercising the powers conferred on it by sub-section (14) are a civil debt recoverable summarily from the owner or occupier of the land on which the powers are exercised, or the other public statutory body concerned, in any court of competent jurisdiction.

Division 7—By-laws

219. By-laws

S. 219
 amended by
 No. 121/1994
 s. 190(21)(a).

- (1) An Authority that has functions under Division 2 of this Part may, in accordance with sections 160 and 161, make by-laws for or with respect to—
- (a) preventing or minimising interference with or obstruction of the flow of water;
 - (b) preventing or minimising the silting up of a designated waterway or designated land or works or any injury to or pollution of it or them, including prohibiting the deposit of any material in or near it or them;
 - (c) prohibiting or regulating the removal of any material from land forming part of a designated waterway or designated land or works;
 - (d) regulating activities carried on on land forming part of a designated waterway or designated land or works;
 - (e) the general management and control of any designated waterway or designated land or works.

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S. 219(1A)
inserted by
No. 65/1995
s. 20,
repealed by
No. 66/2000
s. 32.

* * * *

S. 219(2)
inserted by
No. 121/1994
s. 190(21)(b),
repealed by
No. 66/2000
s. 32.

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PART 11—IRRIGATION

220. Application of this Part

This Part applies to an Authority that has an irrigation district.

221. Functions of Authorities

- (1) An Authority that has an irrigation district has the following functions in relation to the district—
 - (a) to provide, manage and operate systems for the supply of water to irrigable lands and for the appropriate drainage and protection of those lands;
 - (b) to identify community needs relating to irrigation, drainage and salinity mitigation, and to plan for the future needs of the community relating to irrigation, drainage and salinity mitigation;
 - (c) to develop and implement programs for improved irrigation practices, improved drainage practices and improved salinity mitigation practices;
 - (d) to investigate and research any matter related to its functions, powers and duties in relation to irrigation, drainage and salinity mitigation.
- (2) An Authority may, with the approval of the Minister, exercise its functions outside its district.

222. General powers and duties of Authorities

- (1) Subject to section 141 and sub-section (1A), an Authority—
 - (a) must make available for supply, to the owner or occupier of each holding in its irrigation district in respect of which a domestic and stock charge is levied, water for domestic

S. 222(1)
 amended by
 No. 22/1999
 s. 4(1).

and stock use on a scale of quantities fixed by the Authority; and

- (b) must make available for supply, to the owner or occupier of each holding in its irrigation district, the amount of water for irrigation that is specified in the register in relation to that holding; and
- (c) may sell additional water to any owner or occupier to whom it supplies water under paragraph (a) or (b); and
- (d) may sell water to the owner or occupier of any land, whether within or outside its irrigation district.

S. 222(1A)
 inserted by
 No. 22/1999
 s. 4(2).

- (1A) Without limiting section 141, an Authority may reduce or restrict the quantity of water supplied, or discontinue the supply of water, to the owner or occupier of a holding in its irrigation district entitled to a supply of water under any paragraph of sub-section (1) if the Authority is, because of contamination of water in its water supply system, unable to supply the quantity of water which would otherwise be supplied to the owner or occupier.

S. 222(1B)
 inserted by
 No. 22/1999
 s. 4(2).

- (1B) An Authority that reduces, restricts or discontinues the supply of water to an owner or occupier may reduce or waive any amount of money payable to it for the supply of water to the owner or occupier.

S. 222(1C)
 inserted by
 No. 22/1999
 s. 4(2).

- (1C) An Authority that reduces, restricts or discontinues the supply of water to an owner or occupier in accordance with sub-section (1A) is not liable to any claim or demand in respect of the reduction, restriction or discontinuance unless the contamination of water giving rise to the reduction, restriction or discontinuance occurred as a result of intentional or negligent conduct

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(including an omission) on the part of the Authority.

- (2) An Authority must not sell water—

S. 222(2)
amended by
No. 22/1999
s. 4(3)(a).

* * * * *

S. 222(2)(a)
repealed by
No. 22/1999
s. 4(3)(b).

- (b) under sub-section (1)(c) or (d) until it has made provision for the supply of all water to which owners and occupiers are entitled under sub-section (1)(a) or (1)(b).

- (3) Nothing in this Act entitles any person to the supply of water for irrigation purposes other than during an irrigation period.

- (4) Nothing in this Act entitles the owner or occupier of a holding in an irrigation district of an Authority to the supply of water for domestic and stock use other than during an irrigation period.

S. 222(4)
inserted by
No. 110/1997
s. 19.

223. District bulk entitlements

- (1) An Authority that has an irrigation district specified in column 1 of Schedule 11 is, subject to sub-section (4), entitled to the amount of water specified in column 2 of that Schedule from the sources specified in column 3 of that Schedule.
- (2) An Authority (other than the First Mildura Irrigation Trust) that has an irrigation district not specified in Schedule 11 is, subject to sub-section (4), entitled to the amount of water specified by the Governor in Council in an Order made under the **Water Act 1958** and published in the Government Gazette before the commencement of this section from the sources specified in that Order.

S. 223(4)
substituted by
No. 22/1999
s. 3(6).

S. 223(5)
inserted by
No. 22/1999
s. 3(6).

S. 224(1)
amended by
No. 62/1995
s. 21(1)(a)(b).

S. 224(2)
amended by
No. 62/1995
s. 21(2).

- (3) The First Mildura Irrigation Trust is, subject to sub-section (4), entitled to the entitlement granted under section 71(1) of the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958** and continued under this Act.
- (4) Subject to sub-section (5), the entitlement of an Authority that has an irrigation district or the sources of that entitlement may be amended in accordance with section 44 or converted in accordance with section 47.
- (5) Despite anything to the contrary in Division 1 of Part 4, only the Governor in Council has power to make an Order amending or converting an entitlement referred to in sub-section (4) and that Division has effect for this purpose with any necessary modifications.

224. Temporary transfer of water rights

- (1) The owner of a holding within a prescribed irrigation district may, in accordance with this section and the by-laws made under section 225, transfer to an Authority or to the owner or occupier of any land (including the transferor as the owner or occupier of any other land) any water rights that are attached to that holding or, subject to sub-section (3A), the whole or part of any water offered for sale under section 222(1)(c).
- (2) A transfer may only be made with the approval of the Authority responsible for delivery of the water.
- (3) A transfer takes effect subject to the prescribed terms and conditions and to any other terms and conditions of which notice is given to the parties by the Authority when the transfer is approved.

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(3A) If—

- (a) there is no bulk entitlement covering water offered for sale under section 222(1)(c); and
- (b) the Minister believes that transfers of such water may result in a serious increase in water usage—

the Minister may, by Order published in the Government Gazette, prohibit or limit, for a period specified in the Order, such transfers.

- (4) A transfer takes effect for the period agreed between the parties but not exceeding—
 - (a) if the transfer is approved during an irrigation period, the remainder of that irrigation period; and
 - (b) if the transfer is approved between irrigation periods, the duration of the next irrigation period after the transfer is approved.
- (5) Subject to this Act, the Authority must supply to the holding of the transferee any volume of water the right to which is the subject of the transfer and which would, if the transfer had not been approved, have been supplied to the holding of the transferor.
- (6) A transfer does not affect the attachment of water rights (as opposed to the actual delivery of water) to a holding or the liability of the transferor to pay any amount payable under a tariff for irrigation, drainage or salinity mitigation.
- (7) An application for the approval by an Authority of a transfer must be made in accordance with the by-laws made under section 225 and must be accompanied by any prescribed fees.

S. 224(3A)
 inserted by
 No. 62/1995
 s. 21(3).

S. 224(6)
 amended by
 No. 62/1995
 s. 21(4).

s. 224A

S. 224A
 inserted by
 No. 62/1995
 s. 22.

224A. Temporary transfer of water rights interstate

- (1) Subject to this section, the owner of a holding within a prescribed irrigation district may, in accordance with this section and the by-laws made under section 225, make a temporary transfer to the owner or occupier of any land outside Victoria (including the transferor as the owner or occupier of any other land) of—
 - (a) any water rights that are attached to the holding; or
 - (b) the whole or part of any water offered for sale under section 222(1)(c).
- (2) A transfer takes effect for the period agreed between the parties but not exceeding—
 - (a) if the transfer is approved during an irrigation period, the remainder of that irrigation period; and
 - (b) if the transfer is approved between irrigation periods, the duration of the next irrigation period after the transfer is approved.
- (3) Unless the Minister makes a determination under sub-section (5), an owner of a holding may not transfer water rights attached to the holding if the owner—
 - (a) has accepted an offer by the Authority in whose district the holding is located to sell water under section 222(1)(c) calculated in respect of those water rights; or
 - (b) has transferred that part of water offered for sale under section 222(1)(c) calculated in respect of those water rights.

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- (4) Unless the Minister makes a determination under sub-section (5), an owner who transfers water rights under sub-section (1) may not accept an offer to buy water under section 222(1)(c) calculated in respect of those water rights.
 - (5) The Minister may determine that sub-section (3) or (4) does not apply to an owner or a class of owners specified in the determination, having regard to the effect of the transfer on usage of water, the impact of subsidies and any other matter that the Minister considers relevant.
 - (6) A transfer under this section may only be made with the approval of the Authority in whose district the holding of the transferor is located.
 - (7) In determining whether to give approval, an Authority must have regard to guidelines determined by the Minister under section 224B.
 - (8) Subject to this Act, the Authority that has the irrigation district referred to in sub-section (1) must arrange for the supply to the land of the transferee of any volume of water which would, if the transfer had not been approved, have been supplied to the holding of the transferor.
 - (9) A transfer does not affect the attachment of water rights (as opposed to the actual delivery of water) to a holding or the liability of the transferor to pay any amount payable under a tariff for irrigation, drainage or salinity mitigation.
 - (10) An application for approval by an Authority of a transfer must be made in accordance with the by-laws made under section 225 and must be accompanied by any prescribed fees.
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s. 224B

S. 224B
inserted by
No. 62/1995
s. 22.

S. 224B(1)(a)
amended by
No. 110/1997
s. 15(4).

S. 224B(1)(b)
amended by
No. 110/1997
s. 15(4).

224B. Guidelines as to interstate transfers

- (1) The Minister may determine guidelines as to—
 - (a) whether transfers under section 224A or 226AA should take place; and
 - (b) if transfers under section 224A or 226AA are to take place, the terms and conditions on which they are to be approved by an Authority.
- (2) Any guidelines determined by the Minister may be determined so as to apply—
 - (a) generally or in specified cases or in a specified class of case or specified classes of cases; and
 - (b) at all times or at a specified time or specified times.
- (3) The Minister must serve a copy of all guidelines on every Authority that has a prescribed irrigation district.
- (4) The Minister may at any time amend any guidelines and must serve a copy of every amendment on every such Authority.
- (5) An Authority that has a prescribed irrigation district must comply with any guidelines determined by the Minister under this section, as amended from time to time.

225. By-laws about temporary transfer of water rights

- (1) An Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to the temporary transfer of water rights or water offered for sale under section 222(1)(c) within and out of its irrigation district.

S. 225(1)
amended by
No. 62/1995
s. 24(a).

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(2) Without limiting sub-section (1), by-laws may—

- (a) prescribe procedures for applications for approval; and
- (b) fix any fees payable to the Authority for processing and approving an application; and
- (ba) fix any fees payable to the Authority for the use of the Authority's works for the temporary transfer of water; and
- (c) set the minimum amount of water rights that must be retained by the owner of any holding; and
- (d) set the maximum amount of water rights that may be held by the owner or occupier of any holding; and
- (e) set limits on the transfer of water rights or water offered for sale under section 222(1)(c) into and out of any part of an irrigation district, having regard to—
 - (i) drainage and salinity criteria; and
 - (ii) the need to protect the water rights attached to other holdings within the irrigation district; and
 - (iii) the possible environmental impact of transfers; and
- (f) prescribe any other terms and conditions in relation to a transfer; and
- (g) prescribe irrigation districts within and out of which water rights and water offered for sale under section 222(1)(c) may be temporarily transferred.

S. 225(2)(ba)
 inserted by
 No. 62/1995
 s. 24(b).

S. 225(2)(e)
 amended by
 No. 62/1995
 s. 24(c).

S. 225(2)(g)
 amended by
 No. 62/1995
 s. 24(d).

S. 226(1AA)
inserted by
No. 62/1995
s. 25(1).

S. 226(1)
amended by
Nos 49/1994
s. 7(a)(b),
62/1995
s. 25(2).

S. 226(2)
substituted by
No. 62/1995
s. 25(3).

S. 226(4)
amended by
No. 62/1995
s. 25(4).

226. Permanent transfer of water rights

(1AA) In this section—

"buyer's Authority" means the Authority responsible for the supply of water to the land of the transferee or, if there is no responsible Authority, the Minister;

"seller's Authority" means the Authority in whose district the holding of the transferor is located.

- (1) The owner of a holding within a prescribed irrigation district may, in accordance with this section and the regulations made under section 228, permanently transfer to the seller's Authority, or to the owner or occupier of any land (including the transferor as the owner or occupier of any other land) any water rights that are attached to that holding.
- (2) A transfer under this section may only be made—
 - (a) with the approval of the seller's Authority and the buyer's Authority; and
 - (b) with the consent of each person who has a prescribed interest in the holding of the transferor.
- (3) A person who proposes to transfer water rights under this section must, at least 28 days before applying under sub-section (4), cause notice of the proposed application to be published in a newspaper circulating generally in the area concerned.
- (4) An application to the seller's Authority or the buyer's Authority for approval of a transfer must be in the prescribed form and accompanied by—
 - (a) a copy of the written consent to the transfer of each person who has a prescribed interest in the holding of the proposed transferor; and

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- (b) a copy of—
- (i) in the case of land under the **Transfer of Land Act 1958** (other than land in an identified folio), the Crown grant or certificate of title; or
 - (ii) in any other case—
 - (A) the last conveyance in the chain of title to the land; or
 - (B) any other document that gives evidence of the proposed transferor's title to the land; and
 - (c) a copy of the notice published under subsection (3); and
 - (d) a statutory declaration made by the proposed transferor setting out the names and addresses of each person known by the proposed transferor to have a prescribed interest in the holding; and
 - (e) the prescribed fee.
- (5) The seller's Authority must not approve a transfer under this section unless it is satisfied that each person whom it knows, or ought to have known, to have a prescribed interest in the holding has consented to the transfer.
- (6) A transfer of water rights under this section made for valuable consideration and in good faith to a person who, at the time of the transfer, did not have notice of the prescribed interest of a person in the holding is not liable to be set aside on the ground that the holder of that prescribed interest had not consented to the transfer.

S. 226(4)(b)(i)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.3).

S. 226(5)
 amended by
 No. 62/1995
 s. 25(5).

S. 226(7)
amended by
No. 62/1995
s. 25(6).

S. 226(8)
amended by
Nos 121/1994
s. 194(a),
62/1995
s. 25(7).

S. 226(9)
amended by
No. 121/1994
s. 194(b).

S. 226(11)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.31).

S. 226(11A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.31).

S. 226(12)
amended by
No. 62/1995
s. 25(8).

- (7) A transfer takes effect subject to the prescribed terms and conditions and to any other terms and conditions of which notice is given to the parties by the buyer's Authority when the transfer is approved.
- (8) Subject to this Act, the buyer's Authority must supply to the land of the transferee any volume of water the right to which is the subject of the transfer and which would, if the transfer had not been approved, have been supplied to the holding of the transferor.
- (9) A transfer under this section detaches the water rights that are the subject of the transfer from the holding of the transferor and, if the land of the transferee is within an irrigation district, attaches them to the holding of the transferee.
- (10) By virtue of the transfer the liability to pay any amount payable under a tariff for irrigation or for drainage is transferred to the transferee.
- (11) A person whose interests are affected by a decision of an Authority to refuse to approve a transfer under this section may apply to the Tribunal for review of the decision.
- (11A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (12) Sub-sections (8), (9), (10) and (11) do not apply to a transfer if the seller's Authority is the transferee.

226AA. Permanent transfer of water rights interstate

S. 226AA
 inserted by
 No. 110/1997
 s. 20.

- (1) Subject to this section, the owner of a holding within a prescribed irrigation district may, in accordance with this section and the regulations made under section 228, permanently transfer to the owner or occupier of any land outside Victoria (including the transferor as the owner or occupier of any other land) any water rights that are attached to the holding.
- (2) A transfer under this section may only be made—
 - (a) with the approval of the Authority in whose district the holding of the transferor is located; and
 - (b) with the consent of each person who has a prescribed interest in the holding of the transferor.
- (3) A person who proposes to transfer water rights under this section must, at least 28 days before applying under sub-section (4), cause notice of the proposed application to be published in a newspaper circulating generally in the area concerned.
- (4) An application to the Authority in whose district the holding of the proposed transferor is located for approval of a transfer must be in the prescribed form and accompanied by—
 - (a) a copy of the written consent to the transfer of each person who has a prescribed interest in the holding of the proposed transferor; and
 - (b) a copy of—
 - (i) in the case of land under the **Transfer of Land Act 1958** (other than land in an identified folio), the Crown grant or certificate of title; or

S. 226AA(4)
 (b)(i)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.4).

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- (ii) in any other case—
 - (A) the last conveyance in the chain of title to the land; or
 - (B) any other document that gives evidence of the proposed transferor's title to the land; and
 - (c) a copy of the notice published under subsection (3); and
 - (d) a statutory declaration made by the proposed transferor setting out the names and addresses of each person known by the proposed transferor to have a prescribed interest in the holding; and
 - (e) the fee fixed by the Authority for such applications.
- (5) An Authority must not approve a transfer under this section unless it is satisfied that each person whom it knows, or ought to have known, to have a prescribed interest in the holding has consented to the transfer.
 - (6) In determining whether to give approval, an Authority must have regard to guidelines determined by the Minister under section 224B.
 - (7) A transfer of water rights under this section made for valuable consideration and in good faith to a person who, at the time of the transfer, did not have notice of the prescribed interest of a person in the holding is not liable to be set aside on the ground that the holder of that prescribed interest had not consented to the transfer.
 - (8) A transfer takes effect subject to the prescribed terms and conditions and to any other terms and conditions of which notice is given to the parties by the Authority when the transfer is approved.
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- (9) Subject to this Act, the Authority that has the irrigation district referred to in sub-section (1) must arrange for the supply to the land of the transferee of any volume of water which would, if the transfer had not been approved, have been supplied to the holding of the transferor.
- (10) A transfer under this section detaches the water rights that are the subject of the transfer from the holding of the transferor.
- (11) A person whose interests are affected by a decision of an Authority to refuse to approve a transfer under this section may apply to the Tribunal for review of the decision.
- (11A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 226AA(11)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.32).

S. 226AA(11A)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.32).

226A. Conversion of licences into water rights

S. 226A
 inserted by
 No. 62/1995
 s. 26.

- (1) If a licence under section 51 is transferred to the owner of a holding within a prescribed irrigation district, the transferee may apply to the Authority responsible for delivery of the water to have the licence converted into a water right to be attached to the holding.
- (2) An application must be in the prescribed form and be accompanied by the prescribed fee.
- (3) An Authority may approve or refuse to approve an application under sub-section (1).

S. 226A(5)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.33).

S. 226A(6)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.33).

- (4) If an Authority approves an application—
 - (a) the maximum annual amount of water which may be taken under the licence becomes a water right attached to the holding of the transferee; and
 - (b) the Authority must revise the register referred to in section 230 accordingly.
- (5) A person whose interests are affected by a decision of an Authority to refuse to approve an application for conversion may apply to the Tribunal for review of the decision.
- (6) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

227. Certificates as to transfers

- (1) A person may apply to an Authority for a certificate in the prescribed form specifying in relation to a holding in an irrigation district for which the Authority has responsibility—
 - (a) the total volume of water rights attached to that holding; and
 - (b) whether any of those rights have been transferred under this Part and, if so, particulars of the transfer.
- (2) An application for a certificate under sub-section (1) must be accompanied by the prescribed fee.

228. Regulations about permanent transfer of water rights

S. 228
 amended by
 No. 110/1997
 s. 15(5)(a).

For the purposes of sections 226, 226AA and 227 the Governor in Council may make regulations for or with respect to—

- (a) prescribing irrigation districts within and out of which water rights may be transferred under section 226 or 226AA; and
- (b) prescribing interests in a holding the consent of the holders of which is required to a transfer of water rights under section 226 or 226AA; and
- (c) prescribing procedures for applications for approval; and
- (d) fixing the fees payable to an Authority for processing and approving an application for approval; and
- (e) setting the minimum amount of water rights that must be retained by the owner of any holding (except in the case of a transfer to the Authority), having regard to—
 - (i) drainage and salinity criteria; and
 - (ii) the need to protect the water rights attached to other holdings within the irrigation district; and
- (f) setting the maximum amount of water rights that may be held by the owner or occupier of any holding having regard to—
 - (i) drainage and salinity criteria; and
 - (ii) the need to protect the water rights attached to other holdings within the irrigation district; and

S. 228(a)
 amended by
 No. 110/1997
 s. 15(5)(b).

S. 228(b)
 amended by
 No. 110/1997
 s. 15(5)(b).

- (g) setting limits on the transfer of water rights into and out of any part of an irrigation district (except in the case of a transfer to the Authority), having regard to—
 - (i) drainage and salinity criteria; and
 - (ii) the need to protect the water rights attached to other holdings within the irrigation district; and
 - (iii) the possible environmental impact of transfers; and
- (h) prescribing any other terms and conditions in relation to a transfer; and
- (i) prescribing forms; and
- (j) fixing the fees payable to an Authority for the issue of a certificate under section 227(1).

229. Tenders for new allocations

- (1) An Authority may, by notice published in the Government Gazette and in a newspaper circulating generally in an irrigation district—
 - (a) declare that water rights are available for purchase by any occupier or owner of the land comprised in any holding within the district on the terms and conditions specified in the notice; and
 - (b) invite applications from any such occupier or owner for an apportionment of water rights under this section.
- (2) On receipt of an application made in response to a notice published under sub-section (1), the Authority may apportion a volume of water rights to the land in respect of which the application is made.

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| <p>(3) Instead of making an apportionment of water rights on an application under this section, an Authority may, if the Authority demonstrates to the Minister that it has water surplus to its existing obligations to supply water, sell additional water rights—</p> <p style="margin-left: 40px;">(a) at auction; or</p> <p style="margin-left: 40px;">(b) by inviting tenders; or</p> <p style="margin-left: 40px;">(c) in any other manner that it thinks fit.</p> | <p>S. 229(3)
amended by
No. 62/1995
s. 20(1)(a).</p> |
| <p>(4) If an Authority decides to sell additional water rights under sub-section (3) the Authority must, by notice published in the Government Gazette and in a newspaper circulating generally in the area concerned—</p> <p style="margin-left: 40px;">(a) declare that the water rights are available for purchase by any person holding the qualifications specified in the notice; and</p> <p style="margin-left: 40px;">(b) give details of the method by which the water rights are to be sold; and</p> <p style="margin-left: 40px;">(c) specify the conditions subject to which the water rights are to be sold.</p> | <p>S. 229(3)(c)
amended by
No. 62/1995
s. 20(1)(b).</p> |
| <p>(5) An apportionment or sale of water rights under this section is subject to the published terms and conditions and to any other terms and conditions of which notice is given to the applicant by the Authority before the apportionment or sale is made.</p> | <p>S. 229(4)
amended by
No. 62/1995
s. 20(2)(a)(b).</p> |
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- (6) In determining any other terms and conditions the Authority must have regard to—
- (a) drainage and salinity criteria; and
 - (b) the maximum amount of water rights that, in its opinion, is required for the reasonable irrigation of land; and
 - (c) the need to protect the water rights apportioned to other holdings within the irrigation district; and
 - (d) any other matters that it considers relevant.
- (7) An apportionment or sale of water rights under this section—
- (a) does not limit and is not limited by; and
 - (b) must not be taken into account in calculating—
- the volume of water to be apportioned or capable of being apportioned as water rights under any other provision of this Act, but is otherwise subject to all the provisions of this Act.
- (8) In determining whether to apportion or sell water rights under this section the Authority—
- (a) must have regard to any water rights previously apportioned or sold by it within the irrigation district under this section and to the amount of any water previously sold by it within that district; and
 - (b) must consult the Victorian Farmers Federation and any other bodies that the Authority considers it appropriate to consult.
- (9) The Authority must make sure that details of an apportionment or sale under this section are entered in the register of lands kept under section 230.
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230. The register

- (1) An Authority must keep a register for each irrigation district for which it has responsibility.
- (2) The register must show—
 - (a) all lands within the district; and
 - (b) the owner or occupier of each holding; and
 - (c) the total volume of water rights that the Authority determines to have been attached to each holding; and
 - (d) the domestic and stock allowance that the Authority determines to have been attached to each holding; and
 - (e) any other information that the Authority considers necessary.
- (3) An Authority may revise the register—
 - (a) because of changes in ownership or occupation of lands; and
 - (b) to correct any obvious error; and
 - (c) to include any land that is added to the district; and
 - (d) to exclude any land that is excised from the district.
- (4) An Authority must revise the register to take account of any transfer of water rights under section 226 or conversion into water rights under section 226A.
- (4A) An Authority may revise the register to amalgamate one or more entries in the register or to split an entry in the register.

S. 230(4)
amended by
No. 62/1995
s. 27(1).

S. 230(4A)
inserted by
No. 62/1995
s. 27(2).

S. 230(5)
 amended by
 No. 62/1995
 s. 27(3),
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.34).

S. 230(5A)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.34).

- (5) A person whose interests are affected by—
- (a) a determination of an Authority under sub-section (2)(c) or (d); or
 - (b) a decision of an Authority under sub-section (3)(a) or (b) or sub-section (4A) to revise the register—

may apply to the Tribunal for review of the determination or decision.

- (5A) An application for review must be made within 28 days after the later of—
- (a) the day on which the determination or decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the determination or decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (6) Subject to this section, an Authority may keep its register in any form that it decides to be appropriate.

231. Subdivision of water rights attached to holdings

- (1) In this section "**capitalised depreciation**", in respect of any works, means the sum determined by the Authority to be necessary to provide for the maintenance and renewal of the works.
- (2) A person must not subdivide into separate holdings any land within an irrigation district except in accordance with a proposal submitted to and approved by the Authority.

- (3) A proposal that is submitted to the Authority must—
- (a) show the allotments into which the applicant intends to subdivide the land; and
 - (b) show the easements that the applicant intends to be provided in favour of each allotment for the supply of water for irrigation to it and the drainage of water from it; and
 - (c) be accompanied by a statement of the manner in which the applicant proposes that the existing water right be apportioned to each allotment.

- (3A) In addition to the requirements of sub-section (3), if a proposal relates to a holding consisting of 2 or more titles, the proposal must be accompanied by—

S. 231(3A)
 inserted by
 No. 62/1995
 s. 27(4).

- (a) a copy of—

- (i) in the case of land under the **Transfer of Land Act 1958** (other than land in an identified folio), the Crown grant or certificate of title; or

S. 231(3A)(a)(i)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.5).

- (ii) in any other case—

- (A) the last conveyance in the chain of title to the land; or

- (B) any other document that gives evidence of the applicant's title to the land; and

- (b) a copy of a written consent to the proposed apportionment of water rights between each new allotment proposed under sub-section (3)(c) by all persons shown on the title or conveyance to have a prescribed interest in all or any of the land comprising the holding to be subdivided.

- (4) The Authority must, after considering the proposal, advise the applicant of—
- (a) any modification to the proposal that the Authority requires; and
 - (b) the nature and extent of the works that the Authority will need to provide for the supply of water to each allotment, the measurement of the water supplied, the drainage of water from each allotment and the provision of access to or within each allotment; and
 - (c) the estimated cost of any works to be provided, and any amount of the capitalised depreciation of them that the Authority considers will not be met by increased revenue resulting from the works.
- (5) The Authority may—
- (a) approve the proposal, with or without modification; or
 - (b) refuse to approve it.
- (6) The Authority may make it a condition of approval of a proposal that the applicant pays to it—
- (a) any fees fixed by by-law for the investigation and approval of proposals; and
 - (b) the estimated cost of the works and the amount of the capitalised depreciation referred to in sub-section (4)(c).
- * * * *
- (8) As soon as practicable after the approval of the proposal, and the payment of any amounts required under sub-section (6), the Authority must—

S. 231(7)
 repealed by
 No. 48/2003
 s. 12(3).

-
- (a) construct the works; and
 - (b) reapportion the water right in accordance with the statement referred to in sub-section (3)(c) and any modifications made under sub-section (5); and
 - (c) amend the register accordingly.
- (9) If the actual cost of constructing the works differs from the estimated cost—
- (a) if the actual cost is less, the difference must be refunded by the Authority to the applicant; and
 - (b) if the actual cost is more, the difference (but not more than 20 per cent of the estimated cost) must be paid by the applicant to the Authority on demand.
- (10) A person whose interests are affected by a decision of an Authority—
- (a) to require any modifications to a proposal; or
 - (b) to refuse to approve a proposal—
- may apply to the Tribunal for review of the decision.
- (11) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 231(10)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.35).

S. 231(11)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.35).

232. Use of Crown land for water supply works

- (1) An Authority, with the approval of the Minister given after consultation with the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**, may authorise a person to establish on Crown lands any works necessary for the supply of water from a waterway to any land in an irrigation district.
- (2) An authority—
 - (a) may be granted on any terms and conditions the Authority thinks fit; and
 - (b) authorises the person to occupy the Crown lands specified in it for the purpose of establishing, maintaining and using the necessary works.
- (3) In this section "**Crown lands**" does not include lands which are subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**.

S. 232(3)
 inserted by
 No. 35/1998
 s. 21(3).

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PART 12—ACCESS OVER LANDS

233. Definitions and application

- (1) In this Part, a reference to the owner of land includes a reference to—
 - (a) a person who acts with the consent of the owner; and
 - (b) a committee as defined in section 244; and
 - (c) a person who holds the land as executor or administrator or trustee.
- (2) An agreement entered into under this Part by a person acting with the consent of the owner of land must be taken to have been entered into by that owner.
- (3) An agreement entered into by a committee must be taken to have been entered into by each participating landowner.
- (4) Nothing in this Part empowers an Authority to seek or obtain a right of access in favour of land, whether or not that land is owned by the Authority.
- (5) In this Part, a reference to an agreement under section 234 includes a reference to a declaration under section 234(5).

S. 233(1)(b)
 amended by
 No. 62/1995
 s. 33(1).

S. 233(1)(c)
 inserted by
 No. 62/1995
 s. 33(1).

S. 233(5)
 inserted by
 No. 62/1995
 s. 33(2).

234. Access by agreement

- (1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person may give notice to—

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- (a) the other owner; and
 - (b) to the occupier of the land over which access is sought, if the owner is not the occupier.
- (2) Once notice has been given, the owner giving notice must try to arrange that access by agreement with the other owner.
- (3) An agreement must—
- (a) specify any compensation agreed to; and
 - (b) clearly describe the access agreed to; and
 - (c) be accompanied by a map of the land which shows the location and measurements of the proposed works.
- (4) An agreement made between the owner of one or more parcels of land and another owner must specify each parcel of land over, or in favour of, which the right of access is created.
- (5) An owner of more than one parcel of land who wishes to create a right of access over one parcel in favour of another parcel may declare in writing in the form approved by the Minister that such right of access has been created.

S. 234(4)
 inserted by
 No. 62/1995
 s. 33(3).

S. 234(5)
 inserted by
 No. 62/1995
 s. 33(3).

235. Access without agreement

- (1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person and who gives notice under section 234(1) may, if agreement has not been reached with the other owner about access within one month after service of the notice on the other owner, apply to the Minister for the appointment of—
- (a) an Authority; or

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(b) Melbourne Water Corporation—

S. 235(1)(b)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.36).

to decide the issue.

- (2) The Minister must make an appointment if an application is made.
- (3) In deciding whether a right of access should be created over land, the appointed body must have regard to the following—
 - (a) whether any damage will be caused to the property of the owner of the land;
 - (b) whether that owner may be fully compensated for that damage by money or otherwise.
- (4) If the appointed body decides that a right of access should be created over land, that body must decide the nature and extent of that right and of the works that may be constructed on that land.
- (5) A decision of the appointed body is, subject to sub-section (6), binding on the parties and may include any order that the body thinks fit for the payment of compensation.
- (6) A person whose interests are affected by the decision of the appointed body under sub-section (1) may apply to the Tribunal for review of the decision.
- (6A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of

S. 235(6)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.37).

S. 235(6A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.37).

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reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

- (7) On an application for review under sub-section (6) the Tribunal may make any order that it thinks fit for the payment of compensation.

236. Registration of right of access

- (1) An agreement under section 234, or a decision under section 235, by virtue of which a right of access is created over, or in favour of, land has no effect until it is recorded in the Register under the **Transfer of Land Act 1958**.
- (2) An agreement or a decision referred to in sub-section (1) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

* * * * *

- (5) The owner of the land in favour of which the right of access is created must lodge the agreement or decision for registration within one month after the agreement or decision is made.
- (6) If the person referred to in sub-section (5) does not comply with that sub-section, the owner of the land over which the right of access is created may register the agreement or decision and recover the reasonable costs of doing so from that person.

S. 235(7)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.38).

S. 236(1)
 substituted by
 No. 85/1998
 s. 24(Sch
 item 66.6).

S. 236(3)(4)
 repealed by
 No. 85/1998
 s. 24(Sch
 item 66.7).

S. 236(5)
 amended by
 Nos 62/1995
 s. 34(1),
 85/1998
 s. 24(Sch
 item 66.8).

S. 236(6)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.8).

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- (7) If requested to do so by a party referred to in section 237(1), the Registrar of Titles must, in registering the agreement or decision, do both or either of the following—

S. 236(7)
inserted by
No. 50/1992
s. 8(1).

- (a) dispense with the submission of any certificate of title or other document;
- (b) register the agreement or decision by recordings in the relevant folio of the Register only.

- (8) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of an agreement or decision registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 236(8)
inserted by
No. 85/1998
s. 24(Sch
item 66.9).

237. Revocation or variation of right of access

- (1) The parties or the successors in title of the parties—
- (a) to an agreement under section 234; or
 - (b) to a dispute decided by a body appointed by the Minister under section 235; or
 - (c) to an agreement made or altered as a result of an order of the Tribunal—

S. 237(1)
amended by
No. 62/1995
s. 33(4).

S. 237(1)(c)
amended by
No. 52/1998
s. 311(Sch. 1
item
105.39(a)).

may, by agreement, revoke or vary the terms of the original agreement or decision.

- (2) If the parties referred to in sub-section (1) do not agree on any proposed revocation or variation within 1 month after the party proposing it notifies the other parties, any party may apply to the Minister for the appointment of—

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S. 237(2)(b)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item
 105.39(b)).

S. 237(3)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item
 105.39(c)).

- (a) an Authority; or
- (b) Melbourne Water Corporation—

to decide the issue.

- (3) Section 235(5), (6), (6A) and (7) applies in relation to a decision under sub-section (2) as if it were a decision under section 235(1).
- (4) Section 236 applies to an agreement under sub-section (1) and a decision under sub-section (2) as if they were an agreement under section 234 and a decision under section 235 respectively.

238. Maintenance of works

- (1) The owner of land in favour of which a right of access is created may enter the land over which the right of access is created to instal, remove, alter or maintain any works on the land over which the right of access is created that are necessary for the use of the right of access.
- (2) If that owner fails to maintain those works, the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of his or her intention to carry out the maintenance and recover from the other owner the reasonable costs of that maintenance, maintain the works and recover those costs.
- (3) If a dispute arises over the maintenance or the costs of it, either owner may apply to the Minister for the appointment of—
 - (a) an Authority; or

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(b) Melbourne Water Corporation—

S. 238(3)(b)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.40).

to decide the issue.

- (4) Section 235(5), (6) and (7) applies in relation to a decision under sub-section (3) as if it were a decision under section 235(1).

239. Breaking up roads in maintaining etc. works

- (1) The owner of land in favour of which a right of access is created may, subject to this Part, do any thing necessary to construct, maintain and alter works in the land over which the right of access is created, including breaking up the surface of any road.
- (2) Before breaking up the surface of a road, the owner must give 14 days' notice to the person responsible for maintaining the road.
- Penalty: 10 penalty units.
- (3) The person responsible for maintaining the road may, if that person thinks fit, supervise the work.
- (4) The owner must do as little damage as possible in exercising powers under sub-section (1), and must, after exercising those powers, return the site, so far as possible, to the state it was in before the work was started.

Penalty: 10 penalty units.

- (5) If the owner fails to comply with sub-section (4), the person responsible for maintaining the road may, after giving the owner 14 days' notice of that person's intention to carry out the necessary works and recover from the owner the reasonable costs of those works, carry out the works and recover those costs.

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- (6) If the owner of land in favour of which a right of access is created—
- (a) does not do as little damage as possible in exercising powers under sub-section (1); and
 - (b) after exercising those powers, does not return the site, so far as possible, to the state it was in before the work was started—

the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of its intention to carry out the necessary works and recover from the other owner the reasonable costs of those works, carry out the works and recover those costs.

240. Penalty for obstructing works

A person must not—

- (a) wilfully obstruct any person carrying out any works under this Part; or
- (b) wilfully damage or obstruct any such works.

Penalty: 20 penalty units.

241. Notice that right of access is sought over public land

- (1) If land in respect of which a right of access is sought is owned by the Crown, the notice required under section 234(1) must be served on the Minister administering the **Conservation, Forests and Lands Act 1987**, and the Minister may enter into an agreement under section 234 with the person seeking the right of access.
- (2) If land in respect of which a right of access is sought is owned by the Public Transport Corporation, the notice required under section 234(1) must be served on that Corporation, and the Corporation may enter into an agreement under section 234 with the person seeking the right of access.

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|---|---|
| <p>(2A) If land in respect of which a right of access is sought is owned by Victorian Rail Track established by Division 2 of Part 2 of the Rail Corporations Act 1996, the notice required under section 234(1) must be served on Victorian Rail Track, and Victorian Rail Track may enter into an agreement under section 234 with the person seeking the right of access.</p> | <p>S. 241(2A)
inserted by
No. 104/1997
s. 58(1).</p> |
| <p>(3) If the Minister or Victorian Rail Track publishes, within 8 weeks after service of the notice, a notice of dissent in the Government Gazette, the right of access is denied, despite any other provision in this Part.</p> | <p>S. 241(3)
amended by
Nos 104/1997
s. 58(2),
30/2000
s. 41(1).</p> |
| <p>(4) If the Minister or Victorian Rail Track publishes a notice in the Government Gazette stating that an agreement under this section—</p> <p style="padding-left: 40px;">(a) is revoked; or</p> <p style="padding-left: 40px;">(b) is varied as specified in the notice—</p> <p style="padding-left: 40px;">the agreement is, on the date of publication of the notice, revoked or varied as specified in the notice.</p> | <p>S. 241(4)
amended by
Nos 104/1997
s. 58(2),
30/2000
s. 41(2).</p> |
| <p>(5) The owner of land in favour of which a right of access is created by an agreement under this section has the rights and obligations that are specified in the agreement in relation to the construction, maintenance and alteration of works in the land over which the right of access is created.</p> | |
| <p>(6) Sections 236, 238 and 239 do not apply in relation to a right of access granted by an agreement under this section.</p> | |

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242. Joint rights of access

If a right of access over any land is sought by more than one person, those people may together—

- (a) give notice under section 234 to the owner of the land over which access is sought; and
- (b) if agreement has not been reached with that owner within one month after service of the notice, apply to the Minister for the appointment of—
 - (i) an Authority; or
 - (ii) Melbourne Water Corporation—to decide the issue.

S. 242(b)(ii)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.41).

243. Costs of investigations

- (1) An Authority or Melbourne Water Corporation may recover, as a debt due to it from the person who applied for its appointment, the reasonable costs of any investigations it undertakes in making a decision under this Part.
- (2) A person whose interests are affected by a decision of the Authority or Melbourne Water Corporation as to the amount of costs may apply to the Tribunal for review of the decision.
- (3) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 243(1)
 amended by
 No. 52/1998
 s. 311(Sch. 1
 item 105.42).

S. 243(2)
 substituted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.43).

S. 243(3)
 inserted by
 No. 52/1998
 s. 311(Sch. 1
 item 105.43).

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244. Community drainage and salinity schemes

(1) In this section and sections 245 and 246—

"committee" means a committee set up under a community agreement to act on behalf of participating landowners;

"community agreement" means an agreement by which a group of landowners voluntarily establishes—

S. 244(1)
def. of
"community
agreement"
substituted by
No. 62/1995
s. 35(1).

- (a) a community drainage or salinity mitigation scheme to combat drainage or salinity problems in their area; or
- (b) a community water supply scheme whose primary purpose is to supply water to farms.

(2) A community agreement must—

- (a) describe in detail the works to be constructed, altered or maintained and their location; and
- (b) clearly identify the land affected by the scheme; and
- (c) provide for the establishment of a committee.

(3) A community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

S. 244(3)
substituted by
No. 85/1998
s. 24(Sch item
66.10).

(4) A community agreement referred to in sub-section (3) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

(4A) If requested to do so by a party to a community agreement referred to in sub-section (3), the Registrar of Titles must, in registering the agreement, do both or either of the following—

S. 244(4A)
inserted by
No. 50/1992
s. 8(2).

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- (a) dispense with the submission of any certificate of title or other document;
- (b) register the agreement by recordings in the relevant folio of the Register only.

* * * * *

S. 244(5)(6)
 repealed by
 No. 85/1998
 s. 24(Sch
 item 66.11).

S. 244(7)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.28),
 49/1994
 s. 5(1)(g)(i),
 62/1995
 ss 34(2), 35(2),
 85/1998
 s. 24(Sch.
 item 66.12).

- (7) The committee set up under a community agreement must, within 30 days after the agreement is lodged for registration under subsection (3), lodge a copy of that agreement with any Authority in whose district (being a district described in a column of item 102 of Schedule 12) and any council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated.

S. 244(8)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.13).

- (8) If the scheme involves—

S. 244(8)(a)
 amended by
 Nos 50/1992
 s. 10(Sch.
 item 11.29),
 49/1994
 s. 5(1)(g)(ii).

- (a) the outfall of the scheme's drain to works of an Authority, the consent of that Authority must be obtained; and
- (b) the construction of a drain across a road reserve, the consent of the municipal council in whose municipal district the road reserve is situated must be obtained—

before the agreement is registered.

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- (9) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a community agreement registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 244(9)
inserted by
No. 85/1998
s. 24(Sch
item 66.14).

245. Powers of committee

- (1) A committee may collect levies, in accordance with the community agreement, from participating landowners.
- (2) A committee may, if authorised by the participating landowners, act as the agent of the participating landowners—
- (a) to seek access over land owned by others; and
- (b) to negotiate variation or revocation of the community agreement.

- (2A) An agreement which varies a community agreement includes an agreement which adds to or removes from the community agreement—
- (a) a participating landowner; or
- (b) land affected by the scheme established by the community agreement.

S. 245(2A)
inserted by
No. 62/1995
s. 35(3).

- (3) An agreement which varies or revokes a community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

S. 245(3)
substituted by
No. 85/1998
s. 24(Sch
item 66.15).

* * * * *

S. 245(4)
repealed by
No. 85/1998
s. 24(Sch
item 66.15).

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S. 245(4A)
inserted by
No. 50/1992
s. 8(3).

S. 245(5)
amended by
No. 62/1995
s. 35(4).

S. 246
amended by
Nos 50/1992
s. 10(Sch.
item 11.30),
49/1994
s. 5(1)(h),
62/1995
s. 35(5)(a)(b).

S. 246(2)
inserted by
No. 62/1995
s. 35(5)(c).

(4A) If requested to do so by a party to an agreement which varies or revokes a community agreement that affects land under the operation of the **Transfer of Land Act 1958**, the Registrar of Titles must, in registering the agreement, do both or either of the following—

- (a) dispense with the submission of any certificate of title or other document;
- (b) register the agreement by recordings in the relevant folio of the Register only.

(5) A committee may take out insurance for damage resulting from the community drainage or salinity mitigation or community water supply scheme, and for that purpose the committee must be taken to have an insurable interest.

246. Powers of Corporation and councils for community schemes

- (1) An Authority or a council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated may, if requested by the committee to do so, exercise the powers and perform the functions of the committee.
- (2) Despite anything to the contrary in any other Act, a council may, if requested under sub-section (1), exercise powers and perform functions under this section where part of the affected land is situated outside the municipal district of the council.

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s. 247

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Division 1—Corporate Plans

Pt 13 Div. 1
 (Heading and
 ss 247, 248)
 substituted as
 Pt 13 Div. 1
 (Heading
 and ss 247–
 249) by
 No. 110/1997
 s. 21.

247. Corporate plans

S. 247
 substituted by
 No. 110/1997
 s. 21.

- (1) An Authority must prepare a corporate plan and submit it to the Minister—
 - (a) on or before the date specified by the Minister; or
 - (b) if no such date is specified, at least 2 months before it intends to implement the plan or any part of it.
- (2) A corporate plan must be in or to the effect of a form approved by the Minister and must include—
 - (a) a statement of corporate intent in accordance with section 248;
 - (b) a business plan and financial statements containing the information that the Minister requires;
 - (c) a pricing proposal containing the information that the Minister requires.
- (3) An Authority may implement a corporate plan 2 months (or any shorter time allowed by the Minister) after its submission to the Minister, unless the Minister, within that time, directs in writing any variations that the Minister thinks fit to be made in any corporate plan submitted in accordance with this section.

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- (4) The Minister must publish in the Government Gazette any direction made under sub-section (3).
- (5) The Minister must not give a direction under sub-section (3) without first having consulted the Authority about the direction.
- (6) An Authority must not make a major deviation from its corporate plan unless it has, at least 2 months (or any shorter time allowed by the Minister) before it intends to make the deviation, submitted to the Minister details of the proposed deviation.
- (7) The Minister may issue guidelines as to what are major deviations for the purposes of sub-section (6).
- (8) The corporate plan of an Authority at any time is that plan as varied under sub-section (3), or as revised by any deviation under sub-section (6), at that time.
- (9) Despite any other provision, an Authority must not set tariffs and other charges otherwise than in accordance with its corporate plan.

S. 248
substituted by
No. 110/1997
s. 21.

248. Statement of corporate intent: contents

Each statement of corporate intent must specify for the Authority, in respect of the financial year to which it relates and each of the 4 following financial years, the following information—

- (a) the business objectives of the Authority;
- (b) the main business undertakings of the Authority;
- (c) the nature and scope of the activities to be undertaken by the Authority;
- (d) the performance targets and other measures by which the Authority may be judged in relation to its business objectives;

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- (e) the kind of information to be provided to the Minister by the Authority during the course of those financial years;
- (f) any other matters that may be agreed on by the Minister and the Authority from time to time.

249. Inspection of corporate plans

An Authority must make sure that an up to date copy of its corporate plan is available at its office during its business hours for inspection on request.

New s. 249 inserted by No. 110/1997 s. 21.

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Pt 13 Div. 2 (Heading and ss 249–251) repealed by No. 31/1994 s. 4(Sch. 2 item 106).

Division 3—Funds of Authorities

252. Use of income

Subject to this Act, an Authority may, for or in connection with, or incidental to, the performance of its functions and the achievement of its objects, use any income received by it.

253. Investment

- (1) An Authority other than a declared Authority within the meaning of Division 4, may invest its money—
 - (a) in any manner in which money may be invested under the **Trustee Act 1958**; or
 - (b) in any other manner that the Minister approves.

S. 253(1) amended by No. 99/1993 s. 23(1).

S. 253(1)(a) amended by No. 104/1995 s. 6(Sch. 1 item 31).

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s. 253A

S. 253(3)
 inserted by
 No. 99/1993
 s. 23(2).

S. 253A
 inserted by
 No. 110/1997
 s. 23.

S. 254(1)
 amended by
 No. 99/1993
 s. 23(3)(a).

- (2) Section 4(2) of the **Trustee Act 1958** does not apply in relation to investments made under sub-section (1)(a) of this section.
- (3) A declared Authority within the meaning of Division 4 may invest its money in accordance with powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

253A. Payments by Treasurer in 1997/98

- (1) The Treasurer may, during the financial year commencing on 1 July 1997, pay out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) to an Authority that has a water supply district and a sewerage district an amount determined by the Treasurer in respect of that Authority.
- (2) The aggregate amount that may be paid to Authorities under sub-section (1) shall not exceed the sum of \$410 000 000.

Division 4—Borrowing⁵²

254. Borrowing powers of Authorities

- (1) In this Division—
 - "financial accommodation"** includes, but is not limited to—
 - (a) a loan; and
 - (b) an overdraft; and
 - (c) non-conventional forms of financial funding;

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s. 254

"Authority" does not include a declared Authority;

S. 254(1) def. of "Authority" amended by Nos 50/1992 s. 10(Sch. item 11.31), 99/1993 s. 23(3)(b), 65/1995 s. 22(l).

"declared Authority" means an Authority declared under section 17A of the **Borrowing and Investment Powers Act 1987** to be a Water Authority to which Schedule 1 of that Act applies.

S. 254(1) def. of "declared Authority" inserted by No. 99/1993 s. 23(3)(c).

- (2) An Authority may obtain financial accommodation, subject to sub-section (3), at a rate of interest approved by the Treasurer and on any terms and conditions imposed by the Minister.
- (3) The total financial accommodation obtained by an Authority in any financial year must not exceed the limit set by the Minister for that Authority for that year, or any higher limit allowed, or lower limit imposed, by the Minister.
- (4) A contract for financial accommodation entered into by an Authority is void if, as a result of the contract, the financial accommodation obtained by the Authority would exceed any limit applying to the Authority, at the time of entering into the contract, under sub-section (3).
- (5) A declared Authority may obtain financial accommodation subject to and in accordance with the **Borrowing and Investment Powers Act 1987**.
- (6) The payment of amounts payable as a result of or in connection with financial accommodation obtained by a declared Authority (including the payment of expenses of enforcement) in accordance with powers conferred on the declared

S. 254(3) amended by No. 69/1993 s. 6(a).

S. 254(4) substituted by No. 69/1993 s. 6(b).

S. 254(5) inserted by No. 99/1993 s. 23(4).

S. 254(6) inserted by No. 99/1993 s. 23(4).

Authority by the **Borrowing and Investment Powers Act 1987** may be secured in such manner as the Treasurer approves.

255. Securities and guarantees

- (1) In borrowing in accordance with this Division an Authority may—
 - (a) issue bonds that are secured on its revenue; or
 - (b) issue notes or any other securities that are approved by the Treasurer; or
 - (c) mortgage its revenue.
- (2) In borrowing in accordance with this Division the Geelong and District Water Board, unless it is a declared Authority, may issue inscribed stock.
- (3) The due repayment of any money borrowed by the issue of inscribed stock in accordance with subsection (2), and the payment of any interest on that money, is guaranteed by the Government of Victoria⁵³.

S. 255(2)
 amended by
 No. 99/1993
 s. 23(5).

256. Investment by public bodies

The providing of financial accommodation in accordance with section 254 is a lawful investment for any money that any company, or any body that is incorporated by or under this or any other Act, is authorised or directed to invest.

Division 5—Payment for services

257. Definitions

In this Division—

"development tariff" means a scale of charges by reference to which a fee is imposed by an Authority on the owner of a property for the development of a service by that Authority;

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"tariff" means a scale of charges by reference to which a fee is imposed by an Authority on the owner or occupier of a property for works or services provided by that Authority;

S. 257 def. of "tariff" amended by No. 49/1994 s. 8(c).

"valuation equalisation factor" means a factor determined by the Valuer-General which, when applied to valuations returned at different dates, allows the calculation of different tariffs so that the amounts payable in respect of properties of equal value are adjusted to compensate for the variations caused by different valuation dates.

258. Properties subject to tariff

- (1) A tariff that is based on the valuation of a property may only be set in relation to land that is rateable under section 154 of the **Local Government Act 1989**.
- (1A) A tariff that is not based on the valuation of a property may only be set in relation to land that is not rateable under section 154 of the **Local Government Act 1989** and that is within a water district or a sewerage district of an Authority if the land is connected to the Authority's works.
- (2) For the purpose of applying section 154(2)(a) of the **Local Government Act 1989**, land which is the property of the Crown must be taken to be occupied if any housing on that land is in a habitable condition.

S. 258(1A) inserted by No. 110/1997 s. 24(1).

259. Tariffs

- (1) An Authority may impose fees under—
 - (a) a tariff on serviced properties within its district; and
 - (b) a development tariff on unserviced properties within its district; and

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S. 259(1)(c)
 amended by
 Nos 62/1995
 s. 41(1),
 110/1997
 s. 24(2).

S. 259(1)(d)
 inserted by
 No. 110/1997
 s. 24(2).

S. 259(2)(c)
 amended by
 No. 62/1995
 s. 41(2).

- (c) a tariff for irrigation, drainage or salinity mitigation purposes on any properties within its district⁵⁴; and
 - (d) a tariff on any properties for the purposes of a management plan for a groundwater supply protection area.
- (2) A fee imposed under a tariff or development tariff on a property may be—
- (a) a fixed amount; or
 - (b) an amount fixed according to the value or size of the property; or
 - (c) an amount fixed according to the extent of use of or benefit from the service⁵⁵; or
 - (d) any combination of amounts referred to in paragraphs (a), (b) and (c).
- (3) In fixing the fees imposed under a tariff that is based on the valuation of a property an Authority may use a valuation equalisation factor.
- (4) An Authority that imposes fees under a tariff or development tariff (other than fees of a fixed amount) may, by resolution, fix a minimum amount payable under the tariff for any property or class of property in respect of which a fee is imposed.
- (5) An Authority that imposes fees under a tariff or development tariff may, by resolution, fix different fees payable for different properties or for different periods on the basis of any criteria specified in the resolution.

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- (6) A resolution under sub-section (4) or (5) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (7) An Authority may impose fees under a tariff or development tariff for any particular purpose specified in the Authority's by-laws.
- (8) An Authority may, in respect of a property that becomes liable during a financial year to a fee imposed under a tariff, impose a proportion of—
- (a) the fee imposed under the tariff for that part of the year during which the property is liable to a fee under the tariff; and
 - (b) the fee imposed under a development tariff for that part of the year during which the property was liable to a fee under a development tariff.
- (9) An Authority may, in respect of a property, separately impose fees under a tariff or development tariff in respect of each separate occupancy on that property. S. 259(9)
inserted by
No. 78/1991
s. 20.
- (10) In determining what constitutes a separate occupancy, the Authority must use the relevant principles set out in the **Valuation of Land Act 1960**. S. 259(10)
inserted by
No. 78/1991
s. 20.
- (11) Any fee imposed under this Act as in force before the amendment made by section 20 of the **Local Government (Rating) Act 1991** is as valid as if it had been imposed under this Act as amended by that section. S. 259(11)
inserted by
No. 78/1991
s. 20 (as
amended by
No. 22/1992
s. 21(2)).
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260. Setting a tariff

- (1) An Authority that sets a tariff must do so by resolution.
- (2) A resolution under sub-section (1) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (3) An Authority that sets a tariff must specify in the notice under sub-section (2)—
 - (a) the district to which the tariff applies; and
 - (b) the method of calculating fees imposed under the tariff; and
 - (c) the period for which the tariff is set; and
 - (d) the date by which, and the place at which, the fee imposed under the tariff is payable.

260A. Limits on power of certain Authorities to set tariffs

- (1) A Catchment Management Authority must not set a tariff in respect of a function the Authority has under Part 10 other than any function the Authority has under Division 3 or Division 4 of that Part.
- (2) In this section "**Catchment Management Authority**" means an Authority that has functions conferred on it by section 13 of the **Catchment and Land Protection Act 1994** and has a waterway management district.

261. Valuation equalisation factor

An Authority whose district includes parts of more than one municipal district may, if the most recent valuations of properties within those municipal districts were not made in the same year, request the Valuer-General to determine a valuation equalisation factor for each of those municipal districts.

S. 260A
 inserted by
 No. 65/1999
 s. 4.

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262. Valuations

An Authority that sets a tariff may—

- (a) use the most recent municipal valuation; or
- (b) cause its own valuation to be made by a valuer—

S. 262(b)
 amended by
 No. 91/1994
 s. 36(12).

for the purposes of fixing the amount of any fee imposed in relation to that property under the tariff.

263. Supplementary valuations

- (1) An Authority may alter the amount of a fee imposed under a tariff in respect of a property if a supplementary valuation of the property is made in accordance with section 13DF of the **Valuation of Land Act 1960**.
- (2) An Authority may request a municipal council to arrange for a supplementary valuation to be made at the Authority's expense.
- (3) The **Valuation of Land Act 1960** applies, with any necessary modifications, to a supplementary valuation made at the request of an Authority as if it were a supplementary valuation made in accordance with section 13DF of that Act.
- (4) If a supplementary valuation is made because of an event that happens during a financial year, a proportion of the amount of the fee imposed under the tariff, as altered, is payable for the part of the financial year after the supplementary valuation, and a proportion of the original amount of the fee imposed under the tariff is payable for the part of the financial year before the supplementary valuation.

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264. Power to charge

- (1) An Authority may, by by-law or otherwise, set charges for anything it does in the performance of its functions, including any function delegated to it.
- (2) A by-law made under sub-section (1) may prescribe a charge by reference to a number (whether whole or fractional) of charge units and that charge may be determined by multiplying the number of charge units by a number of dollars fixed by resolution of the Authority.
- (3) The power in sub-section (1) is in addition to any other powers of an Authority under this Division.

264A. RWC may charge for securing bulk entitlements

- (1) An Authority ("the first Authority") may, by notice in writing to another Authority ("the other Authority") that has a bulk entitlement to take water from any waterway (including the River Murray) or from any works of the first Authority, charge the other Authority—
 - (a) for operating and maintaining any works that are associated with; or
 - (b) in respect of any other costs incurred by the first Authority in connection with—
 supplying, or securing the supply of, water for that bulk entitlement.
- (1A) Sub-section (1) has effect despite any provision to the contrary made before the commencement of Division 1 of Part 4 by or under an Act granting the relevant Authority an entitlement to take water.

S. 264A
 inserted by
 No. 69/1993
 s. 7.

S. 264A(1)
 substituted by
 No. 49/1994
 s. 5(2).

S. 264A(1A)
 inserted by
 No. 49/1994
 s. 5(2).

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- (2) A charge imposed under sub-section (1)—
- (a) is for the period specified in the notice to the Authority;
 - (b) must be paid by the date specified in the notice to the Authority, being a date at least 28 days after the date of issue of the notice.

265. Charges for property that is not rateable⁵⁶

Subject to section 273A, the owner of any property (including land owned by a council) that is not rateable under section 154 of the **Local Government Act 1989** must pay any fee or charge imposed for services provided to the property, and any interest imposed for late payment.

S. 265
amended by
No. 25/1993
s. 14(a).

266. Application for review

- (1) A person who is aggrieved by the setting of a tariff, or the imposing of a fee under a tariff, by an Authority may, within 1 month after receipt of the demand for payment, object in writing to the Authority on any of the following grounds—
- (a) where the fee imposed under the tariff is based on valuation of the land, that the land is not rateable;
 - (b) that the person is not liable for the tariff;
 - (c) that the tariff was not set in accordance with any plans for tariffs included in the Authority's corporate plan;
 - (d) that the Authority did not give the required notice that the property is a serviced property;
 - (e) that the fee imposed by the Authority is not a correct application of the tariff as set.

S. 266(1)(c)
amended by
No. 110/1997
s. 22(2).

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S. 266(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 105.44).

S. 266(4A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 105.44).

S. 266(6)
amended by
Nos 91/1994
s. 31, 52/1998
s. 311
(Sch. 1 item
105.45) (as
amended by
No. 101/1998
s. 22(1)(q)).

- (2) An Authority must, within 2 months after receipt of an objection from a person, notify the person of its decision on the objection.
- (3) If an Authority has not notified the person of its decision within 2 months after the objection was made, the Authority must be taken to have notified the person of its decision to overrule the objection at the expiry of the 2 month period.
- (4) A person who has objected may apply to the Tribunal for review of the Authority's decision on the objection on any of the grounds specified in sub-section (1).
- (4A) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (5) An objection does not prevent the recovery of any fee or interest due under a tariff.
- (6) A person who objects to—
 - (a) the calculation or application of a valuation equalisation factor; or
 - (b) the fixing of different fees imposed under a tariff under section 259(5) that are based on valuation—

may apply to the Tribunal for review in accordance with Part III of the **Valuation of Land Act 1960**.

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|--|---|
| <p>(6A) The provisions of Division 4 of Part III of the Valuation of Land Act 1960, with such modifications as are necessary, apply to an application under sub-section (6).</p> | <p>S. 266(6A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.46).</p> |
| <p>(7) If a tariff is quashed by the Tribunal under this section, the Authority may—</p> <p style="margin-left: 20px;">(a) set a new tariff for the particular year, even if the year has ended; and</p> <p style="margin-left: 20px;">(b) retain any amount paid to it by a person in respect of that tariff on account of any amount payable by that person in respect of the next effective tariff set.</p> | <p>S. 266(7) amended by No. 52/1998 s. 311(Sch. 1 item 105.47).</p> |

Division 6—Owner finance

267. Operation of Division

The provisions of this Division are in addition to any provisions empowering an Authority to enter agreements and provide works in the exercise of its functions.

268. Authority may require payment⁵⁷

- (1) An Authority that intends to provide services which will benefit a property may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of those services, and any fireplugs attached to those works.
- (2) If a proposal for the subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of

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services that will benefit the property, and any fireplugs attached to those works.

- (3) The amount of payment required from an owner must be assessed by the Authority to be fair and reasonable, taking into account the benefit to that property relative to the benefit to other properties.
- (4) The notice must specify—
 - (a) the amount of the payment required; and
 - (b) the reason why the payment is required; and
 - (c) any works or services that have been or will be provided; and
 - (d) the property in relation to which payment is required; and
 - (e) if payments are required in relation to a group of properties, the amounts required in relation to each property; and
 - (f) the right of the owner to object and apply for a review under section 271; and
 - (g) in the case of a notice under sub-section (1), that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.
- (5) In the case of a notice under sub-section (1), the Authority must make sure that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.
- (6) An Authority must bear any cost that would otherwise, under this section, be borne by the Crown in respect of land that—

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- (a) is used or reserved for a public purpose which specifically benefits the area; and
- (b) does not require the service which is being provided.

269. Contributions for increased services⁵⁸

- (1) An Authority that provides services to a property may, by notice in writing, require the owner of the property to contribute to the present day cost of any works referred to in section 268(1) if the use of any service for which those things are used increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.
- (2) The amount of the payment required from an owner must—
 - (a) be assessed by the Authority to be fair and reasonable in all the circumstances; and
 - (b) take into account any payment that the owner has made or is liable to make under section 268 or 270 in relation to that property.
- (3) The notice must specify the things set out in section 268(4)(a) to (f).
- (4) An owner of land who changes, or proposes to change, the use of the land in such a way that the use of any service provided by an Authority increases, or will increase, must notify the Authority of the change, or the proposed change.
 Penalty: 10 penalty units.
- (5) Failure of an owner to give notice as required by sub-section (4) does not prevent an Authority from requiring a payment under this section.

270. Payments on connection⁵⁹

- (1) An Authority may, by notice in writing, require the owner of a property which becomes a serviced property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services to that property.
- (2) The amount of the payment must—
 - (a) be assessed by the Authority to be fair and reasonable in all the circumstances; and
 - (b) take into account any payment that the owner has made or is liable to make under section 268 in relation to that property.
- (3) The notice must specify the things set out in section 268(4)(a) to (f).

271. Review of required payments

- (1) An owner who is required to make a payment under section 268, 269 or 270 may, within 1 month after receipt of the notice (or any longer time allowed by the Authority and specified in the notice), object in writing to the Authority on any of the following grounds—
 - (a) in the case of a notice under section 268, that the property of the owner will not benefit from the provision of the services;
 - (b) if there are several properties that will benefit, that the basis of distribution of the cost between the owners of those properties is unreasonable;
 - (c) that the amount is excessive;
 - (d) if there are several properties that will benefit, that any owner who has been required to pay should not be required to do

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- so, or that any owner who has not been required to pay should be required to do so;
- (e) in the case of a notice under section 269, that the use of the services has not increased, or will not increase, as the case requires;
 - (f) in the case of a notice under section 268(1), any other grounds.
- (2) An Authority must, within 2 months after receipt of an objection, notify the person of its decision on the objection.
 - (3) An owner may apply to the Tribunal for review of the Authority's decision on the owner's objection on any of the grounds specified in sub-section (1)(a) to (e). S. 271(3) substituted by No. 52/1998 s. 311(Sch. 1 item 105.48).
 - (4) An application for review must be made within 28 days after the later of— S. 271(4) inserted by No. 52/1998 s. 311(Sch. 1 item 105.48).
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.

272. Authority may require further payment

- (1) An Authority that has required payments under section 268, 269 or 270 from the owners of any properties may—
 - (a) if the total amount collected is not enough to meet the costs in respect of which the payments were required, require further payments from the owners of those properties; and

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- (b) if the total amount collected is more than enough to meet those costs, refund the excess to the owners of those properties.
- (2) The provisions of sections 268(4), 268(5), 271 and 273 apply in relation to any further payments required, as if they were payments originally required under section 268, 269 or 270, except that in the case of payments required by a notice under section 268(1)—
 - (a) the Authority may require further payments of not more than 20 per cent of the amount specified in that notice, if those further payments are necessary to meet the cost of the works; and
 - (b) the cost of those further payments must be fairly distributed over the group of properties that is to receive the service, if there is such a group.

273. When payment is due

- (1) The date by which payment must be made is—
 - (a) if there have been no objections, any date that is set by the Authority and that is after the expiry of 1 month after the receipt of the notice, or of any longer time allowed by the Authority and specified in the notice; or
 - (b) if each person to whom a notice was issued agrees in writing not to object, any date that is set by the Authority and that is after the date of the last of those agreements; or
 - (c) if there are objections, or if any person to whom a notice was issued does not agree in writing not to object, any date that is set by the Authority and that is after each person who objected, or who did not agree in writing not to object, has been notified by the

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Authority of its decision on any objections made.

- (2) The due date for payment of any further payments required under section 272(1)(a) is the date (not earlier than 14 days after the date of the notice) that is specified in the notice requiring the further payment.

Division 7—Payment and recovery of money

273A. Occupiers liable for costs based on water supplied

S. 273A
 inserted by
 No. 25/1993
 s. 13.

- (1) This section applies if a property to which water is supplied by an Authority—

- (a) is occupied by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1997** applies (whether wholly or partly); or

S. 273A(1)(a)
 amended by
 No. 109/1997
 s. 533(Sch. 2
 item 12.1).

- (b) is a site in a caravan park occupied by a resident of the caravan park—

and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity.

- (2) The occupier of the property is liable for the cost of all water supplied to the property during the time the occupier occupies the property if that cost is based solely on the amount of water that is supplied to the property.
- (3) If the cost of the water supplied to a property during the time the occupier occupies the property is only partly based on the amount of water supplied to the property, the occupier of the property is liable for that part of the cost that is based on the amount of water supplied to the property.

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- (4) The owner of a property is not liable for any amount that an occupier of the property is liable for under this section and any such amount cannot be made a charge on the land of the owner.
- (5) This section overrides anything to the contrary in section 170 but is subject to anything to the contrary in section 273B.
- (6) In this section and section 273B, if an occupier of a property only occupies a part of the property, then a reference to the property is to be read as a reference to the part of the property occupied by the occupier.
- (7) In this section—
 - (a) **"caravan"** and **"site"** have the meanings they have in the **Residential Tenancies Act 1997**; and
 - (b) **"resident"** in relation to a caravan park, means a person who is a resident within the meaning of the **Residential Tenancies Act 1997**.

S. 273A(7)
substituted by
No. 109/1997
s. 533(Sch. 2
item 12.2).

S. 273B
inserted by
No. 25/1993
s. 13.

S. 273B(1)(a)
amended by
No. 109/1997
s. 533(Sch. 2
item 12.3).

273B. Authority must read meter when tenant arrives and departs

- (1) This section applies if a property to which water is supplied by an Authority—
 - (a) is occupied, or to be occupied, by a tenant under a tenancy agreement to which the **Residential Tenancies Act 1997** applies (whether wholly or partly); or
 - (b) is a site in a caravan park occupied, or to be occupied, by a resident of the caravan park—

and the quantity of water supplied to the property is measured by a meter provided or installed by the Authority that only measures that quantity.

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- (2) The tenant or resident must notify the Authority that he or she will occupy or vacate, or has occupied or vacated, the property.
- (3) The Authority must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded on the day the tenant or resident occupies or vacates the property or as soon as is practicable after that day.
- (4) Sub-section (3) does not apply unless the Authority is given at least 48 hours notice of the day of occupation or vacation.
- (5) If the Authority is not given at least 48 hours notice of the occupation or vacation of a property, it must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded within 48 hours of it being given notice that a property has been occupied or vacated by a tenant or resident or as soon as is practicable after it is given notice.
- (6) If a tenant or resident occupies a property, the landlord or caravan park owner is liable for the cost of all water supplied to the property until the Authority records the reading on the meter on or after the date of occupation.
- (7) If a tenant or resident fails to notify the Authority that he or she has occupied a premises within 48 hours of occupying the property—
 - (a) he or she is liable for the cost of all water supplied to the property since the meter was last read on behalf of the Authority; and
 - (b) sub-section (6) does not apply.
- (8) If a tenant or resident fails to notify the Authority that he or she has vacated a property within 48 hours of vacating the property, he or she is liable for the cost of all water supplied to the property until—

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- (a) the Authority next records the reading on the meter; or
- (b) the end of the billing period in which the vacation occurred—

whichever happens first.

- (9) No time falling on a Saturday, Sunday or holiday is to be included in calculating any period of time for the purposes of this section.
- (10) In this section—

- (a) **"caravan"** and **"site"** have the meanings they have in the **Residential Tenancies Act 1997**; and

- (aa) **"resident"** in relation to a caravan park, means a person who is a resident within the meaning of the **Residential Tenancies Act 1997**;

- (b) **"holiday"**, in relation to an area, means any public holiday appointed or observed in a municipal council referred to in the Schedule to the **Public Holidays Act 1993**.

274. Payment to Authorities

- (1) A fee imposed under a tariff is due and must be paid by the date specified in the notice requiring payment, being a date—
 - (a) after the date on which notice of the resolution that sets the tariff was published under section 260(2); and
 - (b) at least 28 days after the date of issue of the notice—

unless payment by instalments is available in accordance with a resolution under sub-section (1A) and the person liable to pay the amount

S. 273B(10)(a)
substituted by
No. 109/1997
s. 533(Sch. 2
item 12.4).

S. 273B
(10)(aa)
inserted by
No. 109/1997
s. 533(Sch. 2
item 12.4).

S. 273B(10)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 274(1)
amended by
Nos 25/1993
s. 14(b)(i)(A)
(B), 69/1993
s. 8(a).

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chooses to pay by instalments in accordance with sub-sections (2) and (3).

(1A) An Authority—

S. 274(1A)
inserted by
No. 69/1993
s. 8(b).

- (a) must by resolution determine that any fee imposed on an annual basis under a tariff is payable to it by instalments as specified in the resolution; and
- (b) may by resolution determine that any other fee payable to it under a tariff is payable by instalments as specified in the resolution.

(1B) A resolution under sub-section (1A) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.

S. 274(1B)
inserted by
No. 69/1993
s. 8(b).

(1C) An Authority must ensure that a resolution under sub-section (1A)(a) is in force at all times from the beginning of the ninetieth day after the commencement of section 8 of the **Water (Amendment) Act 1993**.

S. 274(1C)
inserted by
No. 69/1993
s. 8(b).

(1D) Despite any resolution in force under sub-section (1A)(a) and anything to the contrary in this section, an Authority is not required to accept payment by instalments of a fee imposed on an annual basis under a tariff if the Minister, at the written request of the Authority, has approved it not being required to do so.

S. 274(1D)
inserted by
No. 69/1993
s. 8(b).

(2) A person who is liable to pay to an Authority—

S. 274(2)
amended by
No. 121/1994
s. 195(1).

- (a) an amount under Division 6, other than an amount required under section 268(2) or 269; or
- (b) a fee imposed under a tariff that, in accordance with a resolution under sub-section (1A), is payable by instalments; or

S. 274(2)(b)
amended by
No. 69/1993
s. 8(c).

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(c) with the consent of the Authority, any other fee or amount—

may, by notice in writing to the Authority within 14 days after receipt of the notice setting the due date for payment, choose to pay by instalments, and must make each payment, and any payment of interest due in respect of it, by the date specified by the Authority.

(3) The date specified for the payment of the first instalment must be at least 14 days after the date of issue of the notice to the person that payment is required.

(3A) A person who is liable to pay to an Authority an amount under Division 6 which under sub-section (1) the person has, on or after the commencement of section 195(2) of the **Water Industry Act 1994**, chosen to pay by instalments, is liable to pay interest in accordance with section 281 on any part of that amount that is unpaid from the due date for payment despite the arrangement for payment of that amount by instalments.

(4) Any amount due to an Authority in relation to a property (including interest and including any amount in respect of a licence under Part 4 or 5) is a debt due to the Authority by the person liable to pay the amount.

(4A) If the person liable to pay an amount to an Authority in relation to a property owns the property, the amount due is a charge on the property, whether or not the Authority has agreed to defer the payment of the whole or any part of that amount.

(5) In sub-sections (4) and (4A), "**Authority**" includes the Minister.

S. 274(3A)
inserted by
No. 121/1994
s. 195(2).

S. 274(4)
amended by
No. 25/1993
s. 14(b)(ii).

S. 274(4A)
inserted by
No. 25/1993
s. 14(b)(iii).

S. 274(5)
amended by
No. 25/1993
s. 14(b)(iv).

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- (6) At the written request of the person liable to make a payment to an Authority, the Authority may send the notice requiring the payment to a person specified in the request.

S. 274(6)
inserted by
No. 78/1991
s. 21.

275. Person who acquires property is liable

- (1) A person who becomes the owner of a property must pay to the Authority at the time the person becomes the owner of the property any amount that is, under section 274(4A), a charge on that property.
- (2) In sub-section (1), "**Authority**" includes the Minister.

S. 275(1)
amended by
No. 25/1993
s. 14(c).

276. Authority may require occupier to pay rent to it

- (1) An Authority may, by notice in writing to the occupier of a property in respect of which any payment or fee, or any amount in respect of a licence under Part 4 or 5, is due by the owner of the property and has not been paid, require the occupier to pay rent to the Authority instead of to the lessor until the amount outstanding (including any interest) has been paid.
- (2) The Authority must give to the lessor 7 days' notice of its intention to act under sub-section (1).
- (3) An occupier who pays rent to the Authority as required by a notice under sub-section (1)—
- (a) is entitled to deduct from the rent due to the lessor any amount so paid; and
 - (b) must for the purposes of any tenancy law, be treated as paying that amount as rent to the lessor.
- (4) Sub-section (3) does not apply if the occupier has, independently of the Authority, agreed with the lessor to pay to the Authority the payments or fees due in relation to the property.

S. 276(1)
amended by
No. 25/1993
s. 14(d).

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- (5) The Authority must not require to be paid to it any amount that exceeds the amount of rent due to the lessor.
- (6) If an occupier fails to pay any amount due to the Authority under this section, the Authority may recover the unpaid amount as a debt due to it by the occupier.
- (7) In this section, "**Authority**" includes the Minister.

277. Recovery as between owner and occupier

- (1) If an Authority recovers any contribution or fee, or any amount in respect of a licence under Part 4 or 5, from an owner, and the owner had an agreement with the occupier that the occupier would pay the fee, contribution or amount, the owner may recover from the occupier, as a debt due to the owner, the amount paid to the Authority by the owner.
- (2) For the purposes of sub-section (1)—
 - (a) the owner has the burden of proving that the occupier had agreed to pay the fee, contribution or amount; and
 - (b) "**Authority**" includes the Minister.

278. Disposal of property for unpaid contributions, fees and other amounts

- (1) An Authority may sell, or cause to be transferred to itself, any property in relation to which—
 - (a) any fee imposed under a tariff; or
 - (b) any payment under Division 6; or
 - (c) any payment under an agreement to service or supply the property; or

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- (d) any payment in respect of a licence under Part 4 or 5—
- has been due to the Authority and unpaid for at least 3 years.
- (2) Sub-section (1) does not apply if—
- (a) the contribution, fee or amount has been waived; or
 - (b) the contribution, fee or amount has been deferred for the period for which it is unpaid; or
 - (c) the person liable to pay has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid; or
 - (d) the person liable to pay is not the owner of the property.
- S. 278(2)(c) amended by No. 25/1993 s. 14(e).
- S. 278(2)(d) inserted by No. 25/1993 s. 14(e).
- (3) An Authority must not sell the property or cause it to be transferred, unless it has at least once in the 3 years tried, under section 274, 275, 276(1) or 276(6), to recover the money due to it.
- (4) An Authority must pay, for a transfer of property under sub-section (1), an amount equal to or greater than a valuation of the property that is made by a valuer not more than 6 months before the date of the proposed transfer.
- S. 278(4) amended by No. 91/1994 s. 36(12).
- (5) An Authority must in selling property under sub-section (1)—
- (a) sell the property by auction; or
 - (b) sell the property for an amount equal to or greater than a valuation of the property that is made by a valuer not more than 6 months before the date of the proposed sale.
- S. 278(5)(b) amended by No. 91/1994 s. 36(12).
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- (6) At least 4 weeks before selling any property, or causing it to be transferred, under sub-section (1), the Authority must—
 - (a) give public notice of its intention to do so; and
 - (b) serve, on any person who appears from the register or from any document registered in the office of the Registrar-General to have an estate or interest in the property, a notice requiring payment of any outstanding amounts referred to in sub-section (1).
- (6A) The Registrar of Titles may register a transfer of property by an Authority under this section if the transfer is in a form approved by the Registrar of Titles.
- (6B) The Registrar of Titles may dispense with the production of the certificate of title for the purpose of registering the transfer.
- (7) In this section, "**Authority**" includes the Minister.

279. Application of proceeds

- (1) An Authority that sells property, or causes it to be transferred, under section 278 must apply the proceeds of the sale, or the amount for which the land was transferred, as follows—
 - (a) first, in payment of all expenses incurred in connection with the sale or transfer;
 - (b) secondly, in payment of the outstanding contributions, fees and other amounts, including interest;

S. 278(6A)
inserted by
No. 62/1995
s. 38.

S. 278(6B)
inserted by
No. 62/1995
s. 38.

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- (c) thirdly, in discharging any mortgages or charges, registered or not—
 - (i) of which the Authority has notice; and
 - (ii) over which the Authority's charge has priority—
 according to the priority of those mortgages or charges.
- (2) The Authority must, if the owner of the property can be traced, refund to the owner any surplus after the payments required by sub-section (1)(a) to (c) have been made.
- (3) If the owner cannot be traced, the Authority may, subject to sub-section (5), retain and use any surplus after the payments required by sub-section (1)(a) to (c) have been made.
- (4) A person who claims an estate or interest in the property may apply to the Authority for payment of the value of that estate or interest from any surplus retained by the Authority.
- (5) If the Authority is satisfied that an applicant is entitled to any payment it must make that payment.
- (6) In this section, "**Authority**" includes the Minister.

280. Sale or transfer cancels encumbrances

When an Authority sells property, or causes it to be transferred, under section 278—

- (a) the sale or transfer is free from all estates and interests over which the Authority's charge has priority; and
- (b) the Registrar of Titles must, when registering the transfer, cancel any mortgages or charges registered as encumbrances on the land.

S. 280(b)
 amended by
 No. 85/1998
 s. 24(Sch
 item 66.16).

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281. Interest on unpaid money⁶⁰

S. 281(1)
amended by
No. 78/1991
s. 22(1).

- (1) Any money due to an Authority under this Act, including an agreement which does not provide otherwise, bears interest at the rate set from time to time for the purposes of this section by the Authority from the date that the money becomes due to the date that it is paid.

S. 281(1A)
inserted by
No. 78/1991
s. 22(2).

- (1A) The rate set by the Authority must not be more than the rate fixed from time to time for the purposes of sub-section (1) by the Governor in Council by Order.

S. 281(1B)
inserted by
No. 78/1991
s. 22(2).

- (1B) The Governor in Council may fix a maximum rate—

- (a) by expressing it as a percentage; or
- (b) by tying it to a specific floating institutional rate charged for loans or paid for borrowings by a public or commercial institution.

S. 281(1C)
inserted by
No. 78/1991
s. 22(2).

- (1C) If the Authority sets a new rate, the new rate takes effect on the date set by the Authority, and applies from that date to all money (other than interest) owing to the Authority on that date.

- (2) No interest is payable—

S. 281(2)(a)
substituted by
No. 69/1993
s. 9(a).

- (a) in respect of a fee imposed under a tariff if the amount due is paid within the period after it becomes due fixed by the Authority by resolution; or

S. 281(2)(b)
amended by
No. 121/1994
s. 195(3).

- (b) except in the case of an amount under Division 6, if the person liable to pay the amount has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid.

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- (2A) A resolution under sub-section (2)(a) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.
- (3) An Authority may exempt any person from paying the whole or part of any interest either generally or specifically.
- (4) In this section, "**Authority**" includes the Minister.

S. 281(2A)
inserted by
No. 69/1993
s. 9(b).

Division 8—Concessions and exemptions

282. Deferred payment

- (1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, defer payment of the whole or a specified part of that amount, for the time, and subject to any conditions, specified in the notice.
- (2) A person who receives a notice and complies with any conditions specified in it is not liable to pay the amount until—
 - (a) the time specified in the notice; or
 - (b) the time specified in a notice given to the person under sub-section (3)—
 whichever is sooner.
- (3) An Authority may, by notice to a person, require the person to pay, by a specified date, all or a specified part of any deferred amount, together with any specified interest (at the appropriate rate referred to in section 281(1)) on the outstanding amount from the date of the notice.

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S. 282(4)(a)
 amended by
 No. 25/1993
 s. 14(f).

- (4) An Authority must not issue a notice under sub-section (3) unless—
 - (a) the person never owned or no longer owns the property in respect of which the amount was payable; or
 - (b) it considers that the circumstances because of which payment was deferred have changed.
- (5) A person must not—
 - (a) give false or misleading information to an Authority in or in relation to an application under sub-section (1); or
 - (b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

283. Waiver

S. 283(3)
 substituted by
 No. 25/1991
 s. 4(1).

- (1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, waive the whole or a specified part of the amount, together with any interest for late payment.
- (2) An Authority may require an applicant to give more details, or to verify any matter, in relation to the application.
- (3) An Authority must, in accordance with the regulations, waive all or part of any amount or interest due to it—
 - (a) from a prescribed person; or

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- (b) from an owner if—
- (i) the occupier is liable to pay the amount, whether under an agreement with the owner or for any other reason; and
 - (ii) the occupier is a prescribed person; or
- (c) from the owner of retirement village land if—
- (i) the owner has an agreement with the holder of a residence right in the village that the holder is to pay—
 - (A) the amount; or
 - (B) a maintenance charge which includes a proportion of the amount; and
 - (ii) the holder of the residence right is a prescribed person—
- on application by the prescribed person in accordance with the regulations.
- (3A) Terms used in sub-section (3)(c) that are defined in the **Retirement Villages Act 1986** have the same meanings as in that Act. S. 283(3A)
inserted by
No. 25/1991
s. 4(1).
- (3B) The Minister after consultation with the Treasurer may, by Order published in the Government Gazette, make provision for or with respect to specifying circumstances in which, the manner in which and the extent to which an Authority that has a water supply district or a sewerage district must waive all or part of any amount due to it. S. 283(3B)
inserted by
No. 110/1997
s. 25(1).
- (3C) An Authority must, on the application in the form approved by the Authority of a person entitled by an Order under sub-section (3B) to so apply, in accordance with that Order, waive all or part of any amount due to it. S. 283(3C)
inserted by
No. 110/1997
s. 25(1).
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S. 283(3D)
 inserted by
 No. 110/1997
 s. 25(1).

S. 283(4)(a)
 amended by
 No. 110/1997
 s. 25(2).

S. 283(5)(a)
 amended by
 No. 25/1991
 s. 4(2)(a).

S. 283(5)(b)
 substituted by
 No. 25/1991
 s. 4(2)(b).

S. 284(1)
 substituted by
 No. 110/1997
 s. 25(3).

(3D) An Order under sub-section (3B) must not be inconsistent with any regulations made for or with respect to waivers under sub-section (3).

(4) A person must not—

- (a) give false or misleading information to an Authority in or in relation to an application under sub-section (1), (3) or (3C); or
- (b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

(5) The Governor in Council may make regulations for or with respect to waivers under sub-section (3), including but not limited to regulations for or with respect to—

- (a) the person or class of person to which a waiver or class of waivers applies;
- (b) the extent of a waiver applying to any person or class of persons;
- (c) the making of applications for waivers;
- (d) limitations and restrictions on applications for, or the granting of, any waiver;
- (e) any other matter or thing necessary or convenient to be prescribed for the purposes of this section.

284. Reimbursement by State

(1) The Minister must ensure that an Authority is reimbursed by the State any amount waived by the Authority in accordance with section 283(3) or (3C).

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- (2) An Authority must provide any information that the Minister or the Minister administering Part 7 of the **Financial Management Act 1994** may require for the purposes of sub-section (1).

S. 284(2)
 amended by
 Nos 110/1997
 s. 25(4)(a)(b),
 46/1998
 s. 7(Sch. 1).

**Division 9—Contributions from councils and other
 Authorities**

285. Pre-requisites for requirement of contribution

- (1) An Authority that intends to require a contribution under section 286(1) or a special contribution under section 287(1) must publish notice of its intention in a newspaper circulating in the area affected.
- (2) The notice must state that submissions may be made within 60 days after the publication of the notice.
- (3) Any submission that is received within 60 days after the publication of the notice must be considered by the Authority.
- (4) If the Authority decides to require the contribution it must notify the Minister and send to the Minister all submissions received by it.
- (5) If the Minister approves the proposed requirement, the Authority may proceed under section 286 or 287.
- (6) The Minister must not approve a requirement for a contribution to be made by a council unless he or she has first consulted with the Minister for the time being administering the **Local Government Act 1989**.

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- (7) This section only applies to a contribution required from another Authority or a council under section 286 if the Authority has not previously required a contribution for that purpose from the other Authority or the council under that section.

286. Authorities may require contributions from councils and other Authorities

- (1) An Authority (the "first Authority") that is responsible for a water management scheme or that has a waterway management district may, subject to section 285, by notice in writing require—
- (a) any council whose municipal district is wholly or partly within—
 - (i) an area covered by that water management scheme; or
 - (ii) that waterway management district; or
 - (b) any Authority whose district is wholly or partly within—
 - (i) an area covered by that water management scheme; or
 - (ii) that waterway management district—
- to contribute to the revenue of the first Authority.
- (2) The contribution payable by a council or an Authority is, subject to sub-section (3), calculated as follows—
- $$C = \frac{X}{Y} \times Z$$
- where—

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- C is the amount of the contribution;
- X is the value of all rateable land under section 154 of the **Local Government Act 1989** that is common to—
- (a) the municipal district and the area covered by the scheme or waterway management district; or
 - (b) the district and the area covered by the scheme; or
 - (c) the two districts—
- as appropriate;
- Y is the total value of all rateable land under section 154 of the **Local Government Act 1989** that is within—
- (a) the area covered by the scheme; or
 - (b) the waterway management district of the first Authority;
- Z is the estimated revenue of the first Authority for that year in relation to that area or district.
- (3) The contribution payable by a council or an Authority must not be more than 2% of X.
 - (4) A council or an Authority that receives a notice under sub-section (1)—
 - (a) may rate the properties that are common to both districts or the district and the area, or set a tariff for them (as the case requires); and
 - (b) must pay to the first Authority the contribution required, less a charge of not more than 5% for collecting the money.

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- (5) The first Authority may charge the council or Authority interest (at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**) if the contribution is not paid by the date specified in the notice to be the due date.
- (6) The provisions of the **Local Government Act 1989** about rates apply to a rate made under sub-section (4)(a), and the council is authorised to make the payment required under sub-section (4)(b).
- (7) A council may prepare a separate budget to allow for contributions under this section.
- (8) In this section, "**water management scheme**" means a scheme approved under section 216.

287. Authorities may require special contributions

- (1) An Authority (the "first Authority") that has a waterway management district may, subject to section 285, by notice in writing require—
 - (a) any council whose municipal district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies; or
 - (b) any other Authority whose district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies—
 to make a special contribution to the first Authority's revenue for the purposes, related to that area, specified in the notice.
- (2) The special contribution payable by a council or an Authority is calculated as follows—

$$S = \frac{X}{Y} \times A$$

where—

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S is the amount of the special contribution;

X and Y have the same meanings as in section 286(2);

A is the amount to be spent by the first Authority in the area of the first Authority's waterway management district to which the special contribution applies.

- (3) Section 286(4), (5), (6) and (7) applies to a special contribution with any necessary changes.
- (4) An Authority must not spend the money received under this section for any purposes other than those specified in the notice.

PART 14—ENFORCEMENT

288. Interference etc. with Authority's property⁶¹

- (1) A person must not, without the consent of the Authority or without any other lawful authority, destroy, damage, remove, alter or in any way interfere with any works or other property (whether real or personal) belonging to or under the control and management of an Authority.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

- (2) A person who is guilty of an offence under sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—

- (a) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or
- (b) if no notice of contravention is served, after conviction.

- (3) If in a proceeding for an offence under sub-section (1) it is proved that works—

- (a) situated on land owned or occupied by a person; or
- (b) that service only land owned or occupied by a person; or

S. 288(1)
amended by
Nos 12/1996
s. 12(1),
90/2003
s. 4(1).

S. 288(2)
amended by
No. 90/2003
s. 4(2).

S. 288(2)(a)
amended by
No. 121/1994
s. 189(2)(a).

S. 288(3)
amended by
No. 12/1996
s. 12(2)(a)(b).

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- (c) that record only the amount of water delivered to land owned or occupied by a person—

have been destroyed, damaged, removed, altered or in any way interfered with, the destruction, damage, removal, alteration or interference must be presumed, in the absence of evidence to the contrary, to have been done by that person.

- (4) In this section "**Authority**" includes licensee.

S. 288(4)
 inserted by
 No. 121/1994
 s. 189(2)(b).

289. Wrongful taking etc. of water⁶²

- (1) A person must not, without the consent of the Authority or without any other lawful authority—

S. 289(1)
 amended by
 No. 90/2003
 s. 4(1).

- (a) take, use or divert water—

- (i) that is under the control and management of an Authority; or
 (ii) that is supplied by an Authority for the use of another person; or

- (b) interfere with the flow of water in any waterway, aquifer or works under the control and management of an Authority.

S. 289(1)(b)
 amended by
 No. 5/2002
 s. 51.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months.

For a subsequent offence, 120 penalty units or imprisonment for 12 months.

- (2) A person who is guilty of an offence under sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues (up to a maximum of 20 additional penalty units)—

S. 289(2)
 amended by
 No. 90/2003
 s. 4(2).

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S. 289(2)(a)
 amended by
 No. 121/1994
 s. 189(3)(a).

- (a) after service of a notice of contravention on the person under section 151 of this Act or section 69 of the **Water Industry Act 1994**, as the case requires; or
- (b) if no notice of contravention is served, after conviction.
- (3) If in a proceeding for an offence under sub-section (1) it is proved that water that is under the control and management of an Authority was used on, or taken or diverted to, land owned or occupied by a person, the using, taking or diversion must be presumed, in the absence of evidence to the contrary, to have been done by that person.
- (4) In this section "**Authority**" includes licensee.

S. 289(4)
 inserted by
 No. 121/1994
 s. 189(3)(b).

S. 290
 amended by
 No. 121/1994
 s. 189(4)(a).

290. Uncovering or exposing works⁶³

- (1) Except in an emergency, a person must not open any ground and thereby uncover or expose any works belonging to or under the control and management of an Authority without—
 - (a) the permission of the Authority; or
 - (b) having given to the Authority at least 5 days' written notice.

Penalty: 10 penalty units.

- (2) In this section "**Authority**" includes licensee.

S. 290(2)
 inserted by
 No. 121/1994
 s. 189(4)(b).

291. Trespass

A person must not wilfully trespass on the land or premises of an Authority.

Penalty: 10 penalty units.

292. Offence of obstructing etc. officers

A person must not obstruct, threaten, abuse, insult or intimidate—

- (a) an officer of an Authority in the execution of his or her duty under this Act; or
- (b) any person lawfully performing duties under this Act, whether or not for or on behalf of an Authority; or
- (c) any person lawfully assisting an officer of an Authority in the execution of his or her duty under this Act.

Penalty: 20 penalty units.

293. Power to require person to state name and address

- (1) An officer of an Authority or a member of the police force may require a person to state his or her name and address if that officer or member has reasonable grounds for believing that he or she has committed or is committing an offence against this Act or against regulations or by-laws made under this Act.
- (2) A person who is required under this section to state his or her name and address must not—
 - (a) refuse to state that name or address; or
 - (b) state a false name or address.

Penalty: 10 penalty units.

294. Occupier or manager required to state owner's etc. name and address

- (1) An officer of an Authority may require the occupier of any land or premises or any person who is employed in the management of any land or premises to state the name and address of the owner of that land or those premises or of any person who has an interest in that land or those

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premises or who is employed in the management of that land or those premises.

- (2) A person who is required under this section to state the name and address of a person must not, if he or she knows that name or address—
- (a) refuse to state that name or address; or
 - (b) state a false name or address.

Penalty: 10 penalty units.

295. Higher penalty for certain offences in certain circumstances

- (1) This section applies to offences under—
- (a) section 63(1);
 - (b) section 75;
 - (c) section 76(6);
 - (d) section 78(5);
 - (e) section 79(3);
 - (f) section 80(3);

* * * * *

- (h) section 92(4);
- (i) section 145(1);
- (j) section 145(4);
- (k) by-laws made under section 160(1)(d);
- (l) section 151(2) in relation to a notice under section 169(1);
- (m) section 194(1);
- (n) section 195(1);
- (o) section 208(1);

S. 295(1)(g)
 repealed by
No. 90/2003
s. 12.

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- (p) section 208(5);
- (q) section 288(1);
- (r) section 289(1).
- (2) Despite anything to the contrary in this Act, if—
 - (a) a person is convicted of an offence to which this section applies; and
 - (b) the convicting court is satisfied that as a result of the offence—
 - (i) land, works or water has or have been seriously damaged; or
 - (ii) a person has suffered substantial economic loss—

the person is liable, instead of the penalty otherwise prescribed under this Act, to a penalty of not more than 200 penalty units or to imprisonment for not more than 10 years or to both.

296. Prosecutions

- (1) Proceedings for an offence against a provision of this Act or of regulations or by-laws made under this Act may only be brought by—
 - (a) a member of the police force; or
 - (b) a person authorised to do so, either generally or in any particular case, by the Authority which has responsibility for the enforcement of the provision; or
 - (ba) in the case of an offence against section 288(1), 289(1) or 290(1) where the relevant licensee is a licensee referred to in section 17(1) of the **Water Industry Act 1994**, an employee of the licensee authorised to do so, either generally or in any particular case, by the licensee; or

S. 296(1)(ba)
 inserted by
 No. 90/2003
 s. 7(1).

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S. 296(3)
 inserted by
 No. 90/2003
 s. 7(2).

S. 297(1)
 substituted by
 No. 44/2001
 s. 3(Sch.
 item 127.1).

- (c) a prescribed person or a prescribed class of persons.
- (2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.
- (3) An employee of a licensee may only be authorised by the licensee under sub-section (1)(ba) if the licensee is satisfied that the employee is appropriately qualified and trained.

297. Offences by corporations and partnerships etc.

- (1) In this section, "**officer**"—
 - (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—
 but does not include an employee of the corporation.
- (2) If a corporation is guilty of an offence against this Act or against any regulation or by-law made under this Act, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (3) If in a proceeding for an offence against this Act or against any regulation or by-law made under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.

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- (4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or against any regulation or by-law made under this Act.
- (5) If this Act or a regulation or by-law made under this Act provides that a person is guilty of an offence, that reference to a person must—
 - (a) if the person is a partnership, be read as a reference to each member of the partnership; and
 - (b) if the person is an unincorporated association, be read as a reference to each member of the committee of management of the association.

298. Application of penalties

All penalties imposed on a person in a proceeding for an offence against this Act or against any regulation or by-law made under this Act must, when recovered, be paid to and applied to the purposes of the Authority by or on behalf of whom the proceeding was brought.

299. Civil remedies not affected by bringing of proceeding

The bringing of a proceeding or the imposition of a penalty for, or the entering of a conviction in respect of, an offence under this Act or the regulations or by-laws made under this Act does not take away from the right of an Authority, a licensee or any other person to recover from any person—

- (a) any sum for loss or damage suffered by the Authority, licensee or person due to the contravention, including the value of any water wrongfully taken, used or diverted; or

S. 299
 amended by
 No. 121/1994
 s. 189(5)(a).

S. 299(a)
 amended by
 No. 121/1994
 s. 189(5)(b).

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S. 299(b)
 amended by
 No. 121/1994
 s. 189(5)(b).

S. 300
 amended by
 No. 50/1992
 s. 10(Sch.
 item 11.32(a)).

- (b) the costs and expenses incurred by the Authority, licensee or person in remedying that loss or damage.

300. Proof of certain matters not required

- (1) In any proceeding under this or any other Act or the regulations or by-laws made under this or any other Act until evidence is given to the contrary proof is not required as to any of the following—
 - (a) the constitution of an Authority;
 - (b) the due election or appointment of the members of an Authority;
 - (c) the appointment of any officer of an Authority;
 - (d) the appointment of an officer of an Authority to do an act or for a particular purpose;
 - (e) the size, location or boundaries of a district of an Authority or of an area of interest declared under section 106 in relation to a district of an Authority or of an environmental or recreational area declared under section 107;
 - (f) the fact that a particular property is located within a particular district of an Authority;
 - (g) the authority of any person to bring or defend any proceeding on behalf of an Authority;
 - (h) the presence of a quorum at any meeting of an Authority;
 - (i) that a document purporting to be made or issued by an Authority was made or issued by that Authority;
 - (j) the setting of any tariff;

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- (k) the validity of the contents of any records or minutes of an Authority.

* * * * *

S. 300(2)
 inserted by
 No. 50/1992
 s. 10(Sch.
 item 11.32(b)),
 repealed by
 No. 49/1994
 s. 4(1)(l).

301. General evidentiary provisions

- (1) If in any proceeding under this Act or the regulations or by-laws made under this Act the amount of water delivered to a property during any period is relevant, evidence of the amount of water recorded by a water meter as having passed through the meter to the property during that period is, in the absence of evidence to the contrary, proof that that amount of water was delivered to that property during that period.

- (2) If—

- (a) in any proceeding under this Act or the regulations or by-laws made under this Act the amount of water delivered to a property during any period is relevant; and
- (b) as a result of a water meter having malfunctioned or having been destroyed, damaged, altered or in any way interfered with, an Authority is of the opinion that it did not accurately record the amount of water delivered to that property during that period—

evidence may be given of the amount of water computed by the Authority in accordance with sub-section (3) as having been delivered to that property during that period and that evidence is, in the absence of evidence to the contrary, proof that that amount of water was delivered to that property during that period.

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- (3) A computation for the purposes of sub-section (2) may be made—
- (a) by having regard to the quantity of water delivered to the property concerned in any previous or subsequent period or periods or the quantity of water delivered to any similar property during the period concerned; or
 - (b) in any other way that is prescribed.
- (4) A document purporting to contain a copy of any by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this sub-section) and purporting to be signed by an authorised person is admissible in evidence in any proceeding under this Act or the regulations or by-laws made under this Act and, in the absence of evidence to the contrary, is proof that a by-law, regulation, order or notice in the words written in that document was duly made or issued by the Authority.
- (5) In any proceeding under this Act or the regulations or by-laws made under this Act the production of a copy of the Government Gazette purporting to contain a by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this sub-section) is, in the absence of evidence to the contrary, proof that a by-law, regulation, order or notice in the words appearing in the Government Gazette was duly made or issued by the Authority.
- (6) The provisions of sub-section (5) are additional to and do not take away from the provisions of section 63 of the **Evidence Act 1958**.
- (7) A document purporting—
- (a) to be a map or plan made or issued by an Authority (whether before or after the commencement of this sub-section); and
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s. 301

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- (b) to show the location of any land or works or other thing or the physical features of any area; and
 - (c) to be verified by an authorised person—
 is admissible in evidence in any proceeding under this Act or the regulations or by-laws made under this Act and, in the absence of evidence to the contrary, is proof of the matters shown in the map or plan.
- (8) In any proceeding under this Act or the regulations or by-laws made under this Act—
- (a) evidence that a person is subject to a fee imposed under a tariff set under this Act in respect of any land; or
 - (b) evidence that a person's name appears in any records kept by an Authority as the owner or occupier of any land; or
 - (c) evidence by the certificate of the Registrar of Titles or any Deputy Registrar of Titles or Assistant Registrar of Titles and authenticated by the seal of the Office of Titles that a person's name appears in the Register kept under the **Transfer of Land Act 1958** as the proprietor of an estate in fee simple or of a leasehold estate held of the Crown in any land; or
 - (d) evidence by the certificate of the Registrar-General or any Deputy Registrar-General that a person appears from a memorial of registration of any deed, conveyance or other instrument to be the owner of any land—
- is, in the absence of evidence to the contrary, proof that that person is the owner or occupier (as the case requires) of that land.
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s. 302

- (9) In any proceeding for the recovery of a fee imposed under a tariff by an Authority, the entry in the rate records of a council or a copy of that entry verified by the statutory declaration of the person making it is admissible in evidence in the proceeding and, in the absence of evidence to the contrary, is proof of the ownership or occupation of the property rated by the person named in the entry or copy of the entry.
- (10) In any proceeding under this Act or the regulations or by-laws made under this Act, the statement of any person that on a particular date he or she was an officer of a corporation is admissible in evidence and, in the absence of evidence to the contrary, is proof that on that date he or she was an officer of that corporation.

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S. 301(11)
 inserted by
 No. 50/1992
 s. 10(Sch.
 item 11.33),
 repealed by
 No. 49/1994
 s. 4(1)(m).

302. Use of analyst's certificate in prosecutions

- (1) If in respect of a proceeding for an offence against this Act or against any regulation or by-law made under this Act a copy of an analyst's certificate is obtained on behalf of the informant and served with the summons to answer to the charge, the analyst's certificate is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it and of the facts on which they are based unless the defendant has at least 7 days before the mention date given written notice to the informant requiring the analyst to be called as a witness.

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s. 303

- (2) Service of a copy of an analyst's certificate with a summons to answer to a charge may be proved in any manner in which service of the summons may be proved and the evidence of service must state that a copy of the certificate was served with the summons.

303. Authentication of documents

Despite anything to the contrary in any other Act, a document requiring authentication by an Authority may be sufficiently authenticated without the seal of the Authority if signed by the secretary of the Authority or by any other person authorised in writing by the Authority either generally or particularly to authenticate that document.

304. Service of documents on an Authority

- (1) Any document required or permitted to be served on an Authority may be served by being left at the principal office of the Authority with a person authorised in writing by the Authority to accept service of documents on behalf of the Authority.
- (2) The provisions of this section are additional to and do not take away from the provisions of any rules of court concerning service of documents.

305. Service of documents by an Authority

- (1) If by or under this Act a document is required or permitted to be served by an Authority on a person then, unless otherwise expressly provided by this Act, the document may be served—
- (a) by delivering it personally to the person to be served; or
 - (b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there; or

S. 305
amended by
No. 25/1991
s. 5(1).

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s. 305

- (c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or
 - (d) in the case of service on an owner of any land or premises whose name and address are not known to the Authority, by delivering it personally to the occupier of the land or premises concerned or leaving it at the land or premises with a person apparently over the age of 16 years and apparently residing there or, if there is no occupier, by putting it up on a conspicuous part of the land or premises; or
 - (e) in the case of service on an occupier of any land or premises whose name and address are not known to the Authority, by putting it up on a conspicuous part of the land or premises.
- (2) A document that is to be served on the owner or occupier of any land or premises may be addressed by the description of "the owner" or "the occupier" of the land or premises concerned (naming it or them), without further name or description.
- (3) An occupier of any land or premises to whom under sub-section (1)(d) there is personally delivered a document that is intended to be served on the owner of that land or those premises must immediately send that document by registered post addressed to the owner at the owner's usual place of residence (if known to the occupier) or the owner's place of residence last known to the occupier.

Penalty: 10 penalty units.

Water Act 1989
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Part 14—Enforcement

s. 305

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- (4) The provisions of this section are additional to and do not take away from the provisions of sections 109X and 601CX of the Corporations Act.
- (5) If a document is properly served on the owner or occupier of any land or premises, that service is binding on every subsequent owner or occupier to the same extent as if it had been served on that subsequent owner or occupier.
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S. 305(4)
amended by
No. 44/2001
s. 3(Sch.
item 127.2).

Water Act 1989
Act No. 80/1989

Part 14A—Victorian Water Trust Advisory Council

s. 305AA

Pt 14A
(Heading and
ss 305AA–
305HH)
inserted by
No. 35/2003
s. 3.

**PART 14A—VICTORIAN WATER TRUST ADVISORY
COUNCIL**

S. 305AA
inserted by
No. 35/2003
s. 3.

305AA. Definition

In this Part, "**Council**" means the Victorian Water Trust Advisory Council established in accordance with this Part.

S. 305BB
inserted by
No. 35/2003
s. 3.

305BB. Establishment of Victorian Water Trust Advisory Council

There is established an advisory council to be called the Victorian Water Trust Advisory Council.

S. 305CC
inserted by
No. 35/2003
s. 3.

305CC. Functions of the Council

The functions of the Council are—

- (a) to advise the Minister on the allocation of funds (from money appropriated by the Parliament for the purpose) for initiatives—
 - (i) to enhance the health and sustainability of the water resources of Victoria, including rivers;
 - (ii) to provide greater security for meeting the future water needs of Victorians;
 - (iii) to encourage the increased re-use and recycling of water in Victoria;
 - (iv) to improve efficiencies in the use of water across Victoria;
- (b) to advise the Minister on additional sources of funding for initiatives referred to in paragraph (a);

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Act No. 80/1989

Part 14A—Victorian Water Trust Advisory Council

s. 305DD

- (c) to advise the Minister on any other related matter that the Minister may request;
- (d) to provide information to the public on procedures for applying for funding for initiatives referred to in paragraph (a);
- (e) to promote public awareness of the activities of the Council.

305DD. Powers of the Council

The Council has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

S. 305DD
inserted by
No. 35/2003
s. 3.

305EE. Constitution of the Council

- (1) The Council shall consist of not more than 5 members and not fewer than 3 members appointed by the Minister.
- (2) In making an appointment under sub-section (1), the Minister must ensure that the members are chosen from persons who, in the opinion of the Minister, are experienced in the environment, sustainability, finance, water infrastructure, community service or another field appropriate to the functions of the Council.
- (3) The Minister must appoint a member of the Council to be Chairperson of the Council.

S. 305EE
inserted by
No. 35/2003
s. 3.

305FF. Terms and conditions of appointment of members

- (1) Each member must be appointed for the term, not exceeding 3 years, that is fixed by the Minister in the instrument of appointment but is eligible for re-appointment.
- (2) The Minister may in the instrument of appointment of a member specify the terms and conditions of appointment.

S. 305FF
inserted by
No. 35/2003
s. 3.

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s. 305GG

- (3) The Minister may at any time remove a member from office.
- (4) The office of a member becomes vacant—
 - (a) if the member resigns his or her office by writing addressed and delivered to the Minister;
 - (b) if the member is removed from office in accordance with sub-section (3);
 - (c) if the member becomes an insolvent under administration within the meaning of the Corporations Act;
 - (d) if the member becomes incapable of performing his or her duties;
 - (e) if the member is absent from 3 consecutive meetings of the Council without permission of the Chairperson;
 - (f) if the member is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.
- (5) A member is entitled to be paid any remuneration and allowances fixed from time to time by the Minister.
- (6) The **Public Sector Management and Employment Act 1998** does not apply to a member of the Council in respect of the office of member.

S. 305GG
inserted by
No. 35/2003
s. 3.

305GG. Temporary vacancies

- (1) If the office of a member of the Council is vacant or a member of the Council is unable, whether because of illness or otherwise, to perform the duties of office of member, the Minister may appoint a person to act as a member while the office is vacant or during that period of inability.

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s. 305HH

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- (2) A person appointed to act as a member of the Council has, while so acting, the rights, powers and duties of the member for whom he or she acts.
 - (3) A person appointed to act as a member is entitled to receive any remuneration and allowances fixed for that member by the Minister.

305HH. Meetings

S. 305HH
inserted by
No. 35/2003
s. 3.

- (1) A majority of the members of the Council for the time being constitute a quorum of the Council.
 - (2) The Minister may make guidelines about the proceedings of the Council.
 - (3) Subject to this Act and any guidelines made under sub-section (2), the Council may regulate its own proceedings.
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PART 15—GENERAL

305A. Application to Tribunal for declaration

- (1) A person may apply to the Tribunal for a declaration concerning any matter that could form the subject of an application for review to the Tribunal under this Act (other than an application for review under section 266(6)).
- (2) On an application under sub-section (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.
- (3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

305B. Matters Tribunal must take into account in review proceedings

In determining an application under this Act for review of a decision (other than an application for review under section 266(6)) the Victorian Civil and Administrative Tribunal must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister; and

take account of and give effect to any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**.

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Act No. 80/1989
 Part 15—General

s. 306

306. Power of Minister to delegate

- (1) The Minister may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Minister under this or any other Act, other than—

S. 306
 amended by
 No. 12/1996
 s. 8(8)(a).

- (a) subject to sub-section (2), this power of delegation; and

S. 306(1)(a)
 amended by
 No. 12/1996
 s. 8(8)(b).

- (b) the Minister's powers under sections 4, 22A, 27 to 32A, 32E to 32G, 62(9), 283(3B) and 307.

S. 306(1)(b)
 amended by
 Nos 62/1995
 s. 23(5),
 110/1997
 s. 25(5),
 5/2002
 s. 52(a)–(c).

- (2) If any power, discretion, function, authority or duty of the Minister as an Authority to which Division 4 of Part 10 applies is delegated under this section, the Minister may also delegate to the delegate the power of delegation conferred by this section in relation to the power, discretion, function, authority or duty so delegated.

S. 306(2)
 inserted by
 No. 12/1996
 s. 8(9).

- (3) A delegate to whom a power of delegation is delegated under this section may, subject to the terms of the instrument of delegation, sub-delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty delegated to the delegate under this section, other than the power of sub-delegation.

S. 306(3)
 inserted by
 No. 12/1996
 s. 8(9).

- (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply in relation to a sub-delegation in the same manner as they apply in relation to a delegation.

S. 306(4)
 inserted by
 No. 12/1996
 s. 8(9).

S. 307(1)
amended by
No. 62/1995
s. 17.

307. Power of Minister to give directions

- (1) The Minister may give a direction to an Authority in relation to the performance of any of its functions (including compliance with the specifications of an Order granting a bulk entitlement) and the exercise of any of its powers.
- (2) The Minister must give an Authority 14 days' notice of his or her intention to give a direction under sub-section (1).
- (3) If the Minister gives a direction to an Authority, the Minister must make sure that notice of the giving of the direction, and a statement or summary of the contents of the direction, is published in the Government Gazette.
- (4) An Authority to which the Minister gives a direction must make sure that a statement or summary of the contents of the direction is included in the annual report of the Authority.
- (5) A failure to comply with sub-section (3) or (4) does not affect the validity of the direction.

308. Power of Minister to exempt

The Minister may by Order published in the Government Gazette exempt—

- (a) any person or class of persons; or
- (b) any works or class of works—

S. 308(b)
amended by
No. 5/2002
s. 53(a).

S. 308(c)
repealed by
No. 5/2002
s. 53(b).

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from any of the provisions of Parts 3, 4 or 5, either unconditionally or on specified conditions or in specified circumstances.

309. Powers of Minister in enforcing Parts 4 and 5

- (1) For the purposes of ensuring that Parts 4 and 5 are complied with, the Minister has the powers given by section 133 to an officer of an Authority.
- (2) Section 134 applies to the Minister in the exercise of those powers as if he or she were an officer of an Authority.
- (3) For the purposes of ensuring that Parts 4 and 5 are complied with, the Minister has the powers given by section 151 to an Authority.
- (4) This Act applies to a notice of contravention issued by the Minister as if it were issued by an Authority under section 151.

310. Establishment of Drillers' Licensing Board

- (1) There is established a Board called the Drillers' Licensing Board.
- (2) The Board consists of 3 members appointed by the Minister, of whom—
 - (a) one is nominated by the Department Head; and
 - (b) one is a person with specialist knowledge in areas relevant to the functions of the Board nominated by the Department Head⁶⁴; and
 - (c) one is appointed from a panel of 3 names submitted by the Victorian Branch of the Australian Drilling Industry Association.

S. 310(2)(a)
 amended by
 No. 76/1998
 s. 29(f).

S. 310(2)(b)
 substituted by
 No. 62/1995
 s. 39,
 amended by
 No. 76/1998
 s. 29(f).

- (3) The person appointed under sub-section (2)(a) is the chairperson of the Board.
- (4) If the body referred to in sub-section (2)(c) fails to submit a panel of 3 names on or before the date specified by the Minister when requesting a panel, the Minister may appoint as a member of the Board another person as representing well-drillers.

311. Application for licence

- (1) A person may apply to the Drillers' Licensing Board in writing for a driller's licence.
- (2) An application must be accompanied by the prescribed fee.

312. Board may grant licence

- (1) Subject to the regulations, the Drillers' Licensing Board may grant a driller's licence to an applicant entitling the applicant to use the method of drilling or bore construction endorsed on the licence.
- (2) The Board must advise each applicant in writing of the outcome of the application and, if the application has been refused, must give the applicant the reasons for the refusal.

313. Licences may be revoked or suspended

- (1) If in the opinion of the Drillers' Licensing Board the licensee has—
 - (a) contravened any provision of Part 5 or the regulations made for the purposes of that Part; or
 - (b) used a method of drilling or bore construction not endorsed on the licence; or

S. 313(1)(b)
 amended by
No. 5/2002
s. 54(a).

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Act No. 80/1989
 Part 15—General

s. 314

- (c) contravened a condition of a licence issued under section 67—

S. 313(1)(c)
 inserted by
 No. 5/2002
 s. 54(b).

the Board may, by written notice served on the licensee, revoke the driller's licence or suspend it for the period specified in the notice.

- (2) A notice served under sub-section (1) must specify the reasons for the revocation or suspension.

314. Register of licences

The Drillers' Licensing Board must keep a register of licences granted under section 312 and must record in the register any revocation or suspension of those licences.

315. Term of licence⁶⁵

S. 315
 amended by
 No. 62/1995
 s. 40.

Unless sooner revoked, a driller's licence remains in force for 10 years and, subject to the regulations, may be renewed from time to time on application to the Drillers' Licensing Board and on payment of the prescribed fee.

316. Requirement that licensed driller carry out work

- (1) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, a person must not carry out that work unless he or she is—
- (a) a licensed driller; or
 - (b) an employee or agent of a licensed driller and the work is carried out under the direct supervision of a licensed driller.

Penalty: 20 penalty units.

S. 316(3)
 inserted by
No. 5/2002
 s. 55.

- (2) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out using a specified method of drilling or bore construction, then sub-section (1) applies as if the references to a licensed driller were references to a licensed driller whose licence is endorsed so as to entitle him or her to use the specified method of drilling or bore construction.
- (3) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, the licensed driller must ensure that the work, or that part of the work, carried out by, or under the direction of, the licensed driller complies with the conditions of the licence.

Penalty: 20 penalty units.

317. Appeals

- (1) Any person who is aggrieved by the refusal of the Drillers' Licensing Board to grant him or her a driller's licence or to endorse the licence with respect to a particular method of drilling or bore construction or by any revocation or suspension of his or her licence or by any endorsement on his or her licence may within 30 days after the refusal, revocation or suspension appeal to the Minister.
- (2) The Minister must hear and determine the appeal and his or her decision is final and must be given effect to by the Board.
- (3) The Minister may in writing designate any person (other than an officer or employee of the public service or of any public statutory body) to—
 - (a) hear the whole or any part of an appeal under this section; and

- (b) report to him or her on that hearing; and
- (c) make any recommendation on the appeal.
- (4) A hearing by a person designated by the Minister under sub-section (3) is for the purposes of this section to be taken to be a hearing by the Minister but in every case the final determination of the matter must be made by the Minister himself or herself.

318. Advisory committees established by Minister

- (1) The Minister may establish advisory committees to advise the Minister on any matter referred by the Minister.
- (2) The Minister may at any time remove from office a member of a committee.
- (3) The **Public Sector Management and Employment Act 1998** does not apply to a member of a committee in respect of the office of member.
- (4) Subject to this Act and any rules made under sub-section (5), a committee may regulate its own procedure.
- (5) The Minister may make rules, with which committees must comply, about—
 - (a) their quorums; and
 - (b) voting powers of their members; and
 - (c) their proceedings.
- (6) A member is entitled to be paid any fees and allowances fixed by the Governor in Council.

S. 318(3)
 substituted by
 No. 62/1995
 s. 44(3),
 amended by
 No. 46/1998
 s. 7(Sch. 1).

S. 319(1)
 amended by
 No. 76/1998
 s. 29(g).

S. 319(2)
 amended by
 No. 76/1998
 s. 29(g).

319. Department Head

- (1) If an Authority requests the Department Head to carry out an investigation into any aspect of water services or resources or related areas, the Department Head may carry out the investigation at the Authority's cost.
- (2) The Department Head may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Department Head under this or any other Act, other than this power of delegation.

320. Authorities as at the passing of this Act

- (1) Column 1 of Schedule 12 lists the Authorities that continue in existence as at the date on which this Act receives the Royal Assent under the corporate names specified in that column.
- (2) An entry in column 2 of Schedule 12 in relation to an Authority indicates that the Authority has an irrigation district as described in that column.
- (3) An entry in column 3 of Schedule 12 in relation to an Authority indicates that the Authority has a sewerage district as described in that column.
- (4) An entry in column 4 of Schedule 12 in relation to an Authority indicates that the Authority has a waterway management district as described in that column.
- (5) An entry in column 5 of Schedule 12 in relation to an Authority indicates that the Authority has a water district as described in that column.
- (6) Nothing in this section prevents the exercise of a power under this Act to—
 - (a) proclaim a new district; or
 - (b) unite any two or more districts; or

- (c) increase or diminish the extent of a district;
or
- (d) divide a district into two or more districts; or
- (e) abolish a district; or
- (f) change the corporate name of an Authority.

321. Officers appointed or transferred to Authorities

- (1) In this section, a reference to an appointment includes a reference to a transfer as a result of an Order under section 98(1) or by virtue of clause 20(2)(e) of Schedule 3.
- (2) A person appointed as an officer of an Authority who, immediately before that appointment, was—
 - (a) an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment; or
 - (b) a permanent employee within the meaning of the **State Employees Retirement Benefits Act 1979**—

S. 321(1)
 amended by
 No. 50/1992
 s. 10(Sch.
 item 11.34).

may, subject to those Acts, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue to be an officer or permanent employee for the purposes of the appropriate Act for the period of his or her appointment.

- (3) A person appointed as an officer of an Authority (other than a person referred to in sub-section (2)) who, immediately before that appointment, was a member of or contributor to a scheme of superannuation may, subject to the rules governing that scheme, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue as a member of or contributor to that scheme for the period of his or her appointment.

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- (4) A person referred to in sub-section (2) or (3) who has not, 6 months after commencing duties as an officer of the Authority, made an election under sub-section (2) or (3) must, on and after the end of that period, be taken to be an employee within the meaning of the **Local Authorities Superannuation Act 1988** and, despite anything to the contrary in that Act, must be taken to have become such an employee as from the end of that period.
- (5) A person appointed as an officer of an Authority who makes an election under sub-section (2) or (3) must be taken not to be an employee within the meaning of the **Local Authorities Superannuation Act 1988**.
- (6) Until an officer referred to in sub-section (2) or (3) makes an election under those sub-sections, or 6 months after the date on which he or she commences duties as an officer of the Authority (whichever is earlier) the officer must—
- (a) in the case of an officer referred to in sub-section (2), be taken to continue to be an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment, or a permanent employee within the meaning of the **State Employees Retirement Benefits Act 1979**, as the case requires; and
 - (b) in the case of an officer referred to in sub-section (3), continue as a member of or contributor to the scheme of superannuation.
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322. Guidelines as to terms and conditions of employment

(1) This section applies to—

- (a) officers of an Authority; and
- (b) officers or employees of a council that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the council of any powers, functions or duties conferred on it by or under this Act; and

- (ba) officers or employees of a Catchment Management Authority that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act; and

S. 322(1)(ba)
 inserted by
 No. 25/2001
 s. 12(1)(a).

- (c) officers or employees of a council or Catchment Management Authority who carried out duties for or on behalf of an abolished Authority immediately before its abolition—

S. 322(1)(c)
 amended by
 No. 25/2001
 s. 12(1)(b).

if the Minister has made an Order under section 98(1) in respect of that Authority.

(2) The Minister may determine guidelines as to—

- (a) the salaries, wages or other remuneration of people to whom this section applies; and
- (b) the terms and conditions of service or employment of people to whom this section applies; and
- (c) the payments to be made, or benefits to be provided, to people to whom this section applies who are dismissed from their employment because of redundancy.

S. 322(4)
 substituted by
 No. 25/2001
 s. 12(2).

S. 322(4A)
 inserted by
 No. 25/2001
 s. 12(2).

S. 322(5)
 substituted by
 No. 25/2001
 s. 12(3).

- (3) Any guidelines determined by the Minister under sub-section (2) may be determined so as to apply—
 - (a) generally or in specified cases or in a specified class of case or specified classes of cases; and
 - (b) to all people to whom this section applies or to specified people or people included in a specified class of people; and
 - (c) at all times or at a specified time or specified times.
- (4) Before determining any guidelines under sub-section (2), the Minister must consult any persons that appear to the Minister to represent the interests of Authorities, councils and Catchment Management Authorities and people employed by them respectively.
- (4A) Before determining any guidelines under sub-section (2) with respect to any officer or employee referred to in sub-section (1)(c), the Minister must consult with—
 - (a) in the case of an officer or employee of a council, the Minister administering the **Local Government Act 1989**; and
 - (b) in the case of an officer or employee of a Catchment Management Authority, the Minister administering the **Catchment and Land Protection Act 1994**.
- (5) The Minister must serve a copy of all guidelines determined under sub-section (2) on every Authority and—
 - (a) if the guidelines relate to an officer or employee of a council referred to in sub-section (1)(c), the council; or

- (b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in sub-section (1)(c), the Catchment Management Authority.
- (6) The Minister may at any time amend guidelines determined under sub-section (2), and must serve a copy of every amendment on every Authority and—
 - (a) if the guidelines relate to an officer or employee of a council referred to in sub-section (1)(c), the council; or
 - (b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in sub-section (1)(c), the Catchment Management Authority.
- (7) Despite anything in this or any other Act to the contrary, every Authority and every council and Catchment Management Authority in respect of which an Order under section 98(1) is made and which has an officer or employee referred to in sub-section (1)(c) must comply with any guidelines determined by the Minister under sub-section (2), as amended from time to time under sub-section (6), and those guidelines are in all respects binding on the Authority, the council or the Catchment Management Authority (as the case requires) and on all other persons affected by them.

S. 322(6)
 substituted by
 No. 25/2001
 s. 12(3).

S. 322(7)
 amended by
 No. 25/2001
 s. 12(4)(a)(b).

323. Saving of rights of public servants appointed to Authorities

- (1) If a person ceases to be an officer of an Authority and that person—
 - (a) was immediately before his or her appointment as an officer of the Authority an employee in the public service; and

S. 323(1)
 amended by
 Nos 42/1995
 s. 224(Sch. 2
 item 48),
 62/1995
 s. 44(4)(a)(b),
 substituted by
 No. 46/1998
 s. 7(Sch. 1).

Water Act 1989
Act No. 80/1989
 Part 15—General

s. 323A

- (b) has continuously been an officer of the Authority since he or she ceased to be an employee in the public service—

the person is entitled to be employed in the public service with a classification and emolument corresponding with or higher than those which he or she last held or received in the public service immediately before his or her appointment as an officer of an Authority as if the period of service as an officer of an Authority had been service in the public service and, for the purpose of long service leave, that person must be taken to have been an employee in the public service during the period of his or her service as an officer of an Authority.

- (1A) In sub-section (1) a reference to an appointment includes a reference to a transfer as a result of an Order made under section 98(1) or by virtue of clause 20(2)(e) of Schedule 3.
- (2) Sub-section (1) applies, with any necessary modifications, with respect to an officer or employee of a council or Catchment Management Authority that is an Authority who is employed solely, mainly or partly to perform duties for or in connection with the exercise by the council or Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act in the same manner as it applies to an officer of an Authority.

323A. Supreme Court—limitation of jurisdiction

It is the intention of section 222(1C) to alter or vary section 85 of the **Constitution Act 1975**.

S. 323(1A)
inserted by
No. 50/1992
s. 10(Sch.
item 11.35).

S. 323(2)
amended by
No. 25/2001
s. 13.

S. 323A
inserted by
No. 22/1999
s. 5.

324. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing standards for houseboats (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to—
 - (i) sewerage and water supply; and
 - (ii) services, installations and ancillary equipment, including those for the provision of water supply services, for sanitary purposes and for sewerage; and
 - (b) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.

S. 324(1)(a)
 amended by
 No. 39/1996
 s. 11(3)(a).

S. 324(1)(a)(ii)
 amended by
 No. 39/1996
 s. 11(3)(b).

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- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
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- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations and, in the case of a contravention of a continuing nature, a further penalty not exceeding 5 penalty units for each day during which the contravention continues—
 - (i) after service of a notice of contravention on the person under section 151; or
 - (ii) if no notice of contravention is served, after conviction.
- (4) If under sub-section (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the regulation to be taken to have not been so amended until notice of the amendment is published in the Government Gazette.
 - (5) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
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- (6) Disallowance under sub-section (5) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

325. Repeals

On the coming into operation of an item in Schedule 13, the Act or provisions specified in that item is or are repealed to the extent so specified.

326. Savings and transitionals

- (1) Schedule 14 contains saving and transitional provisions.
- (2) The provisions of Schedule 14 are in addition to, and not in derogation from, the provisions of the **Interpretation of Legislation Act 1984**.
- (3) The amendments of section 47 made by section 3(1) and (2) of the **Water Acts (Amendment) Act 1999** apply only with respect to applications made under section 47 after the commencement of section 3 of that Act.
- (4) The amendments of section 47B made by section 3(3), (4) and (5) of the **Water Acts (Amendment) Act 1999** apply only with respect to requests made under section 47B(1) after the commencement of section 3 of that Act.
- (5) The amendments of this Act made by section 3(6) of the **Water Acts (Amendment) Act 1999** apply with respect to applications under section 44 or 47 or requests under section 47B(1), whether made before or after the commencement of section 3 of that Act.

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S. 326(3)
inserted by
No. 22/1999
s. 3(7).

S. 326(4)
inserted by
No. 22/1999
s. 3(7).

S. 326(5)
inserted by
No. 22/1999
s. 3(7).

Ss 327, 328
repealed by
No. 62/1995
s. 44(5).

**329. Repeal of Victorian Water and Sewerage
Authorities Association Act**

(1) In this section—

- (a) **"former body"** means the Victorian Water and Sewerage Authorities Association established under the **Victorian Water and Sewerage Authorities Association Act 1981**;
- (b) **"new body"** means the Water Authorities Association of Victoria Inc. incorporated under the **Associations Incorporation Act 1981**.

(2) On the commencement of this section—

- (a) the **Victorian Water and Sewerage Authorities Association Act 1981** shall be repealed; and
- (b) the former body shall be abolished and its members shall go out of office; and
- (c) all rights, property and assets that immediately before that commencement were vested in the former body shall, by force of this sub-section, be vested in the new body; and
- (d) all debts, liabilities and obligations of the former body existing immediately before that commencement shall become, by force of this sub-section, debts, liabilities and obligations of the new body; and
- (e) the new body 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 the commencement; and

- (f) the new body shall, by force of this subsection, 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 commencement; and
- (g) 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 commencement and if not inconsistent with the context or subject-matter, be construed as a reference to the new body.

330. Transitional provisions for removal of power to set fees under tariffs

- (1) Subject to this section, any notice by a Catchment Management Authority declaring any land to be a serviced property for the purposes of this Act ceases to have effect on the commencement of the **Water (Waterway Management Tariffs) Act 1999**.
- (2) The commencement of the **Water (Waterway Management Tariffs) Act 1999** does not affect any right a Catchment Management Authority had before that commencement to set a tariff and impose a fee under Division 5 of Part 13 for any period before 1 July 1999, and the Authority may continue to collect any unpaid fee under a tariff which has been imposed in respect of a property before that commencement for any such period.
- (3) If a Catchment Management Authority has, before the commencement of the **Water (Waterway Management Tariffs) Act 1999**, set a tariff and imposed a fee under Division 5 of Part 13 for the

S. 330
 inserted by
 No. 65/1999
 s. 5.

period beginning on 1 July 1999 and ending on 30 June 2000, then—

- (a) if that fee or any part of that fee has been paid to the Authority, the Authority must repay the amount so paid to the person who paid it; and
- (b) if that fee or any part of that fee has not been paid to the Authority, the Authority is not entitled to collect it.
- (4) Any amount required to be repaid to a person under sub-section (3)(a) is a debt due to the person by the Authority and may be recovered in a court of competent jurisdiction.
- (5) In this section "**Catchment Management Authority**" has the same meaning as in section 260A.

331. Transitional provisions—Water (Irrigation Farm Dams) Act 2002

- (1) A groundwater supply protection area declared by Order under section 27(1) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be a water supply protection area for the protection of the groundwater resources in the area concerned and may be abolished, or its boundaries amended, in accordance with Division 3 of Part 3 accordingly.
- (2) A management plan approved by the Minister under section 30(4) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be an approved management plan for groundwater resources for the relevant water supply protection

S. 331
 inserted by
 No. 5/2002
 s. 56 (as
 amended by
 No. 6/2002
 s. 4(4)).

area and may be amended or revoked in accordance with Division 3 of Part 3 accordingly.

- (3) A notice of an application for the declaration of an area to be a groundwater supply protection area—
- (a) that was published under section 27(3)(b)(i) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) in relation to which an Order declaring the area to be a groundwater supply protection area had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 27(4)(a)(i).

- (4) A notice to amend the boundaries of, or abolish, a groundwater supply protection area—
- (a) that was published in accordance with section 28(2) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) in relation to which an Order amending the boundaries of, or abolishing, the groundwater supply protection area (as the case requires) had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 28(2) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

- (5) A consultative committee appointed under section 29(1), as in force before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, and existing immediately before that commencement is

deemed, on that commencement, to be a consultative committee appointed under section 29(1) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

- (6) A draft management plan that—
- (a) had been prepared under Division 3 of Part 3 at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and
 - (b) had not been approved by the Minister under section 30(5) before that commencement—
- is deemed, on that commencement, to be a draft management plan prepared under Division 3 of Part 3 (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).
- (7) An Authority that immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** had the duty of administering and enforcing an approved management plan under section 30 as in force immediately before that commencement must—
- (a) prepare a report in respect of its activities in carrying out its duties for the period beginning on that commencement and ending on 30 June next; and
 - (b) give a copy of that report to the Minister and any relevant Catchment Management Authority in accordance with section 32C(2); and
 - (c) release and make available the report in accordance with section 32D.

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- (8) A person who—
- (a) at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from a spring or soak or water from a dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; and
 - (b) before 1 July 2003 applies for a licence under section 51(1)(ba) in relation to the spring or soak or dam—
- is not liable to pay an application fee in respect of the application.
- (9) A licence issued under section 67 to abandon any works, private dam or a bore that is in force immediately before the commencement of section 35 of the **Water (Irrigation Farm Dams) Act 2002** is, on and from that commencement, deemed to be a licence to decommission those works, or that private dam or bore.
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SCHEDULES

SCHEDULE 1

Section 85

GENERAL PROVISIONS ABOUT MEMBERS OF AUTHORITIES

1. Term of office

- (1) Subject to this Schedule, a member appointed by the Minister holds office for the term (not exceeding 4 years) that is specified in the instrument of that member's appointment.
- (2) Subject to this Schedule, a member elected by persons who are enrolled on the voters' roll for an electoral district of the Authority holds office until the day of the ordinary election in the third year after the year of his or her election.
- (3) Subject to this Schedule, a member who holds office because that person is a councillor of a council holds office until that person ceases to be a councillor of that council.
- (4) Subject to this Schedule, a member elected by a council holds office for three years from the date of that member's election, unless (if he or she was required by section 88 to be a councillor in order to be elected) he or she ceases to be a councillor of that council before that time.
- (5) For the purpose of determining the period for which a member holds office—
 - (a) a member elected or appointed to fill a vacancy (other than one caused by the expiry of the previous member's term) must be taken to have been elected or appointed at the same time and in the same manner as the last holder of the office who was elected or appointed otherwise than to fill any such vacancy; and
 - (b) a member appointed in consequence of any failure to elect holds office as if elected on the day appointed for the election.

**Sch. 1 cl. 1(2)
 amended by
 No. 12/1992
 s. 7(1).**

Water Act 1989
Act No. 80/1989

Sch. 1

Sch. 1 cl. 1A
inserted by
No. 65/1995
s. 21.

Sch. 1 cl. 2
substituted by
No. 62/1995
s. 44(6),
amended by
No. 46/1998
s. 7(Sch. 1).

1A. Appointment of chairperson⁶⁶

- (1) The chairperson of an Authority must be appointed by the Minister.
- (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.
- (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.
- (5) The chairperson may resign by notice in writing to the Minister.

2. Members are not subject to Public Sector Management and Employment Act 1998

The **Public Sector Management and Employment Act 1998** does not apply to a member in respect of the office of member.

3. Allowances

- (1) An Authority may, subject to sub-clause (2), pay remuneration and allowances to its members.
- (2) Unless the Minister permits otherwise, the amounts of any remuneration and allowances paid by an Authority to its members must not exceed the prescribed amount or, if a percentage of revenue is prescribed, the prescribed percentage of the Authority's revenue as determined by audit of the accounts of the preceding year.

4. Resignation

A member may resign his or her office by notice in writing to the chairperson or secretary of the Authority.

Water Act 1989
Act No. 80/1989

Sch. 1

5. Vacation of office

- (1) The office of a member becomes vacant if the member—
- (a) resigns; or
 - (b) is removed from office by the Minister in accordance with clause 6; or
 - (c) becomes bankrupt; or
 - (d) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (e) is not entitled to enrol as an elector for the Legislative Council and the Legislative Assembly under section 48(1)(a) of the **Constitution Act 1975**; or
 - (f) subject to sub-clause (2), holds any office or paid position to which he or she is appointed by the Authority; or
 - (g) ceases to be eligible to be a member, as specified in section 94 or clause 8; or
 - (h) is absent from 4 consecutive ordinary meetings of the Authority without the permission of the Authority.
- (2) The Minister may exempt an Authority from the operation of sub-clause (1)(f), either generally or in relation to any specified office or position.

6. Removal of member by the Minister

The Minister may remove from office—

- (a) any member appointed by the Minister; or
- (b) any member elected by persons who are enrolled on the voters' roll for an electoral district, on a petition signed by a majority of the persons enrolled on that roll asking for the removal of the member; or
- (c) any member elected by a council, on a petition from that council asking for the removal of the member; or
- (d) any member who, in the opinion of the Minister, is no longer capable of performing the functions of a member.

7. Filling of vacancies

- (1) A vacancy in the office of a member who was elected by a council, or by persons who are enrolled on a voters' roll, must be filled at an election by that council or those persons, held within 2 months after the vacancy has occurred.
- (2) A vacancy in the office of a member who held office because he or she was a councillor of a municipal council, which arose for some reason other than the person ceasing to be a councillor, must be filled by the Minister appointing another person to be a member.
- (3) A vacancy in the office of a member which arose only because of his or her absence from 4 consecutive ordinary meetings of the Authority without the permission of the Authority may be filled by the Minister re-appointing that person, if he or she still possesses the qualifications (if any) required for his or her election or appointment originally.
- (4) A vacancy in the office of a member who was appointed by the Minister must be filled by the Minister appointing any person to be a member.
- (5) If a vacancy in the office of a member who was elected by persons who are enrolled on a voters' roll occurs within 6 months before the election at which that member would, if the office had not become vacant, have gone out of office, a member must be elected at that election to fill the vacancy.
- (6) If, within the time referred to in sub-clause (1), no member is elected by the council or persons entitled to elect a member, the Minister may appoint as many persons to be members as may be required as a result of the failure or refusal of the council or persons.

8. Eligibility for election

- (1) A person who is enrolled on the voters' roll for an Authority is, subject to sub-clause (2), eligible for election at an ordinary election as a member of the Authority.
- (1A) At an election to fill an extraordinary vacancy a person who is, or since the preparation of the last voters' roll has become entitled to be, enrolled on the voters' roll for an Authority is, subject to sub-clause (2), eligible for election as a member of the Authority.

Sch. 1 cl. 7(6)
amended by
No. 12/1992
s. 7(2).

Sch. 1 cl. 8(1)
amended by
No. 12/1992
s. 6(a).

Sch. 1
cl. 8(1A)
inserted by
No. 12/1992
s. 6(b).

Water Act 1989
Act No. 80/1989

Sch. 1

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- (2) A person who does any of the things referred to in clause 5(1)(c), (d), (f) or (g), or who is referred to in clause 5(1)(e), is not eligible for election as a member of the Authority.

9. Unqualified person must not act as member

A person who is aware that he or she—

- (a) is incapable of acting, or no longer eligible to act, as a member; or
- (b) has ceased to be a member—

must not act as a member.

Penalty: For every day on which that person acts as a member—2 penalty units.

SCHEDULE 2

Section 86(1)

**GENERAL PROVISIONS ABOUT PROCEEDINGS OF
AUTHORITIES**

1. Meetings

- (1) The members of an Authority must hold their first meeting on the day, and at the time and place, specified by the Minister.
- (2) An Authority must hold at least one ordinary meeting every 3 months.

2. Chairperson and deputy chairperson⁶⁷

- (1) The members of an Authority must—
 - (a) at their first meeting, appoint a member as deputy chairperson; and
 - (b) at the first meeting each year after the election of members (or, if municipal councillors hold office as members because they are councillors, at the first meeting each year after the election of councillors) appoint a member as deputy chairperson; and
 - (c) if a vacancy arises in the office of deputy chairperson, appoint a member to fill the vacancy.
- (2) A deputy chairperson holds office, subject to this Act, until the meeting of the Authority at which the next appointment of a deputy chairperson is to be made.
- (3) A chairperson or deputy chairperson who vacates that office is, if still a member, eligible for reappointment as chairperson or deputy chairperson.
- (4) A chairperson or deputy chairperson ceases to hold that office if he or she ceases to be a member of the Authority.

Sch. 2
cl. 2(1)(a)
amended by
No. 121/1994
s. 192(2)(a).

Sch. 2
cl. 2(1)(b)
amended by
No. 121/1994
s. 192(2)(a).

Sch. 2
cl. 2(1)(c)
amended by
No. 121/1994
s. 192(2)(b).

Sch. 2 cl. 2(2)
amended by
No. 121/1994
s. 192(2)(c)(i)
(ii).

Water Act 1989
Act No. 80/1989

Sch. 2

- (4A) A chairperson may resign by notice in writing delivered to the Minister.

Sch. 2
cl. 2(4A)
inserted by
No. 121/1994
s. 192(2)(d).

- (5) A deputy chairperson may resign by notice in writing delivered to a meeting of the Authority or a person authorised by the Authority.

Sch. 2 cl. 2(5)
amended by
No. 121/1994
s. 192(2)(e).

- (6) If at any meeting of the Authority the chairperson is not present at the time appointed for holding the meeting the deputy chairperson (or, in the absence of the deputy chairperson, a member appointed by the members present) must preside at the meeting.

- (7) If there is no chairperson, or if the chairperson and deputy chairperson are absent or unable or unwilling to act as chairperson, the Authority (or, if the Authority fails to do so, the Minister) may appoint a member to act as chairperson.

3. Special meetings

- (1) The chairperson of an Authority may at any time (and must, if requested by 2 members) call a special meeting of the Authority.
- (2) A special meeting must not be held unless at least 2 days' notice has been given to each member.
- (3) Notice of a special meeting must—
 - (a) be in writing; and
 - (b) be served on each member, by post or in person; and
 - (c) specify the time and place of the meeting and the reason for it.
- (4) A special meeting must deal only with business stated in the notice.

4. Quorum

- (1) The Minister may, by Order published in the Government Gazette, specify the number of members forming a quorum of an Authority.
- (2) The Minister must not specify a quorum that is more than a majority or less than one-third of the members of the Authority.

Water Act 1989
Act No. 80/1989

Sch. 2

- (3) If no quorum is specified by the Minister for an Authority, a majority of the members of the Authority constitutes a quorum.
- (4) If there is a quorum present at a meeting, the Authority may act even though there may be any vacancy in its membership.
- (5) If there is not a quorum present within 30 minutes after the time appointed for a meeting of an Authority, the members present or a majority of them, or any one member if he or she is the only one present, may adjourn the meeting, and, if no member is present, the secretary of the Authority may adjourn the meeting.

Sch. 2 cl. 4A
inserted by
No. 62/1995
s. 43.

4A. Proceedings of an Authority

- (1) An Authority may permit members to participate in a particular meeting of the Authority, or all meetings of the Authority, by telephone, closed-circuit television or other means of communication.
- (2) A member who participates in a meeting under permission under sub-clause (1) is to be taken to be present at the meeting.

Sch. 2 cl. 4B
inserted by
No. 62/1995
s. 43.

4B. Resolutions without meetings

- (1) If a majority of the members for the time being sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Authority held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last member signs the document.
- (2) If a resolution is, under sub-clause (1), taken to have been passed at a meeting of an Authority, each member must immediately be advised of the matter and given a copy of the terms of the resolution.
- (3) For the purposes of sub-clause (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members, shall be taken to constitute one document.

5. Voting

- (1) A question arising at a meeting of an Authority must be determined by a majority of the votes of the members present.

Water Act 1989
Act No. 80/1989

Sch. 2

- (2) If the votes are equal, the person presiding has a casting vote.
- (3) A member present at a meeting must vote on a question arising at the meeting, unless he or she is prohibited from voting on that question under section 92.

6. Minutes

- (1) An Authority must make sure that the following information is recorded in a minute book kept by the secretary of the Authority—
 - (a) minutes of all proceedings at each meeting;
 - (b) names of the members present;
 - (c) names of the members voting on any question in relation to which a division is called;
 - (d) all reports of committees presented at each meeting.
- (2) The minutes must—
 - (a) be confirmed by the Authority at the meeting to which they relate and be signed by the person presiding at that meeting; or
 - (b) be confirmed by the Authority at its next meeting and be signed by the person presiding at that next meeting.
- (3) The minute book must be open to inspection at any reasonable time by—
 - (a) any member or creditor of the Authority; and
 - (b) any person who is entitled to vote in an election or who is liable to pay a fee imposed under a tariff under this Act in respect of any property within the Authority's district.

7. Validity of proceedings

An act or decision of an Authority is not invalid only because there is a defect or irregularity in the election or appointment of a member.

8. Travelling expenses

Despite anything in this or any other Act, the members of an Authority are, if the Authority so resolves, entitled to be reimbursed out of the Authority's funds for their reasonable expenses in travelling to and from meetings of the Authority.

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9. Interim members⁶⁸

- (1) The interim members of an Authority—
- (a) must, at their first meeting appoint from amongst them an interim deputy chairperson of the Authority; and
 - (b) must, if a vacancy occurs in that office, appoint from amongst them a person to fill the vacancy; and
 - (c) have, subject to sub-clause (3), the functions, powers, rights and obligations conferred or imposed by or under this or any other Act on members who have been duly elected or appointed (otherwise than as interim members) in accordance with this Act; and
 - (d) remain in office until the day the first meeting is held of the Authority comprising people who have been duly elected or appointed (otherwise than as interim members) in accordance with this Act.
- (2) The interim chairperson and interim deputy chairperson of an Authority have all the functions, powers, rights and obligations conferred or imposed by or under this or any other Act on the chairperson or deputy chairperson (as the case may be) of an Authority.
- (3) The interim members of an Authority must not, except with the approval of the Minister, appoint any person to a particular office or dismiss any person from his or her office or employment.
- (4) The interim members of an Authority must—
- (a) carry out an examination for the purpose of recommending to the Minister (within 6 months after they take office or within any other period that the Minister specifies) the manner (if any) in which the district or districts of the Authority should be subdivided into electoral districts and the boundaries of each electoral district; and
 - (b) generally, do everything that appears to them to be necessary or desirable for the purpose of making sure that the Authority may be duly elected or appointed in accordance with this Act as early as practicable.

Sch. 2
cl. 9(1)(a)
amended by
No. 121/1994
s. 192(3)(a).

Sch. 2
cl. 9(1)(b)
amended by
No. 121/1994
s. 192(3)(b).

Water Act 1989
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Sch. 2

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- (5) This Schedule applies, with any necessary modifications, with respect to the proceedings of an Authority comprised of interim members in the same way as it applies to the proceedings of an Authority comprised of members who have been duly elected or appointed (otherwise than as interim members) in accordance with this Act.
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Water Act 1989
Act No. 80/1989

Sch. 3

Sch. 3
substituted by
No. 50/1992
s. 4,
amended by
No. 49/1994
ss 4(1)(n)–(p),
10(c)(i)(ii),
repealed by
No. 65/1995
s. 16(8)^{69,70},
new Sch. 3
inserted by
No. 39/1998
s. 13(Sch. 3).

SCHEDULE 3

Section 114

EFFECT OF CERTAIN ORDERS

TABLE A

Column 1 Instrument	Column 2 Body	Column 3 Waterway Management District
Water (Constitution of the Corangamite Catchment Management Authority) Order 1997	Corangamite Catchment Management Authority	Lough Calvert Drainage
Water (Constitution of the East Gippsland Catchment Management Authority) Order 1997	East Gippsland Catchment Management Authority	East Gippsland River Management Snowy River Management Tambo Nicholson River Management Mitchell River Management
Water (Constitution of the Glenelg Hopkins Catchment Management Authority) Order 1997	Glenelg Hopkins Catchment Management Authority	Glenelg River Management
Water (Constitution of the Goulburn Broken Catchment Management Authority) Order 1997	Goulburn Broken Catchment Management Authority	Lower Goulburn Waterway Management Broken River Management Upper Goulburn Waterway Management
Water (Constitution of the North Central Catchment Management Authority) Order 1997	North Central Catchment Management Authority	Pental Island River Management Bullock Creek Management Avoca River Management

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Column 1 Instrument	Column 2 Body	Column 3 Waterway Management District
Water (Constitution of the North East Catchment Management Authority) Order 1997	North East Catchment Management Authority	Ovens River Management Black Dog Creek Management Upper North East River Management
Water (Constitution of the West Gippsland Catchment Management Authority) Order 1997	West Gippsland Catchment Management Authority	Tarwin Bass Waterway Management Corner Inlet Waterway Management Lake Wellington River Management

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Sch. 3

TABLE B

Column 1 Instrument	Column 2 Body	Column 3 Waterway Management District
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the Corangamite Catchment Management Authority) Order 1997	Corangamite Catchment Management Authority	Lough Calvert Drainage
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the East Gippsland Catchment Management Authority) Order 1997	East Gippsland Catchment Management Authority	East Gippsland River Management Snowy River Management Tambo Nicholson River Management Mitchell River Management
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the Glenelg Hopkins Catchment Management Authority) Order 1997	Glenelg Hopkins Catchment Management Authority	Glenelg River Management

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Column 1 Instrument	Column 2 Body	Column 3 Waterway Management District
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the Goulburn Broken Catchment Management Authority) Order 1997	Goulburn Broken Catchment Management Authority	Lower Goulburn Waterway Management Broken River Management Upper Goulburn Waterway Management
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the North Central Catchment Management Authority) Order 1997	North Central Catchment Management Authority	Pental Island River Management Bullock Creek Management Avoca River Management
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the North East Catchment Management Authority) Order 1997	North East Catchment Management Authority	Ovens River Management Black Dog Creek Management Upper North East River Management
Water (Declaration of Application of Regional Drainage and Floodplain Management Functions to the West Gippsland Catchment Management Authority) Order 1997	West Gippsland Catchment Management Authority	Tarwin Bass Waterway Management Corner Inlet Waterway Management Lake Wellington River Management

Water Act 1989
Act No. 80/1989

Sch. 4

Sch. 4
repealed by
No. 110/1997
s. 16(2).

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Sch. 5
repealed by
No. 54/1992
s. 56(h).

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SCHEDULE 6

Section 118(1)

FIRST MILDURA IRRIGATION TRUST

1. First Mildura Irrigation Trust

- (1) There is continued in existence the Authority known as the First Mildura Irrigation Trust.
- (2) Subject to Part 6, the Authority consists of 6 members all of whom are elected by the occupiers or owners of rateable land within the irrigation district of the Authority whose names appear in the register of the Authority in respect of that land and who are not disqualified from voting under this Schedule or any regulations made under section 87(7).

2. Definitions

- (1) In this Schedule—

"indenture" has the same meaning as it had in the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958** immediately before the repeal of that Act;

"irrigable land" means any land—

- (a) that is suitable for cultivation and irrigation; and
- (b) that—
 - (i) received water from the Trust for irrigation purposes for the last irrigation period before the commencement of this Schedule; or
 - (ii) received water from the Trust for irrigation purposes for any subsequent irrigation period up to the last irrigation period before the commencement of section 6(3) of the **Water Acts (Amendment) Act 1999**;

Sch. 6 cl. 2
 amended by
 No. 22/1999
 s. 6(3) (ILA
 s. 39B(3))

Sch. 6 cl. 2(1)
 def. of
"indenture"
 inserted by
 No. 22/1999
 s. 6(1).

Sch. 6 cl. 2(1)
 def. of
**"irrigable
 land"**
 amended by
 No. 22/1999
 s. 6(2).

Water Act 1989
Act No. 80/1989

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Sch. 6 cl. 2(1)
def. of
"irrigation
area"
inserted by
No. 22/1999
s. 6(1).

"irrigation area" has the same meaning as it had in the
**Mildura Irrigation Trusts and Sunraysia Water
Board Act 1958** immediately before the repeal of that
Act;

"irrigation district" means the irrigation district of the
Trust;

"rateable land" means all irrigable land within the district,
including township allotments, except land that is not
rateable land within the meaning of the **Local
Government Act 1989**;

"township allotments" means land laid out as township
allotments of which a subdivision plan has been
lodged in the Office of Titles under the **Transfer of
Land Act 1958** or any corresponding previous
enactment.

"Trust" means the First Mildura Irrigation Trust.

Sch. 6 cl. 2(2)
inserted by
No. 22/1999
s. 6(3).

- (2) For the avoidance of doubt it is declared that the mere
delivery by the Trust to land of water bought by the owner
or occupier of that land from a person other than the Trust is
not the receipt of water from the Trust for the purposes of
paragraph (b) of the definition of "irrigable land" in sub-
clause (1).

3. Election of members

- (1) A person whose name appears in the register of the
Authority as an owner or occupier of not less than 1 hectare
of rateable land that is not a township allotment is entitled
without application to be enrolled on the voters' roll.
- (2) A person who is not enrolled on the voters' roll is not
entitled to vote.

4. Functions

The Authority has the functions of an Authority under
Part 11.

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4A. Extinguishment of certain easements

Sch. 6 cl. 4A
inserted by
No. 22/1999
s. 6(4).

- (1) Any easement or other interest securing a water right, existing immediately before the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999**, over land in the irrigation area—
 - (a) granted in accordance with the indenture; or
 - (b) arising by force of section 13 of the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958** or any corresponding previous enactment—

is extinguished by force of this sub-clause.

- (2) This clause has effect despite anything to the contrary in any Act or law or in a Crown grant of the land.
- (3) The Registrar of Titles, on being requested to do so by the Department Head, must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this clause.

4B. Apportionment of water rights

Sch. 6 cl. 4B
inserted by
No. 22/1999
s. 6(4).

- (1) Despite anything to the contrary in section 229, the Trust may apportion, other than by sale or inviting applications, a volume of water rights to any land (other than irrigable land) that is within the irrigation district and on which a fee was imposed under a tariff for irrigation purposes during the financial year that commenced on 1 July 1998 and during each subsequent financial year including the financial year in which the apportionment is made.
- (2) The maximum volume of water rights that the Trust may apportion under this clause is 9·144 megalitres of water per year per hectare of land that, in the opinion of the Trust, is suitable for cultivation and irrigation.
- (3) An apportionment of water rights under this clause is subject to the terms and conditions of which notice is given to the owner or occupier of the land by the Trust before the apportionment is made.
- (4) Sub-section (6) of section 229 applies to an apportionment of water rights under this clause in the same way that it does to an apportionment of water rights under that section.
- (5) The Trust must make sure that details of an apportionment under this clause are entered in the register of lands kept under section 230.

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Sch. 6 cl. 4C
inserted by
No. 22/1999
s. 6(4).

4C. Register to show water rights

- (1) The total volume of water rights to be shown in the register as attached to a holding that is irrigable land within the irrigation district is—
 - (a) 9·144 megalitres per hectare each year or the other amount fixed in relation to that holding by the Governor in Council by Order under clause 5; and
 - (b) any water rights that are for the time being attached to the holding under section 226 or 226A or apportioned or sold to the owner or occupier of land comprised in the holding under section 229.
- (2) Within 12 months after the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999** the Trust must make a determination under section 230(2)(c) in relation to each holding that is consistent with sub-clause (1).

4D. Abolition of other water rights in irrigation district

- (1) On and from the first anniversary of the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999**, the only water rights attached to a holding in the irrigation district are those specified in the register in relation to that holding and any other water rights attached to that holding immediately before that anniversary (whether arising by force of an Act or at common law or in accordance with the indenture) are abolished.
- (2) Sub-clause (1) is subject to any revision of the register made in accordance with section 230.
- (3) Sub-clause (1) does not limit—
 - (a) clause 4A; or
 - (b) the application of sub-section (7) of section 8 to rights described in that sub-section.

4E. Minister may issue licence without application

- (1) Despite anything to the contrary in this Act, the Minister may, without any application having been made in that behalf, issue a licence under section 51 to a person whom the Minister is satisfied—
 - (a) is the owner or occupier for the time being of any land within the irrigation area but outside the irrigation district; and

Sch. 6 cl. 4D
inserted by
No. 22/1999
s. 6(4).

Sch. 6 cl. 4E
inserted by
No. 22/1999
s. 6(4).

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- (b) does not hold a licence issued under section 51 to take and use water from the River Murray for the purposes of that land; and
 - (c) had in the last irrigation period before the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999** taken water from the River Murray in the exercise of, or purportedly in the exercise of, an entitlement granted by clause 6 or the indenture.
- (2) Without limiting any other conditions that may be imposed on the licence under section 56, a licence issued under section 51 in accordance with sub-clause (1) must allocate not less than 9·144 megalitres of water per year per hectare of land that, in the opinion of the Minister, is being cultivated and irrigated.
- (3) A licence issued under section 51 in accordance with sub-clause (1) may be renewed, amended, revoked, surrendered or transferred in accordance with Division 2 of Part 4.
- (4) For the purposes of section 64D, a power of the Minister under this clause must be taken to be a power of the Minister under Division 2 of Part 4.
- (5) Nothing in this clause prevents a person from making an application under section 51 for the issue of a licence to take and use water from the River Murray.

4F. Abolition of other water rights outside irrigation district

Sch. 6 cl. 4F
inserted by
No. 22/1999
s. 6(4).

- (1) On the issue of a licence under section 51 in accordance with clause 4E(1) to the owner or occupier for the time being of any land within the irrigation area to take and use water from the River Murray for the purposes of that land, any rights of that owner or occupier—
- (a) to take or use water; or
 - (b) to obstruct or deflect the flow of water; or
 - (c) to receive any particular flow of water—
- that the owner or occupier, but for this sub-clause, might have had with respect to that land because of, or as an incident to, that ownership or occupation (whether arising by force of an Act or at common law or in accordance with the indenture) are abolished.
- (2) Any rights of an owner or occupier for the time being of any land within the irrigation area but outside the irrigation district (other than an owner or occupier of land to whom a

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licence could be issued under section 51 in accordance with clause 4E(1) for the purposes of that land at any time after the commencement of section 6(4) of the **Water Acts (Amendment) Act 1999**—

- (a) to take or use water; or
- (b) to obstruct or deflect the flow of water; or
- (c) to receive any particular flow of water—

that the owner or occupier, but for this sub-clause, might have had with respect to that land because of, or as an incident to, that ownership or occupation (whether arising by force of an Act or at common law or in accordance with the indenture) are abolished.

(3) Sub-clause (1) or (2) does not limit—

- (a) clause 4A; or
- (b) the application of sub-section (7) of section 8 to rights described in that sub-section.

(4) Nothing in sub-clause (2) affects a licence issued to an owner or occupier of land under section 51 or any water rights attached to a holding within an irrigation district and shown, or required by any provision of this Act to be shown, in the register kept by an Authority for that irrigation district.

* * * * *

Sch. 6 cl. 5
amended by
No. 22/1999
s. 6(5) (ILA
s. 39B(3)),
repealed by
No. 22/1999
s. 6(6).

* * * * *

Sch. 6 cl. 6
repealed by
No. 22/1999
s. 6(7).

7. Conditions of subdivision of land

- (1) Where a proposed subdivision of land is referred to the Authority under the **Planning and Environment Act 1987**, the Authority must refer the proposal to the Sunraysia Water Board if the subdivision creates lots for residential or commercial purposes.

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- (2) When a plan of subdivision has been certified by the council of the municipal district in which the land in the plan is located, the Authority must, if the land is to be included within the districts administered by the Sunraysia Water Board, hold any amounts received for costs of construction and net capital depreciation until the land is included, then pay those amounts to that Board.
 - (3) When land is included in the districts administered by the Sunraysia Water Board and that Board has received any amounts under sub-clause (2), the Board must construct the required works.

8. Quorum

The quorum of the Authority is 3 members.

9. Meetings of persons to whom the Authority provides services

- (1) A meeting of persons to whom the Authority provides services may be called by the Authority at any time the members consider it desirable.
 - (2) A meeting of persons to whom the Authority provides services must be called by the chairperson of the Authority within 2 weeks after notice in writing is received at the office of the Authority from 20 of those persons, and the meeting must be held within 5 weeks after that notice is received.
 - (3) The quorum for a meeting referred to in sub-clause (1) or (2) is 20.
 - (4) At any such meeting, a poll must only be taken if demanded in writing by a majority of the persons present who are entitled to vote.
-

SCHEDULE 7

Section 119(1)

GEELONG AND DISTRICT WATER BOARD

1. Geelong and District Water Board

There is continued in existence the Authority known as the Geelong and District Water Board.

2. Chairperson

- (1) The Minister must appoint a person to be chairperson of the Authority.
- (2) If a vacancy arises in the office of the chairperson, the Minister must appoint a person to fill the vacancy.
- (3) The chairperson holds office for the term specified by the Minister.
- (4) The chairperson may resign by notice in writing to the Minister.

3. Definitions

In this Schedule—

"Barwon River" means the Barwon River to the extent specified from time to time by the Governor in Council by Order published in the Government Gazette;

"drainage area" means—

- (a) any parts of the cities of Geelong, South Barwon, Newtown and Geelong West; and
- (b) any parts of the Shires of Bellarine, Corio, Bannockburn and Barrabool; and
- (c) any other land—

declared by the Governor in Council by Order published in the Government Gazette to be included in the drainage area.

4. Vesting

- (1) The bed, soil and banks of the Barwon River are, despite any other provision of this or any other Act, by virtue of this clause and without any other conveyance, transfer or assignment, vested in the Authority for the purposes of this Schedule.
- (2) The Governor in Council may from time to time by Order published in the Government Gazette define the extent of the banks of the Barwon River for the purposes of sub-clause (1).

5. Functions

- (1) The Authority has the following functions in respect of the Barwon River—
 - (a) the functions given to it under Part 10, including waterway management functions under Division 2 of that Part in respect of the Barwon River;
 - (b) to improve the area surrounding the Barwon River;
 - (c) to provide and arrange services and facilities in the area surrounding the Barwon River;
 - (d) to control land use in the area surrounding the Barwon River.
- (2) The Authority may set a tariff in relation to properties within the drainage area, and may require contributions (under Division 9 of Part 13) and owner finance (under Division 6 of Part 13) in relation to those properties.

6. Licences

Despite anything in any other Act, the Authority with the consent of the Department Head may grant a licence, on any terms and conditions specified in the licence, authorising a person to occupy any Crown land of which the Authority has the management and control.

**Sch. 7 cl. 6
 amended
 No. 76/1998
 s. 29(h).**

7. Control of certain lands

The Authority continues to have sole control of the lands described in the Third Schedule to the **Geelong Waterworks and Sewerage Act 1958**.

8. Barwon River

- (1) Until an Order is made under this Act by the Governor in Council for the purposes of the definition of "Barwon River" in clause 3, any reference in this Schedule to the Barwon

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River is a reference to the Barwon River to the extent specified by an Order made under section 172 of the **Geelong Waterworks and Sewerage Act 1958** as in force immediately before the commencement of this sub-clause.

- (2) Until an Order is made under this Act by the Governor in Council for the purposes of the description of the waterway management district of the Authority, the waterway management district of the Authority is so much of the Barwon River as is specified by an Order made under section 172 of the **Geelong Waterworks and Sewerage Act 1958** as in force immediately before the commencement of this sub-clause.

9. By-laws

In addition to its other by-law making powers, the Authority may, in accordance with sections 160 and 161, make by-laws for or with respect to the following—

- (a) regulating traffic in an area forming part of the Authority's waterway management district;
- (b) regulating or prohibiting bathing in the Barwon River;
- (c) controlling discharges on land surrounding the Barwon River that may affect the river;
- (d) regulating the traffic of vessels;
- (e) regulating the conduct of people in charge of vessels and the number of passengers and crew;
- (f) regulating the inspection, examination and use of hire vessels;
- (g) regulating the licensing of hire vessels and the people qualified to take charge of them;
- (h) prohibiting the use of vessels that are likely to be offensive (because of noise, smoke or smell) or dangerous;
- (i) the use of lights on vessels between sunset and sunrise;
- (j) the control of traffic during regattas, boat races or similar events;
- (k) prohibiting or regulating the use of firearms;
- (l) generally regulating the use of vessels in the area.

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SCHEDULE 8

Section 120(1)

CENTRAL GIPPSLAND REGION WATER AUTHORITY

1. Definitions

In this Schedule—

"the Authority" means the Central Gippsland Region Water Authority constituted by Order made on 16 December 1994 by the Minister administering the **Water Act 1989** and published in Special Gazette No. 98 on 19 December 1994;

"waste" includes—

- (a) trade waste or any sewage, whether that waste or sewage is untreated, treated or partially treated; and
- (b) any matter that is offensive or injurious to human life or health; and
- (c) any ash, coal-dust or matter that may discolour or impart discolouration to water; and
- (d) any other matter that the Authority by by-law declares to be waste.

2. Additional function of the Authority

The Authority has the function of receiving waste from any person, whether inside or outside the sewerage districts managed and controlled by the Authority, for treatment or disposal by the Authority.

Sch. 8
 amended by
 S.G. (No. 26)
 16.5.91 p. 2,
 Nos 130/1993
 s. 122(Sch. 4
 item 17.3),
 110/1994
 s. 41(Sch. 1
 item 11.4),
 repealed by
 No. 110/1997
 s. 16(5),
 new Sch. 8
 inserted by
 No. 48/2003
 s. 10.

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Act No. 80/1989

Sch. 9

Sch. 9
repealed by
No. 54/1992
s. 56(i).

* * * *

Sch. 10
amended by
S.G. (No. 27)
31.3.95
pp 1, 2,
repealed by
No. 110/1997
s. 16(6).

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SCHEDULE 11

Section 223

BULK ENTITLEMENTS OF IRRIGATION DISTRICTS

<i>Column 1</i> <i>Irrigation District</i>	<i>Column 2</i> <i>Entitlement</i> <i>(megalitres</i> <i>per year)</i>	<i>Column 3</i> <i>Source of supply</i>
Goulburn–Murray	3 392 075	Goulburn, Murray and Loddon Rivers
Macalister	292 270	Macalister and Thomson Rivers
Bacchus Marsh	6 167	Werribee and Parwan Rivers
Campaspe	30 837	Campaspe River
Merbein	42 000	River Murray
Nyah	15 000	River Murray
Red Cliffs	62 000	River Murray
Robinvale	26 000	River Murray
Tresco	11 000	Murray and Loddon Rivers
Werribee	14 802	Werribee River

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SCHEDULE 12

Section 320

LIST OF AUTHORITIES AND DISTRICTS AS AT PASSING OF ACT

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
1. Aireys Inlet Water Board				Aireys Inlet Urban Aireys Inlet Waterworks
2. Alberton Water Board		Yarram Sewerage		Alberton Rural Alberton Urban Alberton Waterworks
3. Avoca River Management Board			Avoca River Management	
4. Avon-Macalister Rivers Management Board			Avon-Macalister Rivers Management	
5. Axedale Water Board				Axedale Urban Axedale Waterworks
6. Ballarat Water Board		Ballarat Sewerage Buninyong Sewerage Miners Rest Sewerage		Greater Ballarat Urban Waterworks
7. Beaufort Water Board		Beaufort Sewerage		Beaufort Urban Beaufort Waterworks
8. Benalla Water Board		Benalla Sewerage		Benalla Urban Benalla Waterworks
9. Bendigo Creek Management Board			Bendigo Creek Management	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
10. Bendigo Water Board		Bendigo Sewerage		
11. Black Dog Creek Management Board			Black Dog Creek Management	
12. Borough of Kerang		Kerang Sewerage		Kerang Urban Kerang Waterworks
13. Bridgewater Water Board				Bridgewater Urban Bridgewater Waterworks
14. Bright District Water Board		Bright Sewerage		Bright Urban Bright Waterworks Harrierville Urban Porepunkah Urban
15. Broadford Water Board		Broadford Sewerage		Broadford Urban Broadford Waterworks
16. Broken River Management Board			Broken River Management	
17. Bullock Creek Management Board			Bullock Creek Management	
18. Cann River Management Board			Cann River Management	
19. Castlemaine and District Water Board		Castlemaine Sewerage		
20. Charlton Water Board		Charlton Sewerage		Charlton Urban Charlton Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
21. Chiltern Water Board		Chiltern Sewerage		Barnawartha Urban Barnawartha Waterworks Chiltern Urban Chiltern Waterworks
22. City of Ararat		Ararat Sewerage		Ararat Water Supply
23. City of Horsham		Horsham Sewerage		Horsham Urban Horsham Waterworks
24. City of Maryborough		Maryborough Sewerage		Maryborough Urban Maryborough Waterworks
25. City of Sale		Sale Sewerage		Sale Water Supply
26. City of Wangaratta		Wangaratta Sewerage		Wangaratta Urban Wangaratta Waterworks
27. City of Warrnambool		Warrnambool Sewerage		City of Warrnambool Water Supply
28. Colac District Water Board		Colac Sewerage		Colac Rural Colac Urban Colac Waterworks
29. Creswick Shire Water Board		Creswick Sewerage		Creswick Water Supply Smeaton Water Supply Spring Hill Water Supply
30. Dandenong-Springvale Water Board		Dandenong Sewerage Springvale and Noble Park Sewerage		
31. Dandenong Valley Authority			Dandenong Valley	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
32. Daylesford Water Board		Daylesford Sewerage		Daylesford Urban Daylesford Waterworks
33. Deakin Water Board		Tongala Sewerage		Girgarre Urban Shire of Deakin Waterworks
34. Devenish Water Board				Devenish Urban Devenish Waterworks
35. Donald Water Board		Donald Sewerage		Donald Urban Donald Waterworks
36. Echuca Water Board		Echuca Sewerage		Echuca Waterworks
37. Elmore Water Board				Elmore Urban Elmore Waterworks
38. Emerald District Water Board		Emerald-Avonsleigh-Cockatoo Sewerage		Avonsleigh Rural Cockatoo Urban Emerald Urban Gembrook Urban Gembrook, Cockatoo and Emerald Waterworks Menzies Creek Urban
39. Euroa Water Board		Euroa Sewerage		Euroa Urban Euroa Waterworks
40. First Mildura Irrigation Trust	First Mildura Irrigation District			
41. Geelong and District Water Board		Geelong Sewerage	So much of the Barwon River as the Governor in Council specifies by Order published in the Government Gazette	Geelong Waterworks Mount Duneed Rural

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
42. Gisborne Water Board		Gisborne Sewerage		Gisborne Urban Gisborne Waterworks
43. Glenelg River Management Board			Glenelg River Management	
44. Glenelg Wannon Water Board		Casterton Sewerage Coleraine Sewerage		Balmoral Waterworks Casterton Urban Coleraine Urban Coleraine and Casterton Waterworks Merino Urban Sanford Urban Shire of Glenelg Waterworks
45. Glenrowan Water Board				Glenrowan Urban Glenrowan Waterworks
46. Goorambat Water Board				Goorambat Urban Goorambat Waterworks
47. Goornong Water Board				Goornong Urban Goornong Waterworks
48. Gordon Water Board				Boort Urban Boort Waterworks
49. Goulburn Water Board		Nagambie Sewerage		Longwood Urban Longwood Waterworks Nagambie Urban Nagambie Waterworks
50. Hamilton Water Board		Hamilton Sewerage		Hamilton Urban Hamilton Waterworks
51. Heathcote Water Board		Heathcote Sewerage		Heathcote Urban Heathcote Waterworks Tooborac Urban

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
52. Heywood Water Board		Heywood Sewerage		Heywood Urban Heywood Waterworks
53. Hindmarsh Water Board		Dimboola Sewerage Jeparit Sewerage Rainbow Sewerage		
54. Kiewa River Management Board			Kiewa River Management	
55. King Valley Water Board				Moyhu Urban Moyhu Waterworks Oxley Urban Whitfield Waterworks
56. Korumburra Water Board		Korumburra Sewerage		Korumburra Urban Korumburra Waterworks Loch Urban Nyora Urban Poowong Urban Poowong, Loch and Nyora Waterworks
57. Kowree Water Board		Edenhope Sewerage		Apsley Urban Edenhope Urban Goroke Urban Harrow Urban Shire of Kowree Waterworks
58. Kyneton Water Board		Kyneton Sewerage		Kyneton Water Board Urban Kyneton Water Board Waterworks
59. Lang Lang Water Board		Lang Lang Sewerage		Lang Lang Urban Lang Lang Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
60. Latrobe Valley Water and Sewerage Board		Latrobe Valley		Latrobe Valley
61. Learmonth Water Board				Learmonth Waterworks
62. Leongatha Water Board		Leongatha Sewerage		Leongatha Urban Leongatha Waterworks
63. Lexton Water Board				Ampitheatre Urban Lexton Urban Lexton Waterworks Waubra Urban
64. Longwarry Drainage Trust			Longwarry Drainage	
65. Lorne Water Board		Lorne Sewerage		Lorne Urban Lorne Waterworks
66. Lough Calvert Drainage Trust			Lough Calvert Drainage	
67. Lower Kiewa Water Board				Kiewa Urban Kiewa Waterworks
68. Macalister Water Board		Heyfield Sewerage Maffra Sewerage Stratford Sewerage		Boisdale Urban Briagalong Urban Briagalong Waterworks Glenmaggie-Coongulla Urban Heyfield Urban Heyfield Waterworks Maffra Urban Maffra Waterworks Stratford Urban Stratford Waterworks
69. Macedon Water Board				Mount Macedon Urban Mount Macedon Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
70. Mallee Water Board		Mallee Sewerage		Mallee Urban Mallee Waterworks
71. Mansfield District Water Board		Bonnie Doon Sewerage Mansfield Sewerage		Bonnie Doon Urban Mansfield Urban Shire of Mansfield Waterworks Woods Point Urban Woods Point Waterworks
72. Marysville Water Board				Marysville Urban Marysville Waterworks
73. Mid-Gippsland Rivers Management Board			Mid-Gippsland Rivers Management	
74. Mid-Goulburn River Management Board			Mid-Goulburn River Management	
75. Mirboo Water Board		Mirboo North Sewerage		Mirboo North Urban Mirboo North Waterworks
76. Mitchell River Management Board			Mitchell River Management	
77. Mitchell Water Board		Bairnsdale Sewerage Lindenow Sewerage Paynesville Sewerage		Mitchell Urban Mitchell Waterworks
78. Mitta Mitta River Management Board			Mitta Mitta River Management	
79. Moe Water Board		Moe Sewerage		Moe Urban Moe Waterworks

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Sch. 12
item 82
amended by
No. 13/1990
s. 46(a).

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
80. Mooroopna Water Board		Mooroopna Sewerage		Mooroopna Urban Mooroopna Waterworks Toolamba Urban
81. Mortlake Water Board				Mortlake Urban Mortlake Waterworks
82. Mornington Peninsula and District Water Board		Blind Bight Sewerage Carrum Downs Sewerage Cranbourne Sewerage Dromana-Rosebud Sewerage Frankston Sewerage Hastings Sewerage Koo Wee Rup Sewerage Langwarrin Sewerage Mornington Sewerage Mount Eliza Sewerage Pearcedale Sewerage		Mornington Peninsula Urban Mornington Peninsula Waterworks
83. Morwell Water Board		Morwell Sewerage		Morwell Urban Morwell Waterworks
84. Murchison Water Board		Murchison Sewerage		Murchison Urban Murchison East Urban Murchison Waterworks
85. Murtoa Water Board		Murtoa Sewerage		Murtoa Urban Murtoa Waterworks
86. Nhill Water Board		Nhill Sewerage		Nhill Urban Nhill Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
87. Orbost Water Board		Orbost Sewerage		Bemm River Rural Bemm River Urban Cann River Urban Cann River Waterworks Jarrahmond Rural Marlo Urban Newmerella Urban Orbost Urban Orbost Waterworks
88. Otway Coast Water Board		Apollo Bay Sewerage		Otway Coast Urban Otway Coast Waterworks
89. Ovens River Management Board			Ovens River Management	
90. Pakenham Water Board		Pakenham Sewerage		
91. Pental Island River Management Board			Pental Island River Management	
92. Port Fairy Water Board		Port Fairy Sewerage		Port Fairy Urban Port Fairy Waterworks
93. Portland Water Board		Portland Sewerage		Portland Urban Portland Waterworks
94. Pyalong Water Board				Pyalong Urban Pyalong Waterworks
95. Riddells Creek Water Board		Riddells Creek Sewerage		Riddells Creek Urban Riddells Creek Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
96. Robinvale Water Board		Robinvale Sewerage		Robinvale Urban
97. Rochester Water Board		Rochester Sewerage		Lockington Urban Rochester Urban Rochester Waterworks
98. Rodney Water Board		Tatura Sewerage		Merrigum Urban Merrigum Waterworks Tatura Urban Tatura Waterworks
99. Romsey-Lancefield Water Board		Romsey Sewerage		Lancefield Rural Lancefield Urban Lancefield Waterworks Romsey Rural Romsey Urban Romsey Waterworks
100. Rosedale District		Rosedale Sewerage		Cowwarr Rural Cowwarr Urban Glengarry Urban Rosedale Urban Rosedale Waterworks Seaspray Urban Seaspray Waterworks Toongabbie Urban Tyers and Glengarry Waterworks Tyers Urban
101. Rural City of Wodonga		Wodonga Sewerage		Wodonga Urban Wodonga Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
102. Rural Water Commission	Bacchus Marsh Irrigation Campaspe Irrigation Goulburn-Murray Irrigation Macalister Irrigation Merbein Irrigation Nyah Irrigation Red Cliffs Irrigation Robinvale Irrigation Tresco Irrigation Werribee Irrigation		Koo Wee Rup Flood Protection Loch Garry Flood Protection	Carwarp Urban Carwarp-Yelta Waterworks Coliban Dingee Urban Eastern Mallee Urban East Loddon Waterworks Koondrook Urban Macorna Urban Meringur Urban Millewa Rural Mitiamo Urban Murrabit Urban Newstead Urban Newstead Waterworks Normanville Waterworks Northern Mallee Urban Nyah Urban Nyah West Urban Otway Rural Otway Urban Otway Waterworks Piangil Urban Pyramid Hill Urban Southern Mallee Urban Southern Wimmera Urban Tyntynder North Waterworks Werrimul Urban Western Wimmera Urban West Loddon Waterworks Wimmera-Mallee Waterworks

Sch. 12
item 102
amended by
No. 13/1990
s. 46(b).

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
103. Rutherglen Water Board		Rutherglen and Wahgunyah Sewerage		Rutherglen Urban Shire of Rutherglen Waterworks Wahgunyah Rural
104. Sea Lake Water Board		Sea Lake Sewerage		
105. Seymour Water Board		Seymour Sewerage		Avenel Urban Avenel Waterworks Seymour Urban Seymour Waterworks Tallarook Urban
106. Shepparton Water Board		Shepparton Sewerage		Shepparton Urban Shepparton Waterworks Violet Town Urban Violet Town Waterworks
107. Shire of Alberton River Management Board			Shire of Alberton River Management	
108. Shire of Alexandra		Alexandra Sewerage		Alexandra Urban Alexandra Waterworks Eildon Urban Thornton Urban
109. Shire of Alexandra River Management Board			Shire of Alexandra River Management	
110. Shire of Ararat		Willaura Sewerage		Shire of Ararat Urban Shire of Ararat Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
111. Shire of Avoca				Avoca Urban Avoca Waterworks Landsborough Urban Landsborough Waterworks Navarre Urban Redbank Urban Redbank Waterworks
112. Shire of Bacchus Marsh		Bacchus Marsh Sewerage		Bacchus Marsh Water Supply Long Forest Rural Myrniong Water Supply
113. Shire of Ballan		Ballan Sewerage		Ballan Urban Ballan Waterworks Blackwood Urban Gordon-Mt. Egerton Rural Gordon-Mt. Egerton Urban
114. Shire of Bet Bet				Bealiba Urban Bet Bet Waterworks Dunolly Urban Tarnagulla Urban
115. Shire of Birchip		Birchip Sewerage		
116. Shire of Cobram		Cobram Sewerage		Cobram Urban Cobram Waterworks Katamatite Urban Katamatite Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
117. Shire of Cohuna		Cohuna Sewerage		Cohuna Urban Cohuna Waterworks Gunbower Urban Leitchville Urban Shire of Cohuna Rural
118. Shire of Dundas				Cavendish Urban Shire of Dundas Waterworks Tarrington Urban
119. Shire of Hampden		Terang Sewerage		Derrinallum Urban Lismore and Derrinallum Waterworks Lismore Rural Lismore Urban
120. Shire of Heytesbury		Cobden Sewerage Port Campbell Sewerage Simpson Sewerage		Port Campbell Urban Shire of Heytesbury Waterworks Timboon Urban
121. Shire of Kaniva		Kaniva Sewerage Serviceton Sewerage		Kaniva Urban Lillimur Urban Miram Urban Shire of Kaniva Waterworks
122. Shire of Kilmore		Kilmore Sewerage Wallan Sewerage		Kilmore and District Waterworks Kilmore Urban
123. Shire of Korong				Inglewood Water Supply Wedderburn and Korong Vale Water Supply
124. Shire of Korumburra River Management Board			Shire of Korumburra River Management	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
125. Shire of Melton		Melton Sewerage Rockbank Sewerage		Melton Rural Melton Urban Melton Waterworks Rockbank Urban Toolern Vale and Hjorths Urban
126. Shire of Mount Rouse				Dunkeld Urban Glenthompson Urban Penshurst Urban Shire of Mount Rouse Waterworks
127. Shire of Myrtleford		Myrtleford Sewerage		Myrtleford Urban Myrtleford Waterworks
128. Shire of Narracan		Shire of Narracan Sewerage Trafalgar Sewerage Willow Grove Sewerage Yallourn North Sewerage Yarragon Sewerage		Erica Urban Erica Waterworks Thorpdale Urban Thorpdale Waterworks Trafalgar Urban Trafalgar Waterworks Willow Grove Urban Yallourn North Waterworks Yarragon Urban Yarragon Waterworks
129. Shire of Nathalia		Nathalia Sewerage		Barmah Urban Nathalia Urban Picola Urban Shire of Nathalia Waterworks
130. Shire of Numurkah		Numurkah Sewerage Strathmerton Sewerage		Katunga Urban Numurkah Urban Shire of Numurkah Waterworks Strathmerton Urban Wunghnu Urban

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
131. Shire of Omeo				Dinner Plain Urban Omeo Urban Omeo Waterworks Swifts Creek Urban Swifts Creek Waterworks
132. Shire of Stawell		Hall's Gap Sewerage		Glenorchy Urban Great Western Urban Hall's Gap Urban Shire of Stawell Waterworks
133. Shire of Talbot and Clunes				Clunes Water Supply Talbot Water Supply
134. Shire of Tallangatta		Bellbridge Sewerage Dartmouth Sewerage Tallangatta Sewerage		Bellbridge Urban Dartmouth Urban Shire of Tallangatta Waterworks Tallangatta Urban
135. Shire of Tullaroop				Bowenvale-Timor Urban Carisbrook Urban Shire of Tullaroop Waterworks
136. Shire of Upper Murray River Management Board			Shire of Upper Murray River Management	
137. Shire of Walpeup				Cowangie Water Supply Murrayville Urban Murrayville Waterworks Underbool Urban Underbool Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
138. Shire of Warrnambool				Caramut Rural Caramut Water Supply Koroit Urban Koroit Waterworks Peterborough Urban Peterborough Waterworks Purnim Urban
139. Shire of Yarrawonga		Yarrawonga Sewerage		Yarrawonga Urban Yarrawonga Waterworks
140. Shire of Yea River Management Board			Shire of Yea River Management	
141. Skipton Water Board				Skipton Urban Skipton Waterworks
142. Snowy River Management Board			Snowy River Management	
143. South Gippsland Water Board		Foster Sewerage Toora Sewerage		Fish Creek Urban Fish Creek Waterworks Foster Urban Foster Waterworks Toora Rural Toora Urban Toora Waterworks Welshpool Urban
144. Springhurst Water Board				Springhurst Urban Springhurst Waterworks
145. Stawell Water Board		Stawell Sewerage		Stawell Rural Town of Stawell Water Supply
146. Strathdownie Drainage Trust			Strathdownie Drainage	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
147. Sunbury Water Board		Diggers Rest Sewerage Sunbury Sewerage		Bulla-Diggers Rest Urban Bulla-Oaklands Junction Rural Sunbury Urban Sunbury Waterworks
148. Sunraysia Water Board		Irymple Sewerage Merbein Sewerage Mildura Sewerage Red Cliffs Sewerage		Red Cliffs Urban Sunraysia Urban
149. Swan Hill Water Board		Swan Hill Sewerage		Lake Boga Urban Swan Hill Urban Swan Hill Waterworks
150. Tambo River Management Board			Tambo River Management	
151. Tambo Water Board		Lakes Entrance Sewerage Metung Sewerage		Bruthen Urban Bruthen Waterworks Buchan Urban Buchan Waterworks Lakes Entrance Urban Lakes Entrance Waterworks Metung Urban Metung Waterworks Nowa Nowa Urban

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
152. Tarago Water Board		Drouin Sewerage Warragul Sewerage		Buln Buln Urban Darnum Urban Drouin Urban Drouin Waterworks Neerim South Urban Neerim South Waterworks Noojee Urban Noojee Waterworks Nilma Urban Rokeby Urban Warragul Urban Warragul Waterworks
153. Tarwin River Management Board			Tarwin River Management	
154. Tarwin Valley Water Board				Tarwin Valley Urban Tarwin Valley Waterworks
155. Town of Camperdown		Camperdown Sewerage		Town of Camperdown Water Supply
156. Town of Kyabram		Kyabram Sewerage		Kyabram Water Supply
157. Town of St. Arnaud		St. Arnaud Sewerage		St. Arnaud Urban St. Arnaud Waterworks
158. Traralgon Water Board		Traralgon Sewerage		Traralgon Urban Traralgon South Urban Traralgon Waterworks
159. Tungamah Shire Water Board				Katandra West Urban Shire of Tungamah Waterworks St. James Urban Tungamah Urban

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
160. United Shire of Beechworth		Beechworth Sewerage		Beechworth Water Supply
161. Upper Kiewa Water Board		Mount Beauty Sewerage		Mount Beauty Waterworks Tawonga Rural Upper Kiewa Urban
162. Upper Murray Water Board		Corryong Sewerage		Corryong Urban Corryong Waterworks Cudgewa Urban Cudgewa Waterworks Walwa Urban Walwa Waterworks
163. Waranga Water Board		Colbinabbin Sewerage Rushworth Sewerage Stanhope Sewerage		Colbinabbin Urban Colbinabbin Waterworks Corop Urban Rushworth Urban Rushworth Waterworks Stanhope Urban
164. Warracknabeal Water Board		Warracknabeal Sewerage		Warracknabeal Urban Warracknabeal Waterworks
165. Westernport Water Board		Cowes Sewerage		Westernport Urban Westernport Waterworks
166. West Moorabool Water Board				
167. Wonthaggi-Inverloch Water Board		Cape Paterson Sewerage Inverloch Sewerage Wonthaggi Sewerage		Inverloch Urban Inverloch Waterworks Wonthaggi Urban Wonthaggi Waterworks
168. Woodend Water Board		Woodend Sewerage		Woodend Urban Woodend Waterworks

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Name of Authority</i>	<i>Irrigation District</i>	<i>Sewerage District</i>	<i>Waterway Management District</i>	<i>Water District</i>
169. Wycheproof Water Board		Wycheproof Sewerage		
170. Yackandandah Water Board		Yackandandah Sewerage		Yackandandah Urban Yackandandah Waterworks
171. Yatchaw Drainage Trust			Yatchaw Drainage	
172. Yea Water Board		Yea Sewerage		Yea Urban Yea Waterworks

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SCHEDULE 13

Section 325

REPEALS

Sch. 13
items 1–9
repealed by
No. 62/1995
s. 44(7).

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10. Groundwater Act 1969 (to the extent that it is not already repealed)

Sch. 13
items 11–14
repealed by
No. 62/1995
s. 44(7).

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Sch. 13
item 15
substituted by
No. 13/1990
s. 46(c),
repealed by
No. 62/1995
s. 44(7).

* * * *

Sch. 13
items 16–22
repealed by
No. 62/1995
s. 44(7).

* * * *

23. Water Act 1958 (section 322)

24. Water Act 1958 (to the extent that it is not already repealed)

Sch. 13
items 25–36
repealed by
No. 62/1995
s. 44(7).

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Sch. 13

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Sch. 13
item 37
amended by
No. 12/1992
s. 7(3),
repealed by
No. 62/1995
s. 44(7).

Sch. 13
items 38–45
repealed by
No. 62/1995
s. 44(7).

SCHEDULE 14

Section 326

SAVINGS AND TRANSITIONALS

1. (1) Subject to anything provided in this Act expressly or by necessary implication, the repeal by this Act of any provision of an Act specified in Schedule 13 does not disturb the continuity of status, operation or effect of—
 - (a) any agreement or appointment made; or
 - (b) any approval, consent or other authority granted or given; or
 - (c) any Authority or other body established; or
 - (d) any circumstances created; or
 - (e) any entitlement to take or use water granted; or
 - (f) any function or duty conferred; or
 - (g) any groundwater conservation area declared under section 61 of the **Groundwater Act 1969** or any prescription made under section 62(1) of that Act in respect of that area; or
 - (h) any liability incurred; or
 - (i) any lease, licence or permit granted or issued; or
 - (j) any Order made; or
 - (k) any power conferred; or
 - (l) any right or privilege given or acquired; or
 - (m) any easement granted or acquired; or
 - (n) any charge on land created; or
 - (o) any property vested; or
 - (p) any money borrowed, lent or appropriated or any amount payable; or
 - (q) any mortgage granted; or
 - (r) any debenture or inscribed stock issued; or
 - (s) any guarantee given; or
 - (t) any exemption or immunity granted or conferred; or

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- (u) any rate made; or
 - (v) any precept or special precept issued; or
 - (w) any rebate granted; or
 - (x) any scheme prepared; or
 - (y) any policy of insurance effected; or
 - (z) any other thing done—
- by or under that provision before its repeal.
- (2) The Governor in Council may by Order published in the Government Gazette—
 - (a) revoke any Order made by him or her under section 49A of the **Groundwater Act 1969** that is continued in operation by sub-clause (1); or
 - (b) abolish any groundwater conservation area continued in effect by sub-clause (1).
 - (3) A groundwater licence issued under Part 5 of the **Groundwater Act 1969** that is continued in operation by sub-clause (1) may be dealt with after the repeal of that Part as provided in Division 2 of that Part.
 - (4) The Minister may, by notice served on the licensee, cancel any licence granted under section 50 of the **River Improvement Act 1958** that is continued in operation by sub-clause (1).
 - (5) Any sums required by the Treasurer for fulfilling any guarantee that is continued in operation by sub-clause (1) are payable out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) and any sums received or recovered by the Treasurer in respect of any sum so paid out of the Consolidated Fund must be paid into the Consolidated Fund.
 - (6) Despite sub-clause (1), the allocation of water under item 6 of Table 1 of Part 1 of Schedule Three B to the **Water Act 1958** continues in operation as if—
 - (a) Crown Allotment 90, Parish of Wychitella was included in the lands specified in that item; and
 - (b) Crown Allotment 4B, Parish of Mysia and Crown Allotment 65, Parish of Wychitella were not included in those lands; and
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- (c) the sales allocation register referred to in that item showed the allocation for Crown Allotment 90, Parish of Wychitella to be the number of acre feet determined by resolution of the Commission; and
 - (d) the allocation to Crown Allotment 65, Parish of Wychitella was omitted from that register.
 - 2. (1) The following are vested in and are under the sole control and management of the Commission for the purposes of this Act—
 - (a) all works which immediately before the commencement of this clause were or were designated, declared or deemed by any Act to be State works of water supply, drainage, salinity mitigation, river improvement, river management, flood mitigation or flood protection;
 - (b) all other works which before that commencement the Commission was authorised or directed to construct and carry out;
 - (c) the land over or on which any works referred to in paragraph (a) or (b) are constructed.
 - (2) On the commencement of this clause the water in or on—
 - (a) any works referred to in paragraph (a) or (b) of sub-clause (1); or
 - (b) any land referred to in paragraph (c) of sub-clause (1)—

ceases to be vested in and to be under the joint control and management of the Director-General and the Commission.
 - (3) Subject to any entitlement granted or licence issued under this Act or any agreement or Order continued by this Act, the Commission—
 - (a) continues to have the right to take any water referred to in sub-clause (2) as if it were made available to it under a bulk entitlement granted under this Act; and
 - (b) has the right to use that water in accordance with section 9(2).
 - (4) Works referred to in paragraph (a) or (b) of sub-clause (1) shall, for the purposes of this Act, be taken to be works of the Commission.
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- (5) The Commission continues to have power—
 - (a) to construct, complete, operate and maintain any works referred to in paragraph (a) or (b) of sub-clause (1); and
 - (b) to do all things that are necessary or convenient to be done for or in relation to the construction, completion, operation or maintenance of those works.
 - 3.
 - (1) The membership structure of an Authority that is continued in existence by this Act remains, subject to this Act, as it was immediately before the commencement of section 320.
 - (2) A person who immediately before the commencement of section 320 held office as a member of an Authority or as the chairperson or deputy chairperson of an Authority continues, subject to this Act, to hold that office on and after that commencement for the balance of his or her period of appointment or for 4 years (whichever is the shorter period) and on the same terms and conditions as applied with respect to that appointment.
 - (3) A person who immediately before the commencement of section 320 held office as a member of the Rural Water Commission Board or as the chairperson or deputy chairperson of that Board holds office, subject to this Act, on and after that commencement as a member of the Commission or as the chairperson or deputy chairperson of the Commission (as the case requires) for the balance of his or her period of appointment or for 4 years (whichever is the shorter period) and on the same terms and conditions as applied with respect to that appointment.
 - (4) A person who immediately before the commencement of section 320 held office as an officer of an Authority continues, subject to this Act, to hold that office on and after that commencement for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
 - (5) A person who by virtue of this clause continues to hold an office from which he or she could have been removed by the Governor in Council before the commencement of this clause may, on and after that commencement, be removed from that office by the Minister instead of by the Governor in Council, despite anything to the contrary in this Schedule.
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4. (1) Subject to sub-clause (2), all money standing immediately before the commencement of this sub-clause to the credit of a fund or account of an Authority and any other money belonging to an Authority as at that commencement may, after that commencement, be used or invested by the Authority in accordance with Division 3 of Part 13.
 - (2) All money standing immediately before the commencement of section 89(7) to the credit of a Long Service Leave Payments Reserve Fund established by an Authority must, on that commencement, be paid into a fund established by the Authority under the regulations for the purpose of making payments in relation to long service leave.
 5. Any provision of an Act specified in Schedule 13 that, immediately before its repeal, applied with respect to a mortgage granted, a debenture or any inscribed stock issued, an advance or other loan made or other amount payable under an Act specified in that Schedule continues, despite its repeal, to so apply.
 6. Section 40 must be taken to include a reference to any Order made by the Governor in Council under section 49A of the **Groundwater Act 1969** that is continued in operation by clause 1.
 7. (1) Division 2 of Part 4 applies with respect to a groundwater licence issued under section 51 of the **Groundwater Act 1969** as if it were a licence issued under section 51 of this Act.
 - (2) Sections 58 to 62 or 72 to 74 (whichever is appropriate) apply with respect to a licence granted under section 204(1) of the **Water Act 1958** or a permit issued under section 204(2) of that Act as if it were a licence issued under section 51 or 67 of this Act, whichever is appropriate.
 8. (1) Part 5 applies with respect to a permit issued under section 20 of the **Groundwater Act 1969** as if it were a licence issued under section 67 of this Act except that—
 - (a) sections 25A and 27 of that Act continue, despite their repeal, to apply with respect to that permit; and
 - (b) that permit remains in force for a period of 12 months commencing on the day of its issue but it may be renewed under section 72 of this Act; and
 - (c) on the renewal of that permit, this Act applies to it as if it were a licence issued under section 67.
 - (2) Division 2 of Part 5 applies with respect to any permission granted under section 12(1) of the **Water Act 1958** as if it were a licence issued under section 67 of this Act.
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9. Section 95(2) applies to a person who is immediately before the commencement of section 320 a member of an Authority or, in the case of the Commission, a member of the Rural Water Commission Board as if it required that person to submit a primary return in the prescribed form to the secretary of the Authority within 60 days after that commencement.
 10.
 - (1) For the purposes of Division 3 of Part 6, any water storage under the control of the Commission immediately before the commencement of that Division must be taken to be a recreational area.
 - (2) Division 3 of Part 6 applies to a recreational area or environmental area declared, or deemed to have been declared, under section 31A of the **Dandenong Valley Authority Act 1963** as if it had been declared under that Division.
 11.
 - (1) Division 4 of Part 6 applies to an advisory committee established or appointed under section 22A of the **Water Act 1958** or section 31A of the **Dandenong Valley Authority Act 1963** and to an advisory body established under section 22B of the **Water Act 1958** as if it had been established under section 108(1)(a) of this Act.
 - (2) Division 4 of Part 6 applies to a committee of management appointed, or deemed to have been appointed, under section 206A(1A) of the **Water Act 1958** or section 31A of the **Dandenong Valley Authority Act 1963** as if it had been established under section 108(1)(b) of this Act.
 - (3) Division 4 of Part 6 applies to a committee established under section 31(1) or 44(1) of the **Water and Sewerage Authorities (Restructuring) Act 1983** as if it had been established under section 108(1) of this Act.
 12.
 - (1) Section 111 applies to a committee established under section 31(1) or 44(1) of the **Water and Sewerage Authorities (Restructuring) Act 1983** as if any power, discretion or function delegated to the committee under section 32 of the **Water and Sewerage Authorities (Restructuring) Act 1983** or section 241A of the **Local Government Act 1958** had been delegated to the committee under and in accordance with section 111 of this Act.
 - (2) Section 111 applies to a committee of management appointed, or deemed to have been appointed, under section 206A(1A) of the **Water Act 1958** or section 31A of the **Dandenong Valley Authority Act 1963** and to an advisory committee appointed under the last-mentioned section as if
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the powers, discretions and functions conferred or imposed on the committee by or under regulations were delegated to the committee by the Authority under and in accordance with section 111 of this Act.

13. Section 130(3) applies to a right in the nature of an easement or purporting to be an easement or deemed to be an easement acquired or vested in an Authority before the commencement of that section.
14.
 - (1) Section 131(2) applies to any Crown land that was by or under a provision of any Act repealed by this Act vested in, or placed under the management and control of, an Authority and that is required for any public purpose or for any public highway.
 - (2) Section 131(3) applies to any Crown land that was by or under a provision of any Act repealed by this Act vested in, or placed under the management and control of, an Authority.
15. Section 136 applies to any easement or reserve that was under any corresponding previous enactment vested in an Authority before the commencement of that section.
16. Section 148 applies with respect to a consent given under section 156(1) of the **Sewerage Districts Act 1958** as if it had been given under section 148 of this Act.
17. Divisions 2 and 3 of Part 10 apply to any thing that is an arterial drain under and for the purposes of the **Dandenong Valley Authority Act 1963** as if it were a designated waterway.
18. Division 4 of Part 10—
 - (a) applies to a flood level designated under section 27B(1) of the **Dandenong Valley Authority Act 1963** or section 37A of the **Drainage of Land Act 1975** as if it had been declared under section 203(1)(a) of this Act; and
 - (b) applies to a flood fringe zone delineated under section 27D(1) of the **Dandenong Valley Authority Act 1963** or section 37C of the **Drainage of Land Act 1975** as if it were a flood fringe area declared under section 203(1)(b) of this Act; and
 - (c) applies to a building line prescribed under section 24 of the **Dandenong Valley Authority Act 1963** as if it had been declared under section 203(1)(c) of this Act; and

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- (d) (except section 206(2)) applies to a proclamation made under section 27(1) of the **Dandenong Valley Authority Act 1963** or section 35(1) of the **Drainage of Land Act 1975** as if it were a declaration made under section 205(1) of this Act.
19. Division 6 of Part 10 (except section 218(7)) applies to a proclamation made under section 38(1) of the **Drainage of Land Act 1975** as if it were a declaration made under section 218(1) of this Act.
20. (1) Sections 237 to 240 apply to—
- (a) an application under Part II of the **Drainage of Land Act 1975** to which the person to whom the application is made has assented as if it were an agreement under section 234 of this Act; and
 - (b) the decision on a dispute made by the Administrative Appeals Tribunal or arbitrators under that Part as if it were the decision on a dispute made by a body appointed by the Minister under section 235 of this Act.
- (2) Section 236 applies to an application, or a decision, referred to in sub-clause (1) as if it was an agreement under section 234, or a decision under section 235, and as if—
- (a) section 236(1) enabled but did not require registration; and
 - (b) section 236(3) enabled but did not require lodgement; and
 - (c) sections 236(5) and (6) were omitted.
- (3) Sections 245 and 246 apply to a community agreement within the meaning of those sections that was entered into before the commencement of those sections.
21. The amount of the payment required from an owner under section 269 must take into account any payment that the owner has made or is liable to make in relation to the property concerned under—
- (a) section 22A of the **Dandenong Valley Authority Act 1963**; or
 - (b) section 78A of the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958**; or
 - (c) section 152A of the **Sewerage Districts Act 1958**; or
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- (d) an agreement made under section 307AA of the **Water Act 1958**; or
 - (e) section 310A of the **Water Act 1958**.
 - 22. Sections 313 to 317 apply with respect to a driller's licence granted under Division 2 of Part III of the **Groundwater Act 1969** as if it were a licence granted under section 312 of this Act.
 - 23. Section 318 applies to—
 - (a) the Groundwater Advisory Committee established under section 5 of the **Groundwater Act 1969**; and
 - (b) a committee established under section 3B of the **Water Act 1958**—

as if it had been established under section 318 of this Act.
 - 24. Section 322 applies with respect to guidelines determined under section 54(2) of the **Water and Sewerage Authorities (Restructuring) Act 1983** (as in force immediately before the repeal of that section) as if they had been determined by the Minister under section 322(2) of this Act.
 - 25.
 - (1) Sub-section (7) of section 24 of the **Dandenong Valley Authority Act 1963** and the proviso to that sub-section continue, despite their repeal, to apply to a building line prescribed under that section.
 - (2) Section 43 of the **Dandenong Valley Authority Act 1963** continues, despite its repeal, to apply to the prescription of building lines and the proclamation of areas liable to flooding under that Act.
 - 26. Section 143(2) of the **Water Act 1958** (as applied by section 14 of the **River Improvement Act 1958** in relation to Authorities that have waterway management districts) continues, despite its repeal and the repeal of section 14 of the **River Improvement Act 1958**, to apply in relation to those Authorities for the remainder of the term of office of the relevant chairperson who holds office at the commencement of this clause.
 - 27.
 - (1) Section 32(2) to (8) of the **Water Act 1958** continues, despite its repeal, to apply with respect to an easement vested in the Commission under that section.
 - (2) Any by-laws made under section 204A of the **Water Act 1958** continue in force with respect to any licence granted or permit issued under section 204 of that Act.
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28. (1) An Authority referred to in item 3, 9, 11, 16, 17, 18, 43, 54, 78, 107, 109, 124, 136, 140, 142, 150 or 153 of Schedule 12 may, until a day appointed by the Governor in Council for that Authority, use as its name the name specified in column 1 of that Schedule with the words "Improvement Trust" substituted for "Management Board".
- (2) If an Authority uses in accordance with sub-clause (1) a name in place of its actual corporate name, any thing done by the Authority in that name is as valid and effectual as it would have been if done in its actual corporate name.
29. Any by-law that continues in force after the repeal by this Act of the provision under which it was made, continues in force until the fifth anniversary of that repeal or until revoked by a by-law made under this Act, whichever occurs first.
30. Despite the repeal by the **Water (Consequential Amendments) Act 1989** of section 25(1)(a) of the **State Electricity Commission Act 1958**, any lease or licence referred to in that sub-section that is in force immediately before that repeal remains in force for the term for which it was granted.
31. (1) A person who immediately before the commencement of section 310(1) held office as a member or as the chairperson of the Drillers' Licensing Board established by section 31 of the **Groundwater Act 1969** holds office, subject to this Act, on and after that commencement as member or the chairperson (as the case requires) of the Drillers' Licensing Board established by section 310(1) of this Act for the balance of his or her period of appointment and on the same terms and conditions as applied with respect to that appointment.
- (2) The Drillers' Licensing Board established by section 310(1) must be taken to be the same body as the Drillers' Licensing Board established by section 31 of the **Groundwater Act 1969**.
32. (1) On the commencement of this clause all registers of lands within irrigation districts that were kept under section 63 of the **Water Act 1958** are, subject to sub-clause (3), closed.
- (2) An entry existing in a register when the register is closed must be taken to be correct as at that time.
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- (3) Once a register is closed, no alteration or addition to it may be made other than one that is necessary—
- (a) to record any allocation of water rights which were applied for before 1 July 1989 and which have not been allocated before the register is closed; or
 - (b) to give effect to the result of an appeal under section 64 of the **Water Act 1958** with respect to which notice was given under section 64(2) of that Act, and which has not been determined, before the register is closed; or
 - (c) to implement advice of an advisory committee appointed under section 22A of the **Water Act 1958** to consider any matter arising from the allocation of water rights that was referred to the committee before the register is closed; or
 - (d) to implement the decision of a court in any proceedings pending when the register is closed in relation to the advice of a committee referred to in paragraph (c); or
 - (e) to re-apportion a water right to the separate holdings created by the sealing of a plan of subdivision under section 72 of the **Water Act 1958** and which has not been re-apportioned before the register is closed.
- (4) Until the commencement of section 230, a register that was kept in respect of an irrigation district and that is closed by sub-clause (1) must be taken to be the register for that district for the purposes of Part 11.
- (5) An Appeal Board constituted under section 64 of the **Water Act 1958** continues in existence after the commencement of this clause until every appeal referred to in sub-clause 3(b) has been determined.
- (6) An Appeal Board is abolished, and its members go out of office, on the determination by the Board of the last appeal referred to in sub-clause (5).
33. (1) In this clause—
- (a) "**appointed day**" means the day on which section 17 of the **Water Act 1958** is repealed; and
 - (b) "**Chief administrator**" means the person who, on the appointed day, holds the office of Director-General of Water Resources under the **Public Service Act 1974**; and
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- (c) **"former body"** means the body corporate known as the Director-General of Water Resources established by section 17 of the **Water Act 1958**.
- (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-clause, vested in the Commission; and
 - (c) all debts, liabilities and obligations of the former body existing immediately before that day shall become, by force of this sub-clause, debts, liabilities and obligations of the Commission; and
 - (d) the Commission shall, by force of this sub-clause, 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
 - (e) the Commission shall, by force of this sub-clause, 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
 - (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 Commission.
- (3) Despite sub-clause (2)(e), the chief administrator is, by force of this sub-clause, substituted on the appointed day as a party to any contract for consultancy services that was entered into by or on behalf of the former body and that was in force immediately before that day.
34. A declaration of a lake, lagoon, swamp or marsh for the purposes of the **Water Act 1958** that was made under section 3(1) of that Act and that was in force immediately before the commencement of section 327 of this Act continues in force as if it were a declaration of a lake, lagoon, swamp or marsh for the purposes of Part XII of the **Land Act 1958** that was made under section 384(2)(b) of that Act.
35. (1) The Minister may, despite section 56(3), issue a licence for an unlimited period under Division 2 of Part 4 to use, or to take and use, water occurring within the specified area.
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- (2) The specified area is the area specified by the Minister in an Order published on or before 30 June 1990 in the Government Gazette.
- (3) This clause does not empower the Minister to make more than one Order.
36. (1) The Groundwater Appeal Board established under Division 3 of Part V of the **Groundwater Act 1969** is abolished and the members of that Board shall go out of office.
- (2) Despite sub-clause (1) and the repeal of Division 3 of Part V of the **Groundwater Act 1969**, that Act (as in force immediately before its repeal) continues to apply to and in relation to an appeal to the Groundwater Appeal Board the hearing of which commenced before that repeal as if this Act had not been enacted.
- (3) Despite sub-clause (1), the Groundwater Appeal Board, as in existence immediately before the commencement of that sub-clause, continues in existence for the purpose of hearing and determining appeals to which sub-clause (2) applies.
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- (5) Despite its repeal, the **Groundwater Act 1969** (as in force immediately before its repeal) continues to apply to and in relation to an appeal to the County Court from a decision of the Groundwater Appeal Board, whether the decision of the Groundwater Appeal Board is made before or after that repeal.
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cl. 36(4)
repealed by
No. 52/1998
s. 311(Sch. 1
item 105.50).

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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 26 May 1989

Legislative Council: 15 November 1989

The long title for the Bill for this Act was "A Bill to re-state, with amendments, the law relating to water in Victoria, to repeal the **Dandenong Valley Authority Act 1963**, the **Drainage of Land Act 1975**, the **Geelong Waterworks and Sewerage Act 1958**, the **Groundwater Act 1969**, the **Latrobe Valley Act 1958**, the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958**, the **River Improvement Act 1958**, the **Sewerage Districts Act 1958**, the **Victorian Water and Sewerage Authorities Association Act 1981**, the **Water Act 1958**, the **West Moorabool Water Board Act 1968** and certain other Acts, to amend the **Land Act 1958** and for other purposes."

The **Water Act 1989** was assented to on 5 December 1989 and came into operation as follows:

Section 328 on 5 December 1989: section 2(2); section 329 on 6 July 1988: section 2(3); rest of Act (*except* Schedule 13 items 10, 23, 24) on 1 November 1990: Government Gazette 15 August 1990 page 2473; Schedule 13 items 10, 23, 24 on 1 September 1991: section 2(1).

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2. Table of Amendments

This Version incorporates amendments made to the **Water Act 1989** by Acts and subordinate instruments.

Local Government (Amendment) Act 1990, No. 13/1990

Assent Date: 8.5.90
Commencement Date: Ss 45, 46 on 8.5.90: s. 2(1)(a)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Waivers) Act 1991, No. 25/1991

Assent Date: 12.6.91
Commencement Date: All of Act (*except* s. 5) on 1.11.90: s. 2(1); s. 5 on 5.12.89: s. 2(2)
Current State: All of Act in operation

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: S. 74 on 25.6.91: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Administrative Appeals Tribunal (Planning) Act 1991, No. 62/1991

Assent Date: 12.11.91
Commencement Date: S. 39 on 29.5.90: s. 2(2); rest of Act on 8.1.92: Government Gazette 8.1.92 p. 2
Current State: All of Act in operation

Local Government (Rating) Act 1991, No. 78/1991 (as amended by No. 22/1992)

Assent Date: 3.12.91
Commencement Date: Ss 20–22 on 3.12.91: s. 2(5)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Elections) Act 1992, No. 12/1992

Assent Date: 2.6.92
Commencement Date: All of Act (*except* s. 7(3)) on 2.6.92: s. 2(1); s. 7(3) on 1.11.90: s. 2(2)
Current State: All of Act in operation

Heritage Rivers Act 1992, No. 36/1992

Assent Date: 16.6.92
Commencement Date: S. 21 on 10.9.92: Government Gazette 9.9.92 p. 2635
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Rural Water Corporation) Act 1992, No. 50/1992

Assent Date: 30.6.92
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

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Melbourne Water Corporation Act 1992, No. 54/1992

Assent Date: 30.6.92
Commencement Date: S. 2 on 30.6.92: s. 2 (2); rest of Act on 1.7.92:
 Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

Residential Tenancies (Water and Utilities Charges) Act 1993, No. 25/1993

Assent Date: 25.5.93
Commencement Date: Pt 1 (ss 1, 2) on 25.5.93: s. 2 (1); Pts 2, 3 (ss 3–12) on
 1.7.93: s. 2(2); Pts 4–6 (ss 13–16) on 1.7.94: s. 2(3)
Current State: All of Act in operation

Water (Amendment) Act 1993, No. 69/1993

Assent Date: 5.10.93
Commencement Date: 5.10.93
Current State: All of Act in operation

Borrowing and Investment Powers (Amendment) Act 1993, No. 99/1993

Assent Date: 23.11.93
Commencement Date: Pt 1 (ss 1–3) on 23.11.93: s. 2(1); rest of Act on
 23.5.94: s. 2(3)
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1993, No. 130/1993

Assent Date: 14.12.93
Commencement Date: S. 122(Sch. 4 item 17) on 3.1.94: Special Gazette
 (No. 97) 23.12.93 p. 1
Current State: This information relates only to the provision/s
 amending the **Water Act 1989**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 106) on 1.1.95: Government Gazette
 28.7.94 p. 2055
Current State: This information relates only to the provision/s
 amending the **Water Act 1989**

Water (Further Amendment) Act 1994, No. 49/1994

Assent Date: 7.6.94
Commencement Date: Ss 1, 2 on 7.6.94: s. 2(1); s. 8 (*except* (a)(c)) on 1.7.92:
 s. 2(2); rest of Act on 1.7.94: s. 2(4)
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1994, No. 53/1994

Assent Date: 15.6.94
Commencement Date: S. 34 on 3.10.94: Special Gazette (No. 64) 27.9.94
 p. 1; Sch. 1 items 11.1–1.3 on 3.10.94: s. 2(4A)
Current State: This information relates only to the provision/s
 amending the **Water Act 1989**

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Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 31 on 23.1.95: Government Gazette 19.1.95 p. 121
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Further Amendment) Act 1994, No. 110/1994

Assent Date: 20.12.94
Commencement Date: S. 41(Sch. 1 item 11) on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Industry Act 1994, No. 121/1994

Assent Date: 20.12.94
Commencement Date: Ss 1, 2 on 20.12.94; s. 2(1); rest of Act on 1.1.95: Special Gazette (No. 105) 23.12.94 p. 1
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 48 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Amendment) Act 1995, No. 56/1995

Assent Date: 20.6.95
Commencement Date: Ss 65, 66 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Amendment) Act 1995, No. 62/1995

Assent Date: 20.6.95
Commencement Date: 20.6.95
Current State: All of Act in operation

Water Industry (Amendment) Act 1995, No. 65/1995

Assent Date: 27.6.95
Commencement Date: Ss 15, 16(1)–(7), 17–21, 22(b)–(d)(f)(i)–(k) on 29.6.95: Government Gazette 29.6.95 p. 1587; ss 16(8), 22(a)(e)(g)(h)(l) on 27.12.95: s. 2(4)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Further Amendment) Act 1995, No. 79/1995

Assent Date: 28.11.95
Commencement Date: Ss 34–36 on 28.11.95: Special Gazette (No. 116) 28.11.95 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

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Water (Further Amendment) Act 1995, No. 86/1995

Assent Date: 28.11.95
Commencement Date: 28.11.95
Current State: All of Act in operation

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Water Acts (Amendment) Act 1996, No. 12/1996

Assent Date: 25.6.96
Commencement Date: Ss 3–12 on 25.6.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Building (Amendment) Act 1996, No. 39/1996

Assent Date: 12.11.96
Commencement Date: Ss 11, 12 on 24.3.97: s.2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Electricity Industry (Miscellaneous Amendment) Act 1997, No. 35/1997

Assent Date: 3.6.97
Commencement Date: S. 29 on 3.6.97: Special Gazette (No. 58) 3.6.97 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 58 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 items 12.1–12.4) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Acts (Further Amendment) Act 1997, No. 110/1997

Assent Date: 23.12.97
Commencement Date: Ss 13–16, 19, 20, 23–25 on 1.1.98: Government Gazette 24.12.97 p. 3783; ss 17, 18, 21, 22 on 1.7.98: Government Gazette 24.12.97 p. 3783
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 21 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Water Act 1989**

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Catchment and Land Protection (Amendment) Act 1998, No. 39/1998

Assent Date: 26.5.98
Commencement Date: Ss 12, 13 on 26.5.98: s. 2(1)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998 (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 105) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998, No. 76/1998

Assent Date: 10.11.98
Commencement Date: S. 29 on 15.12.98: s. 2(5)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 66) on 1.1.99: s. 2(3)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Water Acts (Amendment) Act 1999, No. 22/1999

Assent Date: 18.5.99
Commencement Date: Ss 3–6(5), 6(7), 7 on 18.5.99: s. 2(1); s. 6(6) on 18.5.00: s. 2(2)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Water (Waterway Management Tariffs) Act 1999, No. 65/1999

Assent Date: 21.12.99
Commencement Date: 21.12.99: s. 2
Current State: All of Act in operation

Transport (Amendment) Act 2000, No. 30/2000

Assent Date: 30.5.00
Commencement Date: 31.5.00: s. 2
Current State: All of Act in operation

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Essential Services Legislation (Dispute Resolution) Act 2000, No. 59/2000

Assent Date: 8.11.00
Commencement Date: S. 6 on 13.4.01: Government Gazette 29.3.01 p. 523
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Industry (Amendment) Act 2000, No. 66/2000

Assent Date: 8.11.00
Commencement Date: Ss 25–32 on 1.12.01: s. 2(4)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Electricity Industry Legislation (Miscellaneous Amendments) Act 2000, No. 69/2000

Assent Date: 21.11.00
Commencement Date: S. 65 on 1.1.01: s. 2(4)
Current State: This information relates only to the provisions/s amending the **Water Act 1989**

Water (Amendment) Act 2001, No. 25/2001

Assent Date: 29.5.01
Commencement Date: 30.5.01: s. 2
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 127) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001

Assent Date: 7.11.01
Commencement Date: S. 3(Sch. item 12) on 20.12.01: Government Gazette 20.12.01 p. 3127
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Irrigation Farm Dams) Act 2002, No. 5/2002 (as amended by No. 6/2002)

Assent Date: 3.4.02
Commencement Date: Ss 4–19(1), 19(3), 21–24, 25(2)–(4), 29, 30, 32–56 on 4.4.02: s. 2(1); ss 19(2)(4), 20, 25(1), 26–28, 31 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 66) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

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Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 205 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Utility Meters (Metrological Controls) Act 2002 No. 48/2002

Assent Date: 22.10.02
Commencement Date: S. 75 on 1.1.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water (Victorian Water Trust Advisory Council) Act 2003, No. 35/2003

Assent Date: 27.5.03
Commencement Date: 1.12.03: s. 2(2)
Current State: All of Act in operation

Safe Drinking Water Act 2003, No. 46/2003

Assent Date: 11.6.03
Commencement Date: S. 59(1) on 1.7.04: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Legislation (Essential Services Commission and Other Amendments) Act 2003, No. 48/2003

Assent Date: 11.6.03
Commencement Date: S. 12(1) on 4.4.02: s. 2(2); ss 8, 10 on 12.6.03: s. 2(1); ss 7, 12(2)(3) on 1.1.04: Government Gazette 11.12.03 p. 3117
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Water Legislation (Amendment) Act 2003, No. 90/2003

Assent Date: 11.11.03
Commencement Date: Ss 3–7, 12 on 12.11.03: s. 2
Current State: This information relates only to the provision/s amending the **Water Act 1989**

Special Gazette
(No. 26) 16 May 1991 pages 1–3.

Special Gazette
(No. 27) 31 March 1995 pages 1–3.

3. Explanatory Details

¹ S. 3(1) def. of "waterway": In sections 36, 51 and 63, "waterway" has an extended meaning.

² S. 7(1): Section 8 confers water rights on persons other than the Crown, including the right to use rainwater that falls on land occupied by them. Section 10(1)(b) confers the right to construct works to store rainwater.

³ S. 8(1)(c): Inserted by section 327 of this Act.

⁴ S. 8(7): Section 15 protects rights conferred by or under this Act.

⁵ S. 8(7)(b): Liability may arise under section 16 if a flow of water is obstructed or deflected.

⁶ S. 12: The Crown is bound by this section (see s. 5(a)).

⁷ S. 15: See note 6.

⁸ S. 16: See note 6.

⁹ S. 17: Section 157 sets out the liability of Authorities in respect of a flow of water from their works.

¹⁰ S. 23: The Crown is bound by this section (see s. 5(b)).

¹¹ S. 40(ja): Section 22 of the **Heritage Rivers Act 1992**, No. 36/1992 reads as follows:

22. Transitional provision

This Act is not to be taken to disturb the continuity, operation or effect of any instrument made granted or issued under any other Act before the commencement of this Act which authorises the carrying out of the grazing of domestic stock in a natural catchment area or heritage river area.

¹² S. 46A(3A): Section 15 of the **Water (Further Amendment) Act 1995**, No. 86/1995 reads as follows:

15. Transitional

Section 46A of the Principal Act as amended by section 8 of this Act applies to bulk entitlements whether granted before or after the commencement of section 8.

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¹³ S. 46A(3B): See note 12.

¹⁴ S. 46A(3C): See note 12.

¹⁵ S. 46A(4): See note 12.

¹⁶ S. 46A(8): See note 12.

¹⁷ S. 46A(9): See note 12.

¹⁸ S. 63: The Crown is bound by this section (see s. 5(c)).

¹⁹ S. 68(d): See note 11.

²⁰ S. 75: The Crown is bound by this section (see s. 5(d)). The penalties for offences under this section are set out in section 84.

²¹ S. 76: The Crown is bound by this section (see s. 5(d)).

²² S. 76(6): The penalty for this offence is set out in section 84.

²³ S. 78: See note 21.

²⁴ S. 79: See note 21.

²⁵ S. 80(3): See note 21.

²⁶ S. 81: See note 21.

²⁷ S. 90(1): Section 9 of the **Water (Rural Water Corporation) Act 1992**, No. 50/1992 reads as follows:

9. Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of a proceeding seeking to impose—

- (a) on a member or officer of the Rural Water Corporation or a member of any of the Corporation's Regional Management Boards liability for an act or omission of a kind referred to in section 90(1) of the Principal Act (as amended by this Act); or
- (b) on the Rural Water Corporation or on a member or person acting on behalf of the Corporation or on a member of any of the Corporation's Regional Management Boards

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liability for an action of a kind referred to in section 166 of the Principal Act (as amended by this Act).

²⁸ S. 96(3): Section 106 provides for the declaration of areas of interest.

²⁹ S. 99(3A): Sch. 2 item 1 of the **Water Industry Act 1994**, No. 121/1994 reads as follows:

1. New and restructured Authorities

The amendments of the **Water Act 1989** made by section 192 apply only with respect to an Authority constituted or restructured by an Order made after the commencement of that section.

³⁰ Pt 6 Div 6 (*repealed*): Section 11 of the **Water (Further Amendment) Act 1994**, No. 49/1994 reads as follows:

11. Transfer of certain RWC staff

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

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- (3) An officer of the Rural Water Corporation who—
- (a) by virtue of a determination made under subsection (1) becomes an officer under the **Public Sector Management Act 1992**; and
 - (b) was immediately before then a contributor to the Local Authorities Superannuation Fund—

continues, subject to the **Local Authorities Superannuation Act 1988**, to be a contributor to that Fund despite ceasing to be in the service or employment of an Authority within the meaning of the **Local Authorities Superannuation Act 1988** unless he or she elects in writing within the period of 6 months after becoming an officer under the **Public Sector Management Act 1992** to cease to be a contributor to that Fund.

- (4) An officer of the Rural Water Corporation who—
- (a) by virtue of a determination made under subsection (1) becomes an officer under the **Public Sector Management Act 1992**; and
 - (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.

³¹ S. 141: The Crown is bound by this section (see s. 5(e)).

³² S. 143: See note 31.

³³ S. 145: See note 31.

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³⁴ S. 145: Section 14 of the **Building (Amendment) Act 1996**, No. 39/1996 reads as follows:

14. Water supply or sewerage work for which an inspection fee has been paid must be inspected

- (1) This section applies if—
 - (a) a person has obtained—
 - (i) under section 63 of the **Water Industry Act 1994** either—
 - (A) the permission of a licensee to cause or permit any works to be connected to the works of the licensee; or
 - (B) the consent of a licensee to cause or permit the alteration or removal of any works that are connected to the works of the licensee; and
 - (ii) under section 145 of the **Water Act 1989** either—
 - (A) the permission of an Authority to cause or permit any works to be connected to the works of the Authority; or
 - (B) the consent of an Authority to cause or permit the alteration or removal of any works that are connected to the works of the Authority; and
 - (b) the licensee or Authority is required, either by contract or by the operation of law, to inspect the work in respect of which the permission or consent was given once it is completed; and

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- (c) the work in respect of which the permission or consent was given has not been completed; and
 - (d) the permission or consent is still current.
- (2) On being notified that any work referred to in sub-section (1) has been, or is about to be, completed, the Plumbing Industry Board must ensure that the work is inspected by a plumbing inspector before any pipes or pipework involved in the work has been covered.
- (3) The licensee or Authority that gave the permission or consent for any work inspected under sub-section (2) must reimburse the Board for any reasonable cost incurred by it for the inspection.

³⁵ S. 148(1): The Crown is bound by this sub-section (see s. 5(e)).

³⁶ S. 149: See note 31.

³⁷ S. 150: See note 31.

³⁸ S. 151: See note 31.

³⁹ S. 153: See note 31.

⁴⁰ S. 154: See note 31.

⁴¹ S. 157: By virtue of section 17(2) Authorities cannot be liable under section 16 in respect of a flow of water from their works.

⁴² S. 166 (repealed): Section 59(2) of the **Safe Drinking Water Act 2003**, No. 46 reads as follows:

- (2) Despite the repeal of section 166, that section continues to apply to a person who, immediately before that repeal, was a member of an Authority in respect of any action taken by the person in connection with the treatment of water (including disinfection or fluoridation) in accordance with any Act for the remainder of the current term of that member.

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⁴³ S. 178: The Crown is bound by this section (see s. 5(f)).

⁴⁴ S. 194: The Crown is bound by this section (see s. 5(g)).

⁴⁵ S. 195: See note 44.

⁴⁶ S. 200: See note 44.

⁴⁷ S. 208: See note 44.

⁴⁸ S. 215: Section 10(6) of the **Water Acts (Amendment) Act 1996**, No. 12/1996 reads as follows:

10. Water management schemes

- (6) The amendments of section 215 of the **Water Act 1989** made by this section do not apply with respect to a water management scheme in relation to which the notice required by section 215(2) of that Act was published before the commencement of this section.

⁴⁹ S. 218: See note 44.

⁵⁰ S. 218(1): Section 45(1) of the **Water (Amendment) Act 1995**, No. 62/1995 reads as follows:

45. Transitional provisions

- (1) The amendment of section 218 of the Principal Act made by section 36 does not affect any declaration of a drainage course made before the commencement of this Act.

⁵¹ S. 218(4)(a): See note 50.

⁵² Pt 13 Div. 4: Section 25(1) of the **Borrowing and Investment Powers (Amendment) Act 1993**, No. 99/1993 reads as follows:

25. Transitional provisions—declared Authorities

- (1) If an Authority is declared under section 17A of the Principal Act to be a Water Authority to which Schedule 1 applies, Division 4 of Part 13 of the **Water Act 1989** continues to apply to or in respect of—

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- (a) financial accommodation obtained by that Authority under that Division before the declaration; and
- (b) financial accommodation obtained by that Authority under that Division after the declaration, pursuant to arrangements entered into before the declaration; and
- (c) the investment of money by that Authority before the declaration—

as if the declaration had not been made.

⁵³ S. 255(3): Section 25(2) of the **Borrowing and Investment Powers (Amendment) Act 1993**, No. 99/1993 reads as follows:

25. Transitional provisions—declared authorities

- (2) A guarantee by the Government of Victoria in force under section 255(3) of the **Water Act 1989** immediately before an Authority is declared under section 17A of the Principal Act to be a Water Authority to which Schedule 1 applies has effect and may be enforced as if the guarantee were a contract made on behalf of the Crown and section 23(1)(a) of the **Crown Proceedings Act 1958** applied accordingly.

⁵⁴ S. 259(1)(c): Section 45(6) of the **Water (Amendment) Act 1995**, No. 62/1995 reads as follows:

45. Transitional provisions

- (6) The amendments of section 259 of the Principal Act made by section 41 do not affect any tariff set by an Authority before the commencement of this Act.

⁵⁵ S. 259(2)(c): See note 54.

⁵⁶ S. 265: The Crown is bound by this section (see s. 5(h)).

⁵⁷ S. 268: See note 56.

⁵⁸ S. 269: See note 56.

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⁵⁹ S. 270: See note 56.

⁶⁰ S. 281: See note 56.

⁶¹ S. 288: The Crown is bound by this section (see s. 5(i)).

⁶² S. 289: See note 61.

⁶³ S. 290: See note 61.

⁶⁴ S. 310(2)(b): Section 45(3)(4) of the **Water (Amendment) Act 1995**, No. 62/1995 reads as follows:

45. Transitional provisions

- (3) The members of the Drillers' Licensing Board appointed under section 310 of the Principal Act continue to hold office for the remainder of their term of office, despite the amendment of section 310 of the Principal Act made by section 39.
- (4) Despite the alteration made to the constitution of the Drillers' Licensing Board by section 39—
 - (a) that Board must be taken to be the same body after the commencement of this Act as it was before that commencement; and
 - (b) no act, matter or thing is in any way abated or affected by reason of that alteration but may be continued and concluded in all respects as if this Act had not been passed.

⁶⁵ S. 315: Section 45(5) of the **Water (Amendment) Act 1995**, No. 62/1995 reads as follows:

45. Transitional provisions

- (5) The amendment of section 315 of the Principal Act made by section 40 does not affect the term of a driller's license granted before the commencement of this Act but any renewal of that licence after that commencement must be made under section 315 of the Principal Act as amended by section 40.

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⁶⁶ Sch. 1 cl. 1A: Section 35 of the **Water Industry (Amendment) Act 1995**, No. 65/1995 reads as follows:

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.

⁶⁷ Sch. 2 cl. 2: See note 29.

⁶⁸ Sch. 2 cl. 9: See note 29.

⁶⁹ Sch. 3 (*repealed*): Sections 33, 34 of the **Water Industry (Amendment) Act 1995**, No. 65/1995 read as follows:

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 subsection, 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 subsection, debts, liabilities and obligations of the Director-General; and

- (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
 - (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
 - (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.
- (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

- (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.
 - (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
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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.

- (3) An officer of the Rural Water Corporation who—
- (a) by virtue of a determination made under subsection (1) becomes an officer under the **Public Sector Management Act 1992**; and
 - (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.

⁷⁰ Sch. 3 (*repealed*): Section 4(2) of the **Water (Further Amendment) Act 1994**, No. 49/1994 reads as follows:

4. Repeal of provisions for regional management boards

- (2) On the commencement of this section—
- (a) any Regional Management Board established by the Minister under clause 22(1) of Schedule 3 to the Principal Act is abolished and its members go out of office; and
 - (b) any Regional General Manager of a Regional Management Board goes out of office; and
 - (c) any reference to a Regional Management Board 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 the commencement of this section and if not

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inconsistent with the context or subject-matter, be construed as a reference to the Rural Water Corporation.