

Water (Governance) Act 2006

Act No. 85/2006

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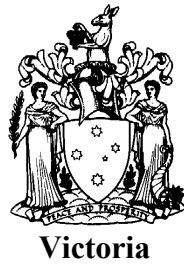
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Victoria

No. 85 of 2006

Water (Governance) Act 2006[†]

[Assented to 17 October 2006]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to amend the **Water Act 1989** to make provision for water corporations and to make other amendments to that Act; and
- (b) to amend the **Catchment and Land Protection Act 1994** to make further provision in relation to Catchment

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Part 1—Preliminary

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- Management Authorities and to make other amendments to that Act; and
- (c) to repeal the **Melbourne and Metropolitan Board of Works Act 1958** and the **Melbourne Water Corporation Act 1992**; and
 - (d) to make amendments to the **Conservation, Forests and Lands Act 1987**, the **Limitation of Actions Act 1958**, the **Public Authorities (Dividends) Act 1983**, the **Road Management Act 2004**, the **Water Industry Act 1994**, the **Valuation of Land Act 1960** and the **Water (Resource Management) Act 2005**; and
 - (e) to amend the **Werribee South Land Act 1991** to make further provision for leasing powers under that Act and to make other related amendments to that Act.

2. Commencement

- (1) Section 1, this section and section 161 come into operation on the day after the day on which this Act receives the Royal Assent.
 - (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
 - (3) If a provision referred to in sub-section (2) does not come into operation before 1 July 2007, it comes into operation on that day.
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Part 2—Amendments to the Water Act 1989

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PART 2—AMENDMENTS TO THE WATER ACT 1989

3. Definitions

In section 3(1) of the **Water Act 1989**—

(a) **insert** the following definitions

' **"area of interest"**, in relation to a water corporation, means an area of land that is declared to be an area of interest under section 122U;

"biosolids" means stabilised organic solids derived from the treatment of sewage;

"board of directors" means—

- (a) in relation to a water corporation, the board of directors established under Division 3 of Part 6 for that corporation; and
- (b) in relation to a Catchment Management Authority, the board established under Division 4 of Part 2 of the **Catchment and Land Protection Act 1994** for that Authority;

"Central Gippsland Region Water Authority" means the Central Gippsland Region Water Authority constituted by Order made on 16 December 1994 by the Minister and published in the Government Gazette on 19 December 1994;

"central plan office" means the Central Plan Office of the Department of Sustainability and Environment;

See:
Act No.
80/1989.
Reprint No. 8
as at
3 August 2006
and
amending
Act Nos
79/2005 and
99/2005.
LawToday:
www.dms.
dpc.vic.
gov.au

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"designated land" means land that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, is declared under section 188 as designated land; and
- (b) in relation to Melbourne Water Corporation, is designated land under section 188A;

"designated waterway" means a waterway that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, is declared under section 188 as a designated waterway; and
- (b) in relation to Melbourne Water Corporation, is a designated waterway under section 188A;

"designated works" means works that—

- (a) in relation to an Authority, other than Melbourne Water Corporation, are declared under section 188 as designated works; and
- (b) in relation to Melbourne Water Corporation, are designated works under section 188A, or are declared as designated works under that section;

"environment Minister" means the Minister administering Part 4 of the **Catchment and Land Protection Act 1994**;

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"First Mildura Irrigation Trust" means the water corporation known as First Mildura Irrigation Trust;

"municipal district", in relation to a Council, has the same meaning as in the **Local Government Act 1989**;

"nominated officer" means each senior officer of a water corporation who is nominated by the water corporation;

"return period", in relation to the ordinary return of a member of the board of directors of a water corporation or a nominated officer in section 114, 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;

"storage manager" means—

- (a) where an Authority is appointed under Part 6C as a storage manager, the Authority in relation to any land for which it is so appointed;
- (b) in any other case, an Authority where it is exercising the functions of a storage manager under Part 8;

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Part 2—Amendments to the Water Act 1989

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"water corporation" means a water corporation established or re-structured under Division 1 of Part 6;';

(b) for the definition of "Authority"
substitute—

' **"Authority"** means a water corporation or a Catchment Management Authority;';

(c) in the definition of "domestic partner", in paragraph (a) for "93 and 95" **substitute** "110 and 114";

(d) the definition of "election" is **repealed**;

(e) for the definition of "irrigation district"
substitute—

' **"irrigation district"**, in relation to an Authority, means—

(a) any district that the Authority is deemed to have as an irrigation district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and

(b) any district that is declared to be an irrigation district of the Authority under Division 2 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;';

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Part 2—Amendments to the Water Act 1989

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(f) for the definition of "Melbourne Water"
substitute—

' "**Melbourne Water Corporation**" means
the water corporation known as
Melbourne Water Corporation;';

(g) the definition of "member" is **repealed**;

(h) the definition of "secretary" is **repealed**;

(i) in the definition of "serviced property", after
paragraph (g) **insert—**

"(h) in relation to the waterway
management district of Melbourne
Water Corporation, means any land that
is serviced property under
section 144A;";

(j) for the definition of "sewerage district"
substitute—

' "**sewerage district**", in relation to an
Authority, means—

(a) any district that the Authority is
deemed to have as a sewerage
district under Division 1 of
Part 6A, and (where the case so
requires) any such district as
extended or changed under
Part 6A; and

(b) any district that is declared to be a
sewerage district of the Authority
under Division 3 of Part 6A, and
(where the case so requires) any
such district as extended or
changed under Part 6A;';

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Part 2—Amendments to the Water Act 1989

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(k) for the definition of "water allocation"
substitute—

' **"water allocation"**—

- (a) in relation to an environmental entitlement, means the volume of water determined under a seasonal determination to be available for the entitlement;
- (b) in relation to a water share, means the amount of water allocated to the water share at any particular time, in accordance with Division 7 of Part 3A;'

(l) for the definition of "water district"
substitute—

' **"water district"**, in relation to an Authority, means—

- (a) any district that the Authority is deemed to have as a water district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and
- (b) any district that is declared to be a water district of the Authority under Division 3 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;'

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(m) for the definition of "waterway management district" **substitute**—

' **"waterway management district"**, in relation to an Authority, means—

- (a) any district that the Authority is deemed to have as a waterway management district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and
- (b) any district that is declared to be a waterway management district of the Authority under Division 3 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;'

4. Repeal of reference

Sections 9(1)(b) and 9(1)(c) of the **Water Act 1989** are **repealed**.

5. Repeal of reference

In section 22M(a) of the **Water Act 1989** omit "or Catchment Management Authority".

6. Copy of management plan to be given to Melbourne Water Corporation

In section 32C(2) of the **Water Act 1989**—

- (a) in paragraph (b), for "in the area." **substitute** "in the area; and";
- (b) at the end of the sub-section **insert**—
"(c) Melbourne Water Corporation, if the area is wholly or partly in the waterway management district of Melbourne Water Corporation."

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7. Statute Law Revision

In section 32G(2)(c) of the **Water Act 1989**, for "that amendment" **substitute** "amendment".

8. Transfer of ownership of water share

For section 33S(2)(b) of the **Water Act 1989** **substitute**—

"(b) in any other case, one of the owners of the water share must not transfer his or her ownership of the water share without the consent of each of the other owners of the water share."

9. Limited term transfers

(1) In section 33T(1) of the **Water Act 1989**, after "water-use registration" **insert** "or of land in another State or a Territory of the Commonwealth".

(2) After section 33T(4) of the **Water Act 1989** **insert**—

"(5) The holder of a limited term transfer may surrender the limited term transfer."

10. Assignments of water allocations under water shares

(1) In section 33U(1) of the **Water Act 1989**, for "to a person who is the owner or occupier of land specified in a water-use licence or water-use registration" **substitute**—

"to—

(a) a person who is the holder of a bulk entitlement; or

(b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or

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- (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
- (d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or
- (e) the environment Minister on behalf of the Crown."
- (2) After section 33U(1) of the **Water Act 1989** insert—
- "(1A) A person who, as a result of the operation of section 33S(3), has a water allocation available to that person, may assign the whole or a part of the water allocation to—
- (a) a person who is the holder of a bulk entitlement; or
- (b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
- (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
- (d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or
- (e) the environment Minister on behalf of the Crown."
- (3) In section 33U(3) of the **Water Act 1989**, for "water allocations under the water share" **substitute** "water under the water allocation under the water share".
- (4) In section 33U(4) of the **Water Act 1989**, for "the taking of water" **substitute** "water to be received".
-

11. Further assignments of water allocations under water shares

(1) In section 33V(1) of the **Water Act 1989**, for "the assigned water allocation to the owner or occupier of land specified in a water-use licence or water-use registration" **substitute**—

"the assigned water allocation to—

- (a) a person who is the holder of a bulk entitlement; or
- (b) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or
- (c) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
- (d) a person who represents the Crown in right of another State or a Territory of the Commonwealth; or
- (e) the environment Minister, on behalf of the Crown."

(2) After section 33V(2) of the **Water Act 1989** **insert**—

"(3) An assignment under this section entitles the holder of the assignment to receive water under the water allocation under the water share from the date specified in the assignment."

12. Ministerial approval for transfers etc.

- (1) In section 33X(3) of the **Water Act 1989**, after "sub-section (1)" **insert** "(a)".
- (2) In section 33X(5) of the **Water Act 1989**, for "this section" **substitute** "sub-section (1)(a) or (b)".

13. Division of water shares

For section 33Y(2) and (3) of the **Water Act 1989** substitute—

- "(2) In granting an application under sub-section (1), the Minister must consider any relevant rules made under Division 13.
- (3) On the division of a water share under sub-section (1), any mortgage that applied to the water share immediately before that division is, on and from the division, deemed to apply—
- (a) in the case of the cancellation of the old share under sub-section (1)(a), to each new share that is issued; or
 - (b) in the case of the variation of one share and the issue of one or more new shares under sub-section (1)(b), to the share that is varied and to each new share that is issued."

14. Consolidation of water shares

Section 33Z(3)(b) of the **Water Act 1989** is repealed.

15. Insertion of new section 33ABA

After section 33AB of the **Water Act 1989** insert—

"33ABA. Cancellation where rights outside declared water system are obtained

- (1) A person who is the owner of a water share may apply to the Minister for the water share to be cancelled on the issuing of a right in a non-declared water system.
- (2) The Minister, in cancelling a water share under this section must consider any relevant rules under Division 13."

16. Service provision fees

For section 33AJ(1) of the **Water Act 1989**
substitute—

"(1) Each Authority that provides services to the owners of water shares, that are services provided in relation to the water shares may make a determination for or with respect to fees to be paid by the owner of the water share for the provision of those services including but not limited to—

(a) obligations as to the payment of any such fees; and

(b) the amount of any such fees."

17. Statute Law Revision

In section 33AR(6) of the **Water Act 1989**, for "sub-section (4)" **substitute** "sub-section (1)".

18. Obligations on cessation of ownership or occupation of land

In section 33AS(3) of the **Water Act 1989**, for "who owns an associated water share in respect of which notice has been given to the Minister under this section" **substitute** "who owns a water share that is an associated water share, who ceases to be the owner or occupier of the land that is associated with the water share".

19. Obligations on cancellation of water-use registration

(1) In the heading to section 33AU of the **Water Act 1989**, **omit "revocation or"**.

(2) In section 33AU(1) of the **Water Act 1989—**

(a) in paragraph (a), **omit "revoked or"**;

(b) in paragraph (b)(ii), **omit "or revocation"**.

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20. Substitution of section 33AV

For section 33AV of the **Water Act 1989**
substitute—

"33AV. Effect of death of owner of water share or holder of limited term transfer

- (1) On the death of a person who is the sole owner of a water share, the share forms part of the estate of that person.
- (2) On the death of a person who owns a water share as a joint tenant with other persons, the remaining owners of the water share become the joint owners of the share.
- (3) On the death of a person who owns a water share as a tenant in common with other persons, that person's portion of the water share becomes part of the estate of that person.
- (4) On the death of a person who is the sole holder of a limited term transfer, the transfer forms part of the estate of that person.
- (5) On the death of a person who holds a limited term transfer as a joint tenant with other persons, the remaining holders of the limited term transfer become the joint holders of the transfer.
- (6) On the death of a person who holds a limited term transfer as a tenant in common with other persons, that person's portion of the limited term transfer becomes part of the estate of that person."

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21. Application of Division 1 of Part 4—MWC

After section 35(2) of the **Water Act 1989**
insert—

"(3) Melbourne Water Corporation may, in relation to any entitlement to take water that it has and that is continued by clause 14 of Schedule 16, apply in accordance with section 47 to have that entitlement converted to an entitlement under this Division."

22. Application for bulk entitlement—MWC

Section 36(1)(d) of the **Water Act 1989** is
repealed.

23. Repeal of reference to storage operator in section 43

In section 43(c) of the **Water Act 1989**, for
"operator" **substitute** "manager".

24. Repeal of references to storage operators in section 43A

(1) For the heading to section 43A of the **Water Act 1989** **substitute—**

"Appointment of resource managers and environmental managers".

(2) Section 43A(1)(a) of the **Water Act 1989** is
repealed.

25. Conversion of bulk entitlement—MWC

In section 47(1) of the **Water Act 1989**, after
"35(2)" **insert** "or section 35(3)".

26. Definitions for environmental entitlements

In section 48A of the **Water Act 1989**—

(a) **insert** the following definition—

' **"apply"**, in relation to water, includes the taking or use of water;'

(b) the definition of **"environment Minister"** is **repealed**.

27. Insertion of new section 48BA

After section 48B of the **Water Act 1989**
insert—

"48BA. Authorisation of entitlement

An environmental entitlement authorises—

- (a) the holder of the entitlement to apply any water allocation under the entitlement (other than a water allocation that has been assigned under section 48L or 48M) for the purpose set out in section 48B(2); or
- (b) a person to whom a water allocation has been assigned under section 48L or 48M to apply any water allocation that has been assigned to that person for any purpose (whether or not it is a purpose set out in section 48B(2))."

28. Amendment of entitlement

For section 48K(1), (2) and (3) **substitute**—

- "(1) The Minister, at the request of the environment Minister, may amend an entitlement under this Division.
- (2) The environment Minister must not request an amendment to an entitlement under this Division unless he or she is of the opinion

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that the amendment would benefit the environmental water reserve.

- (3) An amendment to an entitlement under this section must be made by instrument and published in the Government Gazette."

29. Insertion of new section 48KA

After section 48K of the **Water Act 1989** insert—

"48KA. Water allocations may be applied for other environmental entitlements

The environment Minister, after consulting the Minister, may apply a water allocation (that has been determined by an Authority for an environmental entitlement in a water system) for the purposes of an environmental entitlement that is not the environmental entitlement in the water system for which the water allocation was determined."

30. Assignment of water allocation under environmental entitlement

- (1) In the heading to section 48L of the **Water Act 1989**, for "**allocation of water**" substitute "**water allocation**".

- (2) For section 48L(1) of the **Water Act 1989** substitute—

- "(1) The environment Minister may, by instrument, assign the whole or a part of a water allocation available under an environmental entitlement (at the time at which the assignment is made) to—
- (a) a person who is the owner or occupier of land specified in a water-use licence or water-use registration; or

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- (b) a person who is the owner or occupier of land in another State or a Territory of the Commonwealth; or
 - (c) a person who represents the Crown in the right of another State or a Territory of the Commonwealth; or
 - (d) a person who is the holder of a bulk entitlement.
- (1A) The environment Minister must not make an assignment under sub-section (1) unless he or she has first obtained the approval of the Minister for the assignment.
- (1B) An assignment under this section entitles the holder of the assignment to receive water under the water allocation under the environmental entitlement from the date specified in the assignment."

31. Further assignment of water allocation under environmental entitlement

- (1) In section 48M of the **Water Act 1989**, for "an allocation of water" **substitute** "a water allocation".
- (2) At the end of section 48M of the **Water Act 1989** **insert—**
 - "(2) An assignment under this section entitles the holder of the assignment to receive water under the water allocation under the environmental entitlement from the date specified in the assignment."

32. Ministerial approvals

- (1) For section 48O(1) of the **Water Act 1989** substitute—

"(1) The Minister may—

- (a) on a request from the environment Minister, approve the assigning of a water allocation for the purposes of section 48L; or
- (b) on an application by a person, approve the assigning of a water allocation for the purposes of section 48M."

- (2) Section 48O(4) of the **Water Act 1989** is repealed.

33. Insertion of new sections 48PA and 48PB

After section 48P of the **Water Act 1989** insert—

"48PA. Applications under this Division

An application under this Division—

- (a) must be in the form and made in the manner approved by the Minister; and
- (b) must be accompanied by the prescribed fee.

48PB. Power of environment Minister to delegate

The environment Minister may delegate, by instrument, any of the environment Minister's functions, powers or duties under this Division other than this power of delegation, to—

- (a) a Catchment Management Authority; or
- (b) Melbourne Water Corporation; or

- (c) the Chief Executive of Parks Victoria;
or
- (d) the Department Head."

34. Application for licence to go to Melbourne Water Corporation

For section 51B(c) of the **Water Act 1989** substitute—

"(c) Melbourne Water Corporation, if the dam is or will be located in the waterway management district of Melbourne Water Corporation; and".

35. Insertion of new section 61A

After section 61 of the **Water Act 1989** insert—

"61A. Cancellation of licence where water share obtained in declared water system

- (1) The holder of a licence issued under section 51 may apply to the Minister for the licence to be cancelled on the issuing of a water share in a declared water system.
- (2) In cancelling a licence under this section, the Minister must have regard to any relevant rules made under this Division."

36. Repeal of Division 3 of Part 4

Division 3 of Part 4 of the **Water Act 1989** is repealed.

37. Repeal of reference

In section 64I(1) of the **Water Act 1989**, for "sections 160 and 161" substitute "section 160".

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38. Offence to use water without licence or registration

- (1) In section 64J(1) of the **Water Act 1989**, for
", being water that is authorised to be taken under
Part 3A," **substitute** ", being water that is from a
declared water system,".
- (2) In section 64J(2) of the **Water Act 1989**, for
", being water that is authorised to be taken under
Part 3A," **substitute** ", being water that is from a
declared water system,".

39. Further offences for water use

- (1) In section 64K(1) of the **Water Act 1989** for
"under a water share under Part 3A" **substitute**
"under Part 3A or under an assignment under
section 48L or 48M".
- (2) In section 64K(3)(c) of the **Water Act 1989**, for
"prescribed documents and information"
substitute "documents or information required by
the Minister".

**40. Obligations of Minister in granting water-use
licences**

Section 64N(a) of the **Water Act 1989** is
repealed.

41. Licence applications

In section 64P(d) of the **Water Act 1989** for "the
prescribed fee" **substitute** "the fee determined by
the Minister".

42. Applications under section 64AI

For sections 64AI(1)(c) and 64AI(1)(d) of the
Water Act 1989 substitute—

- "(c) be accompanied by any prescribed
documents or prescribed information or
information or documents required by the
Minister; and

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(d) be accompanied by the fee determined by the Minister."

43. Power to register water-uses

In section 64AP of the **Water Act 1989** for "(authorised to be taken under Part 3A)" **substitute** ", being water that is from a declared water system,".

44. Applications for water-use registrations

In section 64AR(2)(d) of the **Water Act 1989** for "the prescribed fee" **substitute** "the fee determined by the Minister".

45. Applications under section 64AU

In section 64AU(3) of the **Water Act 1989**—

- (a) in paragraph (c), for "prescribed document or prescribed information" **substitute** "documents or information required by the Minister";
- (b) in paragraph (d), for "the prescribed fee" **substitute** "the fee determined by the Minister".

46. Works licences

After section 67(2) of the **Water Act 1989** **insert**—

- "(3) This section does not apply to the abandonment or decommissioning of any works of an Authority, if the works are major works.
- (4) 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**

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1993 and to install and operate works on that land, under the licence, for the purpose of raising water.

- (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 (4).
- (6) The amount of compensation payable is as agreed by the parties or, in the absence of agreement, as determined by the Tribunal."

47. Application for works licence to go to Melbourne Water Corporation

For section 67A(d) of the **Water Act 1989** substitute—

"(d) Melbourne Water Corporation, if the dam is or will be located in the waterway management district of Melbourne Water Corporation; and"

48. Works licence conditions

After section 71(1) of the **Water Act 1989** insert—

- "(1A) In addition to any conditions to which a licence under section 67 is subject under sub-section (1), a licence under section 67 is subject to conditions that are prescribed or fixed by the Minister relating to—
- (a) the maximum amounts of water which may be taken in particular periods or circumstances from any bore or works to which the licence relates; or
 - (b) the installation and use of measuring devices and pumps; or

- (c) the operation of any bore or works (to which the licence relates) for extracting water from waterways."

49. Applications under section 73A

In section 73A(3) of the **Water Act 1989**—

- (a) in paragraph (c), for "prescribed document or prescribed information" **substitute** "documents or information required by the Minister";
- (b) in paragraph (d), for "the prescribed fee" **substitute** "the fee determined by the Minister".

50. Insertion of new section 84JA

After section 84J of the **Water Act 1989** insert—

"84JA. Recording of surrender of limited term transfer

- (1) If the holder of a limited term transfer surrenders the limited term transfer, that person may lodge with the Registrar a document for a recording of the surrender to be made in the water register in respect of the water share that is the subject of the limited term transfer.
- (2) A document lodged under sub-section (1) must be in the approved form."

51. Recording of survivor of joint owners of water share

For section 84L(3) of the **Water Act 1989** **substitute**—

- "(3) On being satisfied as to proof of the death of a joint owner of a water share, the Registrar may make a recording of the transmission by survivorship."

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52. Statute Law Revision

In section 84ZB(4)(c) of the **Water Act 1989**, for "section 33AB" substitute "section 33AAB".

53. Statute Law Revision

In section 84ZG(a) of the **Water Act 1989**, for "section 33AC" substitute "section 33S".

54. Substitution of Part 6

For Part 6 of the **Water Act 1989** substitute—

'PART 6—WATER CORPORATIONS

**Division 1—Establishment, Restructuring,
Abolition and Administration of Water
Corporations**

85. Establishment of water corporations

- (1) There are established water corporations each of which is to be known by a name set out in an item in Column 1 of the table in Schedule 1.
- (2) The Minister may, by determination, with the approval of the Treasurer, establish a water corporation, if the Minister is satisfied that it is necessary to do so for the purposes of section 87, which is to be known by the name set out in the determination.
- (3) Each water corporation established under this section—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold or dispose of real and personal property; and

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- (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
 - (4) All courts must take judicial notice of the seal of a water corporation affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
 - (5) The official seal of each water corporation must be kept in the custody that is directed by the water corporation and must not be used, except as authorised by the water corporation.

86. Application of Public Administration Act 2004

The **Public Administration Act 2004** applies to each water corporation as if that water corporation were a public entity, but not a small entity, within the meaning of that Act, established on or after the commencement of Part 5 of that Act.

87. Restructuring of water corporations

- (1) The Minister may, by determination, with the approval of the Treasurer appoint a water corporation to take over the whole or any part of the functions, powers and duties of another water corporation under this Act.
- (2) The Minister must not make a determination under sub-section (1) unless—
 - (a) the Minister has reached agreement with each water corporation that is affected by the determination as to the terms and conditions of the determination; or

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- (b) the Minister has before making such a determination—
- (i) given reasons for the determination to all water corporations affected by the determination; and
 - (ii) laid a copy of the reasons for the determination before both Houses of the Parliament.
- (3) If the water corporation to which section 95(2) applies is restructured under this section, section 95(1) applies to the restructured water corporation and section 95(2) does not apply.

88. Abolition of water corporations

- (1) The Minister may, by determination, with the approval of the Treasurer, abolish a water corporation.
- (2) The Minister must not make a determination under sub-section (1) unless—
- (a) a petition is delivered by a majority of the persons subject to a tariff within the water, sewerage, waterway management and irrigation districts (if any) of the water corporation to the Minister requesting the abolition of the water corporation; or
 - (b) the water corporation has no functions to perform.

89. Publication of determinations as to establishment, restructuring and abolition

The Minister must publish a determination under section 85(2), 87 or 88 in the Government Gazette.

90. Effect of Schedule 2

Schedule 2 has effect with respect to any determination made under section 87 or 88.

91. Appointment of administrator

- (1) The Minister may, by determination, appoint an administrator to carry out the functions of a water corporation, if the water corporation has failed to comply with a direction of the Minister under section 307.
 - (2) A determination of the Minister under subsection (1)—
 - (a) must specify the term for which the Administrator is appointed, which must be not more than 12 months; and
 - (b) must set out reasons for the actions proposed in it; and
 - (c) must be published in the Government Gazette; and
 - (d) must be laid by the Minister before both Houses of Parliament within 5 sitting days of each House after the determination is made.
 - (3) During the period for which an administrator is appointed under this section, the administrator acts in substitution for the board of directors in performing the functions and duties of the water corporation.
 - (4) Any defect in relation to the appointment of the administrator does not invalidate that appointment or anything done by the administrator.
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- (5) On the expiry of a determination under this section the Minister must determine whether or not to—
- (a) reinstate to his or her office each member of the board of directors of the water corporation whose term has not expired; or
 - (b) dismiss each member of the board of directors of the water corporation.
- (6) The administrator goes out of office—
- (a) if members are reinstated under sub-section (5)(a), at the time of that reinstatement; or
 - (b) if all the members are dismissed under sub-section (5)(b), on the appointment of new members—
- as the case requires.
- (7) If the term of appointment of the administrator expires and a determination under sub-section (5) has not been made, members of the board of directors of the water corporation whose term has not expired, are reinstated.

Division 2—Functions, Powers, Duties and Objectives of Water Corporations

92. Functions, powers and duties of water corporations

- (1) Each water corporation has the functions, powers and duties conferred on it by or under this or any other Act.

-
- (2) In addition to any other functions conferred on a water corporation by or under this or any other Act, a water corporation has the functions of—
- (a) investigating, promoting and conducting research into any matter relating to its other functions, its powers and its duties; and
 - (b) educating the community about its functions.
- (3) Schedule 3 has effect with respect to Melbourne Water Corporation.

93. Sustainable management principles for water corporations

Each water corporation, in performing its functions, exercising its powers and carrying out its duties must have regard to the following principles—

- (a) the need to ensure that water resources are conserved and properly managed for sustainable use and for the benefit of present and future generations; and
 - (b) the need to encourage and facilitate community involvement in the making and implementation of arrangements relating to the use, conservation and management of water resources; and
 - (c) the need to integrate both long term and short term economic, environmental, social and equitable considerations; and
 - (d) the need for the conservation of biological diversity and ecological integrity to be a fundamental consideration; and
-

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- (e) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty as to measures to address the threat should not be used as a reason for postponing such measures.

94. Business objective for water corporations

Each water corporation, in performing its functions, exercising its powers and carrying out its duties has the objective that the water corporation must act as efficiently as possible consistent with commercial practice.

Division 3—Boards of Directors

95. Board of directors

- (1) Subject to sub-section (2), each water corporation must have a board of directors consisting of—
 - (a) not less than 2 and not more than 8 directors appointed by the Minister, or, in the case of Melbourne Water Corporation, appointed by the Minister together with the Treasurer (of whom one is to be appointed as chairperson under section 104); and
 - (b) the managing director of the water corporation.
 - (2) The First Mildura Irrigation Trust must have a board of directors consisting of—
 - (a) 6 directors elected by the owners or occupiers of rateable land within the irrigation district of the Authority in accordance with Schedule 6 and any regulations made under section 324A
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- (of whom one is to be appointed as chairperson under section 104); and
- (b) the managing director of the First Mildura Irrigation Trust.
- (3) For the purposes of sub-section (1)(a), the Minister, or in the case of Melbourne Water Corporation, the Minister together with the Treasurer, may from time to time, by instrument, determine the number of directors for each water corporation.
- (4) The board of directors of a water corporation—
- (a) is responsible for—
- (i) the strategic planning of the corporation; and
- (ii) the management of the affairs of the corporation; and
- (b) may exercise the powers of the corporation.
- (5) When acting under sub-section (4), the board of directors of a water corporation must do so having regard to the principles set out in section 93 and the objective set out in section 94.

96. Other duties not affected

This Part has effect in addition to and not in derogation of, any Act or law relating to the criminal or civil liability of directors and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

97. Appointment of members of board of directors

In appointing persons to be members of the board of directors of a water corporation, the Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, must ensure that each person so appointed has qualifications and experience that are relevant to the operations of the water corporation.

98. Terms and conditions of appointment of members of board of directors

- (1) A member of the board of directors of a water corporation holds office, subject to this Act—
 - (a) for the term, not exceeding 4 years, that is specified in the instrument of his or her appointment and is eligible for re-appointment; and
 - (b) subject to this section, on the other terms and conditions that are determined by the Minister or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer.
 - (2) Each member of the board of directors of a water corporation holds office on a part-time basis.
 - (3) In this section "**member of the board of directors**" does not include the managing director.
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99. Managing Director

- (1) The board of a water corporation may appoint a person as the managing director of the water corporation, on a full-time or part-time basis.
- (2) The managing director of a water corporation holds office, subject to this Act—
 - (a) for the term, not exceeding 5 years that is specified in the instrument of his or her appointment, and is eligible for re-appointment; and
 - (b) subject to the terms and conditions that are specified in that instrument.
- (3) The managing director of a water corporation is not capable of being appointed as the chairperson, deputy chairperson or another director of the corporation.

100. When a member of the board of directors of a water corporation ceases to hold office

- (1) The office of member of the board of directors becomes vacant if the member—
 - (a) resigns in accordance with subsection (3); or
 - (b) becomes an insolvent under administration (within the meaning of the Corporations Act); or
 - (c) fails to attend 3 consecutive meetings of the board of directors without the approval of the board; or

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- (d) is found guilty of an indictable offence;
or
 - (e) holds a paid office in the water
corporation.
- (2) Sub-section (1)(e) does not apply to the
managing director.
 - (3) A person may resign from the office of
member of the board of directors by notice in
writing delivered to the Minister.

**101. Removal from office of member of the
board of directors**

- (1) The Minister, or, in the case of Melbourne
Water Corporation, the Minister together
with the Treasurer, may at any time remove a
member of the board of directors of a water
corporation, other than the managing
director, from the office of member.
 - (2) The Minister or, in the case of Melbourne
Water Corporation, the Minister together
with the Treasurer, must remove a person
from the office of member of the board of
directors, other than the managing director, if
the member—
 - (a) is found guilty of such an offence that
the Minister or, in the case of
Melbourne Water Corporation, the
Minister together with the Treasurer, is
satisfied may affect the member's
ability to carry out the duties of his or
her office as member; or
 - (b) fails without reasonable cause to
disclose any interest under section 109.
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102. Acting Managing Director

- (1) The board of directors of a water corporation may appoint a person to act as managing director of the water corporation if—
 - (a) the office of managing director is vacant; or
 - (b) the managing director is absent or is unable, for any reason, to perform the duties of the office.
- (2) The acting managing director of a water corporation is not capable of being the chairperson, deputy chairperson or another director of the corporation.

103. Removal of managing director

The board of directors of a water corporation must remove a person from the office of managing director if the managing director—

- (a) is found guilty of an offence relating to his or her duties as managing director; or
- (b) fails without reasonable cause to disclose any interest under section 109.

104. Chairperson

The Minister, or, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, must appoint a member of the board of directors of a water corporation to be the chairperson of the water corporation.

105. Deputy chairperson

- (1) The board of directors of a water corporation must appoint one of the members of the board of directors to be the deputy chairperson of the board or directors.
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- (2) The deputy chairperson, if present, must preside at meetings of the board of directors at which the chairperson is not present.

106. Acting appointments

- (1) The deputy chairperson must act as chairperson if—
- (a) the office of chairperson is vacant; or
 - (b) the chairperson is unable, for any reason, to perform the duties of the office.
- (2) While the deputy chairperson is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.
- (3) The Minister may appoint a person who has the qualifications and experience as required under section 97 to be a member of the board of directors of a water corporation during any period, or during all periods, when—
- (a) the deputy chairperson is acting as chairperson; or
 - (b) a member of the board of directors is unable for any reason to attend meetings of the board.

107. Validity of decisions

- (1) An act or decision of the board of directors of a water corporation is not invalid merely because of—
- (a) a vacancy in the membership of the board of directors; or
 - (b) a defect or irregularity in, or in connection with, the appointment of a member of the board of directors.
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- (2) Anything done by or in relation to a person purporting to act as a member of the board of directors of a water corporation, whether as chairperson, deputy chairperson or another director, is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

108. Improper use of information

A member or a person who has been a member of the board of directors of a water corporation must not make improper use of information acquired by virtue of that person's position as a member—

- (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 water corporation, whether or not detriment was caused.

Penalty: 20 penalty units.

109. Effect of pecuniary interests

- (1) A member of the board of directors of a water corporation who has a pecuniary interest in any matter in which the water corporation is concerned must—
- (a) if the member is present at a meeting of the board of directors or any of its committees at which the matter is to be

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considered, disclose the nature of the interest immediately before the consideration; or

- (b) if the member is aware that the matter is to be considered at a meeting of the board of directors or any of its committees at which the member does not intend to be present, disclose the nature of the interest to the chairperson of the water corporation before the meeting is held.
- (2) If a member of the board of directors of a water corporation has disclosed an interest to the chairperson under sub-section (1)(b), the chairperson must disclose that interest at the meeting at which the matter is considered, before the consideration of the matter.
- (3) The member of the board of directors—
- (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.
- (4) If a member of the board of directors discloses an interest under sub-section (1), a statement showing—
- (a) that the disclosure was made; and

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- (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—
 - (e) in the case of a disclosure made at or before a meeting of the board of directors, 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 board of directors.
- (5) A person must comply with sub-sections (1) and (3).
Penalty: 20 penalty units.
- (6) It is a defence to a charge under sub-section (5) for the person charged to prove that the person 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.
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- (7) The Magistrates' Court has jurisdiction over a charge under this section even though title to land may be genuinely in question.
- (8) A charge may not be filed for an offence under this section more than 3 years after the commission of the alleged offence.
- (9) The Minister may, by notice in writing to a water corporation, remove any disability imposed by this section in any case if so many of the members of the board of directors of the water corporation are affected that the Minister decides that the transaction of the business of the water corporation would be impeded.
- (10) For the purposes of sub-section (9), the Minister may remove, either indefinitely or for a specified time, any disability that would otherwise attach to a member, or class of members, of the board of directors, because of any interests, and in respect of any matters, that the Minister specifies in the notice.

110. What constitutes a pecuniary interest?

- (1) In this section "**shares**" includes stock, and "**share capital**" must be read accordingly.
- (2) A member of the board of directors of a water corporation does not have a pecuniary interest to which section 109 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 water corporation in common with other persons who receive a service from the water corporation; or

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- (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 water corporation offers, or proposes to offer, goods and services which are, or are proposed to be, offered generally by the water corporation on the same terms and conditions as to that member; or
 - (f) as a person who receives a service from the water corporation, or as a resident of a district under the control of the water corporation, who may be required by the water corporation to make any payment that other persons who receive that service, or other residents of the district, may be required by the water corporation 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
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- (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 board of directors of a water corporation; 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 a board of directors of a water corporation 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 109 does not preclude the member from taking part in the consideration of the matter.
 - (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 of the board of directors 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.
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- (7) The interest of a spouse or domestic partner of a member of the board of directors must, if known to the member, be taken to be an interest of the member for the purposes of this section.

111. Pecuniary interest does not prevent voting and consideration of some questions

Nothing in section 109 precludes any person from taking part in the consideration of, or voting on—

- (a) any question as to whether the amount payable for goods or services previously supplied or provided under any contract should be paid from any fund of the water corporation or from any other money belonging to the water corporation; or
- (b) any question as to whether an application should be made to the Minister for the exercise of the powers conferred by section 109(9).

112. Effect of finding of guilt for offence against section 109

- (1) A member of the board of directors of a water corporation who is found guilty of an offence against section 109 or any corresponding previous enactment is not capable of being or continuing to be a member of a board of directors of a water corporation for 7 years after that finding of guilt, unless—
- (a) on application by the person found guilty, the court by which he or she is found guilty; or

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- (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 found guilty 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 finding of guilt giving rise to the disqualification.

113. Submission of returns by members of the board and nominated officers

- (1) A person who becomes a member of a board of directors of a water corporation must within 30 days after becoming a member submit a primary return in the prescribed form to the managing director of the water corporation.
- Penalty: 20 penalty units.
- (2) If a person is re-appointed on completion of his or her term of office as a member of the board of directors of a water corporation, the member need not submit a new primary return.
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- (3) If the board of directors of a water corporation has resolved that nominated officers must submit returns—
- (a) each nominated officer 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 nomination as a nominated officer—

submit a primary return in the prescribed form to the managing director of the water corporation.

Penalty: 20 penalty units.

- (4) A member of the board of directors of a water corporation or a nominated officer of a water corporation must, on or before 31 July each year, submit an ordinary return in the prescribed form to the managing director of the water corporation.

Penalty: 20 penalty units.

114. Information to be disclosed in primary and ordinary returns

- (1) Each member of the board of directors of a water corporation and each nominated officer of a water corporation 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;

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- (b) the information referred to in paragraphs (b), (c), (d) and (f) of subsection (2).

Penalty: 20 penalty units.

- (2) Each member of the board of directors of a water corporation and each nominated officer must disclose in an ordinary return the following information in relation to the return period—
- (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 \$2000 in value;
 - (c) the address or description of any land in any district of the water corporation or in a district which adjoins a district of the water corporation 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 relative holds a beneficial interest;

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- (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.

- (3) If a member of the board of directors of a water corporation 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 sub-section (2)(a) to (f) 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.

- (4) In this section "**relative**" of a member of the board of directors of a water corporation or nominated officer includes a domestic partner, or relative of a domestic partner, of the member or nominated officer.

115. Water corporation to maintain register

- (1) A water corporation must—
 - (a) maintain a register of the interests of members of the board of directors and, where required, nominated officers; and
 - (b) enter in the register all the information given in the returns.
- (2) A water corporation must allow a person to inspect the register if that person applies, in writing and in accordance with the regulations, to the water corporation to do so.
- (3) The register may be inspected at the principal office of the water corporation during normal office hours.
- (4) A water corporation 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.
- (5) 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.

Penalty: 20 penalty units.

- (6) A person employed by a water corporation 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 water corporation, or make use of that information for any purpose other than

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the discharge of his or her official duties under this Act.

Penalty: 20 penalty units.

- (7) A water corporation must—
- (a) retain the returns of a member of the board of directors 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.
- (8) As soon as practicable after a person ceases to be a member of the board of directors of a water corporation or a nominated officer, the water corporation must delete the entries relating to that person from the register.

116. Contracts of insurance

The board of directors of a water corporation may by resolution allow members of the board to enter into contracts of insurance in respect of activities undertaken by directors as members of the board of directors.

117. Allowances

- (1) A water corporation may, subject to subsection (2), pay remuneration and allowances to its members of the board of directors.
- (2) The amounts of any remuneration and allowances paid by a water corporation must not exceed the amounts fixed by the Minister and, in the case of Melbourne Water Corporation, the Minister together with the Treasurer, in respect of that water corporation.

- (3) The amounts fixed by the Minister under this section may vary between water corporations.
- (4) This section does not apply to the remuneration and allowances paid to the Managing Director of a water corporation.

118. Expenses

Despite anything in this or any other Act, the members of the board of directors of a water corporation are, if the board so resolves, entitled to be reimbursed out of the water corporation's funds for their reasonable expenses incurred whilst carrying out functions and exercising powers under this Act.

Example

Reasonable expenses incurred when travelling to and from meetings, undertaking training or making site visits.

119. Employment of officers of water corporations

- (1) A water corporation may employ, on terms and conditions determined by the water corporation, such officers and employees as it considers necessary for the carrying out of its functions.
- (2) An officer of a water corporation must not, without permission from the water corporation—
 - (a) engage in any business; or
 - (b) engage in the private practice of any profession or trade; or

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- (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.
- (3) An officer who has been employed by a water corporation for 10 years is entitled in accordance with the regulations to be granted by the water corporation 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.
- (4) 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 water corporations to establish funds for the purpose of making payments in relation to long service leave;
 - (g) regulating the transfer of amounts from those funds;
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- (h) regulating agreements between water corporations;
 - (i) requiring the exchange of information between water corporations;
 - (j) regulating agreements between water corporations and other persons.
- (5) Any person who, in accordance with the regulations, enters into an agreement about long service leave with a water corporation is empowered to enter into that agreement and may do anything necessary or convenient for giving effect to the agreement.

120. Meetings and proceedings at meetings of the boards of directors

- (1) The board of directors of a water corporation must hold at least one ordinary meeting every 3 months.
 - (2) Subject to this Act, the board of directors of a water corporation may regulate its own procedure.
 - (3) The chairperson or, in his or her absence, the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, a member of the board of directors of a water corporation elected by the members present at the meeting, must preside at a meeting of the board.
 - (4) The quorum for a meeting of the board of directors of a water corporation is a majority of the members for the time being.
 - (5) A question arising at a meeting of the board of directors of a water corporation is determined by a majority of the votes of the members present and voting on the question.
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- (6) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
- (7) The board of directors of a water corporation must ensure that minutes are kept of each meeting of the board.
- (8) The board of directors of a water corporation must record in the minutes—
- (a) the names of the members present; and
 - (b) the names of the members voting on any question in relation to which a division is called.
- (9) The board of directors of a water corporation may permit its members to participate in a particular meeting by—
- (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of electronic or instantaneous communication.
- (10) A member of the board of directors of a water corporation who participates in a meeting under sub-section (9) is deemed to be present at the meeting.

121. Validity of decisions of board of directors of water corporation

An act or decision of the board of directors of a water corporation is not invalid merely because of—

- (a) a defect or irregularity in, or in connection with, the appointment of a member of the board of directors; or

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- (b) a vacancy in the membership of the board of directors, including a vacancy arising from the failure to appoint a member of the board of directors.

122. Special meetings

- (1) The chairperson of the board of directors of a water corporation may at any time (and must, if requested by 2 members) call a special meeting of the board.
- (2) Subject to sub-section (3), a special meeting must not be held unless at least 2 days' notice has been given to each member of the board of directors of a water corporation.
- (3) If all members of the board of directors of a water corporation consent in writing, a special meeting may be held with less than 2 days' notice being provided to each member.
- (4) Notice of a special meeting must—
 - (a) be in writing; and
 - (b) be served on each member of the board of directors, by post or in person; and
 - (c) specify the time and place of the meeting and the reason for it.
- (5) A special meeting must deal only with business stated in the notice.

122A. Resolutions without meetings

- (1) If all of the members of the board of directors of a water corporation for the time being see a document setting out a resolution and a majority of those members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those

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terms is deemed to have been passed at a meeting of the board 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 to sign signs the document.

- (2) If a resolution is deemed under sub-section (1) to have been passed at a meeting of the board of directors of a water corporation, each member of the board must be advised as soon as practicable and given a copy of the terms of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the board of directors of a water corporation, are deemed to constitute one document.

Division 4—Other Provisions Relating to Water Corporations

122B. Powers of delegation of water corporations

A water corporation may, by instrument under its official seal, delegate to—

- (a) a member of the board of directors of the water corporation or any other officer of the water corporation, by name or to the holder of the office; or
- (b) to any committee established by the water corporation under this Act, the members of which are members of the board of directors or officers of the water corporation; or

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- (c) with the consent of the Minister, to any other person or body, including any committee established by the water corporation under this Act, the members of which are not members of the board of directors or officers of the water corporation—

any function, power or duty of the water corporation other than—

- (d) this power of delegation; or
- (e) the power to make by-laws; or
- (f) any other power that is prescribed for the purposes of this section.

122C. Committees established by the board of directors of a water corporation

- (1) The board of directors of a water corporation—
 - (a) may establish a committee to advise the water corporation on any matter referred by the board of directors; and
 - (b) may establish a committee to exercise any power or perform any function, authority or discretion delegated to it by the board of directors.
 - (2) The following provisions apply to committees—
 - (a) the board of directors 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 committee may act despite any vacancy in its membership;
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- (c) subject to this Act and any rules made under paragraph (d), a committee may regulate its own proceedings;
 - (d) the board of directors of a water corporation 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;
 - (e) 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;
 - (f) a water corporation 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 water corporation;
 - (g) the Minister may specify rules of procedure for the exercise of a delegated power by a committee referred to in paragraph (f) and any purported exercise of that delegated power by such a committee otherwise than in accordance with those rules is void.
- (3) A water corporation that has an irrigation district may, in accordance with section 160, 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.
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- (4) By-laws made under sub-section (3) prevail, to the extent of any inconsistency, over the provisions of sub-section (2).
- (5) A member of a committee is entitled to be paid any fees and allowances fixed by the Minister.
- (6) A committee established by the board of directors of a water corporation is subject to the requirements of Part 13 about annual reports and audits as if it were a part of the water corporation.

122D. Incorporated committees

- (1) If the Minister declares a committee to be a corporation under section 122C(2)(e), 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.
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- (2) The common seal of a corporation constituted under section 122C(2)(e) 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 122C(2)(e) 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 122C(2)(e), 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; 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 122C(2)(e)—
- (a) consists of the members who constituted the committee immediately before the publication in the Government Gazette of the notice
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declaring the committee to be a corporation; and

- (b) is subject to all the provisions of this Act and the regulations relating to committees.

122E. Regulation making powers

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 a water corporation; and
- (b) the accreditation of any person who holds a specific office or position in a water corporation; 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 5—Particular Water Corporations

122F. Additional function of Central Gippsland Region Water Corporation

- (1) In addition to any other functions conferred on the Central Gippsland Region Water Corporation, the Corporation has the function of receiving waste from any person, whether inside or outside the sewerage districts managed and controlled by the Corporation, for treatment or disposal by the Corporation.

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(2) In this section—

"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 Corporation by by-law declares to be waste.

**PART 6A—DISTRICTS AND LAND
MANAGEMENT AREAS**

Division 1—Continuation of Districts

122G. Continuation of districts

- (1) Each Authority specified in an item in Column 1 of the Table in Schedule 1 (other than item 12) is deemed to have the irrigation district or districts, the water district or districts, the sewerage district or districts and the waterway management district or districts that the pre-dating Authority had immediately before the commencement of section 54 of the **Water (Governance) Act 2006**.

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- (2) Each Catchment Management Authority that is deemed, by section 98(1) of the **Catchment and Land Protection Act 1994**, to continue in existence as if it were established under Division 3 of Part 2 of that Act, is deemed to have the waterway management district that the Catchment Management Authority had immediately before the commencement of section 151 of the **Water (Governance) Act 2006**.
- (3) In this section "**pre-dating Authority**" has the same meaning as in Schedule 16.

122H. Waterway management district of Melbourne Water Corporation

- (1) The waterway management district of Melbourne Water Corporation is the land shown delineated in red on the plan lodged in the central plan office and numbered LEGL./05-406.
- (2) The Minister may, by determination, published in the Government Gazette—
- (a) add to the area of land that comprises the waterway management district of Melbourne Water Corporation; or
 - (b) diminish the area of land that comprises the waterway management district of Melbourne Water Corporation.
- (3) A determination under sub-section (2) takes effect from the date specified in the determination, which must be no earlier than the date of publication of the determination.

122I. Transfer of assets on inclusion or diminution of land in waterway management district of Melbourne Water Corporation

(1) In this section—

"previous body" means—

- (a) an Authority whose waterway management district has been diminished by determination under section 122H; or
- (b) any other body whose area of jurisdiction has been diminished by determination under section 122H;

"new body" means—

- (a) an Authority whose waterway management district has been increased by a determination under section 122H; or
- (b) any other body whose area of jurisdiction has been increased by a determination under section 122H.

(2) On the making of a determination under section 122H—

- (a) any rights, property and assets that are specified in the determination are deemed to be vested in the new body; and
 - (b) any debts, liabilities and obligations of the previous body arising out of any vesting under paragraph (a) are deemed to be the debts, liabilities and obligations of the new body; and
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- (c) the new body is substituted as a party to any arrangement or contract entered into by or on behalf of the previous body arising out of any vesting under paragraph (a).
- (3) Where any right, property or asset is vested in a new body under this section, the new body is liable to pay the previous body in whom the right, property or asset was vested the amount that is agreed on by the new body and the previous body, or if there is no agreement, the amount determined by the Governor in Council.
- (4) The amount referred to in sub-section (3), whether agreed on by the new body and the previous body or determined by the Governor in Council, must be an amount that is agreed or determined by taking any debts, liabilities and obligations that were vested in the previous body into account.

**Division 2—New Irrigation and Waterway
Management Districts**

122J. New irrigation districts

- (1) The Minister may, on application by an Authority, declare a new irrigation district and declare that the new irrigation district is an irrigation district of the Authority that made the application.
- (2) A declaration under sub-section (1) must be published in the Government Gazette.

122K. New waterway management districts

- (1) The Minister may declare a new waterway management district and specify, in the declaration, the Authority for the new waterway management district.
- (2) A declaration under sub-section (1) must be published in the Government Gazette.

Division 3—New and Extended Water Districts and Sewerage Districts and Extended Irrigation Districts and Waterway Management Districts

122L. Non-application of Division

This Division (other than sections 122U, 122V and 122W) does not apply to any extension or diminution of the waterway management district of Melbourne Water Corporation.

122M. Submission of proposal for establishment or extension of district

An Authority may, submit to the Minister a proposal—

- (a) to establish a new water district or sewerage district; or
- (b) to extend an existing water district, sewerage district, waterway management district or irrigation district.

122N. Restrictions on areas for which proposals for new or extended districts may be made

- (1) An Authority must not submit a proposal for—
 - (a) a new water district or sewerage district; or
 - (b) an extended water district, sewerage district, waterway management district or irrigation district—

if the whole or any part of the area to be covered by the proposal is within the area of interest of another Authority.

- (2) An Authority must not submit a proposal for—
 - (a) a new or extended sewerage district unless the area to be covered by the district is within the Authority's water district; and
 - (b) an extended waterway management district, unless the area to be covered by the district 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.

122O. Form of proposal

- (1) A proposal under section 122M must be in the form required by guidelines issued by the Minister.
- (2) The Minister may exempt a water corporation which submits a proposal for the extension of a district from complying with sub-section (1).

122P. Advertising proposal

- (1) An Authority that has submitted a proposal under section 122M to the Minister must—
- (a) give notice of the proposal to—
 - (i) all councils that are affected by the proposal; and
 - (ii) any person whom the Authority reasonably believes may be affected by the proposal and any person to whom the Minister has directed the Authority to so 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.
- (2) A notice under sub-section (1) must state that—
- (a) the Authority invites submissions on the proposal to be made to it; and
 - (b) any submission made to the Authority should set out the grounds on which it is made; and

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- (c) the time within which any submission on the proposal must be received by the Authority.
- (3) The Minister may exempt an Authority which submits a proposal to extend a district from the requirement to comply with sub-section (1) (other than sub-section (1)(c)(ii)) or with sub-section (2).

122Q. Submissions

- (1) An Authority that has submitted a proposal under section 122M to the Minister must invite submissions to the proposal in a notice under section 122P.
- (2) Any person who is affected by the proposal of an Authority submitted under section 122M may make a written submission on the proposal to the Authority.
- (3) A submission under sub-section (2) must be received by the Authority within one month of publication in the Government Gazette of notice of the proposal under section 122P.

122R. Final determination of Authority

- (1) An Authority that has submitted a proposal to the Minister under section 122M may finally determine whether to—
 - (a) proceed with the proposal as submitted to the Minister; or
 - (b) vary the proposal as a result of submissions received on the proposal; or
 - (c) not proceed with the proposal.

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- (2) The Authority must not make a determination under sub-section (1) unless the Authority has considered all submissions received by the Authority within the time for making submissions under section 122Q.
- (3) On making a determination under sub-section (1), the Authority must notify the Minister of the determination and send to the Minister copies of all submissions that the Authority received within the required time.

122S. Ministerial determination

On receiving notice of the Authority's decision on a proposal it has submitted under section 122M, the Minister may—

- (a) approve the proposal, with or without changes; or
- (b) refuse the proposal.

122T. Ministerial declaration

The Minister, on approving a proposal under section 122S must give effect to the substance of the proposal by declaring, by notice published in the Government Gazette, the new or extended district that was the substance of the proposal.

122U. Areas of interest

The Minister may, at the request of an Authority, by instrument published in the Government Gazette declare an area of land outside a water, sewerage or waterway management district to be an area of interest for that Authority in relation to a water district, sewerage district or waterway management district of that Authority.

122V. Advertising proposal for declaration

The Minister must not make a declaration under section 122U unless—

- (a) the Authority requesting the declaration—
 - (i) has given notice of the proposed declaration at least 30 days before its making to any public statutory body which the Authority considers may be affected by it; and
 - (ii) has published notice of the proposed declaration in a newspaper circulating generally in the area to be affected by the declaration; and
- (b) the Minister is satisfied that all public statutory bodies which may be affected by the proposed declaration have been adequately consulted about it.

122W. Powers of Authority in area of interest

- (1) If an area of interest is declared under section 122U in respect of a water district, sewerage district or waterway management district of an Authority, the Authority 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

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- (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.
- (2) If an area of interest in relation to a particular function has been granted to an Authority, another Authority may not be appointed under this Division to manage and control a district related to that function that is wholly or partly within that area of interest.
- (3) An area of interest of 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**.

Division 4—Changes to Existing Districts

122X. Non-application of Division

This Division does not apply to any extension or diminution of the waterway management district of Melbourne Water Corporation.

122Y. Power of Authorities to change 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
- (iv) irrigation districts—
- that are under the management and control of the Authority; or

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- (b) diminish the extent of a water district, sewerage district, waterway management district or irrigation district of the Authority; 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 a water district, sewerage district, waterway management district or irrigation district of the Authority 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.

122Z. Power of Minister to change districts

- (1) The Minister may, by determination—
- (a) unite any 2 or more—
 - (i) water districts; or
 - (ii) sewerage districts; or
 - (iii) waterway management districts;
or
 - (iv) irrigation districts—
of the same Authority; or
 - (b) diminish the extent of a water district, sewerage district, waterway management district or irrigation district of an Authority; or
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- (c) on the request of an Authority, abolish a water district, sewerage district or irrigation district of the Authority; or
 - (d) abolish a waterway management district; or
 - (e) divide a water district, sewerage district, waterway management district or irrigation district of an Authority into 2 or more districts.
- (2) On making a determination under sub-section (1), the Minister may make any determination that the Minister considers desirable as to—
- (a) providing for any adjustment to areas affected by the determination under sub-section (1); and
 - (b) any other matter as a result of the determination under sub-section (1).
- (3) The Minister must publish notice of any determination under this section in the Government Gazette.

Division 5—Environmental and Recreational Areas

122ZA. Environmental and recreational areas

- (1) The Minister may determine land—
- (a) which is owned or controlled by an Authority; or
 - (b) which is within the water district, sewerage district, waterway management district or irrigation district of an Authority, or which is significant to the exercise of a function of an Authority and which is owned or
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controlled by another public statutory
body or which is Crown land—

to be an environmental area or a recreational
area under the management and control of
the Authority specified by the Minister and
for the period specified by the Minister in the
determination.

- (2) The Minister must not make a determination
under sub-section (1)(b) unless the Minister
has first obtained the consent of the public
statutory body or the Minister responsible for
the management of the land (as the case
requires) to the making of that determination.

122ZB. Functions of Authority in area

- (1) An Authority that has the management and
control of any environmental or recreational
area has the following functions—
- (a) in accordance with the directions of the
Minister, to prepare a management
strategy as to recreational uses for the
area;
 - (b) to improve the area;
 - (c) to provide and arrange services and
facilities in the area;
 - (d) to control land use in the area.
- (2) Subject to any determination under section
122ZA establishing an area, an Authority is
under no duty to exercise its functions under
sub-section (1).

122ZC. Contributions by public authorities

Despite anything in any other Act, if an environmental area or a recreational area is determined under section 122ZA, 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.

122ZD. Revenue from land

Any revenue collected 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.

122ZE. Limitation of exercise of powers under this Division

- (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.

122ZF. Regulation making powers as to areas

The Governor in Council may make regulations for or with respect to—

- (a) the granting of leases or licences for areas determined under this Division, and in particular as to the following matters—

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- (i) the Authority that may grant any such lease or licence, which must be the Authority that has the management and control of the area and that has a proprietary interest in the area;
 - (ii) the purposes for which any such lease or licence may be granted, which must be for activities carried on in, or things introduced into, the area; and
- (b) the charging of fees for leases or licences over areas determined under this Division; and
- (c) the powers of the Authority in relation to the removal of any unregistered or abandoned motor vehicle from an area determined under this Division 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 necessary or convenient matter.
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**PART 6B—DUTIES OF WATER
CORPORATIONS**

Division 1—Customer Dispute Resolution

122ZG. Customer dispute resolution

- (1) A water corporation must, on or before a date determined by the Minister administering the **Essential Services Commission Act 2001**, enter into a customer dispute resolution scheme approved by the Essential Services Commission established under the **Essential Services Commission Act 2001**.
 - (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 Essential Services Commission 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
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- (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 a water corporation that has a water district, a sewerage district or an irrigation district.

Division 2—Dividends

122ZH. Dividends

Each water corporation must pay to the State such dividend, at such time and in such manner, as is determined by the Treasurer after consultation with the board of directors of the water corporation and the Minister.

Division 3—Repayment of Capital

122ZI. Repayment of capital

- (1) The capital of a water corporation is repayable to the State at such times, and in such amounts, as the Treasurer directs in writing, after consultation with the Minister and the board of directors of the water corporation.
- (2) In giving a direction under this section, the Treasurer must have regard to any advice that the board of directors has given to the Treasurer in relation to the water corporation's affairs.

Division 4—Annual Report

122ZJ. Information to be included in annual report

- (1) A water corporation, in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, must include the following information—
 - (a) in relation to each person, who is not a natural person, who uses water supplied by the water corporation for purposes that are not farming, irrigation or domestic purposes, at a volume that is within a specified range—
 - (i) the name of the person; and
 - (ii) the information (if any) as to the person's participation in any water conservation program; and
 - (b) in relation to each specified range, the number of persons to whom paragraph (a) applies who are within the range.
- (2) For the purposes of this section the Minister may specify one or more range or ranges of volumes.
- (3) In this section "**specified range**" means a range of volumes specified by the Minister under sub-section (2).

PART 6C—STORAGE MANAGERS

122ZK. Appointment of storage managers

- (1) The Minister may, by instrument, appoint an Authority to carry out any of the functions under this Part in relation to any water storage or land specified in the instrument.
- (2) In an instrument under sub-section (1) the Minister—
 - (a) must describe the land, including any water storage, in respect of which the storage manager is to exercise functions under this Part; and
 - (b) may specify terms and conditions to which the appointment is subject; and
 - (c) must specify the term of the appointment.
- (3) Before making an appointment of an Authority under sub-section (1), the Minister must consult with—
 - (a) any other Authority that is exercising any function to which the appointment would apply on the land to be specified in the instrument of appointment; and
 - (b) any other Authority that owns any land that is to be specified in the instrument of appointment or works on that land.

122ZL. Functions of storage managers

- (1) The functions of a storage manager appointed under this Part in respect of the land to which the appointment relates are—
 - (a) to control and manage any water storage on the land specified in the instrument of appointment and any

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water or works on the land so specified, in a manner that is consistent with this Act and that will maintain the water quality of any water storage on the land;

- (b) to carry out any other functions that are conferred on the storage manager by or under this Act or any instrument made under this Act.
- (2) An Authority, in performing its functions under sub-section (1) must have regard to—
- (a) protecting the ecological values of the water systems relating to the land specified in the instrument of appointment; and
 - (b) protecting the reliability and quality of water supply; and
 - (c) subject to water supply needs, minimizing the impact on the environment of the carrying out of any such function and maximizing the benefit to the environment of the carrying out of any such function; and
 - (d) developing and implementing strategies to mitigate flooding, where possible.

122ZM. Management agreements for water storages

- (1) If an Authority that has been appointed as the storage manager of any land under this Part, does not hold a proprietary interest in the whole or part of the land described in the instrument appointing the storage manager, the Authority must enter into an agreement with the owner of the land as to the management of the land.

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- (2) An agreement under sub-section (1)—
 - (a) must be in writing; and
 - (b) must be consistent with this Act; and
 - (c) may be amended from time to time by further written agreement between the parties.
- (3) An agreement under sub-section (1) must set out procedures to be followed to prevent or settle disputes concerning the management of the land specified in the instrument of appointment of the Authority that arise between the parties during the currency of the agreement, including the submission of any unresolved disputes to the Minister for a decision that is binding on the parties.

122ZN. Powers for storage managers to charge fees

A storage manager appointed under this Part may charge a fee for a service provided by the storage manager to another Authority in carrying out its functions under this Act."

55. Ministerial approval of abandonment or decommissioning of works

After section 139(2) of the **Water Act 1989**
insert—

- "(3) The Minister may impose conditions on any approval given under sub-section (1).
- (4) In respect of each proposal submitted to the Minister under section 139A, the Minister must publish notice of whether he or she has approved or refused to approve the proposal under sub-section (1)—

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- (a) in a newspaper circulating generally in the area to which the proposal relates; and
- (b) in the Government Gazette."

56. Insertion of new sections 139A to 139E

After section 139 of the **Water Act 1989** insert—

"139A. Submission of proposal for approval of the abandonment or decommissioning of major works

- (1) An Authority which proposes to abandon or decommission any major works must submit the proposal to the Minister for approval under section 139.
- (2) When making a submission under subsection (1), the Authority must give to the Minister copies of all submissions it is required to consider under section 139D.

139B. Notification of proposal to approve the abandonment or decommissioning of major works

- (1) Before making a submission under section 139A, the Authority must cause notice of the proposal to be published—
 - (a) in a newspaper circulating generally in the area to which the proposal relates; and
 - (b) in the Government Gazette.

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- (2) A notice under sub-section (1) must state that—
- (a) the Authority invites submissions on the proposal to be made to it; and
 - (b) any submission made to the Authority must set out the grounds on which it is made; and
 - (c) the time within which submissions on the proposal must be received by the Authority.

139C. Submissions on proposal

- (1) An Authority that has submitted a proposal for the approval of the Minister under section 139A must, in the notice under section 139B invite submissions on the proposal.
- (2) Any person who is affected by the proposal may make a written submission on the proposal to the Authority.
- (3) A submission under sub-section (2) must be received by the Authority within one month of the publication of the notice of the proposal in the Government Gazette under section 139B.

139D. Authority to consider submissions

Before making a submission to the Minister under section 139A, an Authority must consider all submissions made to it on the proposal within the time specified in section 139C(3).

139E. Appointment of panel by Minister

- (1) Before making a decision under section 139, the Minister may appoint a panel of persons and refer to the panel for consideration the submission of an Authority under section 139A, and, in particular, any submissions on that submission given by the Authority to the Minister.
- (2) The panel appointed by the Minister must consider the submissions referred to it by the Minister and must report on that consideration to the Minister within the time specified by the Minister."

57. Insertion of new section 141A

After section 141 of the **Water Act 1989** insert—

"141A. Circumstances in which Melbourne Water Corporation to continue water supply

- (1) Despite section 141, Melbourne Water Corporation must supply or continue to supply water to—
 - (a) a retail licensee to the extent necessary to enable it to perform its functions or exercise its powers under its licence;
 - (b) the holder of a bulk entitlement to water in Melbourne Water Corporation's works granted in accordance with the provisions of Division 1 of Part 4;
 - (c) any other person or class of person prescribed for the purposes of this section by regulations made by the Governor in Council.

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- (2) Despite any provision to the contrary made by or under this or any other Act, the terms and conditions on which water is supplied under sub-section (1) are as agreed between Melbourne Water Corporation and the retail licensee, bulk entitlement holder or other person or, in default of agreement, as determined by the Essential Services Commission."

58. Serviced properties

After section 144(4) of the **Water Act 1989** insert—

- "(5) This section does not apply to Melbourne Water Corporation."

59. Insertion of new section 144A

After section 144 of the **Water Act 1989** insert—

"144A. Serviced property, Melbourne Water Corporation

For the purposes of any function of Melbourne Water Corporation under Part 10, serviced property is any land in the waterway management district of Melbourne Water Corporation—

- (a) that is rateable land within the meaning of the **Local Government Act 1989**; or
- (b) that is, by the operation of section 258(4), deemed to be rateable for the purposes of section 258(1)."

60. Structures near works

For section 148(1)(b) of the **Water Act 1989**—

"(b) any structure to be built, or any filling to be placed—

- (i) in the case of Melbourne Water Corporation, within 5 metres laterally of any works of Melbourne Water Corporation; or
- (ii) in the case of any other Authority, within 1 metre laterally of any of the works of the Authority; or".

61. Notice of intention to affect works

After section 152(4) of the **Water Act 1989**
insert—

'(5) In this section and in sections 153 and 154
"public statutory authority" includes—

- (a) a passenger transport company within the meaning of the **Transport Act 1983**;
- (b) a rail corporation, a tram operator or a train operator within the meaning of the **Rail Corporations Act 1996**.'

62. By-laws

- (1) In section 160(1) of the **Water Act 1989** omit
", subject to section 161,".
- (2) In section 160(1)(b) of the **Water Act 1989**, for
"and control" **substitute** "and control including,
but not limited to—
 - (i) the control, management and use of the land,
services and facilities in the area, including
fees for the provision or use of any such
services or facilities or for entry to land on
which such services or facilities are situated;

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- (ii) the protection of the land, services and facilities;
- (iii) the protection of people in the area from injury or nuisance;
- (iv) the conservation and preservation of flora, fauna and habitat in the area;
- (v) the control of the introduction of any new flora or fauna to the area;
- (vi) the control of the numbers of any flora or fauna in the area; and".

63. Repeal of section 161

Section 161 of the **Water Act 1989** is **repealed**.

64. Repeal of reference

In section 161D of the **Water Act 1989** omit
", Catchment Management Authority".

65. Insertion of new heading

After the heading to Part 8 of the **Water Act 1989**
insert—

**"Division 1—Authorities with a water
district"**.

66. Application of Division 1 of Part 8

- (1) Insert the following heading to section 162 of the
Water Act 1989—

"Application of this Division".

- (2) In section 162 of the **Water Act 1989**, for "Part"
substitute "Division".

67. Water supply functions not to include storage management functions

- (1) In section 163(1) of the **Water Act 1989**, after "has the following functions" **insert** "(to the extent that the functions are not storage management functions that have been conferred on an Authority under Part 6C)".
- (2) Section 163(2) of the **Water Act 1989** is **repealed**.

68. Insertion of new section 170CA

After section 170C of the **Water Act 1989**
insert—

"170CA. Requirement to publish permanent water saving plan

An Authority must publish in the Government Gazette the following—

- (a) on the adoption of a permanent water saving plan by the Authority under section 170A(9), the plan as so adopted;
- (b) on the variation of a permanent water saving plan by the Authority under section 170B(8), the plan as so varied;
- (c) on the adoption of a revised permanent water saving plan by the Authority under section 170B(8), the revised plan as so adopted."

69. By-laws—to include power to serve infringement notices

- (1) In section 171(1) of the **Water Act 1989** for "sections 160 and 161" **substitute** "section 160".

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- (2) After section 171(1)(b) of the **Water Act 1989** **insert—**
- "(ba) prescribing offences, in respect of contravention of restrictions or prohibitions, set out in 4 stages, on the use of water in the whole or any part of the district of the Authority, for which an infringement notice may be served; and
 - (bb) the infringement penalties for any offence for which an infringement notice may be served; and
 - (bc) prescribing persons or classes of persons for the purposes of serving infringement notices; and".
- (3) After section 171(2) of the **Water Act 1989** **insert—**
- "(3) An infringement penalty imposed for a contravention of an offence for which an infringement notice may be served under a by-law made under sub-section (1)(ba) must not exceed—
- (a) for an offence in respect of a stage 1 restriction or prohibition on the use of water, 2 penalty units;
 - (b) for an offence in respect of a stage 2 restriction or prohibition on the use of water, 3 penalty units;
 - (c) for an offence in respect of a stage 3 restriction or prohibition on the use of water, 4 penalty units;
 - (d) for an offence in respect of a stage 4 restriction or prohibition on the use of water, 5 penalty units."
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70. Repeal of reference

In section 171A(2) of the **Water Act 1989** omit
", 161".

71. Insertion of new Division 2 in Part 8

After section 171A of the **Water Act 1989**
insert—

"Division 2—Melbourne Water Corporation

**171B. Water supply function of Melbourne
Water Corporation**

Melbourne Water Corporation has the
following functions—

- (a) to provide, manage, operate, maintain
and protect water supply systems for
the supply of water to all or any of the
following—
 - (i) the holder of a water licence under
the **Water Industry Act 1994**;
 - (ii) the holder of a water and sewerage
licence under the **Water Industry
Act 1994**;
 - (iii) the holder of a bulk entitlement to
water in the works of Melbourne
Water Corporation granted under
Division 1 of Part 4;
 - (iv) an Authority that has a water
district or an irrigation district;
 - (v) any other person or class of person
prescribed for the purposes of this
section;

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- (vi) any person with whom Melbourne Water Corporation has an agreement to supply water that is in force immediately before the commencement of section 162 of the **Water (Governance) Act 2006**;
 - (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 supply water to all or any of the persons referred to in paragraph (a)(i) to (vi);
 - (d) to develop and implement programs for the conservation and efficient use of water;
 - (e) to manage, operate, maintain and protect water storages for the collection, harvesting, storage, treatment and distribution of water;
 - (f) to carry out the operational, environmental, financial and reporting obligations in any bulk entitlement to water in any works of Melbourne Water Corporation;
 - (g) to provide and maintain facilities for the recreational use of water storages and surrounding areas, where this use is compatible with the protection of a water storage and the other uses to which the water in the water storage may be put;
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- (h) to protect the ecological values of water storages, and to develop and implement programs related to the ecological values of water storages.

171C. System access

- (1) Melbourne Water Corporation must allow its works to be used to the extent necessary to enable water—
 - (a) to which a person has a right under a bulk entitlement under Division 1 of Part 4; or
 - (b) to which a licence granted to a person under section 51 of the **Water Act 1989** relates; or
 - (c) required to be supplied to a person by the holder of a water headworks licence issued under Division 1 of Part 2 of the **Water Industry Act 1994** or by another Authority within the meaning of Division 1 of Part 4 of the **Water Act 1989**—

to be supplied to that person by means of those works.

- (2) Sub-section (1)—
 - (a) does not apply if the works of Melbourne Water Corporation do not have sufficient capacity to enable the water to be supplied by means of those works;
 - (b) does not limit or affect any other duty or obligation imposed on Melbourne Water Corporation by or under this or any other Act.

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- (3) Subject to any determination made by the Essential Services Commission under Part 3 of the **Essential Services Commission Act 2001**, the terms and conditions on which a person is allowed to use the works of Melbourne Water Corporation as mentioned in sub-section (1) are as agreed between the Corporation and that person.

171D. Fire plugs and free water—Melbourne Water Corporation

- (1) A council may require Melbourne Water Corporation to fix fire plugs to any of the works of Melbourne Water Corporation in locations that are determined by Melbourne Water Corporation as being suitable 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) Melbourne Water Corporation 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) Melbourne Water Corporation must—
- (a) keep all fire plugs that are fixed to its works 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 attached to its works for cleaning sewers and drains, unless the water is
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unavailable due to a shortage of water or another unavoidable cause, or due to repairs.

- (5) Sub-section (4)(a) does not require Melbourne Water Corporation to make sure that water pressure is adequate for fire fighting.

171E. Power to enter land for water supply protection

- (1) An officer of Melbourne Water Corporation 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).

171F. Notice of contravention for water supply protection

- (1) Subject to sub-section (2), Melbourne Water Corporation 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 Melbourne Water Corporation, likely to affect the purity of Melbourne Water Corporation'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

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the substance or thing is specifically authorised by or under this or any other Act.

- (3) Section 151 applies to a notice under subsection (1) as if it were a notice of contravention under section 151(1).

171G. Immediate action for water supply protection

Melbourne Water Corporation may, immediately and without notice, remove from—

- (a) any land that is adjacent to any waterway or works forming part of Melbourne Water Corporation's water supply system; or
- (b) any water in or adjacent to any such waterway or works—

any substance or thing that is, in Melbourne Water Corporation's opinion, likely to affect the purity of Melbourne Water Corporation's water supply system.

171H. By-laws

- (1) Melbourne Water Corporation may, in accordance with section 160, 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

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- 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
 - (f) regulating or prohibiting any activity that—
 - (i) is carried out within 40 metres of works or waterways forming part of Melbourne Water Corporation'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 Melbourne Water Corporation's works; and
 - (h) regulating or prohibiting the access to or use of land and works under the management and control of Melbourne Water Corporation; 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 Melbourne Water Corporation 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
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- (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 171F; or
- (d) if no notice of contravention is served, after conviction of the person for the offence.

171I. 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 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."

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72. Insertion of new division heading in Part 9

After the heading to Part 9 of the **Water Act 1989**
insert—

**"Division 1—Authorities other than
Melbourne Water Corporation".**

73. Substitution of section 172

For section 172 of the **Water Act 1989**
substitute—

'172. Definitions

In—

- (a) section 179, "**Authority**" means a water corporation within the meaning of Part 6 other than Melbourne Water Corporation;
- (b) the remaining provisions of this Division, "**Authority**" means a water corporation within the meaning of Part 6 that has a sewerage district.'

74. Functions of Authorities under Part 9

Section 173(2) of the **Water Act 1989** is
repealed.

75. Repeal of reference

In section 181(1) of the **Water Act 1989**, for
"sections 160 and 161" **substitute** "section 160".

76. Repeal of reference

In section 184(1) of the **Water Act 1989**, for
"sections 160 and 161" **substitute** "section 160".

77. Insertion of new Division in Part 9

At the end of Part 9 of the **Water Act 1989**
insert—

'Division 2—Melbourne Water Corporation

184A. Sewerage functions of Melbourne Water Corporation

Melbourne Water Corporation has the following functions—

- (a) to provide, manage, operate, maintain, and protect systems for the collection, in bulk, of sewage from all or any of the following—
 - (i) the holder of a water and sewerage licence under the **Water Industry Act 1994**;
 - (ii) an Authority with a sewerage district;
 - (iii) any other person or class of person prescribed for the purposes of this section;
- (b) to provide, manage, operate, maintain, and protect systems for the conveyance, treatment and disposal of any sewage collected under paragraph (a);
- (c) by agreement or consent, to provide, manage, operate, maintain, and protect systems for the collection in bulk, conveyance, treatment and disposal of trade waste;
- (d) to develop and implement programs and provide, manage and operate systems for the recycling, re-use and supply of treated waste and water

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by-products of sewage treatment and trade waste treatment;

- (e) the acceptance, storage, treatment and disposal of biosolids and other waste;
- (f) to identify community needs relating to sewage treatment services and to plan for the future needs to the community relating to those services.

184B. Application of certain provisions of Division 1 of Part 9

Sections 176, 177, 178, 181 and 182 of Division 1 apply to Melbourne Water Corporation when it is exercising a function under section 184A, as if a reference to "Authority" in those sections were a reference to "Melbourne Water Corporation".

78. Designated waterways—Authorities

In section 188(1) of the **Water Act 1989**, after "An Authority" **insert** ", other than Melbourne Water Corporation,".

79. Insertion of new section 188A

After section 188 of the **Water Act 1989** **insert**—

'188A. Designated waterways, land or works—Melbourne Water Corporation

- (1) Any—
 - (a) waterway that is within the waterway management district of Melbourne Water Corporation is a designated waterway of Melbourne Water Corporation, except—

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- (i) any waterway to the extent that it is within the port waters of the Port of Melbourne under the **Port Services Act 1995**; and
 - (ii) that section of the Yarra River from its mouth up to the downstream side of the Bolte Bridge; and
 - (iii) that section of the Maribyrnong River from its mouth up to the downstream side of Shepherds Bridge; and
 - (iv) that section of the Moonee Ponds Creek from its mouth up to the downstream side of the Footscray Bridge; and
 - (v) that section of the Stony Creek in Yarraville from its mouth up to the downstream side of the Hyde Street Bridge; and
- (b) land which abuts a waterway that is a designated waterway of Melbourne Water Corporation under paragraph (a), or is within 20 metres of such a waterway is designated land of Melbourne Water Corporation.
- (2) Any land or works that are within the waterway management district of Melbourne Water Corporation are designated land or works of Melbourne Water Corporation—
- (a) if they are works—
 - (i) owned by Melbourne Water Corporation under section 138 for the purpose of the exercise of functions under this Part; or
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- (ii) declared to be designated works of Melbourne Water Corporation under sub-section (3); and
- (b) in the case of land or works situated on land that has been added to the waterway management district of Melbourne Water Corporation, if immediately before that addition, they were land or works of the Authority in whose waterway management district they were situated.
- (3) Melbourne Water Corporation may, by declaration, published in the Government Gazette, declare—
- (a) any drain vested in Melbourne Water Corporation (that was vested in the pre-dating corporation immediately before the commencement of section 163 of the **Water (Governance) Act 2006**) to be designated works; and
- (b) any drain in the waterway management district of Melbourne Water Corporation to be designated works.
- (4) The requirements for a declaration that are specified in section 188(2) apply to a declaration under sub-section (3).
- (5) In this section, "**pre-dating corporation**" has the same meaning as in Schedule 16.!

80. Repeal of redundant sections

Sections 190, 191 and 192 of the **Water Act 1989** are **repealed**.

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81. Owner finance

In section 196(1) of the **Water Act 1989**, after "its functions" **insert** "under this Part".

82. Finance for increased use of services

In section 197(1) of the **Water Act 1989**, after "its functions" **insert** "under this Part".

83. Application of Division 3 of Part 10

For section 198(1) of the **Water Act 1989** **substitute**—

"(1) This Division applies to—

- (a) Melbourne Water Corporation, in relation to Melbourne Water Corporation's waterway management district; and
 - (b) any other Authority to the extent that that Authority has a waterway management district to which the Minister declares that this Division applies.
- (2) A declaration under this section must be in writing and published in the Government Gazette.
- (3) Any declaration made by the Minister under this section as in force before the commencement of section 83 of the **Water (Governance) Act 2006**, being a declaration in force immediately before that commencement, is deemed, on and from that commencement, to be a declaration made by the Minister under this section as amended by section 83 of that Act."

84. Drainage functions of Melbourne Water Corporation

- (1) In section 199(1) of the **Water Act 1989**—
- (a) after "An Authority" **insert** "other than Melbourne Water Corporation";
 - (b) in paragraph (a), **omit** "and, with the consent of the Minister, the drainage of water from that district into any waterway outside that district".
- (2) After section 199(1) of the **Water Act 1989** **insert**—
- "(1A) Melbourne Water Corporation has the following functions—
- (a) to provide, manage, operate, protect and maintain drainage systems into all designated waterways and all designated land and works within its waterway management district;
 - (b) to develop and implement plans or schemes, and to take any action necessary—
 - (i) to bring into operation new drainage systems; and
 - (ii) to improve stormwater quality of water in drainage systems;
 - (c) the functions set out in sub-section (1) (c) and (d)."
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85. Application of Division 4 of Part 10

- (1) In section 201(1) of the **Water Act 1989**—
 - (a) after "applies to—" **insert**—

"(a) Melbourne Water Corporation, in relation to Melbourne Water Corporation's waterway management district; and";
 - (b) in paragraph (b), for "any Authority" **substitute** "any other Authority".
- (2) For section 201(2) of the **Water Act 1989** **substitute**—

'(2) A declaration under sub-section (1) must be in writing and published in the Government Gazette.
- (3) In this Division, a reference to "**Authority**" includes—
 - (a) in relation to the waterway management district of Melbourne Water Corporation, Melbourne Water Corporation; and
 - (b) in relation to any area to which sub-section (1)(c) applies, the Minister.'

86. Floodplain management functions of Melbourne Water Corporation

- (1) In section 202 of the **Water Act 1989**—
 - (a) before "An Authority" **insert** "(1)";
 - (b) after "An Authority" **insert** "(other than Melbourne Water Corporation)";
 - (c) in paragraph (f), **omit** "of Infrastructure".

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(2) At the end of section 202 of the **Water Act 1989** **insert**—

"(2) Melbourne Water Corporation has the following functions in relation to its waterway management district—

- (a) to find out how far floodwaters are likely to extend and how far they are likely to rise;
- (b) to declare flood levels and flood fringe levels;
- (c) to declare building lines;
- (d) to develop and implement plans and to take any action necessary to minimise flooding and flood damage;
- (e) to control developments that have occurred or that may be proposed for land adjoining waterways;
- (f) to provide advice about flooding and controls on development to local councils, the Secretary to the Department and the community."

87. Declarations of flood levels etc.

In section 203(1) of the **Water Act 1989**, after "section 202(b) and (c)" **insert** "or section 202(2)(b) and (c)".

88. Declarations of floodway areas etc.

For section 205(2)(a) of the **Water Act 1989** **substitute**—

"(a) at the request of an Authority that has the functions referred to in section 202(1)(a), (b) and (c) or that has the functions referred to in section 202(2)(a), (b) and (c);".

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89. Notice of declaration

In section 206(1)(c) of the **Water Act 1989**, omit "of Infrastructure".

90. Control of works and structures

(1) In section 208(1) of the **Water Act 1989**, after "section 202(d) or (e)" **insert** "or referred to in section 202(2)(d) or (e)".

(2) In section 208(2) of the **Water Act 1989**, after "section 202(d) or (e)" **insert** "or referred to in section 202(2)(d) or (e)".

91. Removal of existing works and structures

In section 209(1) of the **Water Act 1989**, after "section 202(d) or (e)" **insert** "or referred to in section 202(2)(d) or (e)".

92. Availability of information

At the end of section 212 of the **Water Act 1989** **insert**—

"(2) Despite sub-section (1), Melbourne Water Corporation may impose a charge under section 264 for any information given under sub-section (1)."

93. Revision of outdated reference

In section 218(4)(b) of the **Water Act 1989**, omit "of Infrastructure".

94. Repeal of reference and Statute Law Revision

(1) In section 219(1) of the **Water Act 1989**, for "sections 160 and 161" **substitute** "section 160".

(2) In section 219(1)(d) of the **Water Act 1989**, for "carried on on" **substitute** "carried out on".

95. Powers of Authorities

For section 222(1)(a)(i) and (ii) of the **Water Act 1989 substitute**—

"(i) for the purpose of irrigation; and

(ii) for stock and domestic use—

at the volumes and for the periods that are determined by the Authority in accordance with this Part; and".

96. Mortgagee consent

For section 226(2) of the **Water Act 1989 substitute**—

"(2) An Authority must refuse an application under sub-section (1)(a) if consent has not been obtained to the application to transfer a volume or period from any one of the mortgagees of any parcel of land from which the volume or period is being transferred."

97. Documents to accompany applications under Part 11

In section 230(c) of the **Water Act 1989**, for "prescribed document or prescribed information" **substitute** "documents or information required by the Authority".

98. Repeal of reference

In section 235(1) of the **Water Act 1989**, for "appointment of—

(a) an Authority; or

(b) Melbourne Water Corporation—

to decide the issue" **substitute** "appointment of an Authority to decide the issue".

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99. Repeal of reference

In section 237(2) of the **Water Act 1989**, for "appointment of—

- (a) an Authority; or
- (b) Melbourne Water Corporation—

to decide the issue" **substitute** "appointment of an Authority to decide the issue".

100. Repeal of reference

In section 238(3) of the **Water Act 1989**, for "appointment of—

- (a) an Authority; or
- (b) Melbourne Water Corporation—

to decide the issue" **substitute** "appointment of an Authority to decide the issue".

101. Repeal of reference

In section 242(b) of the **Water Act 1989**, for "appointment of—

- (i) an Authority; or
- (ii) Melbourne Water Corporation—

to decide the issue" **substitute** "appointment of an Authority to decide the issue".

102. Repeal of reference

- (1) In section 243(1) of the **Water Act 1989**, omit "or Melbourne Water Corporation".
- (2) In section 243(2) of the **Water Act 1989**, omit "or Melbourne Water Corporation".

103. Corporate plans

- (1) For section 247(1) of the **Water Act 1989** substitute—

"(1) An Authority must prepare a corporate plan and must submit it to—

- (a) the Minister on or before the date specified by the Minister, or, if no such date is specified, at least 2 months before it intends to implement the plan or any part of it; and
- (b) the Treasurer, at the same time as it submits the plan to the Minister."

- (2) After section 247(2) of the **Water Act 1989** insert—

"(2A) The Treasurer may make any comments on the plan that he or she thinks fit to the Authority, and the Authority must have regard to any comments made by the Treasurer under this sub-section."

104. Insertion of new sections 250 and 251

After section 249 of the **Water Act 1989** insert—

"250. Board to notify Minister and Treasurer of significant affecting events etc.

If the board of directors of an Authority forms the opinion that matters have arisen—

- (a) that may prevent, or significantly affect, achievement of the objectives of the Authority under the corporate plan; or

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- (b) that may prevent, or significantly affect, achievement of the financial targets under the plan—

the board of directors must immediately notify the Minister and the Treasurer of its opinion and the reasons for the opinion.

251. Report on achievement of corporate plan

- (1) The Minister or the Treasurer may, from time to time, require an Authority to provide a report on the progress the Authority is making in achieving any targets or objectives in its corporate plan.
- (2) A report under sub-section (1) must—
- (a) be given in the form and manner; and
 - (b) address the issues; and
 - (c) relate to the period—
- specified by the person to whom the report is to be given."

105. Borrowing power of Melbourne Water Corporation

In the definition of "declared Authority" in section 254(1) of the **Water Act 1989**, after "that Act applies" insert "or Melbourne Water Corporation".

106. Definitions—Division 5 of Part 13

At the end of section 257 of the **Water Act 1989** insert—

- '(2) In this Division a reference to "Authority"—
- (a) in section 264 includes a reference to Melbourne Water Corporation, when exercising any function under this Act; and

- (b) in any other provision of this Division does not include a reference to Melbourne Water Corporation, except where Melbourne Water Corporation is exercising a function under Part 10.!

107. Properties subject to tariff

After section 258(2) of the **Water Act 1989**
insert—

- "(3) Sub-section (1A) does not apply to Melbourne Water Corporation.
- (4) In relation to any tariff that may be set by Melbourne Water Corporation under this Division, land that is owned by a declared public statutory authority that is not used exclusively as public open space or as a park is deemed to be land that is rateable for the purposes of sub-section (1).
- (5) For the purposes of sub-section (4), the Governor in Council, by Order published in the Government Gazette, may declare a public statutory authority constituted under the laws of Victoria to be a declared public statutory authority.
- (6) Despite anything to the contrary in any other provision of this Act, the Treasurer, after consultation with the Minister responsible for a declared public statutory authority, may give his or her approval to Melbourne Water Corporation levying an amount in lieu of a fee under a tariff in respect of a financial year on land owned by the public statutory authority that, by operation of sub-section (4), is deemed to be land that is rateable for the purposes of sub-section (1).

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- (7) The amount to be levied in lieu of a fee under a tariff in accordance with sub-section (6) is the amount agreed between the public statutory authority and Melbourne Water Corporation or, in the absence of agreement, determined by the Treasurer.
- (8) An approval may only be given by the Treasurer under sub-section (6) on the application of Melbourne Water Corporation.
- (9) For the purposes of section 281A an amount to be levied in lieu of fee under a tariff under this section is to be taken to be such a fee."

108. Tariffs

(1) In section 259(2) of the **Water Act 1989**—

(a) after paragraph (c) **insert**—

"(ca) in the case of a fee imposed under a tariff set by Melbourne Water Corporation—

- (i) an amount fixed according to the use of the property; or
- (ii) an amount fixed according to how the use or development of the property is controlled under a planning scheme; or";

(b) in paragraph (d), after "and (c)" **insert** "and in the case of Melbourne Water Corporation, amounts referred to in paragraph (ca)".

(2) In section 259(4) of the **Water Act 1989**, after "a minimum amount" **insert** "or no amount".

109. Repeal of certain requirements as to tariffs

Section 260(3)(d) of the **Water Act 1989** is **repealed**.

110. Repeal of section 260A(2)

Section 260A(2) of the **Water Act 1989** is **repealed**.

111. Power to fix fees under tariffs by reference to valuations used for price determinations

(1) In section 262 of the **Water Act 1989**—

(a) in paragraph (b), for "valuer—" **substitute** "valuer; or";

(b) after paragraph (b) **insert**—

"(c) in the case of Melbourne Water Corporation, use the relevant valuation for the price determination applying at the time of the setting of the tariff—".

(2) At the end of section 262 of the **Water Act 1989** **insert**—

(2) In this section—

"Essential Services Commission" has the same meaning as "Commission" has in the **Essential Services Commission Act 2001**;

"price determination" means a price determination made by the Essential Services Commission under section 4D of the **Water Industry Act 1994** and section 33 of the **Essential Services Commission Act 2001**;

"relevant valuation", in relation to a price determination, means the valuation which forms the basis of the tariffs submitted by Melbourne Water Corporation to the Essential Services Commission and which is approved in the price determination.'

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112. Insertion of section heading

(1) **Insert** the following heading to section 264A of the **Water Act 1989**—

"Authority may charge for securing bulk entitlements".

(2) After section 264A(2) of the **Water Act 1989** **insert**—

'(3) This section does not apply to Melbourne Water Corporation except where Melbourne Water Corporation is "the first Authority", within the meaning of sub-section (1).'

113. Grounds for applications for review

For section 266(1)(c) of the **Water Act 1989** **substitute**—

"(c) that the tariff was not set in accordance with an Order under section 4D(1)(a) of the **Water Industry Act 1994** or in accordance with the **Essential Services Commission Act 2001**;"

114. Insertion of new section 266A

After the heading to Division 6 of Part 13 of the **Water Act 1989** **insert**—

'266A. Definition

In this Division a reference to "**Authority**" does not include a reference to Melbourne Water Corporation, except where Melbourne Water Corporation is acting under section 196 or 197.'

115. Review of required payments

After section 271(1)(e) of the **Water Act 1989**
insert—

"(ea) that the payment was not set in accordance with an Order under section 4D(1)(a) of the **Water Industry Act 1994** or in accordance with the **Essential Services Commission Act 2001**;"

116. Application of Division 7

After the heading to Division 7 of Part 13 of the **Water Act 1989** **insert—**

"273AA. Application of Division

This Division does not apply to Melbourne Water Corporation."

117. Time period for payment of fees under tariffs

For section 274(1)(b) of the **Water Act 1989**
substitute—

"(b) in the case of—

- (i) fees that are payable on an annual basis, at least 28 days after the date of issue of the notice; or
- (ii) in the case of fees that are payable on a basis that is less than an annual basis, at least 14 days after the date of issue of the notice—"

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118. Insertion of new Division 7A of Part 13

After Division 7 of Part 13 of the **Water Act 1989**
insert—

**"Division 7A—Payment and Recovery of
Money Owed to Melbourne Water Corporation**

**281A. Agreements with respect to collection of
fees under tariffs**

- (1) Melbourne Water Corporation may enter into an agreement with—
- (a) a licensee; or
 - (b) a Council; or
 - (c) any other person—

with respect to the collection by that licensee, Council or any other person (as the case requires), on behalf of Melbourne Water Corporation, of any fees under tariffs, charges, interest or other money due to Melbourne Water Corporation under this Act.

- (2) A licensee must collect, on behalf of Melbourne Water Corporation, fees under tariffs, charges, interest and other money referred to in sub-section (1) that relate to the area or areas specified in the licence of the licensee on the terms and conditions agreed with Melbourne Water Corporation or, in default of agreement, determined by the Essential Services Commission.
- (3) A Council must collect, on behalf of Melbourne Water Corporation, fees under tariffs, charges, interest and other money referred to in sub-section (1) that relate to the municipal district of the Council on the terms and conditions agreed with Melbourne Water

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Corporation or, in default of agreement, determined by the Essential Services Commission.

- (4) A person who receives a notice from a licensee, a Council or any other person under sub-section (1) must pay the amount set out in the notice to the licensee, Council or person (as the case requires).

281B. Recovery of fees under tariffs

- (1) Fees imposed under a tariff set by Melbourne Water Corporation under this Part are payable by, and recoverable from, the owner for the time being of the property in respect of which the fee is imposed.
- (2) A fee imposed under a tariff set by Melbourne Water Corporation under this Part is due and must be paid by the date specified in a notice issued by Melbourne Water Corporation requiring payment, being a date at least 14 days after the date of issue of the notice.
- (3) Any amount due to Melbourne Water Corporation under a tariff is a debt due to Melbourne Water Corporation by the owner for the time being of the property in respect of which the amount is due.
- (4) If a person liable to pay an amount due to Melbourne Water Corporation under sub-section (3) in relation to a property owns the property, the amount due is a charge on the property, whether or not Melbourne Water Corporation has agreed to defer the payment of the whole or any part of that amount.

281C. Inspection of rate records

- (1) A person authorised by Melbourne Water Corporation may, at any reasonable time and without charge, inspect, and take a copy of an entry in or make an extract from, any valuation or rate records of any Council the municipal district of which is wholly or partly within the waterway management district of Melbourne Water Corporation.
- (2) A person having custody of the valuation or rate records of a Council must not, when required to do so by an authorised person exercising a power under sub-section (1), fail to produce those records for inspection or fail to allow the authorised person to take a copy of or make an extract from those records.

Penalty: 1 penalty unit."

119. Application of proceeds of disposal of water share

For section 287C(4) of the **Water Act 1989**
substitute—

- "(4) A person who claims to be the mortgagee of a recorded mortgage over a water share may apply to the Authority for payment of the value of that mortgage from any surplus retained by the Authority."

120. Insertion of new Parts 13A and 13B

After Part 13 of the **Water Act 1989** insert—

**'PART 13A—PROCESS FOR TRANSFER OF
PROPERTY ETC. OF AUTHORITIES**

287E. Definitions

(1) In this Part—

"allocation statement" means an allocation statement under section 287F;

"former transferor instrument" means an instrument (including a legislative instrument other than this Act) or an oral agreement subsisting immediately before the relevant date—

- (a) to which the transferor was a party; or
- (b) that was given to, or in favour of, the transferor; or
- (c) that refers to the transferor; or
- (d) under which—
 - (i) money is, or may become, payable to the transferor; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the transferor;

"former transferor property" means property, rights or liabilities of the transferor that, under this Part, have vested in, or become liabilities of, a licensee;

"instrument" includes a document and an oral agreement;

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"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"property" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

"relevant date", in relation to an allocation statement or property, rights or liabilities allocated under such a statement, means the date fixed by the Minister under sub-section (2) for the purposes of that statement;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"transferee" means a person to whom property is, or rights or liabilities are, allocated under an allocation statement;

"transferor" means a person from whom property is, or rights or liabilities are, transferred under an allocation statement.

- (2) The Minister, by notice published in the Government Gazette, may fix the relevant date for the purposes of an allocation statement.

287F. Application to Minister for approval of transfer proposal

- (1) If an Authority and a licensee jointly propose that property, rights or liabilities of a specified kind be transferred from the Authority to the licensee, the Authority and the licensee may submit the proposal to the Minister for his or her approval.

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- (2) A proposal must be in the form required by any guidelines issued by the Minister and be accompanied by a statement containing the information required by the guidelines relating to the property, rights or liabilities to be transferred.
 - (3) A statement under this section—
 - (a) must give the value of the property, rights or liabilities of the transferor that are to be transferred, to the extent to which it is practicable to determine that value; and
 - (b) must allocate to the transferee the property, rights or liabilities of the transferor shown in the statement; and
 - (c) must be signed by the chief executive officer (however described) of the transferee and the transferor.
 - (4) The Minister may refuse the proposal or approve it, with or without any changes.
 - (5) If a proposal is approved by the Minister—
 - (a) the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.

287G. Amendment of allocation statement

- (1) An allocation statement under section 287F may be amended by a document in writing signed by the Minister and the managing director of the transferee and the transferor.
 - (2) An amendment under sub-section (1) to an allocation statement made after the relevant date in relation to that statement may be made with effect from that relevant date if
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the Minister is satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the transferor or the transferee in relation to that statement but must not otherwise be so made.

- (3) In this Part, a reference to an "allocation statement" includes (where the case so requires) a reference to such a statement as amended under this section.

287H. Property transferred in accordance with allocation statement

On the relevant date for an allocation statement—

- (a) all property and rights of the transferor, wherever located, that are allocated under the allocation statement, vest in the transferee in accordance with the statement;
- (b) all liabilities of the transferor, wherever located, that are allocated under the allocation statement, become liabilities of the transferee in accordance with the statement.

287I. Staff transferred in accordance with allocation statement

- (1) On the relevant day for an allocation statement, all specified officers of the transferor become officers of the transferee, and each such officer—
- (a) holds an office that is equivalent to that previously held by the person in the transferor; and

- (b) holds the office on terms and conditions no less favourable than those of the office held in the transferor and with the benefit of all rights accrued in respect of the office so held.
- (2) In this section "**specified officer**" means a person who holds an office that is specified in the allocation statement, or is of a class of offices that is specified in the allocation statement.

287J. Allocation of property etc. subject to encumbrances

Unless an allocation statement otherwise provides, where, under this Part—

- (a) property or rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with an allocation statement—

- (c) the property or rights so vested are subject to the encumbrances (if any) to which the property or rights were subject immediately before so vesting; and
- (d) the rights to which the transferor was entitled in respect of those liabilities, immediately before they ceased to be liabilities of the transferor, vest in the transferee.

287K. Certificate of managing director

- (1) A certificate signed by the managing director of the transferor certifying that property, rights or liabilities of the transferor specified in the certificate have been allocated under an allocation statement is, unless revoked under sub-section (2), admissible in evidence

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in any proceedings and, in the absence of evidence to the contrary, is proof—

- (a) that the property, rights or liabilities so specified are the property, rights and liabilities to which the allocation statement applies; and
 - (b) that the allocation statement is an allocation statement for the purposes of this Part.
- (2) The managing director may revoke a certificate given under sub-section (1) by issuing another certificate in place of the first certificate.
- (3) The managing director of a transferor—
- (a) must keep a register of allocation statements and of certificates relating to them that are issued under this section; and
 - (b) must make the register reasonably available for inspection by a transferee or other interested person.

287L. Value of transferred property

If the relevant allocation statement gives the value of property, rights or liabilities of the transferor that are allocated to the transferee, the value to the transferee of the property, rights or liabilities is the value so given.

287M. Substitution of party to agreement

Where, under an allocation statement, the rights and liabilities of a transferor under an agreement are allocated to a transferee—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and

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- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement in place of the transferor.

287N. Former transferor instruments

Each former transferor instrument relating to former transferor property continues to have effect according to its tenor on and after the relevant date in relation to that property as if a reference in the instrument to the transferor were a reference to the transferee.

287O. Proceedings

Unless an allocation statement otherwise provides, if, immediately before the relevant date, proceedings relating to former transferor property (including arbitration proceedings) to which a transferor was a party were pending or existing in any court or tribunal (including an arbitral tribunal), then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights and liabilities in the proceedings as the transferor had.

287P. Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former transferor property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

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- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the transferor had.

287Q. Easements

If a licensee acquires any right in the nature of an easement, or purporting to be an easement, as a result of an allocation under this Part, that right must be taken to be an easement even though there is no land vested in the transferee which is benefited or capable of being benefited by that right.

287R. 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 and certificate of the managing director of the transferor of former transferor property, must make any amendments in the Register that are necessary because of the operation of this Part.
- (2) Despite sub-section (1), it is not necessary to produce a certificate of title in the case of a request for amendment to the Register in relation to transferred property that is an easement registered under the **Transfer of Land Act 1958**.

287S. Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an

instrument made, executed, lodged or given, for the purpose of, or connected with, the transfer of property, rights or liabilities of a transferor.

287T. Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to a former transferor instrument or former transferor property if this Part had not been enacted is admissible for or against the interests of the transferee.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of a transferor and to entries made in those books of account before the relevant date, whether or not they relate to a former transferor instrument or former transferor property.

287U. Validity of things done under this Part

Nothing effected or to be effected by this Part or done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of

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any property or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of, or to terminate, any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligor wholly or in part from any obligation.

**PART 13B—PROCEDURES FOR MAKING
BY-LAWS**

Division 1—Preliminary

287V. Definitions

In this Part—

"electronic communication" has the same meaning as in the **Electronic Transactions (Victoria) Act 2000**;

"model by-laws" means model by-laws issued by the Minister under section 287ZB;

287W. Authorities required to use certain procedures when making by-laws

An Authority must use either the procedure set out in Division 2 or the procedure set out in Division 3 when making a by-law under this Act.

Division 2—Procedure for Making By-laws Using Model By-laws

287X. Requirements for Minister when issuing model by-laws

In issuing a model by-law to be used by Authorities in an exercise of a by-law making power under this Act, the Minister must comply with the procedure set out in this Division.

287Y. Minister to give notice of proposed model by-law

- (1) Before issuing a model by-law, the Minister must give notice of the proposal to issue the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the proposed model by-law will apply.
- (2) A notice under sub-section (1) must state—
 - (a) the title of the proposed model by-law; and
 - (b) the purpose and general purport of the proposed model by-law; and
 - (c) that a copy of the proposed model by-law may be inspected, free of charge, and the places at which and the

means by which any such copy may be inspected under section 287Z; and

- (d) that submissions are invited on the proposed model by-law; and
- (e) the time within which any such submissions must be received by the Minister under section 287ZA(3); and
- (f) the means by which any such submissions may be made to the Minister under section 287ZA(2).

287Z. Inspection of proposed model by-law

The Minister must ensure that the proposed model by-law—

- (a) is available for inspection, free of charge, at the offices of the Department during ordinary business hours; and
- (b) is able to be inspected, free of charge, by means of electronic communication at the electronic address of the Department.

287ZA. Submissions on model by-laws

- (1) The Minister must invite submissions on the proposed model by-law in the notice under section 287Y.
- (2) Any person who is affected by the proposed model by-law may make a submission on the by-law to the Minister in writing, whether by means of electronic communication or otherwise.
- (3) A submission under sub-section (2) must be received by the Minister within one month of the publication of the notice under section 287Y(1).

287ZB. Issuing of model by-laws

After considering all submissions made on the proposed model by-laws, the Minister may issue, as model by-laws, the proposed model by-laws, either with or without amendment.

287ZC. Making and giving of notice of making of by-law using model by-law

- (1) An Authority may make a by-law by using a model by-law.
- (2) In making a by-law by using a model by-law, the Authority may make any necessary minor or technical changes to the by-law.
- (3) An Authority that is making a by-law using a model by-law must give notice of the making of the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area in which the by-law will apply.
- (4) A notice under sub-section (3) must set out—
 - (a) the title of the by-law; and
 - (b) the purpose and general purport of the by-law; and
 - (c) that the by-law is being made by using a model by-law issued by the Minister; and
 - (d) that a copy of the by-law may be inspected, free of charge, and the places and times at which and the means by which a copy of the by-law may be inspected under section 287ZK; and

- (e) the address of the Authority (including any electronic address) and the site of any electronic publication of information by the Authority about its operations.

Division 3—Procedure for Making By-laws Not Using Model By-laws

287ZD. Obligation of Authorities when exercising by-law making power

In exercising a by-law making power under this Act, without using a model by-law issued by the Minister under Division 2, the Authority must comply with the procedure set out in this Division.

287ZE. Authority to give notice of proposed by-law

- (1) Before making a by-law, the Authority that proposes to make the by-law, must give notice of the proposal—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area to which the proposed by-law will apply.
- (2) A notice under sub-section (1) must state—
 - (a) the title of the proposed by-law; and
 - (b) the purpose and general purport of the proposed by-law; and
 - (c) that a copy of the proposed by-law may be inspected, free of charge, and the places at which and the means by which any such copy may be inspected under section 287ZF; and

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- (d) that submissions are invited on the proposed by-law; and
- (e) the time within which any such submissions must be received by the Authority under section 287ZG(3); and
- (f) the means by which any such submissions may be made to the Authority under section 287ZG(2).

287ZF. Inspection of proposed by-law

The Authority must ensure that the proposed by-law—

- (a) is available for inspection, free of charge, at the offices of the Authority during ordinary business hours; and
- (b) is able to be inspected by means of electronic communication at the electronic address of the Authority.

287ZG. Submissions on by-laws

- (1) The Authority must invite submissions on the proposed by-law in the notice under section 287ZE.
- (2) Any person who is affected by the proposed by-law may make a submission on the by-law to the Authority in writing, whether by means of electronic communication or otherwise.
- (3) A submission under sub-section (2) must be received by the Authority within one month of the publication of the notice under section 287ZE(1).

287ZH. Consideration and Ministerial approval

- (1) Before making the proposed by-law, the Authority must consider all submissions made on the proposed by-law within the time set out in section 287ZG(3) for the making of submissions.
- (2) After considering any such submissions, the Authority may make any amendments it considers necessary to the proposed by-law.
- (3) After consideration and any amendment under this section, the Authority may forward the proposed by-law to the Minister for approval for making.
- (4) The Minister, on receiving a proposed by-law forwarded under sub-section (3), may approve the proposed by-law for making.

287ZI. Making and giving of notice of making

- (1) On the Minister approving a proposed by-law for making under section 287ZH(4), the Authority may make the by-law.
- (2) The Authority must give notice of the making of the by-law—
 - (a) in the Government Gazette; and
 - (b) in a newspaper circulating generally in the area in which the by-law will apply.
- (3) A notice under sub-section (2) must set out—
 - (a) the title of the by-law; and
 - (b) the purpose and general purport of the by-law; and

- (c) that a copy of the by-law may be inspected, free of charge, and the places and times at which and the means by which a copy of the by-law may be inspected under section 287ZK; and
- (d) the address of the Authority (including any electronic address) and the site of any electronic publication of information by the Authority about its operations.

Division 4—General

287ZJ. Effect of by-laws

- (1) A by-law made under Division 2 has no effect until notice of its making under section 287ZC is published in the Government Gazette.
- (2) A by-law made under Division 3 has no effect until it is approved by the Minister and notice of its making under section 287ZI is published in the Government Gazette.

287ZK. Inspection of by-laws

- (1) An Authority must ensure that a copy of any by-law made by it—
 - (a) is available for inspection, free of charge, at the offices of the Authority during ordinary business hours; and
 - (b) is able to be inspected, free of charge, by means of electronic communication at the electronic address of the Authority.
- (2) An Authority must ensure that any by-law made by it is able to be purchased, on demand, at the offices of the Authority during ordinary business hours.

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287ZL. Automatic revocation of by-laws

- (1) Unless sooner revoked, a by-law is by virtue of this section, revoked on the day which is 10 years after the making of the by-law.
- (2) In the case of any particular by-law, the Minister may certify that the operation of the by-law that would otherwise be revoked should be extended beyond the day of revocation, if the Minister is satisfied that there are particular circumstances that make that certification reasonable.
- (3) The Authority that has made a by-law to which sub-section (2) applies may on the certification of the Minister under sub-section (2), make a by-law under this Act extending the operation of the by-law that is the subject of the certification for a period of no more than 12 months.
- (4) The Minister must not make more than one certification under sub-section (2) in relation to any particular by-law.'

121. Insertion of new section 295A

After section 295 of the **Water Act 1989** insert—

"295A. Power to issue infringement notices

- (1) A person authorised in writing, either generally or in a particular case, by an Authority may serve an infringement notice on any person he or she reasonably believes has contravened a restriction or prohibition on the use of water in any area set out, in accordance with section 170A(4), in a Schedule to the permanent water saving plan that the Authority has adopted under section 170A(9).

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- (2) An offence referred to in sub-section (1), for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.
 - (3) The penalty to be paid in respect of an offence, to which an infringement notice that is served under this section relates, must not exceed 1 penalty unit."

122. Service of documents

For section 304(1) of the **Water Act 1989** substitute—

- "(1) Any document required or permitted to be served on an Authority may be served—
- (a) by being left at its principal office with a person authorised in writing by the Authority to accept service of documents on behalf of the Authority; or
 - (b) by sending it by certified mail addressed to the managing director at the principal office of the Authority."

123. Incorporation of plans etc. in other instruments

- (1) In section 305C(1) of the **Water Act 1989**—
 - (a) in paragraph (b) for "then; or" substitute "then.";
 - (b) paragraph (c) is **repealed**.
- (2) After section 305C(2)(b) of the **Water Act 1989** insert—

"(ba) section 6A;"
- (3) Section 305C(2)(c) of the **Water Act 1989** is **repealed**.

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(4) After section 305C(2)(h) of the **Water Act 1989** **insert**—

"(ha) section 33AAA;"

(5) Sections 305C(2)(i), 305C(2)(j), 305C(2)(k), 305C(2)(l) and 305C(2)(m), of the **Water Act 1989** are **repealed**.

(6) After section 305C(2)(n) of the **Water Act 1989** **insert**—

"(na) section 122H;

(nb) section 122I;

(nc) section 122J;

(nd) section 122K;

(ne) section 122T;

(nf) section 122U;

(ng) section 122Y;

(nh) section 122Z;

(ni) section 122ZA;

(nj) section 122ZK;"

(7) After section 305C(2)(q) of the **Water Act 1989** **insert**—

"(qa) section 188A(3);"

124. Change of cross-reference

In section 306(1)(b) of the **Water Act 1989**,
for section "33AB(1)" **substitute**
"section 33AAB(1)".

125. Ministerial directions

(1) In section 307(1) of the **Water Act 1989**—

(a) after "The Minister" **insert** ", after consulting with the Treasurer,";

(b) after "may give a" **insert** "written".

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- (2) After section 307(1) of the **Water Act 1989** insert—

"(1A) An Authority to which a direction has been given under sub-section (1) must comply with the direction."

126. Insertion of new section 307A

After section 307 of the **Water Act 1989** insert—

"307A. Reimbursement of cost of complying with directions

- (1) If the Minister is satisfied that an Authority has suffered financial detriment as a result of complying with a direction of the Minister under section 307, the Minister may direct that an Authority be reimbursed the amount determined by the Minister to be the amount of the financial detriment.
- (2) The Minister must not make a determination under sub-section (1) unless the Minister has first—
- (a) obtained the approval of the Minister administering the **Financial Management Act 1994**; and
 - (b) consulted with the board of directors of the Authority.
- (3) On making a determination under sub-section (1), the Authority becomes entitled to the payment of the amount so determined.
- (4) A reference in sub-section (1) to suffering financial detriment includes a reference to—
- (a) incurring costs that are greater than would otherwise have been incurred; or
 - (b) foregoing revenue that would otherwise have been received.

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(5) A determination under sub-section (1) must be made in writing."

127. Guidelines as to terms and conditions of employment

In section 322(1)(a) of the **Water Act 1989**, after "Authority" **insert** "other than a Catchment Management Authority".

128. Insertion of new section 324A

After section 324 of the **Water Act 1989 insert—**

"324A. Powers to make regulations as to elections

- (1) The Governor in Council may make regulations for or with respect to the holding of elections for the filling of vacancies in the membership of the board of directors of First Mildura Irrigation Trust, 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;

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- (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;
 - (q) generally, all matters necessary for the proper conduct of elections.
- (2) Without limiting section 324, regulations made under this section 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.
- (3) Regulations made under this section must not provide for election by the quota-preferential or any other method of proportional representation."
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129. Insertion of new sections 325A and 330A

(1) After section 325 of the **Water Act 1989** insert—

"325A. Effect of Schedule 15

Schedule 15 has effect."

(2) After section 330 of the **Water Act 1989** insert—

"330A. Effect of Schedule 16

Schedule 16 has effect."

130. Insertion of new sections 332 and 333

After section 331 of the **Water Act 1989** insert—

**'332. Transitional and validation provision—
Longwarry Drainage Trust**

(1) In this section—

"Dandenong Valley and Westernport Authority" means the Authority established under the **Dandenong Valley Authority Act 1963**, whether when known as the Dandenong Valley Authority or when known as the Dandenong Valley and Westernport Authority;

"former body" means the body known as the Longwarry Drainage Trust;

"new body" means Melbourne Water Corporation under the **Melbourne Water Corporation Act 1992**.

(2) On the commencement of this section—

(a) the former body is abolished and its members go out of office; and

(b) all rights, property and assets that immediately before that commencement were vested in the former body vest in the new body; and

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- (c) all debts, liabilities and obligations of the former body existing immediately before that commencement become debts, liabilities and obligations of the new body; and
 - (d) the new body is substituted as a party to any proceedings pending in any court to which the former body was a party immediately before the commencement; and
 - (e) the new body is 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
 - (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, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to the new body.
- (3) Anything done or purported to have been done by Melbourne Water Corporation as successor in law of the Dandenong Valley and Westernport Authority (to the extent that that body was purporting to act as successor in law of the Longwarry Drainage Trust) that would have been validly done had the Dandenong Valley and Westernport Authority been validly appointed as successor in law of the Longwarry Drainage Trust has, and is deemed always to have had, the same force and effect as it would have
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had if the Dandenong Valley and Westernport Authority had been validly appointed as successor in law of the Longwarry Drainage Trust.

- (4) Anything done or purported to have been done by the Dandenong Valley and Westernport Authority, to the extent that that body was purporting to act as successor in law of the Longwarry Drainage Trust, that would have been validly done had the Dandenong Valley and Westernport Authority been validly appointed as successor in law of the Longwarry Drainage Trust has, and is deemed always to have had, the same force and effect as it would have had if the Dandenong Valley and Westernport Authority had been validly appointed as successor in law of the Longwarry Drainage Trust.

333. Amendment of Register

The Registrar of Titles must make any recordings in or amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of section 332.!

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131. Substitution of Schedule 1

For Schedule 1 to the **Water Act 1989**
substitute—

"SCHEDULE 1

**WATER CORPORATIONS AND FORMER WATER
AUTHORITIES**

TABLE

<i>Item</i>	<i>Column 1</i> <i>Water Corporations</i>	<i>Column 2</i> <i>Former Water Authorities</i>
1.	Barwon Region Water Corporation	Barwon Region Water Authority
2.	Central Gippsland Region Water Corporation	Central Gippsland Region Water Authority
3.	Central Highlands Region Water Corporation	Central Highlands Region Water Authority
4.	Coliban Region Water Corporation	Coliban Region Water Authority
5.	East Gippsland Region Water Corporation	East Gippsland Region Water Authority
6.	First Mildura Irrigation Trust	First Mildura Irrigation Trust
7.	Gippsland and Southern Rural Water Corporation	Gippsland and Southern Rural Water Authority
8.	Goulburn—Murray Rural Water Corporation	Goulburn-Murray Rural Water Authority
9.	Goulburn Valley Region Water Corporation	Goulburn Valley Region Water Authority
10.	Grampians Wimmera Mallee Water Corporation	Grampians Wimmera Mallee Water Authority

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<i>Item</i>	<i>Column 1</i> <i>Water Corporations</i>	<i>Column 2</i> <i>Former Water Authorities</i>
11.	Lower Murray Urban and Rural Water Corporation	Lower Murray Urban and Rural Water Authority
12.	Melbourne Water Corporation	Melbourne Water Corporation
13.	North East Region Water Corporation	North East Region Water Authority
14.	South Gippsland Region Water Corporation	South Gippsland Region Water Authority
15.	Wannon Region Water Corporation	Wannon Region Water Authority
16.	Western Region Water Corporation	Western Region Water Authority
17.	Westernport Region Water Corporation	Westernport Region Water Authority

".

132. Substitution of Schedule 2

For Schedule 2 to the **Water Act 1989**
substitute—

'SCHEDULE 2

**TRANSITIONAL PROVISIONS APPLYING ON
RESTRUCTURING OR ABOLITION OF WATER
CORPORATIONS**

1. Definitions

In this Schedule—

"old corporation" means a water corporation from whom powers, duties or functions are being transferred under a determination of the Minister under section 87 or 88;

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"new corporation" means a water corporation to whom powers, duties or functions are being transferred under a determination of the Minister under section 87 or 88.

2. Membership of board of directors on restructuring or abolition

- (1) The Minister may, in the case of an old corporation or a new corporation, specify, in the determination under section 87 or 88 (as the case requires), an alteration to the membership of the board of directors of the corporation either by—
 - (a) the appointment of additional members to the board of directors; or
 - (b) the removal of members from the board of directors.
- (2) Division 3 of Part 6 applies to an appointment of a member to a board of directors under sub-clause (1) as if it were an appointment under that Division.

3. Transfer of assets on restructuring or abolition

On the making of a determination under section 87 or 88—

- (a) any rights, property and assets of the old corporation that are specified in the determination are deemed to be vested in the new corporation; and
 - (b) any debts, liabilities and obligations of the old corporation arising out of any vesting under paragraph (a) are deemed to be the debts, liabilities and obligations of the new corporation; and
 - (c) the new corporation is substituted as a party to any arrangement or contract entered into by or on behalf of the old corporation arising out of any vesting under paragraph (a).
-

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4. Transfer of staff

- (1) On the making of a determination under section 87 or 88, all specified officers of the old corporation become officers of the new corporation and each such officer—
 - (a) holds an office that is equivalent to that previously held by the person in the old corporation; and
 - (b) holds the office on terms and conditions no less favourable than those of the office in the old corporation and with the benefit of all rights accrued in respect of the office so held.
- (2) In this section "**specified officer**" means a person who holds an office that is specified in the determination, or is of a class of offices that is specified in the determination.

5. Amendment of Register

The Registrar of Titles must make any recordings in or amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of this Schedule.

6. Continuation of by-laws on restructuring or abolition

Any by-law made by an old corporation, being a by-law that—

- (a) relates to property, rights or liabilities that are transferred under clause 3 to a new corporation; and
- (b) is in force immediately before that transfer—

is deemed, on the happening of the transfer to be a by-law made by the new corporation and may be amended or revoked accordingly.

_____!

133. Substitution of Schedule 3

For Schedule 3 to the **Water Act 1989**
substitute—

"SCHEDULE 3

**PARTICULAR POWERS OF MELBOURNE WATER
CORPORATION**

**Corporation to maintain certain roads in Corio
and Werribee**

- (1) The **Road Management Act 2004** applies to any road or portion of a road—
- (a) that is within the municipal district of the City of Wyndham; and
 - (b) that is abutted on both sides by land owned by Melbourne Water Corporation; and
 - (c) that is not a freeway or arterial road, within the meaning of the **Road Management Act 2004—**

as if the road or the part of the road is a road within the meaning of that Act.

- (2) For the purposes of the Road Management Act **2004**, the relevant road authority for the land to which sub-section (1) applies is Melbourne Water Corporation, subject to any regulations for the purposes of section 37(1)(c) of that Act.

_____".

**134. Amendment of Schedule 6—First Mildura
Irrigation Trust**

- (1) Clause 1 of Schedule 6 to the **Water Act 1989** is **repealed**.

- (2) **Insert** the following definition in clause 2(1) of Schedule 6 to the **Water Act 1989—**

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

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(3) For clause 3 of Schedule 6 to the **Water Act 1989** substitute—

"3. Enrolment to vote

A person whose name appears in the register of the First Mildura Irrigation Trust 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 voter's roll.

3A. Entitlement to vote

- (1) A person who is not enrolled on the voter's roll is not entitled to vote at an election of members of the board of directors of First Mildura Irrigation Trust.
- (2) At an election of members of the board of directors of First Mildura Irrigation Trust, a person who is enrolled on the voter's roll of the First Mildura Irrigation Trust is entitled to one vote.
- (3) Sub-clause (2) does not require an owner or occupier of property whose principal place of residence is outside the irrigation district of First Mildura Irrigation Trust, to vote at an election.

3B. Eligibility to stand for election

A person is eligible to stand for election as a member of the board of directors of the First Mildura Irrigation Trust if that person is an occupier or owner of rateable land in the irrigation district of the First Mildura Irrigation Trust and that person's name appears on the register of the Trust in respect of that land and that person is not disqualified from voting under this Schedule or under regulations made under section 324A."

(4) Clauses 4 and 4A of Schedule 6 to the **Water Act 1989** are **repealed**.

(5) Clause 8 of Schedule 6 to the **Water Act 1989** is **repealed**.

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135. Repeal of Schedules relating to former bodies

Schedules 7 and 8 to the **Water Act 1989** are **repealed**.

136. Repeal of Schedules 11 and 12

Schedules 11 and 12 to the **Water Act 1989** are **repealed**.

137. Amendment of Schedule 12A—mortgages

For clause 1(2) of Schedule 12A to the **Water Act 1989** **substitute**—

- "(2) The owner of a water share must not mortgage an undivided portion of the water share.
- (2A) The holder of a limited term transfer of a water share must not mortgage the limited term transfer of the water share."

138. Schedule 15, amendment of definition of owner

In the definition of "owner" in clause 1(1) of Schedule 15 to the **Water Act 1989**—

- (a) in paragraph (a), for "the registered proprietor of the land" **substitute** "the registered proprietor of an estate in fee simple in the land";
- (b) in paragraph (b)(i), for "a mortgage over the land" **substitute** "a mortgage over an estate in fee simple in the land";
- (c) for paragraph (b)(ii) **substitute**—
 - "(ii) in the case of any other estate in fee simple, the owner of the legal estate;"

139. Schedule 15, conversion of prior joint right

In clause 4(1) of Schedule 15 to the **Water Act 1989**, after "prior joint right within the water system" **insert** ", that does not relate to Crown land".

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140. Schedule 15, conversion of prior water right

In clause 5(1) of Schedule 15 to the **Water Act 1989**, after "prior water right within the water system" **insert** ", that does not relate to Crown land".

141. Amendment of Schedule 15—correction of reference

In clause 5(4) of Schedule 15 to the **Water Act 1989**, for "222(1)(b)" **substitute** "222(1)".

142. Schedule 15, conversion of prior domestic and stock right

In clause 6(1) of Schedule 15 to the **Water Act 1989**, after "prior domestic and stock right within the water system" **insert** ", that does not relate to Crown land".

143. Amendment of Schedule 15—correction of reference

In clause 6(4) of Schedule 15 to the **Water Act 1989**, for "222(1)(a)" **substitute** "222(1)".

144. Schedule 15, holdings to which no rights apply

In clause 8(2) of Schedule 15 to the **Water Act 1989**—

- (a) **omit** ", prior domestic and stock right";
- (b) for "within one year" **substitute** "within 6 months or any other period (not being more than 12 months) specified in the conversion rules".

145. Schedule 15, serviced property

In clause 12 of Schedule 15 to the **Water Act 1989**, for "is deemed to be a serviced property" **substitute** "is deemed to be serviced property".

146. Schedule 15, mortgages

(1) In clause 25(1) of Schedule 15 to the **Water Act 1989**—

- (a) after "in the form" **insert** "and manner";
- (b) for "and propose that clause 26 should apply to the mortgage" **substitute** "and advise the owner that clause 26 will apply to the mortgage".

(2) After clause 25(1) of Schedule 15 to the **Water Act 1989 insert**—

"(1A) A notice under sub-clause (1) must be given by the Authority before the appointed day for the water system, when it is practicable to do so."

(3) Before clause 26(1) of Schedule 15 to the **Water Act 1989 insert**—

"(1AA) On and from the appointed day for a water system, the following sub-clauses apply to each mortgage over the whole or a part of any parcel of land where, the owner of the whole or the part of the parcel, by virtue of that ownership, is deemed by the operation of Part 2, to be the owner of a water share in respect of the water system."

(4) In clause 26(1) of Schedule 15 to the **Water Act 1989**—

- (a) for "If an Authority has given a notice under clause 25 to a land owner before the appointed day for a water system, on and from the appointed day for the water system, the mortgage" **substitute** "The mortgage";
- (b) after "to secure the debt secured by the mortgage, immediately before the appointed day," **insert** "and amounts that may be advanced under the mortgage on or after that day,".

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147. Schedule 15, works licences

In clause 27 of Schedule 15 to the **Water Act 1989**, after "section 67" **insert** "that is in force immediately before the appointed day and".

148. Insertion of new Schedule 16

After Schedule 15 to the **Water Act 1989**
insert—

'

SCHEDULE 16

**TRANSITIONAL ARRANGEMENTS WATER
(GOVERNANCE) ACT 2006**

PART 1—PRELIMINARY

1. Definitions

In this Schedule—

"pre-dating Authority", in relation to a water corporation set out in an item in Column 1 of the Table in Schedule 1 (other than item 12), means the body corporate that was, immediately before the commencement of section 54 of the 2006 Act, commonly known by the name set out in the item in Column 2 of the Table in Schedule 1 opposite that water corporation;

"pre-dating Corporation" means the body corporate that was, immediately before the commencement of section 162 of the 2006 Act, the "Corporation" within the meaning of the **Melbourne Water Corporation Act 1992**;

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"relevant post-dating water corporation", in relation to a pre-dating Authority means the water corporation set out in the item in Column 1 of the Table in Schedule 1 immediately opposite the pre-dating Authority;

"2006 Act" means the **Water (Governance) Act 2006**.

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AUTHORITIES**

2. Water Corporations deemed to be the same body as pre-dating Authorities

- (1) Despite the commencement of section 54 of the 2006 Act—
 - (a) a pre-dating Authority, is deemed to continue in existence as if it were established as the relevant post-dating water corporation under Part 6 of this Act; and
 - (b) each member of a pre-dating Authority, is deemed to continue in office as a member of the board of directors of the relevant post-dating water corporation, as if the member had been appointed under this Act, for the remaining period of that member's term of appointment.
- (2) Where the maximum number of members of a pre-dating Authority was, immediately before the commencement of section 54 of the 2006 Act, greater than 9, clause (1)(b) has effect to continue each member in office despite section 95.
- (3) Despite the commencement of section 54 of the 2006 Act—
 - (a) any rights, property and assets that immediately before that commencement were vested in a pre-dating Authority are deemed to be vested in the relevant post-dating water corporation; and

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- (b) any debts, liabilities and obligations of a pre-dating Authority that were existing immediately before that commencement are deemed to be the debts, liabilities and obligations of the relevant post-dating water corporation; and
- (c) the relevant post-dating water corporation is deemed to be substituted as a part to any proceedings pending in any court to which a pre-dating Authority was a party immediately before that commencement; and
- (d) the relevant post-dating water corporation is substituted as a party to any arrangement or contract entered into by or on behalf of a pre-dating Authority and in force immediately before that commencement; and
- (e) any reference to a pre-dating Authority in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to the relevant post-dating water corporation and the force and effect of any such document is not to be taken to be affected by that commencement.

3. Immunity of certain members of water corporations

- (1) A relevant member of a post-dating water corporation is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
 - (b) in the reasonable belief that the Act or omission was in the exercise of a power of the discharge of a duty under this Act or the regulations.
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(2) Any liability arising from an act or omission that would, but for sub-section (1), attach to a relevant member of a post-dating water corporation attaches instead to the post-dating water corporation.

(3) In this clause—

"relevant member" in relation to a post-dating water corporation, means a person who is a member of the board of directors of the water corporation and who was, at the commencement of section 7 of the **Water (Essential Services Commission and Other Amendments) Act 2003**, a member of the board of the relevant pre-dating Authority and whose term of office has not expired since that commencement.

4. By-laws

(1) Subject to sub-clause (2), any by-law made by a pre-dating Authority and in force immediately before the commencement of section 54 of the 2006 Act is deemed to continue in force on and after that commencement as if the by-law were made by the relevant post-dating water corporation and may be amended or revoked accordingly.

(2) Any by-law made by a pre-dating Authority under this Act and in force immediately before the commencement of section 54 of the 2006 Act, that was made 10 or more years before that commencement, is deemed to continue in force for a period of no more than 12 months after that commencement, as if it were made by the relevant post-dating water corporation and may be amended or revoked accordingly.

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**PART 3—TRANSITIONAL AND SAVINGS—
MELBOURNE WATER CORPORATION**

**5. Melbourne Water Corporation deemed to be the
same body as pre-dating Corporation**

- (1) Despite the commencement of section 162 the 2006 Act—
 - (a) the pre-dating Corporation, is deemed to continue in existence as if it were established as Melbourne Water Corporation under Part 6 of this Act; and
 - (b) each member of the Board of Directors of the pre-dating Corporation, is deemed to continue in office as a member of the board of directors of Melbourne Water Corporation, as if the member had been appointed under this Act, for the remaining period of that member's term of appointment.
- (2) Despite the commencement of section 162 the 2006 Act—
 - (a) any rights, property and assets that immediately before that commencement were vested in the pre-dating Corporation are deemed to be vested in Melbourne Water Corporation; and
 - (b) any debts, liabilities and obligations of the pre-dating Corporation that were existing immediately before that commencement are deemed to be the debts, liabilities and obligations of Melbourne Water Corporation; and
 - (c) Melbourne Water Corporation is deemed to be substituted as a party to any proceedings pending in any court to which the pre-dating Corporation was a party immediately before that commencement; and

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- (d) Melbourne Water Corporation is substituted as a party to any arrangement or contract entered into by or on behalf of the pre-dating Corporation and in force immediately before that commencement; and
- (e) any reference to the pre-dating Corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to Melbourne Water Corporation and the force and effect of any such document is not to be taken to be affected by that commencement.
- (3) On the commencement of section 162 of the 2006 Act, Melbourne Water Corporation ceases to be a reorganising body within the meaning of the **State Owned Enterprises Act 1992**.
- (4) Subject to this Schedule and to any other provision of this Act, the force and effect of any instrument made or anything done under the **Melbourne and Metropolitan Board of Works Act 1958** or the **Melbourne Water Corporation Act 1992** by the pre-dating corporation, is not to be taken to be affected by the repeal of those Acts.

6. Ownership of works

Any works that were, immediately before the commencement of section 162 of the 2006 Act—

- (a) owned; or
- (b) in the process of being constructed, that are not works in respect of which it has been agreed that they are to be owned by another person on completion of construction—

by the pre-dating Corporation are deemed to be owned by Melbourne Water Corporation.

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7. Designated land or works

Any land or works within the waterway management district of Melbourne Water Corporation that was land or works of the pre-dating Corporation immediately before the commencement of section 79 of the 2006 Act that was used for the purposes in the nature of the purposes of Part 10 are deemed to be designated land or works of Melbourne Water Corporation for the purposes of that Part.

8. Main drains

Any drain or waterway that was a main drain (within the meaning of section 259(1) of the **Melbourne and Metropolitan Board of Works Act 1958**) immediately before the commencement of section 162 of the 2006 Act, is deemed to be a designated waterway of Melbourne Water Corporation for the purposes of Part 10.

9. Statutory easements

Any right in the nature of an easement or purporting to be an easement or deemed to be an easement vested in the pre-dating Corporation immediately before the commencement of section 162 of the 2006 Act is deemed to be a right of Melbourne Water Corporation to which section 130(3) applies.

10. Continuation of operation of by-laws

Despite the commencement of section 162 of the 2006 Act, each by-law made by the pre-dating Corporation described in the Table to this clause is deemed to continue in force until its revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the by-law were made under this Act by Melbourne Water Corporation, and the by-law may be amended or revoked accordingly.

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Table

Statutory Rule Number	Description of by-law
S.R. No. 173/1997	By-Law No. 1 Water Supply Protection (as in force immediately before the commencement of section 162 of the 2006 Act)
S.R. No. 94/2002	By-Law No. 294 Waterways (Revocation) (as in force immediately before the commencement of section 162 of the 2006 Act)
S.R. No. 113/1998	By-Law No. 2 Waterways and Drainage Protection (as in force immediately before the commencement of section 162 of the 2006 Act)

11. Transfer of sewerage or drainage reserves in certain subdivisions to Corporation

- (1) Where any map or plan has been lodged or deposited with the Registrar of Titles pursuant to section 97 of the **Transfer of Land Act 1958** or a corresponding previous enactment which has been sealed before the commencement of section 44 of the **Subdivision Act 1988** and any allotment on the map or plan has been transferred, the Governor in Council may on the request of Melbourne Water Corporation, by Order published in the Government Gazette, direct that the whole or any part of the land comprised in any reserve shown on the map or plan as a reserve for the purposes of sewerage or drainage or sewerage and drainage, (being land which is under the jurisdiction of the Corporation) is vested in the Corporation.
- (2) Sub-clause (1) does not apply to any land which has been transferred to or vested in the council of a municipality or in respect of which a request has been made by a council that the owner of the land execute an agreement under seal to transfer that reserve or any part of that reserve to it.

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- (3) On publication of an Order under subsection (1), that land vests in Melbourne Water Corporation freed and discharged from any mortgage, charge, lease or sub-lease.

12. Building lines

Any building line (within the meaning of section 268 of the **Melbourne and Metropolitan Board of Works Act 1958**, as in force immediately before its repeal) as determined under that section (as so in force), being a building line in force, immediately before that repeal, in any part of the area delineated in red on the plan lodged in the central plan office and numbered LEGL./05-406, is deemed to be a building line determined by Melbourne Water Corporation under Division 4 of Part 10.

13. Serviced properties

Any land that was, immediately before the commencement of section 163 of the 2006 Act, rateable property (within the meaning of the **Melbourne and Metropolitan Board of Works Act 1958** as in force before its repeal) for the purposes of the pre-dating corporation, is deemed to be serviced property, within the meaning of this Act, for the purposes of Melbourne Water Corporation.

14. Saving of certain entitlements to water

Despite the repeal of the **Melbourne and Metropolitan Board of Works Act 1958**, any entitlement of the pre-dating corporation to take water under that Act, being an entitlement that was in force immediately before that repeal, is deemed to continue in force, as if the entitlement is an entitlement of Melbourne Water Corporation and the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal) is deemed to continue to apply to any such entitlement.

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**PART 4—MISCELLANEOUS TRANSITIONAL
PROVISIONS**

15. References to storage operators

A reference in any bulk entitlement in force immediately before the commencement of section 54 of the 2006 Act to a storage operator, in relation to a water storage, is deemed to be on and after that commencement, a reference to the storage manager appointed under Part 6C for that water storage.

16. Saving of certain regulations

- (1) Despite the commencement of section 54 of the 2006 Act, the Water (Lake Eildon) (Houseboat) Regulations 2003 are deemed to continue in force until their revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the regulations were made under section 122ZF of this Act (as in force on or after that commencement) and may be amended or revoked accordingly.
 - (2) Despite the commencement of section 54 of the 2006 Act, the Water (Long Service Leave) Regulations 2001 are deemed to continue in force until their revocation under section 5 of the **Subordinate Legislation Act 1994**, as if the regulations were made under section 119(4) of this Act (as in force on or after that commencement) and may be amended or revoked accordingly.'
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See:
Act No.
52/1994.
Reprint No. 3
as at
5 August 2004
and
amending
Act Nos
81/2004,
108/2004 and
7/2005.
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dpc.vic.
gov.au

**PART 3—AMENDMENTS TO THE CATCHMENT AND LAND
PROTECTION ACT 1994**

149. Definitions

**Insert the following definitions in section 3 of the
Catchment and Land Protection Act 1994—**

' **"domestic partner"** of a person in sections 18H
and 18L means 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—

- (a) for fee or reward; or
- (b) on behalf of another person or an
organisation (including a government
or government agency, a body
corporate or a charitable or benevolent
organisation);

"nominated officer" means each senior officer of
an Authority who is nominated by the board
of an Authority;

"relative" has the same meaning as in the **Water
Act 1989**;

"return period", in relation to the ordinary return
of a member of the Authority or a nominated
officer in section 18L, means—

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- (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;

"subordinate instrument" has the same meaning as in the **Interpretation of Legislation Act 1984**;

150. Amendment of headings

- (1) For the heading to Division 2 of Part 2 of the **Catchment and Land Protection Act 1994** substitute—

"Division 2—Catchment and Land Protection Regions".

- (2) Insert the following heading to section 10 of the **Catchment and Land Protection Act 1994**—
"Areas and boundaries of catchment and land protection regions".

151. Substitution of sections 11 to 14

For sections 11, 12, 13 and 14 of the **Catchment and Land Protection Act 1994** substitute—

'Division 3—Catchment Management Authorities

11. Establishment of Authorities

- (1) The Minister must, by instrument establish a Catchment Management Authority for each catchment and land protection region.

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- (2) Each Catchment Management Authority established under sub-section (1)—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of a Catchment Management Authority affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of each Catchment Management Authority must be kept in the custody that is directed by the Authority and must not be used, except as authorised by the Authority.

12. Functions powers and duties of Authorities

- (1) Each Authority has the following functions in respect of the region for which it has been appointed—
 - (a) to prepare a regional catchment strategy for the region and to co-ordinate and monitor its implementation;
 - (b) to prepare special area plans for areas in the region and to co-ordinate and monitor their implementation;

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- (c) to promote the co-operation of persons and bodies involved in the management of land and water resources in the region in preparing and implementing the strategy and special area plans;
 - (d) to advise the Minister, and, if requested by any other Minister, that other Minister—
 - (i) on regional priorities for activities by and resource allocation to bodies involved in the management of land and water resources in the region; and
 - (ii) on guidelines for integrated management of land and water resources in the region; and
 - (iii) on matters relating to catchment management and land protection; and
 - (iv) on the condition of land and water resources in the region;
 - (e) to promote community awareness and understanding of the importance of land and water resources, their sustainable use, conservation and rehabilitation;
 - (f) to make recommendations to the Minister about the funding of the implementation of the regional catchment strategy and any special area plan;
 - (g) to make recommendations to the Minister and the Secretary about actions to be taken on Crown land managed by the Secretary to prevent land degradation;
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- (h) to advise the Minister and provide information to the Minister on any matter referred to it by the Minister;
 - (i) to carry out any other functions conferred on the Authority by or under this Act or any other Act.
- (2) Each 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.
- (3) Sub-section (2) is not to be taken to be limited by any other provision of this Act that confers a power on the Authority.
- (4) Each Authority has the duties conferred on it by or under this or any other Act.

13. Appointment of administrator

- (1) The Minister may, by determination, appoint an administrator to carry out the functions of the Authority, if an Authority fails or refuses to comply with a direction of the Minister under—
- (a) section 19A; or
 - (b) section 307 of the **Water Act 1989**.
- (2) A determination of the Minister under sub-section (1)—
- (a) must specify the term for the which the Administrator is appointed, which must not be more than 12 months;
 - (b) must set out reasons for the actions proposed in it; and
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- (c) must be published in the Government Gazette; and
 - (d) must be laid by the Minister before both Houses of Parliament within 5 sitting days of each House after the Order is made.
- (3) During the period for which an administrator is appointed under this section, the administrator acts in substitution for the board in performing the functions and duties of the Authority.
- (4) Any defect in relation to the appointment of the administrator does not invalidate that appointment or anything done by the administrator.
- (5) On the expiry of a determination under this section the Minister must determine whether or not to—
- (a) reinstate to his or her office each member of the board of the Authority whose term has not expired; or
 - (b) dismiss each member of the board of the Authority.
- (6) The administrator goes out of office—
- (a) if members are reinstated under sub-section (5)(a), at the time of that reinstatement; or
 - (b) if all the members are dismissed under sub-section (5)(b), on the appointment of new members—
- as the case requires.

- (7) If the term of appointment of the administrator expires and a determination under sub-section (5) has not been made, members of the board of the Authority whose term has not expired, are re-instated.

14. Application of Public Administration Act 2004

The **Public Administration Act 2004** applies to each Authority as if that Authority were a public entity but not a small entity within the meaning of that Act, established on or after the commencement of Part 5 of that Act.

Division 4—Boards

15. Board

- (1) Each Catchment Management Authority must have a board consisting of—
- (a) a chairperson; and
 - (b) not less than 5 and not more than 8 other members—
- appointed by the Minister, after consultation with the Minister administering the **Water Act 1989** and the Minister administering the **Agricultural Industry Development Act 1990**.
- (2) The board of each Authority must consist of persons with experience and knowledge of one or more of the following—
- (a) land management;
 - (b) water resources management and the water industry;
 - (c) waterway management;
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- (d) environment or natural resources management;
 - (e) primary industry;
 - (f) strategic or business planning;
 - (g) financial management.
- (3) More than one half of the members of the board of each Catchment Management Authority (other than the Port Phillip and Westernport Catchment Management Authority) must be persons whose principal occupation is primary production.

16. Function of boards

- (1) The board of an Authority—
- (a) is responsible for—
 - (i) the strategic planning of the Authority; and
 - (ii) deciding the policies of the Authority; and
 - (iii) the management of the affairs of the Authority, including ensuring the performance of the functions and the carrying out of the duties of the Authority; and
 - (b) may exercise the powers of the Authority.
- (2) Each board of an Authority, in performing its functions, exercising its powers and carrying out its duties must act in a proper and efficient manner.

17. Terms and conditions of appointment of members of boards

A member of the board of an Authority holds office, subject to this Act—

- (a) for the term, not exceeding 4 years, that is specified in the instrument of his or her appointment and is eligible for re-appointment; and
- (b) subject to this section, on the other terms and conditions that are determined by the Minister.

18. Appointment of chairperson

- (1) The chairperson of the board of an Authority must be appointed by the Minister.
- (2) The Minister may appoint as a chairperson any person who was a member of the board immediately before being appointed as chairperson.
- (3) If a vacancy arises in the office of the chairperson, the Minister must appoint a person in accordance with this section 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.

18A. Deputy chairperson

- (1) The board of an Authority must appoint one of the members of the board to be the deputy chairperson of the board.
 - (2) The deputy chairperson, if present, must preside at meetings of the board at which the chairperson is not present.
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18B. Acting appointments

- (1) The deputy chairperson must act as chairperson if—
 - (a) the office of chairperson is vacant; or
 - (b) the chairperson is unable, for any reason, to perform the duties of office, and it is not possible for the members to participate in a meeting in accordance with section 18N(7).
- (2) While the deputy chairperson is acting as chairperson, the deputy chairperson has and may exercise all the powers, and must perform all the duties, of the chairperson.
- (3) The Minister may appoint a person who has the experience and knowledge as required under section 15 to be a member of the board of an Authority during any period, or during all periods, when—
 - (a) the deputy chairperson is acting as chairperson; or
 - (b) a member of the board is unable for any reason to attend meetings of the board.

18C. When a member ceases to hold office

- (1) The office of member of the board of an Authority becomes vacant if the member—
 - (a) resigns in accordance with subsection (2); or
 - (b) becomes an insolvent under administration (within the meaning of the Corporations Act); or
 - (c) fails to attend 3 consecutive meetings of the board without the approval of the board.

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- (2) A person may resign from the office of member of the board of an Authority by notice in writing to the Minister.

18D. Removal from office of member

- (1) The Minister may at any time remove a member of the board of an Authority from the office of member.
- (2) The Minister must remove a person from the office of member of the board of an Authority if the member—
- (a) is convicted of an offence relating to his or her duties as a member of the board of an Authority; or
 - (b) fails without reasonable cause to disclose any interest under section 18G.

18E. Validity of decisions

- (1) An act or decision of the board of an Authority is not invalid merely because—
- (a) a vacancy in the membership of the board; or
 - (b) a defect or irregularity in, or in connection with, the appointment of a member of the board.
- (2) Anything done by or in relation to a person purporting to act as a member of the board of an Authority, whether as chairperson, deputy chairperson or another member, is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
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- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

18F. Improper use of information

A member or a person who has been a member of the board of an Authority must not make improper use of information acquired by virtue of that person's position as a member—

- (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, whether or not detriment was caused.

Penalty: 20 penalty units.

18G. Effect of pecuniary interests

- (1) A member of the board of an Authority 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 board or any of its committees at which the matter is to be considered, disclose the nature of the interest immediately before the consideration; or
 - (b) if the member is aware that the matter is to be considered at a meeting of the board or any of its committees at which the member does not intend to be present, disclose the nature of the interest to the chairperson, or if the chairperson has the interest, the deputy chairperson, before the meeting is held.

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- (2) If a member of the board of an Authority has disclosed an interest to the chairperson or the deputy chairperson, as the case may be, under sub-section (1)(b), the chairperson or the deputy chairperson must disclose that interest at the meeting at which the matter is considered, before the consideration of the matter.
- (3) 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 that the vote has been declared by the chairperson, or the deputy chairperson if it is the chairperson who has the interest, return to the meeting.
- (4) If a member discloses an interest under sub-section (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
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- (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—
- (e) in the case of a disclosure made at or before a meeting of the board, 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 board.
- (5) A person must comply with sub-section (1) or (3).
- Penalty: 20 penalty units.
- (6) It is a defence to a charge under sub-section (5) for the person charged to prove that the person 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.
- (7) The Magistrates' Court has jurisdiction over a charge under this section even though title to land may be genuinely in question.
- (8) A charge may not be filed for an offence under this section more than 3 years after the commission of the alleged offence.
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- (9) The Minister may, by notice in writing to an Authority, remove any disability imposed by this section in any case if so many of the members of the board of the Authority are affected that the Minister decides that the transaction of the business of the Authority would be impeded.
- (10) For the purposes of sub-section (9), the Minister may 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 in the notice.

18H. 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 18G 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 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,

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- 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
- (f) as a person who receives a service from the Authority, or as a resident of a region 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 region, 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 board of an Authority; or
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- (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 a board 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 18G does not preclude the member from taking part in the consideration of the matter.
- (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.

18I. Pecuniary interest does not prevent voting and consideration of some questions

Nothing in section 18G precludes any person from taking part in the consideration of, or voting on—

- (a) any question of whether the amount payable for goods or services previously supplied or provided under any contract should be paid from any

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fund of the Authority or from any other money belonging to the Authority; or

- (b) any question of whether an application should be made to the Minister for the exercise of the powers conferred by section 18G(9).

18J. Effect of finding of guilt for offence against section 18G

- (1) A member of the board of an Authority who is found guilty of an offence against section 18G or any corresponding previous enactment is not capable of being or continuing to be a member of a board of an Authority for 7 years after that finding of guilt, unless—

- (a) on application by the person found guilty, the court by which he or she is found guilty; 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 found guilty by the Magistrates' Court—to the County Court; and
 - (b) in any other case—to the Supreme Court.

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- (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 finding of guilt giving rise to the disqualification.

18K. Submission of returns by members and nominated officers

- (1) A person who becomes a member of a board of an Authority must within 30 days after becoming a member submit a primary return in the prescribed form to a person authorised by the board of the Authority.

Penalty: 20 penalty units.

- (2) 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.

- (3) If the board of an Authority has resolved that nominated officers must submit returns—

- (a) each nominated officer 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 a person authorised by the board of the Authority.

Penalty: 20 penalty units.

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

Penalty: 20 penalty units.

18L. Information to be disclosed in primary and ordinary returns

- (1) Each member and each 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 subsection (2).

Penalty: 20 penalty units.

- (2) Each member and each nominated officer must disclose in an ordinary return the following information in relation to the return period—
- (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;

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- (c) the address or description of any land in the region of the Authority or in a region which adjoins that Authority's region 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 relative 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.

- (3) 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 sub-section (2)(a) to (f) 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.

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- (4) In this section "relative" of a member or a nominated officer includes a domestic partner, or relative of a domestic partner, of the member or nominated officer.

18M. Authority to maintain a register

- (1) 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.
- (2) 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.
- (3) The register may be inspected at the office of the Authority during normal office hours.
- (4) 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.
- (5) 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.
- Penalty: 20 penalty units.
- (6) 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

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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.

- (7) 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.
- (8) 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.

18N. Proceedings of the board of an Authority

- (1) Subject to this Act, the board of an Authority may regulate its own procedure.
 - (2) The chairperson or, in his or her absence, the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, a member of the board of an Authority elected by the members present at the meeting, must preside at a meeting of the board.
 - (3) The quorum for a meeting of the board of an Authority is a majority of the members for the time being.
 - (4) A question arising at a meeting of the board of an Authority is determined by a majority of the votes of the members present and voting on the question.
-

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- (5) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.
 - (6) The board of an Authority must ensure that minutes are kept of each meeting of the board.
 - (7) The board of an Authority may permit its members to participate in a particular meeting by—
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of electronic or instantaneous communication.
 - (8) A member of the board of an Authority who participates in a meeting under a permission under sub-section (7) is deemed to be present at the meeting.

180. Special meetings

- (1) The chairperson of the board of an Authority may at any time (and must, if requested by a majority of members) call a special meeting of the board.
- (2) Subject to sub-section (3), a special meeting must not be held unless at least 2 days' notice has been given to each member.
- (3) If all members of the board consent in writing, a special meeting may be held with less than 2 days' notice being provided to each member.

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- (4) 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.
- (5) A special meeting must deal only with business stated in the notice.

18P. Resolutions without meetings

- (1) If all of the members of the board of an Authority for the time being see a document setting out a resolution and a majority of those members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the board 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 to sign signs the document.
 - (2) If a resolution is deemed under sub-section (1) to have been passed at a meeting of the board of an Authority, each member of the board must be advised as soon as practicable and given a copy of the terms of the resolution.
 - (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the board of an Authority, are deemed to constitute one document.
-

18Q. Allowances

- (1) An Authority may, subject to sub-section (2), pay remuneration and allowances to its members of the board.
- (2) The amounts of any remuneration and allowances paid by an Authority must not exceed the amounts fixed by the Minister in respect of that Authority.
- (3) The amounts fixed by the Minister under this section may vary between Authorities.

18R. Expenses

Despite anything in this or any other Act, the members of the board of an Authority are, if the board so resolves, entitled to be reimbursed out of the Authority's funds for any reasonable expenses they incur whilst carrying out functions and exercising powers under this Act.

Example

Reasonable expenses incurred when making site visits.'

152. Repeal of redundant heading

The heading to Division 4 of Part 2 of the **Catchment and Land Protection Act 1994** is repealed.

153. Immunity

- (1) In section 19 of the **Catchment and Land Protection Act 1994**—
 - (a) for "or an Authority" **substitute** "or any member of the board of an Authority";
 - (b) in paragraph (b), for "Act or omission" **substitute** "act or omission".

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(2) At the end of section 19 of the **Catchment and Land Protection Act 1994 insert—**

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

154. Insertion of new Division 5 of Part 2 of the Catchment and Land Protection Act 1994

After section 19 of the **Catchment and Land Protection Act 1994 insert—**

'Division 5—Other Provisions Relating to Catchment Management Authorities

19A. 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 or 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.
-

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- (5) A failure to comply with sub-section (3) or (4) does not affect the validity of the direction.

19B. Annual report

- (1) Each Authority must submit to the Minister and the Council, on or before the prescribed date in each year, a report on the condition and management of land and water resources in its region and the carrying out of its functions.
- (2) In this section "**prescribed date**" means the day in each year fixed by the Minister by instrument.

19C. Corporate plans

- (1) Each 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 19D;
 - (b) a business plan and financial statements 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

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the Minister thinks fit to be made in any corporate plan submitted in accordance with this section.

- (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.

19D. 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;

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- (d) the performance targets and other measures by which the Authority may be judged in relation to its business objectives;
- (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.

19E. Statements of obligations of Authorities

- (1) The Minister may—
 - (a) issue a statement of obligations to an Authority specifying obligations that the Authority has in performing its functions under this Act or exercising powers it has under this Act; or
 - (b) amend, vary or revoke a statement of obligations after complying with sub-section (5).
- (2) The Minister must not issue, amend, vary or revoke a statement under sub-section (1), unless the Minister has first consulted with the Minister administering Part 10 of the **Water Act 1989**.
- (3) A statement of obligations may include provisions relating to—
 - (a) standards as to the performance of any such functions;
 - (b) requirements as to community consultation in performing any such functions.

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- (4) An Authority must comply with a statement of obligations that applies to that Authority.
- (5) The Minister must not amend or vary a statement of obligations unless—
 - (a) the Authority has agreed to the proposed amendment or variation; or
 - (b) the Minister has—
 - (i) given the Authority notice in writing of the proposed amendment or variation; and
 - (ii) considered any written submission made by the Authority in response to the notice.
- (6) The Minister must cause a notice of—
 - (a) the making and issue of a statement of obligations to an Authority; or
 - (b) the amendment, variation or revocation of a statement of obligations—to be published in the Government Gazette.

19F. Powers of delegation of an Authority

An Authority may, by instrument under its common seal, delegate to—

- (a) a member of the board of an Authority or any other officer of the Authority, by name or to the holder of an office; or
- (b) to any committee established by the Authority under this Act, the members of which are members of the board or officers of the Authority;

- (c) with the consent of the Minister, to any other person or body, including any committee established by the Authority under this Act, the members of which are not members of the board or officers of the Authority—

any function, power or duty of the Authority other than—

- (d) this power of delegation; or
- (e) the power to make by-laws; or
- (f) any other power that is prescribed for the purposes of this section.

19G. Chief Executive Officer

- (1) An Authority may appoint a person as Chief Executive Officer of the Authority.
- (2) A person appointed under sub-section (1) must not be a member of the board of the Authority.
- (3) The Chief Executive Officer holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
- (4) The Chief Executive Officer is responsible to the Authority for the carrying out of the Authority's functions.
- (5) The Chief Executive Officer must comply with the directions of the Authority.

19H. Delegation of powers of Chief Executive Officer

An Authority may, by instrument, delegate to any officer or employee referred to in section 19I, any power, duty or function conferred on the Chief Executive Officer under this Act or the regulations, except this power of delegation.

19I. Employment of officers of Authorities

An Authority may employ, on terms and conditions determined by the Authority, such officers and employees it considers necessary for the carrying out of its functions.

19J. 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 committee may act despite any vacancy in its membership;
 - (c) subject to this Act and any rules made under paragraph (d), a committee may regulate its own proceedings;
 - (d) 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;

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- (e) 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;
 - (f) 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;
 - (g) the Minister may specify rules of procedure for the exercise of a delegated power by a committee referred to in paragraph (f) and any purported exercise of that delegated power by such a committee otherwise than in accordance with those rules is void.
- (3) A member of a committee is entitled to be paid any fees and allowances fixed by the Minister.!

155. Repeal of section 30(4)

Section 30(4) of the **Catchment and Land Protection Act 1994** is **repealed**.

156. Amendment of Part heading

In the heading to Part 10 of the **Catchment and Land Protection Act 1994**, after "**REGULATIONS**" insert "**AND SUBORDINATE INSTRUMENTS**".

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157. Insertion of new section 95A

After section 95 of the **Catchment and Land Protection Act 1994** insert—

"95A. Incorporation of documents in certain subordinate instruments

- (1) A subordinate instrument, made under a section of this Act may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—
 - (a) wholly or partially or as amended by the order or other instrument; or
 - (b) as formulated, issued, prescribed or published at the time the order or other instrument is made or at any time before then.
- (2) Sub-section (1) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department."

158. Substitution of sections 96 to 102

For sections 96 to 102 of the **Catchment and Land Protection Act 1994** substitute—

'96. Definition

In this Part—

"2006 Act" means the **Water (Governance) Act 2006**.

97. Validation of certain orders or other instruments

An order or other instrument made or purported to be made under section 10 on or after 30 September 1994 or under section 24 on or after 15 December 1994 and in force,

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or purportedly in force, immediately before the commencement of section 157 of the 2006 Act that would have been validly made if section 95A had been in operation at the time the relevant order or other instrument was made or purported to have been made has, and is deemed always to have had, the same force and effect as it would have had—

- (a) if section 95A had been in operation at that time; and
- (b) despite any failure or purported failure to comply with the requirements of section 32 of the **Interpretation of Legislation Act 1984** in respect of that order or other instrument.

98. Catchment Management Authorities deemed to be the same body

- (1) Despite the commencement of section 151 of the 2006 Act—
 - (a) a Catchment Management Authority that was in existence immediately before that commencement, is deemed to continue in existence, on and from that commencement, as if it were established under Division 3 of Part 2 of this Act as in force on and from that commencement; and
 - (b) each member of a Catchment Management Authority that was in existence immediately before that commencement, is deemed to continue in office as a member of the board of the Catchment Management Authority (as deemed to be established under Division 3 of Part 2) as if the member had been appointed under that Division

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for the remaining period of that member's term of appointment.

- (2) Despite the commencement of section 151 of the 2006 Act—
- (a) any rights, property and assets that immediately before that commencement were vested in a Catchment Management Authority are deemed to be vested in the Catchment Management Authority (as deemed to be established under Division 3 of Part 2); and
 - (b) any debts, liabilities and obligations of a Catchment Management Authority that were existing immediately before that commencement are deemed to be the debts, liabilities and obligations of the Catchment Management Authority (as deemed to be established under Division 3 of Part 2); and
 - (c) a Catchment Management Authority (as deemed to be established under Division 3 of Part 2) is deemed to be substituted as a party to any proceedings pending in any court to which the Catchment Management Authority was a party immediately before that commencement; and
 - (d) a Catchment Management Authority (as deemed to be established under Division 3 of Part 2) is substituted as a party to any arrangement or contract entered into by or on behalf of the Catchment Management Authority and in force immediately before that commencement; and
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- (e) any reference to a Catchment Management Authority in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document whatsoever, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, must be construed as a reference to the Catchment Management Authority (as deemed to be established under Division 3 of Part 2).
- (3) For the purposes of this Act, a catchment and land protection region of a Catchment Management Authority (that is deemed to be established under Division 3 of Part 2) is deemed to be the area that was the catchment and land protection region of the Catchment Management Authority immediately before the commencement of section 151 of the 2006 Act.'

159. Consequential repeal of Schedules 1, 4 and 6

Schedules 1, 4 and 6 to the **Catchment and Land Protection Act 1994** are repealed.

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See:
Act No.
41/1987.
Reprint No. 6
as at
3 February
2005
and
amending
Act Nos
108/2004,
109/2004,
32/2006 and
40/2006.
LawToday:
www.dms.
dpc.vic.
gov.au

**160. Delegations to Catchment Management
Authorities—Conservation, Forests and Lands
Act 1987**

After section 11(1)(c) of the **Conservation,
Forests and Lands Act 1987** insert—

"(ca) a Catchment Management Authority
established under the **Catchment and Land
Protection Act 1994**; or".

See:
Act No.
6295.
Reprint No. 8
as at
30 June 2003
and
amending
Act Nos
8/2004,
76/2004 and
75/2005.
LawToday:
www.dms.
dpc.vic.
gov.au

**161. Insertion of new section 7AB in the Limitation of
Actions Act 1958**

After section 7A of the **Limitation of Actions
Act 1958** insert—

**"7AB. No title by adverse possession against
water authorities etc.**

Despite any rule of law or provision made by
or under this or any other Act, but without
limiting section 7, the right, title or interest—

- (a) of an Authority, within the meaning of
the **Water Act 1989**; or
- (b) of the Melbourne Water Corporation
under Part 6 the **Melbourne Water
Corporation Act 1992**; or
- (c) of a licensee under Division 1 of Part 2
of the **Water Industry Act 1994**—

to or in any land is not affected by any
possession of that land adverse to the
Authority, Corporation or licensee (as the
case requires) irrespective of the period of
that possession."

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162. Repeal of Melbourne Water Corporation Act 1992

- (1) The **Melbourne Water Corporation Act 1992** is **repealed**.
- (2) In section 7C of the **Limitation of Actions Act 1958**—
 - (a) paragraph (b) is **repealed**; and
 - (b) **omit** ", Corporation".

163. Repeal of Melbourne and Metropolitan Board of Works Act 1958

The **Melbourne and Metropolitan Board of Works Act 1958** is **repealed**.

164. Repeal of reference to water authorities in Public Authorities (Dividends) Act 1983

In the definition of "public authority" in section 4(1) of the **Public Authorities (Dividends) Act 1983**, paragraph (g) is **repealed**.

See:
Act No.
10003.
Reprint No. 2
as at
8 August 1997
and
amending
Act Nos
91/1997 and
23/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

165. Amendment of Road Management Act 2004

After section 37(1)(d)(ii) of the **Road Management Act 2004** insert—

- "(iia) in the case of the land referred to in the Clause in Schedule 3 to the **Water Act 1989**, Melbourne Water Corporation; or".

See:
Act No.
12/2004.
Reprint No. 1
as at
1 July 2004
and
amending
Act Nos
39/2004,
108/2004,
110/2004,
14/2005,
24/2005,
61/2005,
95/2005,
9/2006 and
32/2006.
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See:
Act No.
121/1994.
Reprint No. 5
as at
28 April 2005
and
amending
Act Nos
48/2003,
9/2006 and
24/2006.
LawToday:
www.dms.
dpc.vic.
gov.au

166. Insertion of new section 60A in the Water Industry Act 1994

After section 60 of the **Water Industry Act 1994**
insert—

"60A. Power to issue infringement notices

- (1) A person authorised in writing, either generally or in a particular case, by a licensee may serve an infringement notice on any person he or she reasonably believes has contravened a permanent water saving plan that the licensee has adopted under section 78J(9).
- (2) An offence referred to in sub-section (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The penalty to be paid in respect of an offence to which an infringement notice that is served under this section relates must not exceed 1 penalty unit."

167. Insertion of new section 77A in the Water Industry Act 1994

After section 77 of the **Water Industry Act 1994**
insert—

"77A. Annual report of certain information to be given to Minister and tabled

- (1) A licensee must give to the Minister, for each financial year the following information—
 - (a) in relation to each person, who is not a natural person, who uses water supplied by the licensee for purposes that are not farming, irrigation or domestic purposes, at a volume that is within a specified range—

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- (i) the name of the person; and
 - (ii) the information (if any) as to the person's participation in any water conservation program; and
- (b) in relation to each specified range, the number of persons to whom paragraph (a) applies who are within the range.
- (2) The information to be given under sub-section (1) must be given to the Minister on or before the date specified by the Minister.
 - (3) The Minister must cause any information given to him or her under this section to be laid before each House of Parliament within 7 sitting days of the House after the day on which the Minister is given the information.
 - (4) For the purposes of this section the Minister may specify one or more range or ranges of volumes.
 - (5) In this section "**specified range**" means a range of volumes specified by the Minister under sub-section (4)."

168. Plan to contain 4 stages of restrictions and prohibitions—section 78B of Water Industry Act 1994

- (1) For section 78B(3) of the **Water Industry Act 1994** substitute—

"(3) Without limiting sub-section (2), a plan must contain a Schedule setting out 4 stages of restrictions or prohibitions on the use of water with each stage being of varying severity capable of being separately implemented in any area, or a specified part of any area, in respect of which the licensee

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has the function of providing the water supply system."

- (2) In section 78B(6)(a) of the **Water Industry Act 1994**, after "plan" insert "in respect of each of the 4 stages required to be set out in the plan under sub-section (3)".

169. Implementation of plan—section 78G of Water Industry Act 1994

- (1) For section 78G(2) of the **Water Industry Act 1994** substitute—

"(2) Implementation involving the imposition, removal or substitution of restrictions or prohibitions in 1 or more of the 4 stages of restrictions and prohibitions on the use of water in an area may be effected by the licensee publishing a notice in a newspaper circulating generally in the area specifying—

- (a) the restrictions and prohibitions imposed or being substituted or removed; and
- (b) the stage to which they apply or applied; and
- (c) the area to which they apply or applied; and
- (d) the time from which they apply or cease to apply, not being earlier than the day of publication of the notice."

- (2) In section 78G(3) of the **Water Industry Act 1994**, after "section 78H" insert ", or be served with an infringement notice under section 78HA,".

170. Section 78H substituted and new section 78HA inserted in Water Industry Act 1994

For section 78H of the **Water Industry Act 1994** substitute—

"78H. Contravention of plan

- (1) A person who receives a supply of water from a licensee in a period when stage 1 restrictions or prohibitions (as set out in the drought response plan or an emergency management plan of the licensee) are in force must not, after receiving a warning notice from the licensee, contravene any such restriction or prohibition on the use of that water.

Penalty: For a first offence, 15 penalty units;

For a second or subsequent offence, 30 penalty units.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

- (2) A person who receives a supply of water from a licensee in a period when stage 2 restrictions or prohibitions (as set out in the drought response plan or emergency management plan of the licensee) are in force must not, after receiving a warning notice from the licensee, contravene any such restriction or prohibition on the use of that water.

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Penalty: For a first offence, 20 penalty units;

For a second or subsequent offence, 40 penalty units.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

- (3) A person who receives a supply of water from a licensee in a period when stage 3 restrictions or prohibitions (as set out in the drought response plan or emergency management plan of the licensee) are in force must not, after receiving a warning notice from the licensee, contravene any such restriction or prohibition on the use of that water.

Penalty: For a first offence, 30 penalty units;

For a second or subsequent offence, 60 penalty units or imprisonment for 3 months.

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

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- (4) A person who receives a supply of water from a licensee in a period when stage 4 restrictions or prohibitions (as set out in the drought response plan or an emergency management plan of the licensee) are in force must not, after receiving a warning notice from the licensee, contravene any such restriction or prohibition on the use of that water.

Penalty: For a first offence, 40 penalty units or imprisonment for 3 months;

For a second or subsequent offence, 80 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 (up to a maximum of 20 additional penalty units) after service of a notice of contravention on the person under section 69.

- (5) The maximum penalty for an offence under this section committed by a body corporate is a fine that is 5 times the fine provided for in the relevant sub-section as the penalty.

78HA. Power to serve an infringement notice

- (1) A person authorised in writing, either generally or in a particular case, by a licensee may serve an infringement notice on any person he or she reasonably believes has committed an offence under section 78H.

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Part 4—Amendment and Repeal of Other Acts

- (2) An offence referred to in sub-section (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of this section, the infringement penalty for an offence against a provision set out in Column 1 of the Table is the relevant amount set out in Column 2 of the Table in respect of that offence.
- (4) A summary of an offence in Column 3 of the Table is not to be taken to affect the nature or elements of the offence to which the summary refers.

TABLE

<i>Column 1</i> <i>Infringement</i> <i>Offence</i>	<i>Column 2</i> <i>Infringement</i> <i>penalty</i>	<i>Column 3</i> <i>Summary of</i> <i>offence</i>
An offence against section 78H(1)	2 penalty units	Contravention of a stage 1 drought response plan or emergency management plan restriction or prohibition on the use of water
An offence against section 78H(2)	3 penalty units	Contravention of a stage 2 drought response plan or emergency management plan restriction or prohibition on the use of water

Water (Governance) Act 2006
Act No. 85/2006

Part 4—Amendment and Repeal of Other Acts

s. 171

<i>Column 1</i> <i>Infringement</i> <i>Offence</i>	<i>Column 2</i> <i>Infringement</i> <i>penalty</i>	<i>Column 3</i> <i>Summary of</i> <i>offence</i>
An offence against section 78H(3)	4 penalty units	Contravention of a stage 3 drought response plan or emergency management plan restriction or prohibition on the use of water
An offence against section 78H(4)	5 penalty units	Contravention of a stage 4 drought response plan or emergency management plan restriction or prohibition on the use of water

171. Amendment of Water (Resource Management) Act 2005—payment of compensation

After section 141(7) of the **Water Act 1989**, as proposed to be substituted by section 58 of the **Water (Resource Management) Act 2005** insert—

"(8) A person is not entitled to any compensation under section 155 for anything done by an Authority under this section."

See:
Act No.
99/2005.
LawToday:
www.dms.dpc.vic.gov.au

Water (Governance) Act 2006
Act No. 85/2006

Part 4—Amendment and Repeal of Other Acts

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See:
Act No.
6653.
Reprint No. 11
as at
1 July 2006
and
amending
Act Nos
99/2005 and
22/2006.
LawToday:
www.dms.
dpc.vic.
gov.au

172. Amendment of Valuation of Land Act 1960

- (1) In section 5A(6) of the **Valuation of Land Act 1960**, insert "and this sub-section".
- (2) After section 13DF(2)(k) of the **Valuation of Land Act 1960** insert—
 - "(1) where the value of any land has been determined on the basis that an associated water share in relation to that land is deemed relevant and where the water share ceases to be an associated water share in relation to the land because the owner of the water share—
 - (i) sells the water share to a person who is not a related person (within the meaning of section 3 of the **Water Act 1989**) to the owner; or
 - (ii) sells the water share to a person who is a related person to the owner of the water share and the water share becomes an associated water share in relation to other land;"
- (3) After section 13DF(8) of the **Valuation of Land Act 1960** insert—
 - '(9) In this section "**associated water share**" and "**water share**" have the same meanings as in section 3 of the **Water Act 1989**.
 - (10) Sub-sections (2)(1), (9) and this sub-section expire on 1 July 2008.'

173. Effect of Schedule

The Acts set out in Schedule 1 are amended as set out in Schedule 1.

Water (Governance) Act 2006
Act No. 85/2006

Part 5—Amendments to the Werribee South Land Act 1991

s. 174

**PART 5—AMENDMENTS TO THE WERRIBEE SOUTH
LAND ACT 1991**

174. Long-term marina development leases

In section 5(3) of the **Werribee South Land Act 1991**, for "50 years" substitute "99 years".

See:
Act No.
11/1991.
LawToday:
www.dms.dpc.vic.gov.au

175. Effect of Schedule 2

The **Werribee South Land Act 1991** is amended as set out in Schedule 2.

SCHEDULES

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

1. Australian Grands Prix Act 1994

In section 48(1) omit "the **Melbourne and Metropolitan Board of Works Act 1958**".

2. Land Act 1958

2.1 For section 137A(17) **substitute**—

(17) In this section "**metropolitan area**" means—

- (a) "metropolitan area" within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
- (b) any area declared by the Governor in Council under sub-section (18) to be the metropolitan area.

(18) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

(19) An Order made under sub-section (18) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

- (a) wholly or partially or as amended by order or other instrument; or
- (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

(20) Sub-section (19) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment!.

Water (Governance) Act 2006
Act No. 85/2006

Sch. 1

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- 2.2 In section 137B(2) after "metropolitan area" **insert**
"(as defined in section 137A)".
- 2.3 In sections 3(1) and 384(1) for the definition of "metropolis"
substitute—
' "**metropolis**" means the waterway management district of
Melbourne Water Corporation under the **Water Act**
1989;'.
- 2.4 Section 385(2)(a) is **repealed**.

3. Land Tax Act 2005

- 3.1 In section 64(1), for the definition of "greater Melbourne"
substitute—
' "**greater Melbourne**" means—
- (a) "metropolitan area" within the meaning of
section 201 of the **Melbourne and**
Metropolitan Board of Works Act 1958 (as in
force immediately before its repeal); or
 - (b) any area declared by the Governor in Council
under sub-section (3) to be the metropolitan
area;'.
- 3.2 After section 64(2) **insert—**
- "(3) The Governor in Council may, by Order published in
the Government Gazette, declare an area to be the
metropolitan area for the purposes of this section.
- (4) An Order made under sub-section (3) may apply,
adopt or incorporate any matter contained in any
document formulated, issued, prescribed or published
by any person, whether—
- (a) wholly or partially or as amended by order or
other instrument; or
 - (b) as formulated, issued, prescribed or published
at the time the order is made or at any time
before then.
- (5) Sub-section (4) does not apply to the incorporation of
a map or plan of an area of land unless the map or
plan is lodged in the Central Plan Office of the
Department of Sustainability and Environment."

Water (Governance) Act 2006
Act No. 85/2006

Sch. 1

4. Libraries Act 1988

4.1 In section 3, for the definition of "metropolitan area" **substitute—**

' "**metropolitan area**" means—

- (a) "metropolitan area" within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
- (b) any area declared by the Governor in Council under sub-section (2) to be the metropolitan area;'

4.2 At the end of section 3 **insert—**

"(2) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

(3) An Order made under sub-section (2) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

- (a) wholly or partially or as amended by order or other instrument; or
- (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

(4) Sub-section (3) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment."

5. Melbourne City Link Act 1995

5.1 In section 96(6), for ", the **Water Act 1989** and the **Melbourne and Metropolitan Board of Works Act 1958**" **substitute** "and the **Water Act 1989**".

5.2 In section 103(3) for "Sections 87 to 89 of the **Melbourne and Metropolitan Board of Works Act 1958** apply" **substitute** "Section 165 of the **Water Act 1989** applies".

6. Eastlink Project Act 2004

In section 229(3), for "Sections 87 to 89 of the **Melbourne and Metropolitan Board of Works Act 1958** apply" substitute "Section 165 of the **Water Act 1989** applies".

7. National Gallery of Victoria Act 1966

7.1 In section 4, for the definition of "regional art gallery" substitute—

' "**regional art gallery**" means an art gallery situate and conducted outside—

- (a) the metropolitan area for the time being within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
- (b) any area declared by the Governor in Council under sub-section (2) to be the metropolitan area.'

7.2 At the end of section 4 insert—

"(2) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

(3) An Order made under sub-section (2) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

- (a) wholly or partially or as amended by order or other instrument; or
- (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

(4) Sub-section (3) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment."

8. National Parks Act 1975

8.1 In section 3(1), in the definition of "Melbourne Water Corporation" for "**Melbourne Water Corporation Act 1992**" substitute "**Water Act 1989**".

8.2 In section 10(c)(iv) omit ", as defined in the **Melbourne and Metropolitan Board of Works Act 1958**".

Water (Governance) Act 2006
Act No. 85/2006

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8.3 At the end of section 10 **insert**—

- (2) In this section "**metropolitan area**" means—
- (a) "metropolitan area" within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
 - (b) any area declared by the Governor in Council under sub-section (3) to be the metropolitan area.
- (3) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.
- (4) An Order made under sub-section (3) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—
- (a) wholly or partially or as amended by order or other instrument; or
 - (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.
- (5) Sub-section (4) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment.!

8.4 In section 32AH(1)(b), for "**Melbourne Water Corporation Act 1992**" substitute "**Water Act 1989**".

9. Residential Tenancies Act 1997

In sections 54(2) and 164(2) **omit** "and Part II of the **Melbourne and Metropolitan Board of Works Act 1958**".

10. Rural Finance Act 1988

In section 3, in paragraph (b)(ii) of the definition of "rural industries", for "metropolis (as defined in the **Melbourne and Metropolitan Board of Works Act 1958**)" substitute "waterway management district of Melbourne Water Corporation under the **Water Act 1989**".

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11. Safe Drinking Water Act 2003

11.1 In section 3, in paragraph (a) of the definition of "water storage manager" for "**Melbourne Water Corporation Act 1992**" substitute "**Water Act 1989**".

11.2 Section 53(d)(ii) is **repealed**.

12. Sale of Land Act 1962

12.1 In section 30(1), for the definition of "metropolitan area" substitute—

' "**metropolitan area**" means—

- (a) "metropolitan area" within the meaning of section 201 of the **Melbourne and Metropolitan Board of Works Act 1958** (as in force immediately before its repeal); or
- (b) any area declared by the Governor in Council under sub-section (3) to be the metropolitan area;'

12.2 After section 30(2) **insert**—

"(3) The Governor in Council may, by Order published in the Government Gazette, declare an area to be the metropolitan area for the purposes of this section.

(4) An Order made under sub-section (3) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person, whether—

- (a) wholly or partially or as amended by order or other instrument; or
- (b) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

(5) Sub-section (4) does not apply to the incorporation of a map or plan of an area of land unless the map or plan is lodged in the Central Plan Office of the Department of Sustainability and Environment."

13. South Yarra Project (Subdivision and Management) Act 1985

For section 19(2)(b) **substitute**—

"(b) is not rateable under the **Water Act 1989** (except for the making and payment of a fee imposed under a tariff for water supplied and sewerage services provided under that Act); and"

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14. Transport Act 1983

In section 2(1) of the **Transport Act 1983**, the definition of "metropolitan area" is **repealed**.

15. Water Industry Act 1994

15.1 In section 3(1)—

- (a) the definition of "MMBW Act" is **repealed**;
- (b) for the definition of "trade waste agreement" **substitute—**

' "trade waste agreement" includes a trade waste consent granted by a licensee under this Act;'

15.2 In section 4B(3), for "**Essential Services Commission Act 2001**, the **Water Act 1989**, the **Melbourne and Metropolitan Board of Works Act 1958** or the **Melbourne Water Corporation Act 1992**," **substitute "Essential Services Commission Act 2001** or the **Water Act 1989**".

15.3 In section 25(2)(c), **omit** "or Part X of the MMBW Act".

15.4 In section 85(1)(g), **omit** "or any rate due to Melbourne Water Corporation under Division 3 of Part II of the MMBW Act".

15.5 In section 175A(1)(a)—

- (a) for "MMBW Act" **substitute "Water Act 1989"**;
- (b) for "of that Act" **substitute "of the Melbourne Metropolitan Board of Works Act 1958** (before its repeal)".

15.6 In section 175A(1)(b)—

- (a) for "MMBW Act as mentioned in section 3(7) of that Act" **substitute "Water Act 1989"**;
- (b) for "section 3 of that Act" **substitute "section 3 of the Melbourne Metropolitan Board of Works Act** (before its repeal)".

15.7 In section 175A(3), for "MMBW Act" **substitute "Water Act 1989"**.

Water (Governance) Act 2006
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15.8 In section 191, for paragraph (c) of the definition of "water supply authority" **substitute**—

"(c) Melbourne Water Corporation established under Part 6 of the **Water Act 1989**".

15.9 In clauses 1, 2, 3 and 4 of Schedule 1 for "MMBW Act" (wherever occurring) **substitute "Water Act 1989"**.

16. World Swimming Championships Act 2004

Section 48 is **repealed**.

SCHEDULE 2

AMENDMENT TO WERRIBEE SOUTH LAND ACT 1991

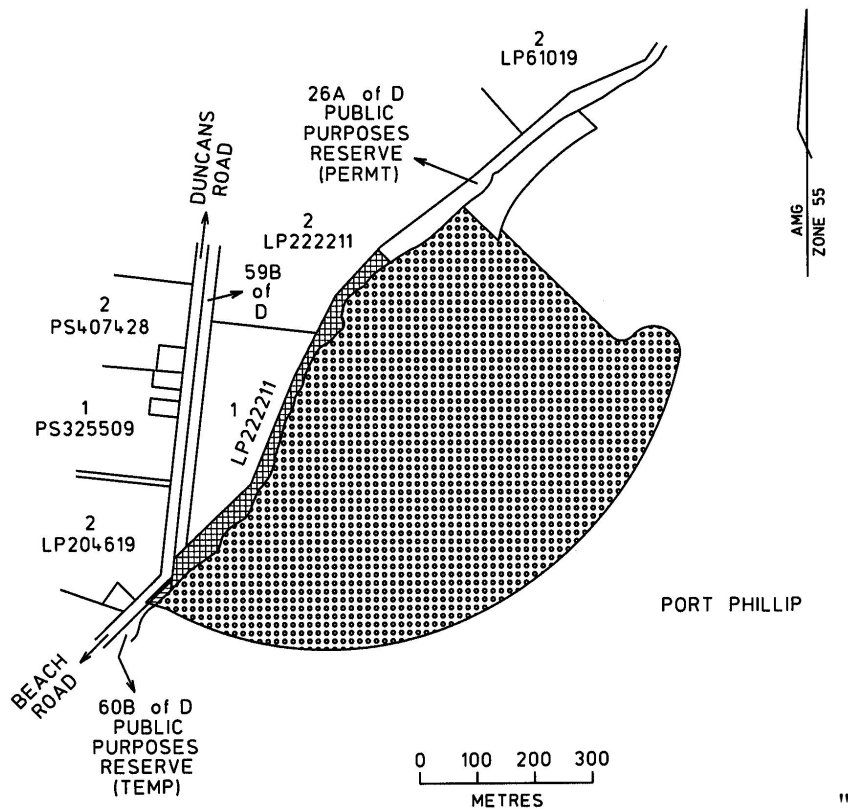
1. Schedule 2 to the Werribee South Land Act 1991 substituted

For Schedule 2 to the Werribee South Land Act 1991
substitute—

"SCHEDULE 2

Sections 3 and 4

PLAN OF WERRIBEE SOUTH LAND



Water (Governance) Act 2006
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Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 10 August 2006

Legislative Council: 4 October 2006

The long title for the Bill for this Act was "to amend the **Water Act 1989** to make provision for water corporations and to make other amendments to that Act, to amend the **Catchment and Land Protection Act 1994** to make further provision for Catchment Management Authorities and to make other amendments to that Act, to repeal the **Melbourne and Metropolitan Board of Works Act 1958** and the **Melbourne Water Corporation Act 1992** and to make further amendments to the **Conservation, Forests and Lands Act 1987**, the **Limitation of Actions Act 1958**, the **Public Authorities (Dividends) Act 1983**, the **Road Management Act 2004**, the **Water Industry Act 1994**, the **Valuation of Land Act 1960**, the **Water (Resource Management) Act 2005** and the **Werribee South Land Act 1991**."